Summary of Death Sentence Process: Data Set I Research Report to Arizona Capital Case Commission

Submitted by

The Center for Urban Inquiry
College of Public Programs
Arizona State University

Peg Bortner and Andy Hall

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

In Consort with the Research Subcommittee of Arizona Capital Case Commission:

The Honorable Michael Ryan, Dr. John Stookey, Mr. Rick Unklesbay and Attorney General Janet Napolitano

March 2001

Data verification continues. Any changes will appear in the final report.

Summary of Death Sentence Process:
Table of Contents

Methodology and Acknowledgements v

Overview

Exhibit 1. Arizona Death Sentences by Year, 1974–1999 1

Exhibit 2. Arizona Death Sentences by County and Year, 1974–1999 2

Exhibit 3. Major Time Intervals: Arizona Death Sentence Cases, 1974–July 1, 2000 3

Exhibit 4. Comparison of Arizona Counties by Population and
Death Sentence Cases, 1974–July 1, 2000 and 1990–1999 4

Exhibit 5. Conviction- and Sentence-related Remands, Reversals and Modifications:
Arizona Death Sentence Cases, Five-year Intervals, 1975–1999. 5

Exhibit 6. Most Recent Disposition and Current Status: Individuals
Sentenced to Death, Arizona, 1974–July 1, 2000 6

Sentencing

Exhibit 7. Number of Aggravating and Mitigating Factors Found by Sentencing Judges:
Arizona Death Sentence Cases, 1974–July 1, 2000 7

Exhibit 8. Aggravating Factors Found to Exist by Trial Court Judges:
Arizona Death Sentence Cases, 1974–July 1, 2000 8

Exhibit 9. Death Sentence Cases in Which Only a Single Aggravating Factor Was Found to
Exist by Trial Court Judges: Arizona, 1974–July 1, 2000 9

Exhibit 10. Statutory Mitigating Factors Found to Exist by Trial Court Judges:
Arizona Death Sentence Cases, 1974–July 1, 2000 10

Exhibit 11. Nonstatutory Mitigating Factors Found to Exist by Trial Court Judges:
Arizona Death Sentence Cases, 1974–July 1, 2000 11

Appeal Process

Exhibit 12. Remands, Reversals, and Modifications:
Arizona Death Sentence Cases, 1974–July 1, 2000, and 1990–July 1, 2000 12

Exhibit 13. Explanatory Notes for Issue Categories in Remands, Reversals, and Modifications 13

Exhibit 14. Issues Cited as Basis for Reversals, Remands, and Modifications:
Arizona Death Sentence Cases, 1974–July 1, 2000 14

Exhibit 15. Issues Cited as Basis for Reversals, Remands, and Modifications and Year of
Death Sentence in Cases Remanded 1990–July 1, 2000 16

Exhibit 16. Most Frequently Cited Basis for Reversals, Remands, and Modifications:
Arizona Death Sentence Cases, 1974–1989 and 1990–July 1, 2000 17

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 17. Most Frequently Cited Basis for Reversals, Remands, and Modifications: Arizona Death Sentence Cases, 1974–1989 and 1990–2000 . . . 19

Exhibit 18. Most Frequently Cited Basis for Reversals, Remands, and Modifications: Arizona Death Sentence Cases, 1974–July 1, 2000 . . . 20

Exhibit 19. Most Frequently Cited Basis for Reversals, Remands, and Modifications Arizona Death Sentence Cases, 1990–July 1, 2000 . . . 21

Outcomes

Exhibit 20. Outcomes of Conviction- and Sentence-related Reversals, Remands, and Modifications by Individuals: Arizona Death Sentence Cases, 1974–July 1, 2000 . . . 22

Exhibit 21. Outcomes of Conviction- and Sentence-related Reversals, Remands, and Modifications: Arizona Death Sentence Cases, 1974–July 1, 2000 . . . 23

Exhibit 22. Outcomes of Conviction- and Sentence-related Reversals, Remands, and Modifications: Arizona Death Sentence Cases, 1974–July 1, 2000 . . . 24

Exhibit 23. Outcomes of Conviction- and Sentence-related Reversals, Remands, and Modifications: Arizona Death Sentence Cases, 1990–July 1, 2000 . . . 25

Exhibit 24. Type of Defense Attorney at Conviction, Direct Appeal, Post-Conviction Relief, and Habeas: Arizona Death Sentence Cases, 1974–July 1, 2000 . . . 26

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Time Intervals

Exhibit 25. Summary Table of Time Intervals for Arizona Death Sentence Cases . . . 27

Exhibit 26. Arizona Death Sentence Cases: Part I—1974–July 1, 2000 Time Intervals . . . 28

Exhibit 27. Arizona Death Penalty Appeals Process: Part II—1974–July 1, 2000 Time Intervals . . . 29

Exhibit 28. Arizona Death Penalty Appeals Process: Part III—1974–July 1, 2000 Time Intervals . . . 30

Exhibit 29. Arizona Death Sentence Cases: Part I—1990–July 1, 2000 Time Intervals . . . 31

Exhibit 30. Arizona Death Penalty Appeals Process: Part II—1990–July 1, 2000 Time Intervals . . . 32

Exhibit 31. Arizona Death Penalty Appeals Process: Part III—1990–July 1, 2000 Time Intervals . . . 33

Defendant and Victim Information

Exhibit 32. Defendant-Victim Relationships: Arizona Death Sentence Cases, 1974–July 1, 2000 . . . 34

Exhibit 33. Defendant-Victim Relationships: Arizona Death Sentence Cases, 1974–July 1, 2000 . . . 35

Exhibit 34. Defendant and Victim Race/Ethnicity, Sex, and Age: Arizona Death Sentence Cases, 1974–July 1, 2000 . . . 36

Exhibit 35. Defendant and Victim Race/Ethnicity, Sex, and Age: Arizona Death Sentence Cases, 1974–July 1, 2000 . . . 37

Exhibit 36. Defendant Race/Ethnicity by Victim Race/Ethinicity:
Arizona Death Sentence Cases, 1974–July 1, 2000 38

Exhibit 37. Defendant Characteristics I: Arizona Death Sentence Cases, 1974–July 1, 2000 39

Exhibit 38. Defendant Characteristics II: Defendant Prior Criminal Justice History,
Arizona Death Sentence Cases, 1974–July 1, 2000 40

Appendix

Appendix A.G-1 Statutory Mitigation Ruled to Exist by Sentencing Judges:
Arizona Death Sentence Cases, 1974- July 1, 2000 41

Appendix B. Nonstatutory Mental Health-related Mitigation Ruled to Exist by
Sentencing Judge: Arizona Death Sentence Cases, 1974–July 1, 2000 43

Appendix C. Explanatory Notes for Time Interval Figures, Exhibits 25–31 46

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Introduction

The Attorney General's Capital Case Commission was formed in recognition of the need for a comprehensive study of the death penalty process in Arizona. The Commission has four subcommittees: three examine specific parts of the death penalty litigation process (Pre-Trial Issues, Trial Issues, and Direct Appeal/Post-Conviction Relief Issues) and the Data/Research Subcommittee is responsible for compiling data and providing statistical analyses to the Commission.

The Commission has requested that the Data/Research Subcommittee explore three distinct data sets. This report summarizes key information contained in Data Set I. It examines the characteristics of the 230 Arizona death sentence cases (involving 228 individuals) from 1974 through July 1, 2000. The data set is based on original documents provided by the Office of the Arizona Attorney General, the Arizona Supreme Court, the County Clerk's Offices, the United States District Court for the District of Arizona, and the Arizona Department of Corrections. It focuses on:

- the number and type of aggravating and mitigating factors found to exist by sentencing judges;
- the number and type of conviction and sentence related remands, reversals, or modifications in the appellate process of the cases;
- case outcomes;
- time intervals for key junctures in the sentencing and appellate process; and
- preliminary defendant and victim profiles, including relationships between victims and defendants, and group characteristics (such as; age, race/ethnicity, gender, and county of residence).

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Data Set II will facilitate a comparative analysis of capital cases and other first degree murder cases during the five-year period, January 1,1995, through December 31, 1999, for Maricopa, Pima, Coconino, and Mohave counties. Data Set III will explore the incremental additional costs of prosecution, defense and appeal of a capital murder case compared to a non-capital murder case.

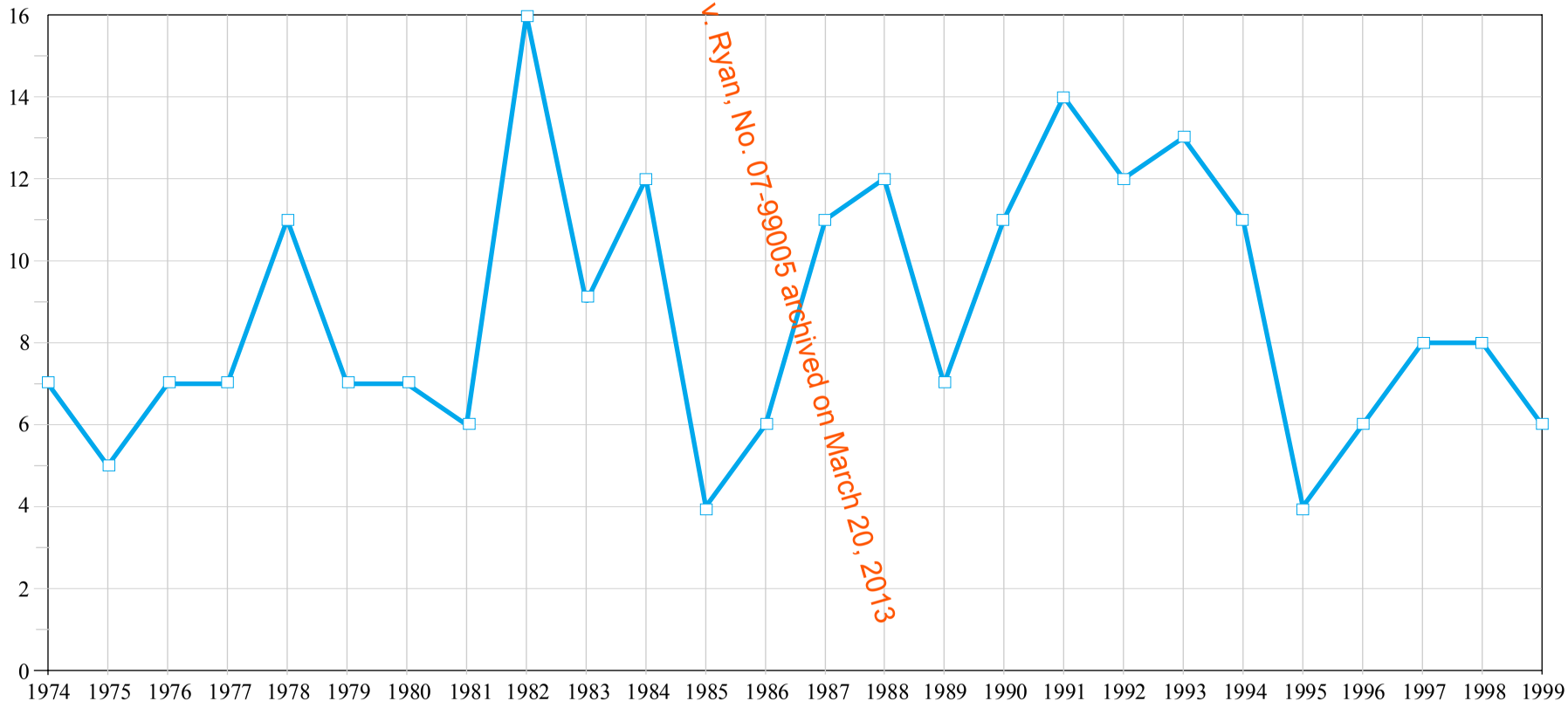
Acknowledgments

We are deeply grateful to the many individuals who have made major contributions to the research endeavor. These include: **Center for Urban Inquiry and College of Public Programs** at **Arizona State University:** Cyndee Coin, Janet Soper, Jolan Hsieh and Anne Schneider; research associates, assistants, and apprentices, Cory Gonzales, Kim Furumoto, Jeanine Giordano, Kate Engstrom, Kelly Guth, Lisa Hird, Rebeca Hoeffer, Bin Liang, Kathy McCaghren, Toni Quintana, Natalie Ramos, Rashad Shabazz, Rina Shah, Anitra Smith, Susan Trower, and Eric Welch.

The Arizona Attorney General's Staff, Diane Saunders, Scott Bales, Dennis Burke, Kent Cattani, Patrick Cunningham, and Tim Geiger; **Maricopa County Attorney's Office**, Paul McMurdie; **Arizona State Department of Corrections**, Daryl Fischer; **Arizona Supreme Court Staff Attorneys Office**, Donna Hallam; **Arizona Supreme Court**, Noel Dessaint; and **U.S. District Court for Arizona**, Kristine Fox. For special assistance in gathering and processing victim-related data, we are grateful to Jan Christian, **The Restorative Justice Project**, and Teena Olszewski, Director, **Arizona Attorney General Victim Services**. For special assistance in gathering defense counsel-related information, we thank the staff of **Osborn Maledon** and the **Office of the Attorney General**.

