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## Appeals court throws out more that 100 death sentences in three state

By David Kravets THE ASSOCIATED PRESS

SAN FRANCISCO — A federal appeals court threw out more than 100 death sentences in Arizona, Montana and Idaho on Tuesday because the inmates were sent to death row by judges instead of juries.

The case stems from a 2002 decision by the U.S. Supreme Court, in which the high court found that juries, not judges, must render death sentences. But the Supreme Court left unclear whether the new rules should apply retroactively to inmates awaiting execution.

In an 8-3 vote, the San Francisco-based 9th U.S. Circuit Court of Appeals said all condemned inmates sentenced by a judge should have their sentences commuted to life in prison.

The ruling applies only to Arizona, Idaho and Montana, the only states in the 9th Circuit that have allowed judges to impose death sentences.

Two other states, Nebraska and Colorado, have also allowed judges to sentence inmates to death. But the federal appeals courts that oversee them have yet to rule on the issue.

The ruling affects approximately 3 percent of the 3,700 people on death row in the United States.

"By deciding that judges are not constitutionally permitted to decide whether defendants are eligible for the death penalty, the Supreme Court altered the fundamental bedrock principles applicable to capital murder trials," Circuit Judge Sidney R. Thomas wrote for the court.

Defense attorneys hailed the verdict. "This is fundamental justice," said Ken

Murray, a federal public defender in Phoenix. Murray estimated that the decision affects at least 100 inmates on Arizona's death row alone.

If the decision stands, Arizona and the other states might hold new penalty trials, convening juries to

decide between life and death, said John Pres Todd, a lawyer with the Arizona Attorney General office. He said the state was trying to deter exactly how many condemned inmates are affect by the ruling.

'We are disappointed. We are going to appeal," Kent Cattani, chief counsel for the Arizona An General's office.

The ruling is expected to reduce the death tences of at least 16 condemned inmates in k Montana Assistant Attorney General Pamela Co said state attorneys were reviewing the decision determine whether its five condemned inmates wo be affected.

'This may cause some chaos in the shortdon't think this is going to hold up," Collins say

The case the appeals court used to decide issue concerned Arizona inmate Wa Summerlin, who was found guilty of murdering 1981 slaying of Brenna Bailey, 36.

The Tempe finance company adminis body was found in the trunk of her carac after she visited Summerlin to check on m he owed. Summerlin was convicted in 1982a a judge sentenced him to death.

Prior to the U.S. Supreme Court's ruling last a jury determined guilt or innocence, but one on judges evaluated whether the particulars of the made it worthy of the death penalty in Air Idaho, Montana, Colorado and Nebraska.

The Death Penalty Information Center. compiles statistics on capital punishment, lated that since 1976, those five states have cuted 29 people under laws allowing nonjung

In July, meanwhile, the 11th U.S. Circuit Co Appeals ruled in a Florida case that the Sup Court decision should not be applied retroact some death penalty cases. In Florida, Alia Indiana and Delaware, juries recommend a li death sentence but judges are allowed to gi death penalty against the jury's wishes.

# Heavy flooding in China kills 3

BEIJING (AP) — Heavy flooding in northern China has killed 38 people with another 34 people missing, the official Xinhua News

Agency reported Tuesday.

Rains pounding Shaanxi province over the past weeks caused rivers to overflow and sparked mudslides, Xinhua said. More than 30,000 soldiers and militia helped residents shore up river embankments against further flooding, it said.

Xinhua didn't say when the deaths occurred, but earlier reports said at least 21 people have died since rain began falling Aug. 24.

Rescuers were at work in the remote Shaanxi village of Yongquan, where the mud-rock flow damaged 14 houses, Xinhua said, without providing other details.

Meanwhile, troops were in the Shaanxi city of Weinan, where embankments along the Weihe river burst and forced the evacuation of over 150,000 residents from four counties, said an official at Weinan's flood control office who gave only his family name, Wang.

He said floodwaters were beginning to recede. Flooding hit record highs on Monday, Xinhua said.

Xinhua said direct economic losses have been estimated at \$240 million. 50,000 houses have been destroyed and roads, telephone lines and electricity Death toll rises in China flooding

Heavy flooding in China's Shaanxi province killed 38



and water supplies have b cut, Xinhua said.

## One killed, one injured in hotel robbery incident in Michigan

TROY, Mich. (AP) — Several suspects in a hotel robbery that left an employee dead and a guest wounded were arrested Tuesday in Detroit, police said.

The victims were found about 1:30 a.m. at the Troy Holiday Inn in this suburb 20 miles north of downtown Detroit. Killed was employee Michelle Eberhard, 35, of Wayne County's Redford

Township, Troy police Lt. Steve Zavislak said. A 28-year-old female guest from Cedar Park, Texas, was being treated at a local hospital, Zavislak said. He did not provide her name or condition.

Troy detectives, assisted by Detroit police, arrested "multiple suspects" in Detroit shortly before noon, Zavislak said. He did not say how many suspects were in custody and did not provide their names, ages or hometowns but said, "We're confident we have the shooter in custody."

The robbers disabled the hotel's surveillance system before taking money and property from the hotel, Zavislak said. He declined to say how much money or what property was taken.

The women were not found together, Zavislak

said earlier Tuesday. He declined to say

in the hotel the women were discovered The hotel was closed Tuesday morning w police investigated.

### Blackout driver sentenced to 3 to 6 years in prison for killing

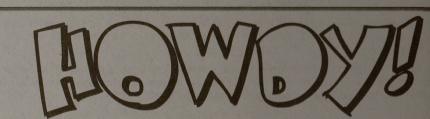
PITTSBURGH (AP) - A man who kept di despite a history of blackouts was sentenced to to six years in prison Tuesday for a crash that kill pregnant woman and her mother.

Jack Monroe Smith, 51, also received 10 years probation for the 2000 crash and for another dent last year in which four women were inju He will not be able to drive while on probation

Prosecutors contend Smith misled his doo and state officials about his seizure disorde he could keep driving despite a history of bl out-related crashes.

Smith was convicted of involuntary manslat in the deaths of Patricia Schick, 54, and daughter, Sherri Zeis, 27. Police said Smith! driving 77 mph when he rear-ended the wom station wagon, apparently after blacking out.

The sentence was the maximum.



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