Exhibit 1. Arizona Death Sentences by Year, 1974–1999

(N = 227)*

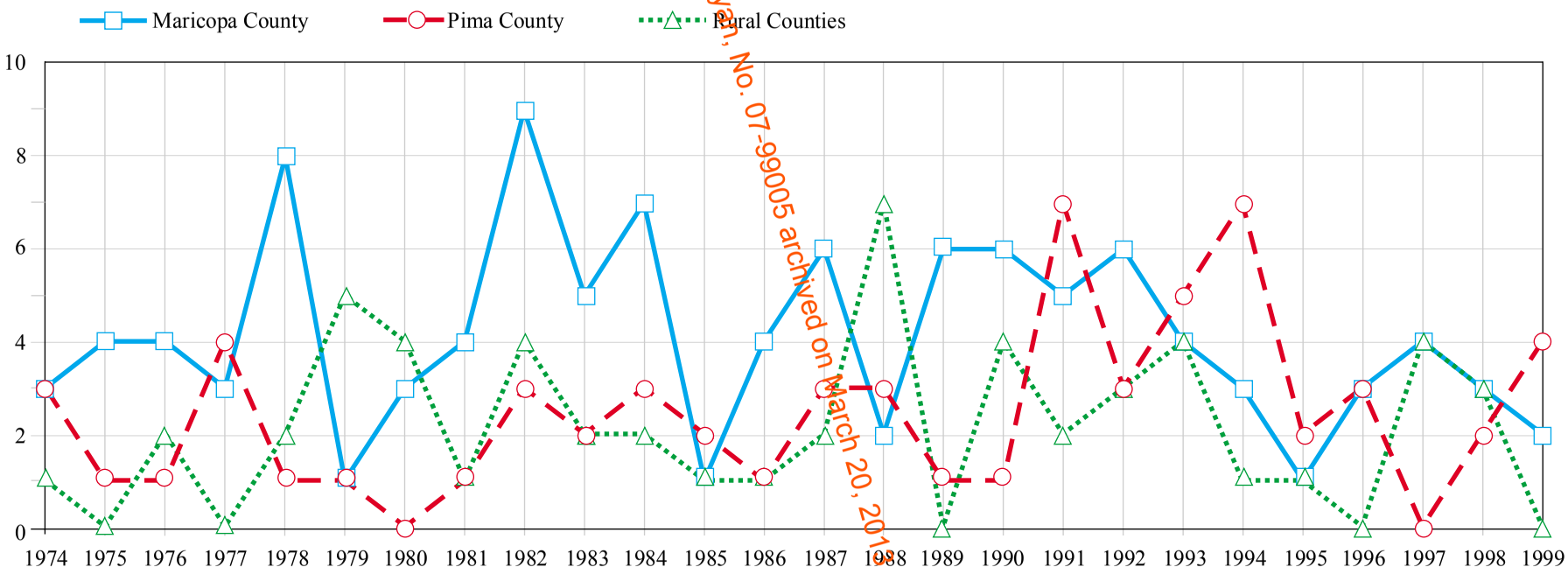


Schad v. Ryan, No. 07-99005 archived on March 20, 2013

*Three death sentences from January 1–July 1, 2000, included in the data set are not depicted here.

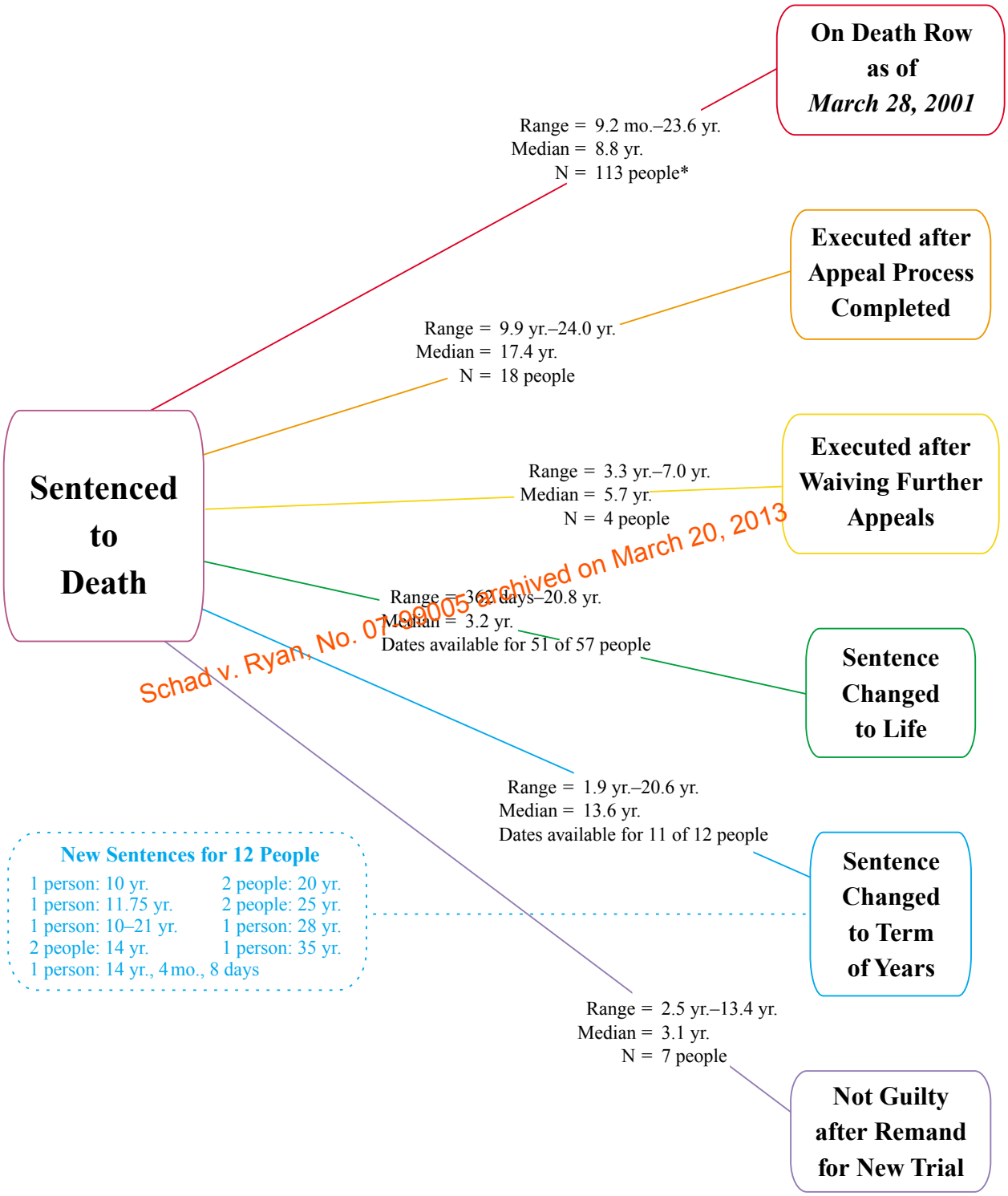
Schad v. Ryan, No. 07-99005 archived on March 20, 2018

Exhibit 2. Arizona Death Sentences by County and Year, 1974–1999
(N = 227)*



*Three death sentences from January 1–July 1, 2000, included in the data set are not depicted here.

Exhibit 3. Major Time Intervals: Arizona Death Sentence Cases, 1974–July 1, 2000



Schad v. Ryan, No. 07-99005 Archived on March 20, 2013

The median is the middle value in the ranked distribution of values.
The range indicates the lowest to the highest values.
*Seventeen of the 228 individuals in the study are not accounted for by these time intervals, including 8 in custody awaiting retrial or resentencing and 9 who died while on death row.

Exhibit 4. Comparison of Arizona Counties by Population and Death Sentence Cases, 1974–July 1, 2000 and 1990–1999

County	1974–2000			1990–1999		
	Percent of AZ Population[a]	Death Sentence Cases (N = 230)	Remands, Reversals, & Modifications (N = 141)	Percent of AZ Population[b]	Death Sentence Cases (N = 93)	Remands, Reversals, & Modifications (N = 49)
Maricopa	57.1%	47.4% (109)	51.1% (72)	59.0%	39.8% (37)	44.9% (22)
Pima	18.6%	27.8% (64)	27.7% (39)	17.5%	36.6% (34)	38.8% (19)
Mohave	2.3%	6.1% (14)	6.4% (9)	2.7%	6.5% (6)	4.1% (2)
Yavapai	2.7%	4.8% (11)	5.7% (8)	3.1%	2.2% (2)	4.1% (2)
Yuma	3.1%	4.8% (11)	5.0% (7)	2.9%	4.3% (4)	6.1% (3)
Pinal	3.4%	3.5% (8)	2.1% (3)	3.2%	4.3% (4)	2.0% (1)
Cochise	3.0%	2.2% (5)	0.7% (1)	2.6%	3.2% (3)	0.0% (0)
Coconino	2.6%	2.2% (5)	0.7% (1)	2.5%	2.2% (2)	0.0% (0)
La Paz[c]	0.4%	0.4% (1)	0.0% (0)	0.4%	1.1% (1)	0.0% (0)
Santa Cruz	0.8%	0.4% (1)	0.0% (0)	0.9%	0.0% (0)	0.0% (0)
Graham	0.8%	0.4% (1)	0.7% (1)	0.7%	0.0% (0)	0.0% (0)
Apache	1.7%	0.0% (0)	0.0% (0)	1.6%	0.0% (0)	0.0% (0)
Gila	1.3%	0.0% (0)	0.0% (0)	1.1%	0.0% (0)	0.0% (0)
Greenlee	0.4%	0.0% (0)	0.0% (0)	0.2%	0.0% (0)	0.0% (0)
Navajo	2.4%	0.0% (0)	0.0% (0)	2.1%	0.0% (0)	0.0% (0)

[a]Average of 1970, 1980, 1990, and 1999 population statistics. May not add to 100% due to rounding.

[b]Average of 1990 and 1999 population statistics. May not add to 100% due to rounding.

[c]Formed as a county January 1, 1983.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 5. Conviction- and Sentence-related Remands, Reversals and Modifications: Arizona Death Sentence Cases, Five-year Intervals, 1975–1999

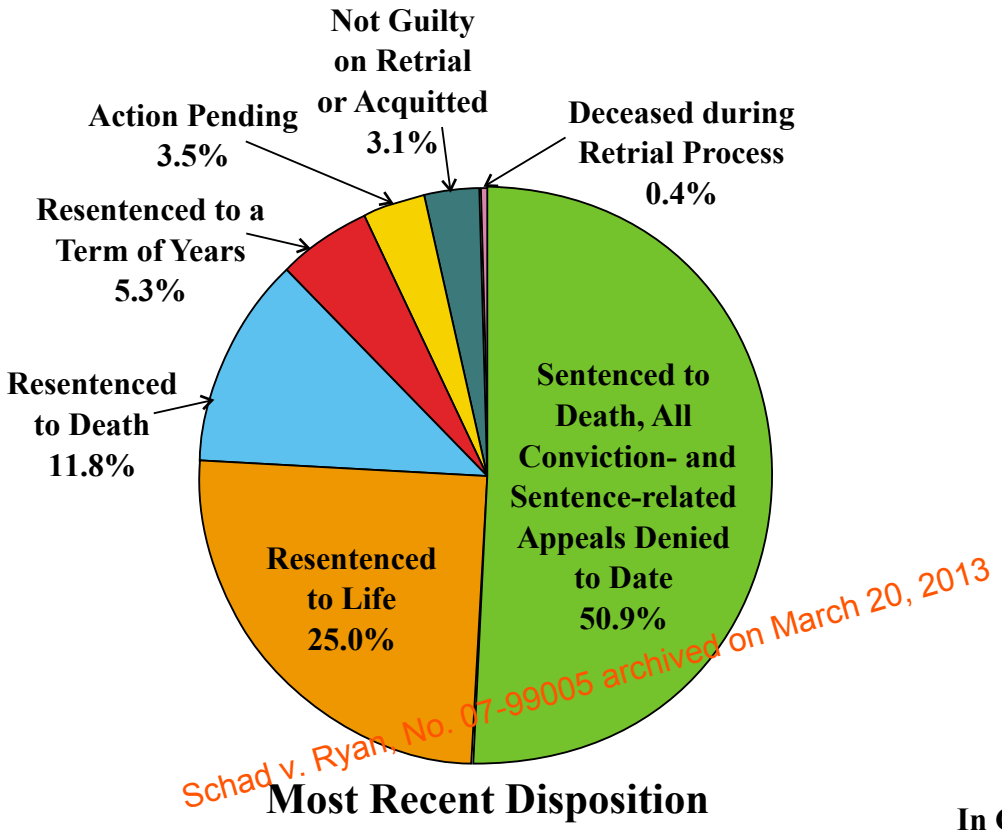
Time Interval	Conviction-related Remands, Reversals	Sentence-related Remands, Modifications	Total Remands, Reversals, Modifications
1975–1979	5	22[a]	27
1980–1984	13	17	30
1985–1989	9	17	26
1990–1994	12	16	28
1995–1999	13	8	21
Totals	52	80	132

[a]These include 16 remands as a result of *Watson.* For an explanation of *Watson* remands, please see Exhibit 13.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

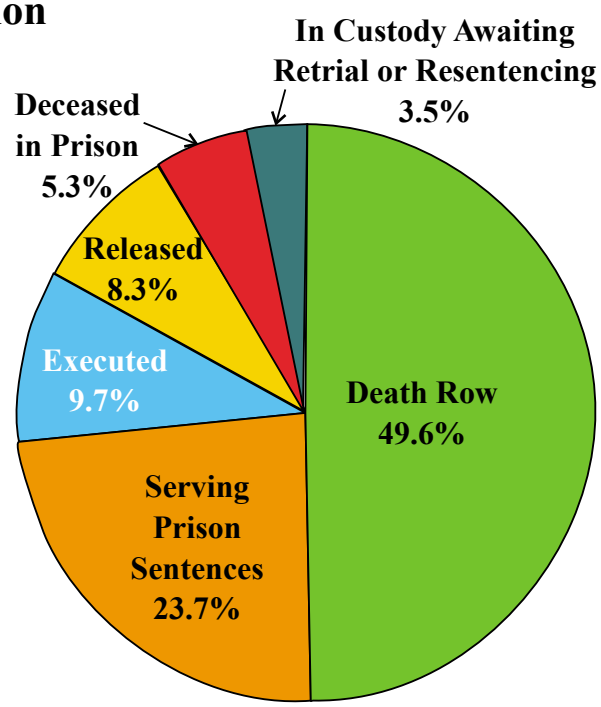
Exhibit 6. Most Recent Disposition and Current Status: Individuals Sentenced to Death, Arizona, 1974–July 1, 2000

(N = 228 Individuals)



Most Recent Disposition

Schad v. Ryan, No. 07-99005 archived on March 20, 2013



Current Physical Status

Exhibit 7. Number of Aggravating and Mitigating Factors Found by Sentencing Judges: Arizona Death Sentence Cases, 1974–July 1, 2000
(N = 230 cases)

Number of Factors Found	Aggravating Factors		Statutory Mitigating Factors		Nonstatutory Mitigating Factors	
	Number	Percent	Number	Percent	Number	Percent
0	N/A		188 Cases	81.7%	122 Cases	53.0%
1	58 Cases	25.2%	38 Cases	16.5%	26 Cases	11.3%
2	82 Cases	35.7%	2 Cases	0.9%	23 Cases	10.0%
3	58 Cases	25.2%	0 Cases	0.0%	11 Cases	4.8%
4	24 Cases	10.4%	0 Cases	0.0%	16 Cases	7.0%
5	6 Cases	2.6%	0 Cases	0.0%	11 Cases	4.8%
6–10	0 Cases	0.0%	N/A	N/A	18 Cases	7.8%
11–13	N/A	N/A	N/A	N/A	1 Cases	0.4%
Missing	2 Cases	0.9%	2 Cases	0.9%	2 Cases	0.9%

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 8. Aggravating Factors Found to Exist by Trial Court Judges: Arizona Death Sentence Cases, 1974–July 1, 2000
(N = 230)

Factor[a]	Statute	Found
Offense committed in an especially heinous, cruel or depraved manner.	F6	176 (76.5%)
Defendant committed the offense in expectation of anything of pecuniary value.	F5	112 (48.7%)
Defendant previously convicted of a serious offense.	F2	84 (36.5%)
The defendant has been convicted of another offense in the United States for which, under Arizona law, a sentence of life imprisonment or death was imposable.	F1	50 (21.7%)
During commission of this offense, the defendant knowingly created a grave risk of death to another person.	F3	31 (13.5%)
Defendant has been convicted of other homicide(s), which were committed during the commission of the offense.	F8	29 (12.6%)
Defendant was an adult at the time the offense was committed, and the victim was under 15 years of age or over 70 years of age.	F9	23 (10.0%)
Defendant committed offense while in custody or on release.	F7	9 (3.9%)
Defendant procured the commission of the offense by payment.	F4	7 (3.0%)
Murdered person was an on-duty peace officer.	F10	1 (0.4%)

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

[a]In 1973, the Arizona Legislature enacted A.R.S. § 13-454(E) (renumbered as § 13-703(F) in 1978), codifying six aggravating circumstances: (1) Prior conviction for which a sentence of life imprisonment or death was imposable; (2) Prior serious offense involving the use or threat of violence; (3) Grave risk of death to others; (4) Procurement of murder by payment or promise of payment; (5) Commission of murder for pecuniary gain; (6) Murder committed in an especially heinous, cruel or depraved manner.

The Legislature subsequently added the following additional aggravating circumstances: (7) Murder committed while in custody (effective Oct. 1, 1978); (8) Multiple homicides (effective Sept. 1, 1984); (9a) Murder of a victim under 15 years of age (effective May 16, 1985); (10) Murder of a law enforcement officer (effective Sept. 30, 1988); and (9b) Murder of a victim 70 years of age or older (effective July 17, 1993).

Exhibit 9. Death Sentence Cases in Which Only a Single Aggravating Factor Was Found to Exist by Trial Court Judges: Arizona, 1974–July 1, 2000
(N = 58)

Factor	Statute	Found
Offense committed in an especially heinous, cruel or depraved manner.	F6	39 (67.2%)
Defendant committed the offense in expectation of anything of pecuniary value.	F5	11 (19.0%)
During commission of this offense, the defendant knowingly created a grave risk of death to another person.	F3	4 (6.9%)
Defendant previously convicted of a serious offense.	F2	3 (5.2%)
The defendant has been convicted of another offense in the United States for which, under Arizona law, a sentence of life imprisonment or death was imposable.	F1	1 (1.7%)
Defendant procured the commission of the offense by payment.	F4	0 (0.0%)
Defendant committed offense while in custody or on release.	F7	0 (0.0%)
Defendant has been convicted of other homicide(s), which were committed during the commission of the offense.	F8	0 (0.0%)
Defendant was an adult at the time the offense was committed, and the victim was under 15 years of age or over 70 years of age.	F9	0 (0.0%)
Murdered person was an on-duty peace officer.	F10	0 (0.0%)

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 10. Statutory Mitigating Factors Found to Exist by Trial Court Judges: Arizona Death Sentence Cases, 1974–July 1, 2000
(N = 230)

Statutory Mitigating Factor[a]	Statute	Found
The defendant's age.	G5	25 (10.9%)
Defendant's capacity to appreciate the wrongfulness … was significantly impaired … but not enough to constitute a defense.[b]	G1	13 (5.7%)
Defendant was under duress.	G2	3 (1.3%)
Defendant legally accountable for the conduct of another … but participation was relatively minor.	G3	1 (0.4%)
Defendant could not reasonably have foreseen that his conduct in the course of the commission of the offense … would cause, or would create a grave risk of causing, death to another person.	G4	1 (0.4%)

[a]These factors were found to exist by trial court judges, but none were ruled to outweigh aggravating factors.

[b]See Appendix A for further information.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 11. Nonstatutory Mitigating Factors Found to Exist by Trial Court Judges: Arizona Death Sentence Cases, 1974–July 1, 2000
(N = 230)

Type of Mitigating Factor[a]	Found to Exist by Trial Judge[b]
Negative Background Factors, Impact of Childhood and Family Such as "childhood sexual abuse, exposure to domestic violence, and deprived childhood, alcoholic father, dysfunctional family, and parents died when defendant only 14, lack of education, gang membership, and victim of sexual abuse."	67 (29.1%)
Positive Character Traits Such as "military service, responsible member of community, prior good acts on part of defendant."	50 (21.7%)
Minimal Record Criminal/Violent Such as "no prior record, no record of past violence, and lack of significant criminal history."	36 (15.6%)
Positive Family Characteristics Such as "strong relationship with family, is a good father, and good family background."	34 (14.8%)
Mental Health Issues[c] Such as "post traumatic stress syndrome, disassociative state, and near borderline of mental retardation."	33 (14.3%)
Negative Impact of Alcohol and Drugs Such as "longstanding substance abuse problems, history of alcohol abuse, and intoxification."	32 (13.9%)
Evidence of or Potential for Rehabilitation Such as "potential for rehabilitation, newfound religious beliefs, and has changed life."	13 (5.7%)
Felony Murder as Basis for Death Sentence Such as "conviction based on felony murder, convicted of felony murder and not premeditated, and convicted of 4 counts of murder under felony murder instructions."	13 (5.7%)
Codefendant Treatment Such as "codefendant sentenced to life imprisonment, codefendant received lesser sentence, and codefendant not prosecuted."	7 (3.0%)
Leniency Recommended Such as "members of the victim's family support the life sentence, leniency recommended by police, and state recommends against death penalty."	5 (2.2%)
Criticisms of Criminal Justice System Such as "state offered plea bargain to defendant and corrupt and coercive prison reality."	3 (1.2%)

[a]But no factors were ruled to outweigh aggravating factors. Percentages do not add to 100 because multiple factors may apply to a single case

[b]Percentages do not add to 100 because multiple factors may apply to a single case.

[c]See Appendix B for further information.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 12. Remands, Reversals, and Modifications: Arizona Death Sentence Cases, 1974–July 1, 2000, 1974–1989, and 1990–July 1, 2000

	Conviction-related Remands and Reversals			Sentence-related Remands and Modifications			Total		
	1974–1989	1990–2000	1974–2000	1974–1989	1990–2000	1974–2000	1974–1989	1990–2000	1974–2000
Direct Appeal	23	16	39	33	16	49	56	32	88
Post-conviction Relief	4	7	11	11	4	15	15	11	26
Habeas	1	4	5	1	5	6	2	9	11
Solely *Watson*[a]	N/A	N/A	N/A	16	N/A	16	16	N/A	16
Total	28	27	55	61	25	86	89	52	141

[a]In *Lockett v. Ohio,* 438 Y.S. 586 (1978), the United States Supreme Court held that the Eighth and Fourteenth Amendments require that the sentencer not be precluded from considering as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death. Applying *Lockett,* in *State v. Watson,* 120 Ariz. 441 (1978), the Arizona Supreme Court struck the portion of Arizona's death penalty statute that limited consideration of mitigating circumstances, and remanded the case to allow the defendant to present any mitigating circumstances tending to show why the death penalty should not be imposed.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 13. Explanatory Notes for Issue Categories in Remands, Reversals, and Modifications

Aggravating factors include findings that aggravating factors at sentencing were not supported by evidence or were inappropriately considered by the trial court.

Constitutional issues include 6th Amendment, right to speedy trial, double jeopardy, 5th Amendment (self-incrimination), 8th Amendment (death penalty cruel and unusual punishment), and challenges to specific aspects of the Arizona death penalty statutes.

Enmund/Tison. In felony murder cases, under *Enmund v. Florida,* 458 U.S. 782 (1982), and *Tison v. Arizona,* 481 U.S. 137 (1987), the death penalty should not be imposed unless the defendant killed, intended to kill, or attempted to kill. If that criterion has not been met, the defendant is not death eligible unless he or she was a major participant in the underlying felony and acted with reckless disregard for human life.

Expert testimony includes issues such as violation of patient confidentiality, and giving fraudulent testimony.

Felony murder includes issues such as lack of proof of predicate felony and insufficient evidence of direct participation.

Improperly excluded evidence includes issues such as disallowed co-defendant testimony, limitation of cross-examination of co-defendant, and newly discovered exculpatory evidence

Inadmissable evidence includes issues such as hearsay testimony, inflammatory physical and/or photographic evidence, use of videotaped confessions or testimony, and inaccurate evidence of defendant's criminal history and "bad acts."

Ineffective assistance of counsel includes prejudicial conduct, failure to develop mitigating evidence, and failure to challenge prosecution evidence at trial.

Insufficient evidence includes issues such as verdicts not supported by evidence and insufficient evidence to convict.

Judicial error includes issues such as coercion of juror and *ex parte* communications.

Juror error includes issues such as consideration of extrinsic evidence.

Jury instruction includes inadequate or improper jury instructions regarding second degree or lower homicide, elements of homicide offenses charged, elements of other offenses, and admissibility/consideration of evidence.

Jury selection/*voir dire* includes such issues as improper dismissal of potential jurors and inadequate *voir dire.*

Law enforcement error includes issues such as involuntary statement, illicit custodial interrogation, coerced confession, warrantless search, lack of probable cause, invalid warrant, and *Miranda* violation (failure to provide access to requested counsel).

Mitigating factors includes findings that mitigating factors at sentencing were not properly considered or weighed by the trial court.

Other due process/procedural issues includes issues such as inadequate record of sentencing hearing.

Prosecutorial error includes issues such as state exhibit not timely disclosed, arraignment delay, failure to preserve material evidence, unenforceable plea agreement, fabricated evidence and failure to disclose plea agreement.

Trial court rulings (pretrial and during trial)–*and aside from evidence and jury instruction issues set out above*–includes issues such as improper refusal to conduct competency hearing, failure to sever charges, and failure to sever co-defendant trials.

Trial court rulings (sentencing-related) includes pre-sentencing, sentencing, resentencing and evidentiary hearing issues.

***Watson* Ruling** refers to the 1978 *State v. Watson* (Arizona). In *Lockett v. Ohio,* 438 Y.S. 586 (1978), the United States Supreme Court held that the Eighth and Fourteenth Amendments require that the sentencer not be precluded from considering as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers. Applying *Lockett,* in *State v. Watson,* 120 Ariz. 441 (1978), the Arizona Supreme Court struck the portion of Arizona's death penalty statute that limited consideration of mitigating circumstances, and remanded the case to allow the defendant to present any mitigating circumstances tending to show why the death penalty should not be imposed.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 14. Issues Cited as Basis for Reversals, Remands, and Modifications: Arizona Death Sentence Cases, 1974–July 1, 2000

Direct Appeal (147 Issues Cited in 90 Remands)			
Issue Cited as Basis for Reversal/Remand/Modification	**Conviction-related**	**Sentence-related**	**TOTALS**
Mitigating Factor	0	28	28
Aggravating Factor	0	22	22
Watson Ruling[a]	0	18	18
Inadmissable Evidence	15	1	16
Jury Instruction	14	0	14
Prosecutorial Error	2	1	3
Trial Court Rulings (sentencing-related)	0	5	5
Aggravating/Mitigating Factors	0	5	5
Constitutional Issues	1	5	6
Improperly Excluded Evidence	4	0	4
Law Enforcement Error	4	0	4
Other Due Process/ Procedural Issues	1	5	6
Enmund/Tison Claims/Findings	0	3	3
Judicial Error	2	0	2
Juror Error	3	0	3
Ineffective Assistance of Counsel	0	1	1
Insufficient Evidence	2	0	2
Jury Selection/*Voir Dire*	2	0	2
Trial Court Rulings (pretrial and trial)	2	0	2
Felony Murder	1	0	1
Totals	53	94	147

[a]This includes 16 cases decided solely on *Watson* and 2 cases in which *Watson* is one issue in the decision.

(continued)

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 14 (continued)

Post-Conviction Relief
(32 Issues Cited in 26 Remands)

Issue Cited as Basis for Reversal/Remand/Modification	**Conviction-related**	**Sentence-related**	**TOTALS**
Ineffective Assistance of Counsel	5	7	12
Improperly Excluded Evidence	4	2	6
Enmund/Tison Claims/ Findings	0	4	4
Prosecutorial Error	2	1	3
Judicial Error	1	1	2
Jury Instruction	2	0	2
Law Enforcement Error	1	0	1
Trial Court Rulings (sentencing-related)	0	1	1
Mitigating Factor	0	1	1
Totals	15	17	32

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Habeas
(13 Issues Cited in 9 Remands)

Issue Cited as Basis for Reversal/Remand/Modification	**Conviction-related**	**Sentence-related**	**TOTALS**
Ineffective Assistance of Counsel	1	5	6
Aggravating Factor	0	1	1
Jury Instruction	1	0	1
Law Enforcement Error	1	0	1
Prosecutorial Error	1	0	1
Mitigating Factor	0	1	1
Other Due Process/Procedural Issues	0	1	1
Trial Court Rulings (pretrial and trial)	1	0	1
Totals	5	8	13

Exhibit 15. Issues Cited as Basis for Reversals, Remands, and Modifications: Arizona Death Sentence Cases, 1990–July 1, 2000

Direct Appeal (46 Issues Cited in 34 Remands)			
Issue Cited as Basis for Reversal/Remand/Modification	**Conviction-related**	**Sentence-related**	**TOTALS**
Mitigating Factor	0	11	11
Aggravating Factor	0	8	8
Inadmissable Evidence	7	0	7
Jury Instruction	6	0	6
Prosecutorial Error	1	0	1
Aggravating/Mitigating Factors	0	3	3
Judicial Error	2	0	2
Jury Selection/*Voir Dire*	2	0	2
Trial Court Rulings (sentencing)	0	1	1
Enmund/Tison Claims/ Findings	0	1	1
Insufficient Evidence	1	0	1
Law Enforcement Error	1	0	1
Other Due Process/ Procedural Issues	0	1	1
Trial Court Rulings (pretrial and trial)	1	0	1
Totals	21	25	46

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

(continued)

Exhibit 15 (continued)

Post-Conviction Relief
(16 Issues Cited in 11 Remands)

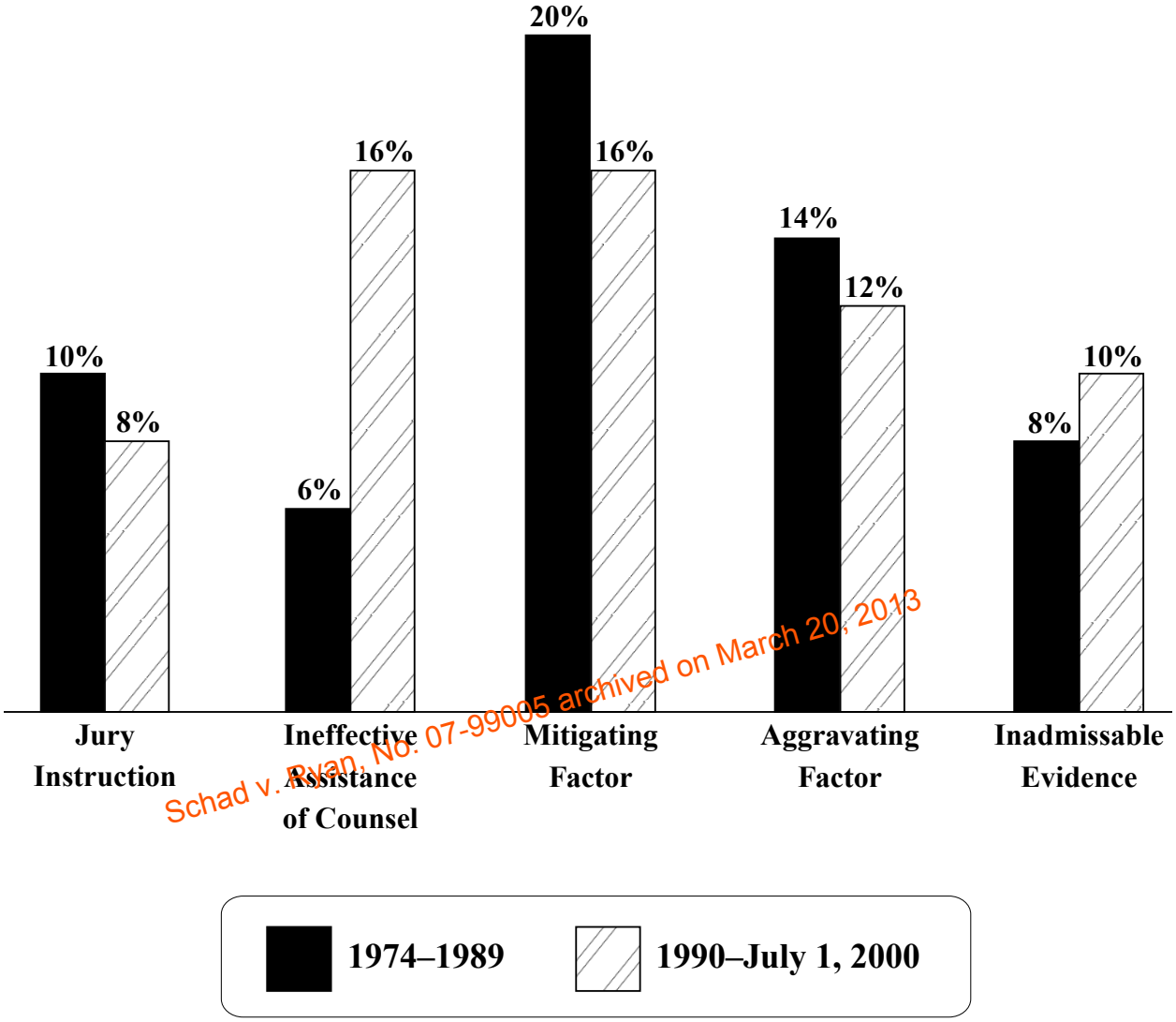
Issue Cited as Basis for Reversal/Remand/Modification	Conviction-related	Sentence-related	TOTALS
Ineffective Assistance of Counsel	5	2	7
Improperly Excluded Evidence	2	1	3
Prosecutorial Error	2	1	3
Judicial Error	1	0	1
Law Enforcement Error	1	0	1
Trial Court Rulings (sentencing)	0	1	1
Totals	11	5	16

Habeas
(9 Issues Cited in 7 Remands)

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Issue Cited as Basis for Reversal/Remand/Modification	Conviction-related	Sentence-related	TOTALS
Ineffective Assistance of Counsel	1	4	5
Aggravating Factor	0	1	1
Law Enforcement Error	1	0	1
Mitigating Factor	0	1	1
Other Due Process/Procedural Issues	0	1	1
Prosecutorial Error	1	0	1
Trial Court Rulings (pretrial and trial)	1	0	1
Totals	4	7	11

Exhibit 16. Most Frequently Cited Basis for Reversals, Remands, and Modifications: Arizona Death Penalty Cases, 1974–1989 and 1990–July 1, 2000[a]



Schad v. Ryan, No. 07-99005 archived on March 20, 2013

[a]Percentages indicate the proportion of issues cited. They do not equal 100 because only most commonly cited reasons are shown.

Exhibit 17. Most Frequently Cited Basis for Reversals, Remands, and Modifications and Year of Death Sentence in Cases Remanded 1974–1989 and 1990–July 1, 2000

1974–1989		1990–July 1, 2000	
Issue Cited as Basis for Reversal/ Remand/Modification	**Year in Which Remanded Case Originally Sentenced to Death**	**Issue Cited as Basis for Reversal/ Remand/Modification**	**Year in Which Remanded Case Originally Sentenced to Death**
Ineffective Assistance of Counsel *7 cases, issue cited 7 times*	1976, 1977, 1978 (2), 1982 (2), 1987	Ineffective Assistance of Counsel *12 cases*	1977, 1979, 1981, 1983, 1984, 1987 (3), 1988, 1989, 1990, 1993
Aggravating Factor *12 cases, issue cited 16 times*	1974 (2), 1976, 1978 (3), 1981, 1984, 1985, 1986 (2), 1987	Aggravating Factor *9 cases*	1974, 1986, 1987 (2), 1988, 1989 (2), 1992, 1993
Mitigating Factor *14 cases, issue cited 23 times*	1974 (2), 1976 (2), 1977, 1978, 1981 (2), 1982, 1984 (2), 1986 (2), 1987	Mitigating Factor *6 cases, issue cited 11 times*	1974, 1987, 1989, 1990, 1991, 1994
Inadmissable Evidence *7 cases, issue cited 9 times*	1974, 1975, 1979, 1980, 1982, 1984, 1987	Inadmissable Evidence *5 cases, issue cited 7 times*	1986, 1991(3), 1992
Jury Instruction *10 cases, issues cited 11 times*	1974, 1976 (2), 1979 (2), 1982 (2), 1983, 1984 (2)	Jury Instruction *5 cases, issues cited 6 times*	1987, 1991(3), 1994

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 18. Most Frequently Cited Basis for Reversals, Remands, and Modifications: Arizona Death Sentence Cases, 1974–July 1, 2000[a]

ISSUE	Direct Appeal (Times cited in 90 decisions)	Post-Conviction Relief (Times cited in 26 decisions)	Habeas Corpus (Times cited in 9 decisions)	All Three Stages (Times cited in 125 decisions)
Most frequently cited	Mitigating Factor (28)	Ineffective Assistance of Counsel (12)	Ineffective Assistance of Counsel (6)	Mitigating Factor (30)
Second most frequently cited	Aggravating Factor (22)	Improperly Excluded Evidence (6)	All others cited once: Law Enforcement Error, Pretrial & Trial Court Ruling, Jury Instruction, Aggravating Factor, Mitigating Factor, Other Due Process Issue, Prosecutorial Error	Aggravating Factor (23)
Third most frequently cited	Inadmissable Evidence (16)	*Enmund/Tison* Claims, Findings (4)		Ineffective Assistance of Counsel (19)
Fourth most frequently cited	Jury Instruction (14)	Prosecutorial Error (3)		Jury Instruction (17)
Fifth most frequently cited	Constitutional Issues (6) and Other Due Process Issues (6)	Judicial Error (2), Jury Instruction (2), and Juror Error (2)		Inadmissable Evidence (16)

[a]The 16 cases remanded for resentencing based solely on the *Watson* ruling are not included.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 19. Most Frequently Cited Basis for Reversals, Remands, and Modifications: Arizona Death Sentence Cases, 1990–July 1, 2000

ISSUE	Direct Appeal (Times cited in 34 remands)	Post-Conviction Relief (Times cited in 11 remands)	Habeas Corpus (Times cited in 7 remands)	All Three Stages (Times cited in 52 remands)
Most frequently cited	Mitigating Factor (11)	Ineffective Assistance of Counsel (7)	Ineffective Assistance of Counsel (5)	Ineffective Assistance of Counsel (12) and Mitigating Factor (12)
Second most frequently cited	Aggravating Factor (8)	Improperly Excluded Evidence (3)	All others cited once: Law Enforcement Error, Pretrial/trial Court Ruling, Aggravating Factor, Mitigating Factor, Other Due Process Issue, Prosecutorial Error	Aggravating Factor (9)
Third most frequently cited	Inadmissable Evidence (7)	Prosecutorial Error (3)		Inadmissable Evidence (7)
Fourth most frequently cited	Jury Instruction (6)	Judicial Error (1), Law Enforcement Error (1), and Court Ruling on Sentencing (1)		Jury Instruction (6)
Fifth most frequently cited	Aggravating/ Mitigating Factors (3)			Prosecutorial Error (5)

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

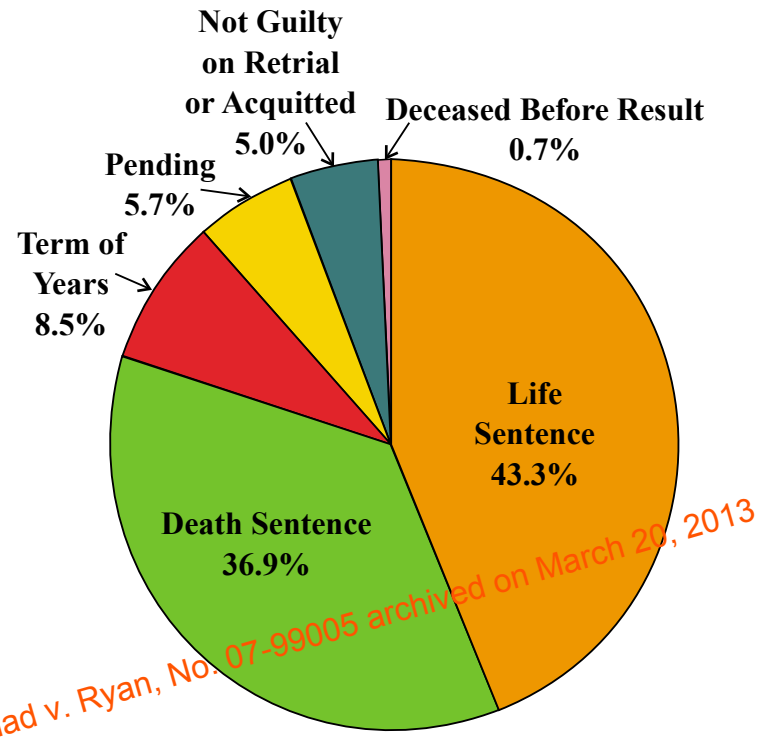
Exhibit 20. Outcomes of Conviction- and Sentence-related Reversals, Remands, and Modifications by Individuals: Arizona Death Sentence Cases, 1974–July 1, 2000
(N = 228 Individuals, 230 Cases)

Most Recent Disposition	Individuals/ Cases	Percent of Total	Current Physical Status of Individuals
Sentenced to death, all conviction- and sentence-related appeals denied to date	116 individuals 117 cases	50.9% 50.9%	94 death row 15 executed 4 died on death row 3 under death sentences in other states
Resentenced to death	27 individuals 28 cases	11.8% 12.2%	16 death row 7 executed 4 died on death row
Resentenced to life	57 individuals 57 cases	25.0% 24.8%	49 serving sentence 3 died in prison 3 released 2 paroled
Resentenced to a term of years	12 individuals 12 cases	5.3% 5.2%	7 released 1 paroled 4 serving sentence
Action pending on remand or reversal	8 individuals 8 cases	3.5% 3.5%	8 in custody awaiting retrial or resentencing
Not guilty on retrial or acquitted	7 individuals 7 cases	3.1% 3.0%	5 released at time of not guilty finding 1 released 11 years later after serving sentence for other offense 1 serving sentence for other offense
Deceased during retrial process	1 individual 1 case	0.4% 0.4%	1 died on death row
TOTAL	228 individuals 230 cases	100.0% 100.0%	113 death row 54 serving prison sentences 22 executed 12 died in prison 16 released 8 in custody awaiting retrial or resentencing 3 paroled

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 21. Outcomes of Conviction- and Sentence-related Reversals, Remands, and Modifications: Arizona Death Sentence Cases, 1974–July 1, 2000

(141 Reversals/Remands/Modifications)



Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 22. Outcomes of Conviction- and Sentence-related Reversals, Remands, and Modifications: Arizona Death Sentence Cases, 1974–July 1, 2000

Outcomes of Conviction Reversals and Remands	Outcomes of Sentence Remands and Modifications	TOTALS
Not Guilty on Retrial or Acquitted 7 decisions	*Not applicable*	**Not Guilty on Retrial or Acquitted 7 decisions**
Reconvicted, Resentenced to Death 16 decisions	Resentenced to Death 36 decisions	**Death Sentence 52 decisions**
Not applicable	Sentence Modified to Life by AZ Supreme Court 28 decisions	**Life Sentence 61 decisions**
Reconvicted, Resentenced to Life 10 decisions	Resentenced to Life 15 decisions	
Guilty Plea, Sentenced to Life 4 decisions	Guilty Plea, Sentenced to Life 4 decisions	
Reconvicted, Sentenced to Term of Years 3 decisions	*Not applicable*	**Term of Years 12 decisions**
Guilty Plea, Sentenced to Term of Years 9 decisions	*None*	
Pending 5 decisions	Pending 3 decisions	**Pending 8 decisions**
Deceased Before Result 1 decision	—	**Deceased Before Result 1 decision**
TOTALS 55 decisions	**86 decisions**	**141 decisions**

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 23. Outcomes of Conviction- and Sentence-related Reversals, Remands, and Modifications: Arizona Death Sentence Cases, 1990–July 1, 2000

Outcomes of Conviction Reversals and Remands	**Outcomes of Sentence Remands and Modifications**	**TOTALS**
Not Guilty on Retrial or Acquitted 4 decisions	None	**Not Guilty on Retrial or Acquitted 4 decisions**
Reconvicted, Resentenced to Death 5 decisions	Resentenced to Death 8 decisions	**Death Sentence 13 decisions**
Not applicable	Sentence Modified to Life by AZ Supreme Court 9 decisions	**Life Sentence 19 decisions**
Reconvicted, Resentenced to Life 4 decisions	Resentenced to Life 2 decisions	
Guilty Plea, Sentenced to Life 1 decisions	Guilty Plea, Sentenced to Life 3 decisions	
Reconvicted, Sentenced to Term of Years 2 decisions	*Not applicable*	**Term of Years 7 decisions**
Guilty Plea, Sentenced to Term of Years 5 decisions	*None*	
Pending 5 decisions	Pending 3 decisions	**Pending 8 decisions**
Deceased Before Result 1 decision	—	**Deceased Before Result 1 decision**
TOTALS **27 decisions**	**25 decisions**	**52 decisions**

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 24. Type of Defense Attorney at Conviction, Direct Appeal, Post-Conviction Relief, and Habeas: Arizona Death Sentence Cases, 1974–July 1, 2000[a]

Process Stage	Public Defender		Court Appointed[b]		Private		Totals
Conviction	76	37.3%	117	57.4%	11	5.4%	204
Direct Appeal	60	28.7%	141	67.5%	8	3.8%	209
Post-Conviction Relief	24	11.4%	183	87.1%	3	1.4%	210
Habeas	21	21.0%	78	78.0%	1	1.0%	100
Totals	181	25.0%	519	71.8%	23	3.2%	723

[a]The total of 723 recorded attorneys includes only lead counsel or designated second counsel involved in these four stages of litigation in the 230 cases. The mean number of attorneys involved in a case was 3.1, although many more were involved in various appeal briefs, especially in federal habeas corpus proceedings.

[b]The "court appointed" status includes attorneys compensated for contract work and those accepting appointment without compensation.

Ineffective Assistance of Counsel

From 1974 to July 1, 2000, nineteen defendants received remands/reversals or modifications based on Ineffective Assistance of Counsel. Thirteen defendants were granted *resentencings* due to ineffective assistance of counsel. Of the thirteen cases, eight defense attorneys were court-appointed and three were public defenders. No information is available on attorney status in the remaining two cases. Eight of the thirteen cases were from Maricopa County, three were from Pima County, one was from Yavapai County, and one was from Yuma County.

During the same period, six defendants were granted *new trials* due to ineffective assistance of counsel. Of the six defense attorneys, two were court-appointed, one was a public defender, and one was privately retained. No information was available on attorney status in the remaining two cases. Three of the six cases were from Maricopa County, and one was from each of Pima, Pinal, and Yuma counties.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

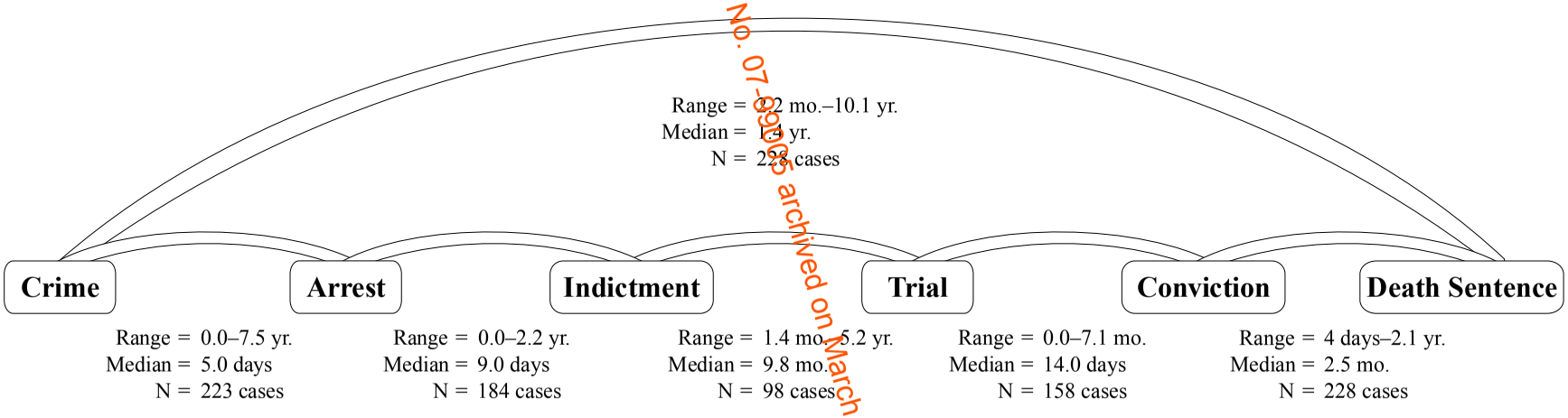
Exhibit 25. Summary Table of Time Intervals for Arizona Death Sentence Cases, 1974–July 1, 2000, 1974–1989, and 1990–July 1, 2000

Time Interval	1974–1989	1990–July 1, 2000	1974–July 1, 2000
Crime *to* **Death Sentence**	Range = 2.2 mo.–7.8 yr. Median = 1 yr.	Range = 7 mo.–10.2 yr. Median = 1.8 yr.	Range = 2.2 mo.–10.1 yr. Median = 1.4 yr.
Notice of Appeal *to* **Arizona Supreme Court Decision on Direct Appeal**	Range = 11.7 mo.–5.5 yr. Median = 1.99 yr.	Range = 1.5 yr.–5.3 yr. Median = 2.7 yr.	Range = 11.7 mo.–5.5 yr. Median = 2.3 yr.
Arizona Supreme Court Decision on Direct Appeal *to* **Petition for Writ of Certiorari**	Range = 1.1 mo.–4.1 yr. Median = 5.3 mo.	Range = 2.7 mo.–3.1 yr. Median = 5.6 mo.	Range = 34 days–4.1 yr. Median = 5.5 mo.
Petition for Writ of Certiorari *to* **Court Order**	Range = 24 days–1.5 yr. Median = 2.3 mo.	Range = 1.1 mo.–8.4 mo. Median = 2.3 mo.	Range = 24 days–1.5 yr. Median = 2.3 mo.
Denial of Cert *to* **Petition for Post-Conviction Relief**	Range = 25 days–4.6 yr. Median = 5.6 mo.	Range = 3.4 mo.–4.5 yr. Median = 1.7 yr.	Range = 25 days–4.6 yr. Median = 1.2 yr.
Petition for Post-Conviction Relief *to* **Trial Court Ruling**	Range = 3 days–3.7 yr. Median = 5.6 mo.	Range = 23.0 days–2.1 yr. Median = 6.7 mo.	Range = 3 days–3.7 yr. Median = 5.9 mo.
Petition for Writ of Habeas Corpus *to* **Federal District Court Ruling**	Range = 3.5 mo.–11.9 yr. Median = 5.5 yr.	1 case 3.2 yr.	Range = 3.5 mo.–11.9 yr. Median = 5.7 yr.
Petition for Writ of Habeas Corpus *to* **U.S. Supreme Court Ruling**	Range = 2.8–17.1 yr. Median = 8.4 yr.	No cases completed	Range = 2.8 yr.–17.1 yr. Median = 7.3 yr.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 26. Arizona Death Sentence Cases: Part I
1974–July 1, 2000 Time Intervals (N = 230 cases)

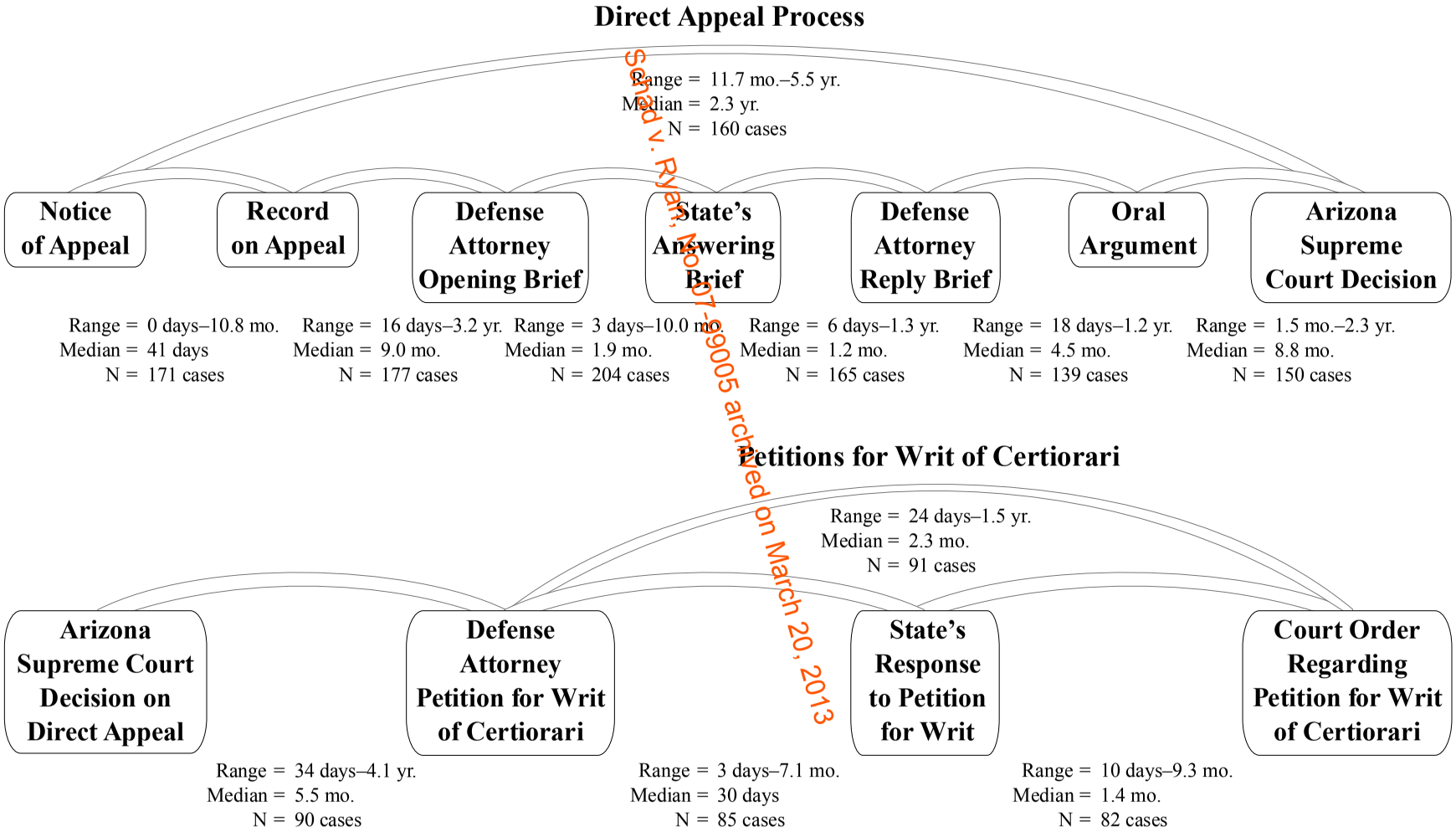
Death Sentencing Process



The median is the middle value in the ranked distribution of values.
The range indicates the lowest to the highest values. Appendix C provides further detail on unusual ranges.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

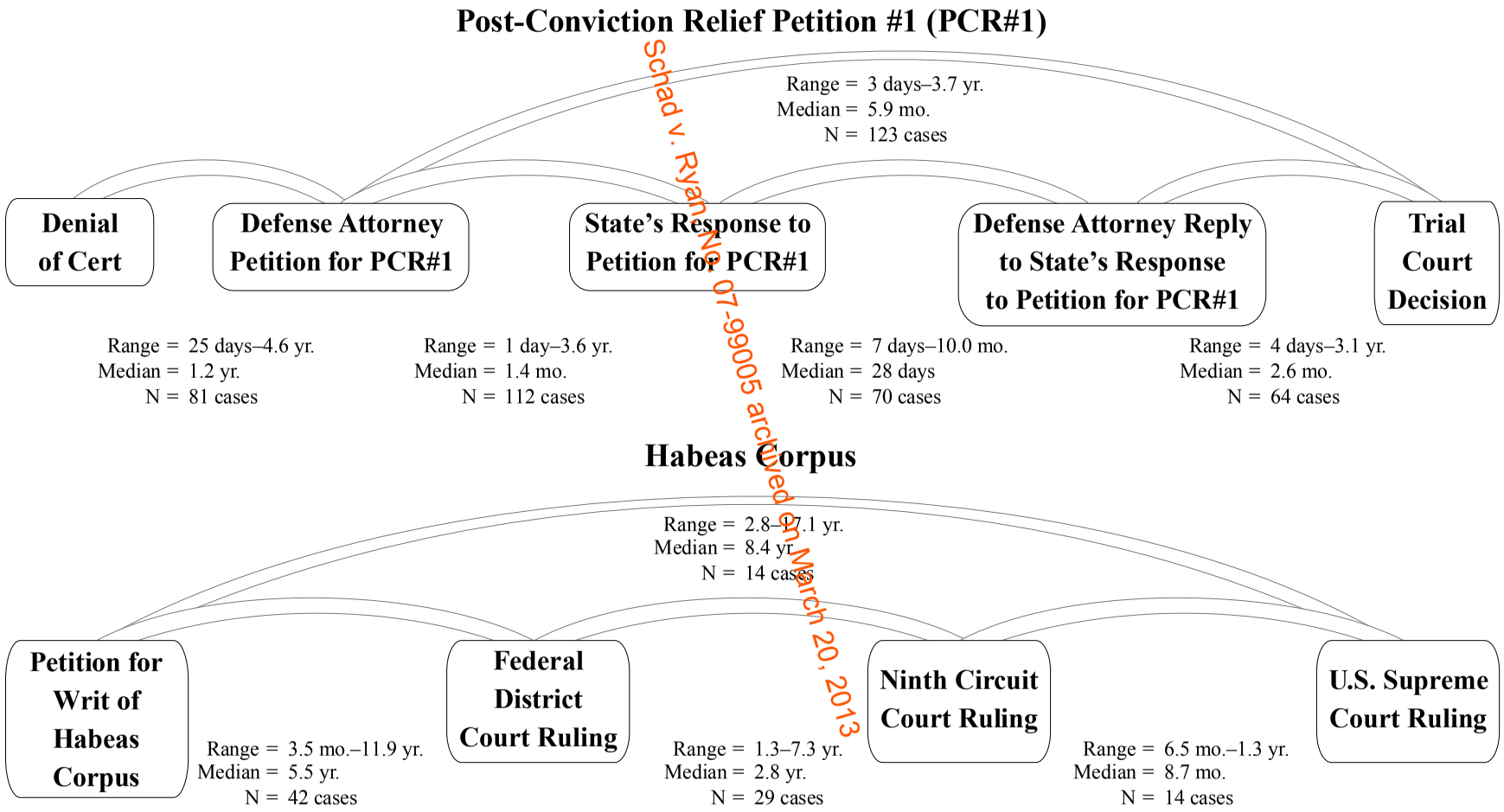
Exhibit 27. Arizona Death Penalty Appeals Process: Part II
1974–July 1, 2000 Time Intervals (N = 230 cases)



Spaad v. Ryan, No. 07-99005 archived on March 20, 2013

These time intervals reflect each case's initial appeal.
The median is the middle value in the ranked distribution of values.
The range indicates the lowest to the highest values. Appendix C provides further detail on unusual ranges.

Exhibit 28. Arizona Death Penalty Appeals Process: Part III
1974–July 1, 2000 Time Intervals (N = 230 cases)

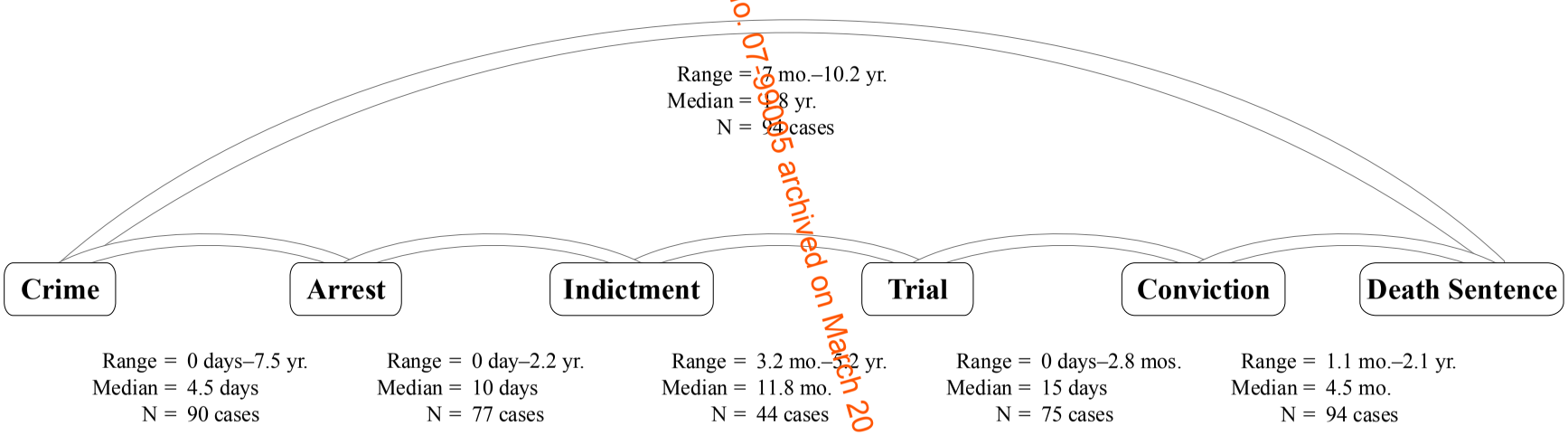


Schad v. Ryan No. 07-99005 archived on March 20, 2013

These time intervals reflect each case's initial appeal. The median is the middle value in the ranked distribution of values. The range indicates the lowest to the highest values. Appendix C provides further detail on unusual ranges. The time intervals for habeas decisions are particularly difficult to calculate. Short intervals may indicate procedural dismissals and extremely long intervals may result when a case is held in abeyance while action is taken at the state level. We anticipate further refinement of these data for the final report.

Exhibit 29. Arizona Death Sentence Cases: Part I
1990–July 1, 2000 Time Intervals (N = 96 cases)

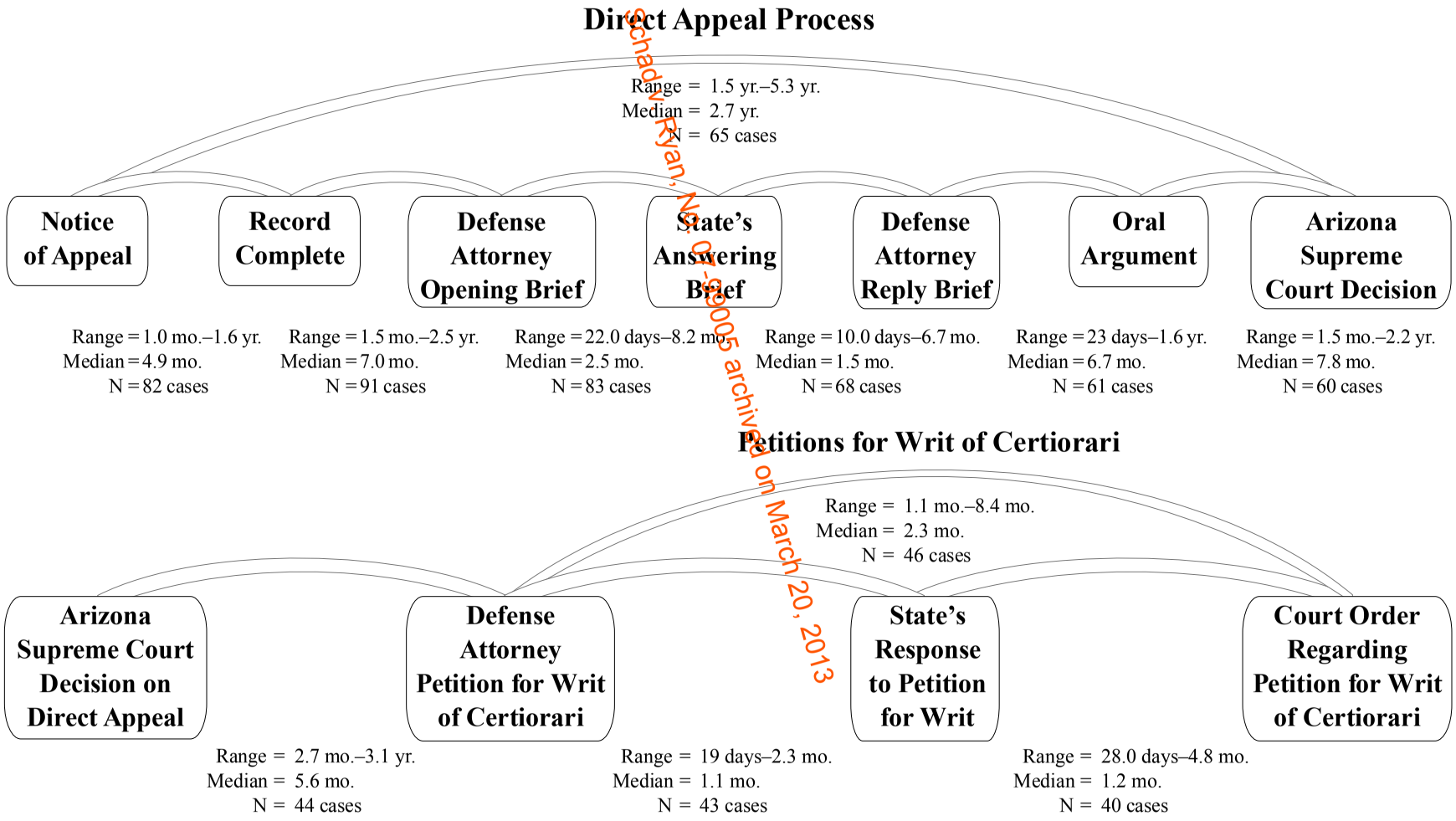
Death Sentencing Process



The median is the middle value in the ranked distribution of values.
The range indicates the lowest to the highest values. Appendix C provides further detail on unusual ranges.

Schad v. Ryan No. 07-99005 archived on March 20, 2013

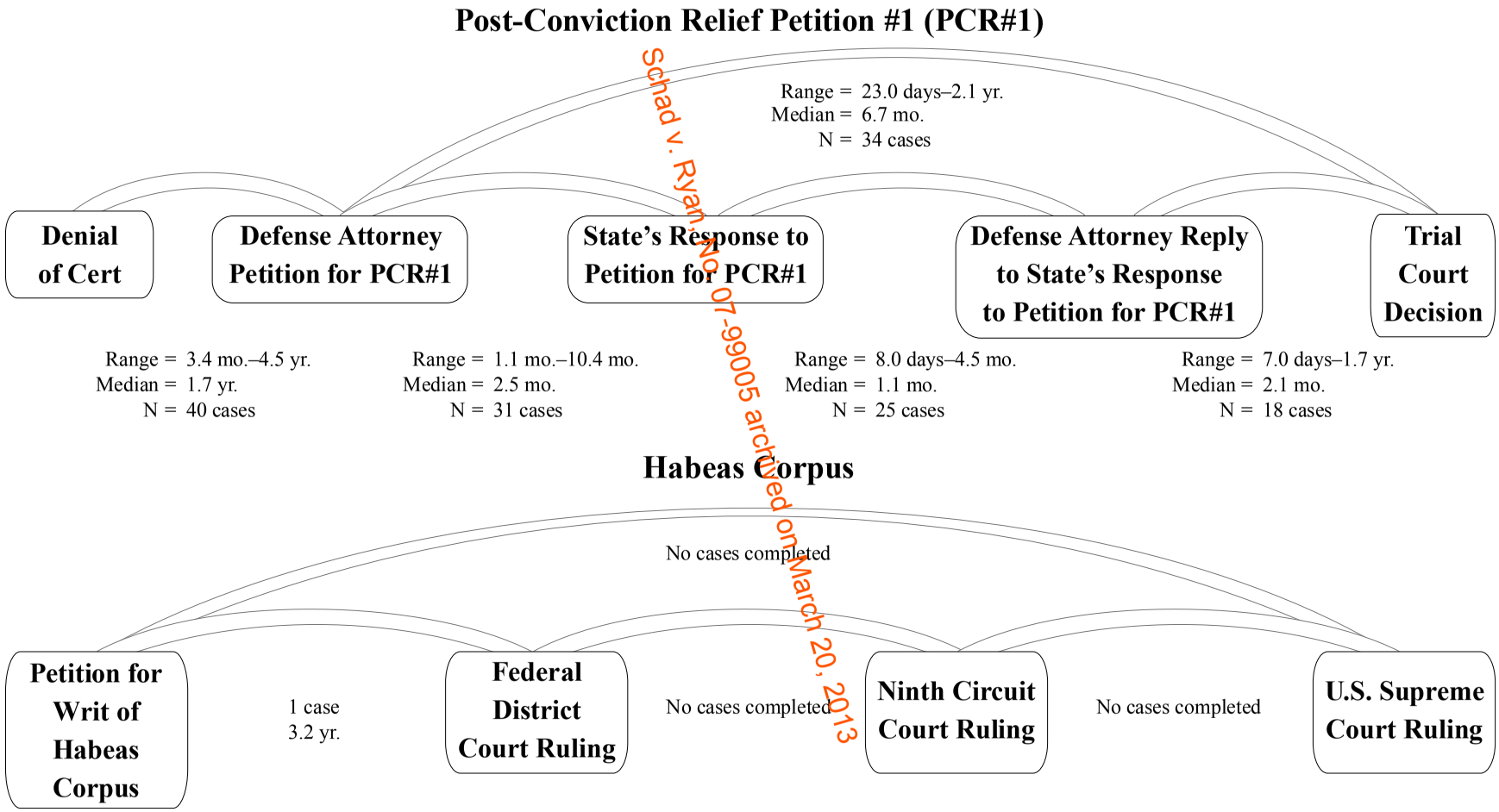
Exhibit 30. Arizona Death Penalty Appeals Process: Part II
1990–July 1, 2000 Time Intervals (N = 96 cases)



These time intervals reflect each case's initial appeal.
The median is the middle value in the ranked distribution of values.
The range indicates the lowest to the highest values. Appendix C provides further detail on unusual ranges.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 31. Arizona Death Penalty Appeals Process: Part III
1990–July 1, 2000 Time Intervals (N = 96 cases)

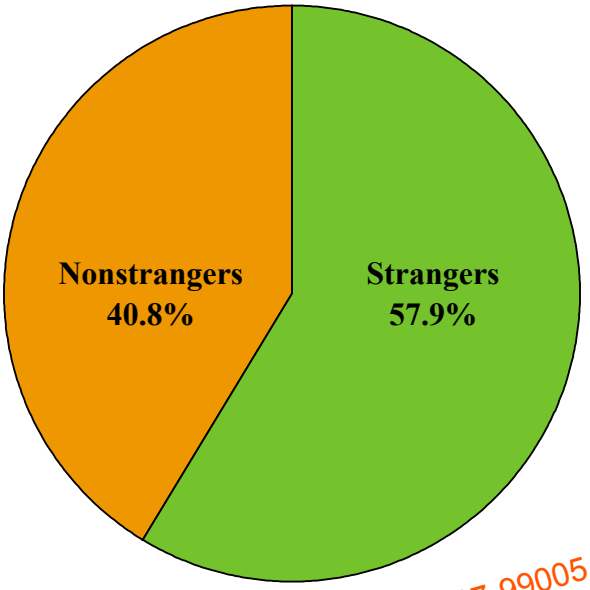


Schad v. Ryan, No. 07-99005 archived on March 20, 2013

These time intervals reflect each case's initial appeal. The median is the middle value in the ranked distribution of values. The range indicates the lowest to the highest values. Appendix C provides further detail on unusual ranges. The time intervals for habeas decisions are particularly difficult to calculate. Short intervals may indicate procedural dismissals and extremely long intervals may result when a case is held in abeyance while action is taken at the state level. We anticipate further refinement of these data for the final report.

Exhibit 32. Defendant-Victim Relationships:
Arizona Death Sentence Cases, 1974–July 1, 2000
(N = 311 relationships)

Overall Relationships



Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Note: 1.3% could not be categorized.

Nonstranger Relationships

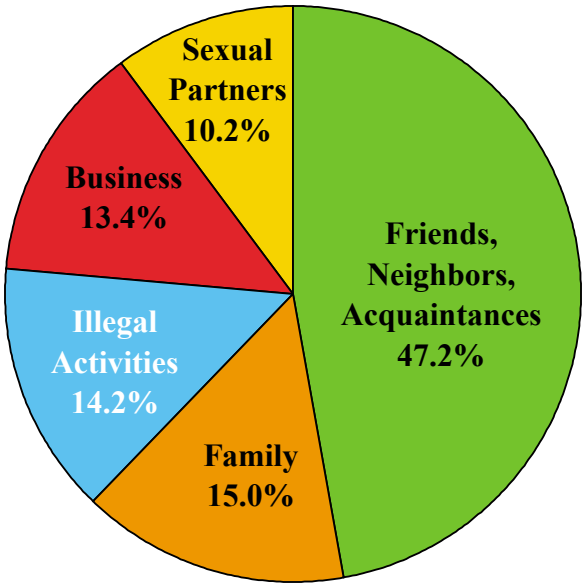


Exhibit 33. Defendant-Victim Relationships:
Arizona Death Sentence Cases, 1974–July 1, 2000
(N=311 Relationships)[a]

Type of Relationship		
Percent of Total	**Number**	**Relationships in Category**
Strangers		
57.9%	180	Stranger, police officer, debt collector, real estate agent, gas station attendant, codefendant's sexual partner's stepmother, hitchhiker
Friends, neighbors, acquaintances		
19.3%	60	Neighbor, acquaintance, family member of acquaintance, child of sexual partner, family friend, friend, temporarily lived in house to aid in moving, coprisoner , roommate, roommate's son, cohabitating sexual partner's daughter, wife's family member's housekeeper, classmate, girlfriend's daughter, stepmother of girl-friend, cohabitant (not sexual partner), codefendant's son, tenet in same building, sexual partner's father, codefendant's ex-sexual partner
Family		
6.1%	19	Spouse, biological mother, adoptive mother, biological father, bio-logical daughter, stepdaughter, biological son, brother's step-daughter ("uncle"), sister-in-law
Illegal activities		
5.8%	18	Drug dealer, coparticipant in drug deal, hired hit-man
Business		
5.5%	17	Business partner, employer, former employer, former coworkers, client
Sexual partners		
4.2%	13	Sexual partner, cohabitant (sexual partner), former sexual partner
Unable to categorize		
1.3%	4	Friend of a friend, renter of defendant's friend, boyfriend of renter of defendant's friend, former coprisoner's wife

[a]The number of relationships (311) exceeds the number of death penalty cases (230) due to multiple victims and codefendants.
[b]Percentages may not add to 100% due to rounding.

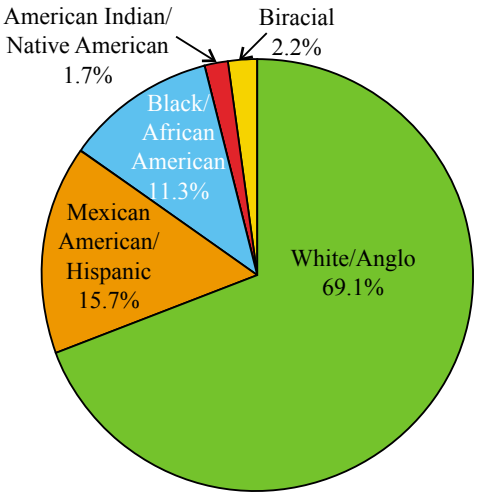
Schad v. Ryan, No. 07-99005 archived on March 20, 2013

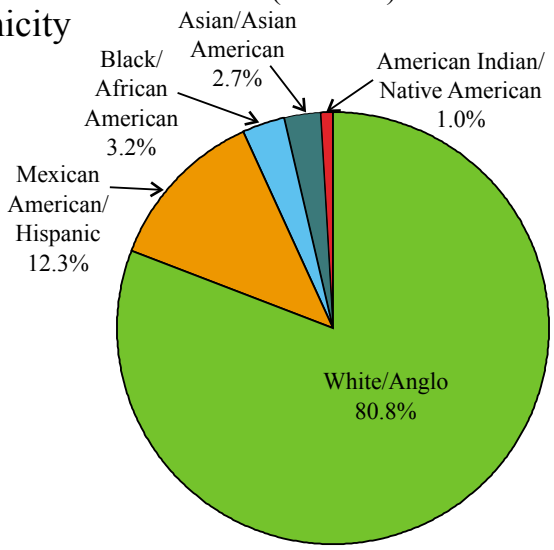
Exhibit 34. Defendant and Victim Race/Ethnicity, Sex, and Age: Arizona Death Sentences 1974–July 1, 2000

Individuals Sentenced to Death
(N = 230)

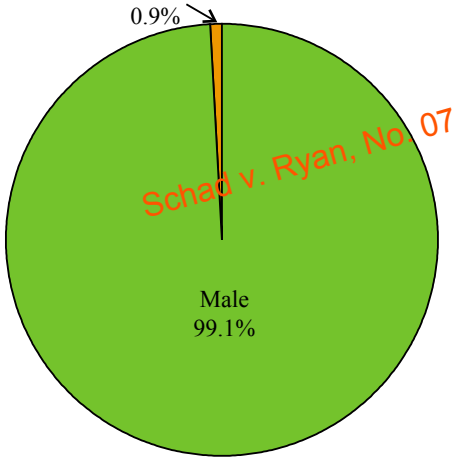
Victims
(N = 219)

Race/Ethnicity

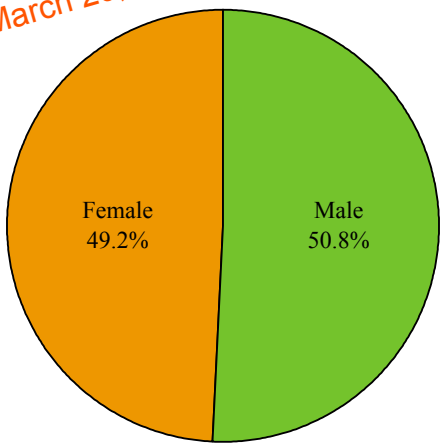




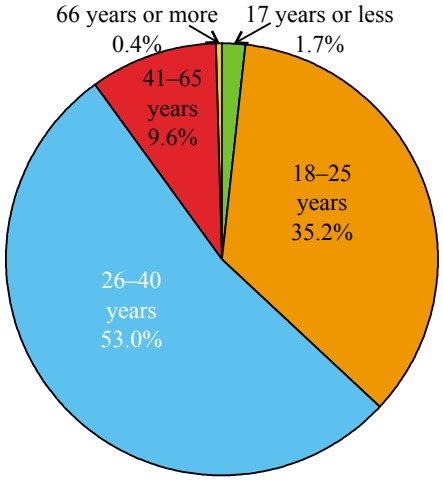
Sex



Schad v. Ryan, No. 07-99005 archived on March 20, 2013



Age



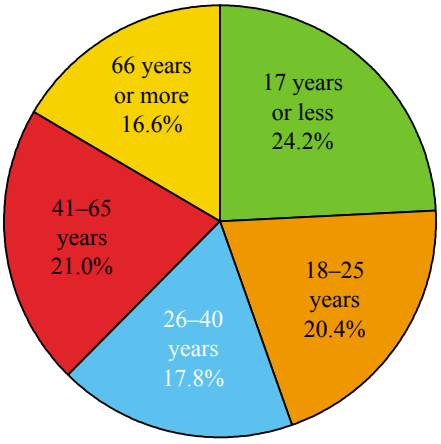


Exhibit 35. Victim and Defendant Race/Ethnicity, Sex, and Age: Arizona Death Sentence Cases, 1974–July 1, 2000

Race/Ethnicity	Victims[a] N = 228	%	Defendants Sentenced to Death[b] N = 230	%	Defendants Receiving Remands[c] N = 113	%
White/Anglo	182	79.8%	159	69.1%	71	62.8%
Mexican American/Hispanic	27	11.8%	36	15.7%	21	18.6%
Black/African American	9	3.9%	26	11.3%	16	14.2%
Asian/Asian American	8	3.5%	0	0.0%	0	0.0%
American Indian/Native American	2	0.9%	4	1.7%	1	0.9%
Biracial[d]	0	0.0%	5	2.2%	4	3.5%
Totals	228	100.0%	230	100.0%	113	100.0%
Sex	**N = 262**					
Male	133	50.8%	228	99.1%	113	100.0%
Female	129	49.2%	2	0.9%	0	0.0%
Totals	262	100.0%	230	100.0%	113	100.0%
Age	**N = 157**					
17 years or less	38	24.2%	4	1.7%	2	1.8%
18–25 years	32	20.4%	81	35.2%	46	40.7%
26–40 years	28	17.8%	122	53.0%	52	46.0%
41–65 years	33	21.0%	22	9.6%	13	11.5%
66 years or more	26	16.6%	1	0.4%	0	0.0%
Totals	157	100.0%	230	99.9%	113	100.0%

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

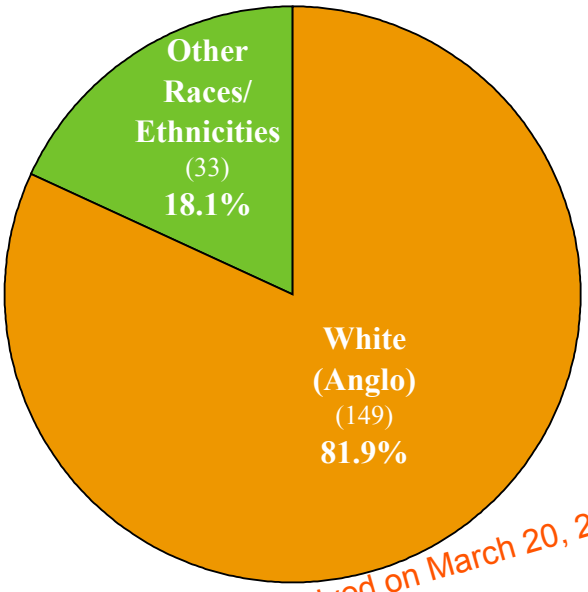
[a]Information is not available for all victims. To avoid double counting victims, this Exhibit includes the victim(s) of one codefendant from each group of codefendants.

[b]We base the defendants' race/ethnicity, sex, and age on the total 230 cases which include 2 individuals sentenced to death in 2 separate cases. Both are white males. One was 20 years old at the time of the first crime and 24 years old at the time of the second; the second individual was 31 at the time of both crimes.

[c]Includes conviction- and sentence-related remands, reversals, and modifications

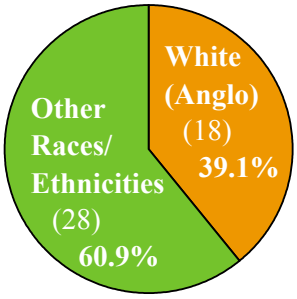
[d]Two of the biracial individuals were Mexican American and American Indian; 3 were Mexican American and White.

Exhibit 36. Defendant Race/Ethnicity by Victim Race/Ethnicity: Arizona Death Sentence Cases, 1974–July 1, 2000
(N = 228 victims, 199 defendants)[a]



Victims of White Defendants
N = 182

Schad v. Ryan, No. 07-99005 archived on March 20, 2013



Victims of Defendants of Other Races/Ethnicities
N = 46

[a]Race/ethnicity is not known for all victims. The 228 victims for whom it is known are paired with defendants. The pie sizes are relative to the number of victims, that is, the number of victims of white defendants is approximately 4 times greater than the number of victims of other defendants.

Exhibit 37. Defendant Characteristics I: Arizona Death Penalty Cases, 1974–July 1, 2000
(N=230)

Important Note: The data for this Exhibit are less robust and reliable than other parts of the data set. They are intended only as preliminary indicators. More reliable data will be available in the forthcoming data set.

Characteristic	Number	Percent
Highest Education Level Completed		
3rd–6th Grade	8	3.5%
7th–9th Grade	39	17.0%
10th–11th Grade	42	18.3%
High School	29	12.6%
GED	53	23.0%
Some community college	13	5.7%
AA degree	3	1.3%
Some college/university	15	6.5%
Bachelor's degree	4	1.7%
Unknown	24	10.4%
Employment Status		
Full-time	37	16.0%
Employed, specifics unknown	23	10.0%
Employed part-time	5	2.2%
Unemployed, 6 months or less	10	4.3%
Unemployed, over 6 months	12	5.2%
Unemployed, duration unknown	124	53.9%
Student/retired/disabled	6	2.6%
Unknown	13	5.7%
First Language		
English	210	91.3%
Spanish	7	3.0%
German	4	1.7%
Unknown	9	3.9%
Citizenship		
United States	204	88.7%
Mexican	4	1.7%
German	4	1.7%
Honduran	1	0.4%
Resident Alien	1	0.4%
Illegal Alien	1	0.4%
Unknown	15	6.5%

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Exhibit 38. Defendant Characteristics II: Defendant Prior Criminal Justice History, Arizona Death Sentence Cases, 1974–July 1, 2000

	Individuals	Percent of Total Cases	Percent of Cases with Data
Prior Adult Felony Convictions			
0	46	20.0	28.4
1	34	14.8	21.0
2	28	12.2	17.3
3–4	27	11.8	16.6
5–7	21	9.1	13
8–14	6	2.5	3.6
Subtotal	162	70.4	100.0
Cases Missing Data	68	29.6	
Total	230	100.0	
Prior Adult Incarcerations			
0	66	28.7	42.9
1	35	15.2	22.7
2–3	35	15.2	22.7
4–7	18	7.8	11.6
Subtotal	154	67.0	100.0
Cases Missing Data	76	33.0	
Total	230	100.0	
Prior Adult Parole Supervisions			
0	84	36.5	58.3
1	33	14.3	22.9
2	15	6.5	10.4
3–5	12	5.2	8.4
Subtotal	144	62.6	100.0
Cases Missing data	86	37.4	
Total	230	100.0	
Prior Adult Probation Supervisions			
0	60	26.1	39.2
1	53	23.0	34.6
2	25	10.9	16.3
3–4	12	5.2	7.9
5–6	3	1.3	2.0
Subtotal	153	66.5	100.0
Cases Missing Data	77	33.5	
Total	230	100.0	

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Appendix A. G-1 Statutory Mitigation Ruled to Exist by Sentencing Judges: Arizona Death Sentence Cases, 1974- July 1, 2000

Case[a]	Mental Health Professionals	Diagnosis/Opinion from Court Documents	Duration of Condition
Hill	Unclear. Psychological evaluation mentioned.	• Long history of alcoholism, but no neurologic or emotional disorder	Over 10 years. *Note: "Time of crime" intoxification.*
Moorman	Unclear. Psychological evaluation mentioned.	*From probation officer's summary:* • Long history of mental illness, possible mental retardation, apparent pedophilia, no psychosis apparent	Unspecified, but previous sex offender treatment in prison noted.
Ramirez	Defense psychologist	• Intoxicated state at time of offense, alcohol & cocaine abuse over 2-month period prior to offense	Unspecified. *Note: "Time of crime" intoxification.*
Rogovich	Defense psychologist	• Acute psychosis and psychotic episode	Unspecified, but apparent long-term drug/alcohol addiction. *Note: "Time of crime" intoxification.*
	Defense psychologist	• Paranoid schizophrenia	
	Prosecution psychologist	• Personality disorder	
	Prosecution psychologist	• No mental disorder	
Jimenez	Court-appointed psychologist	• Major depressive episode w/ psychotic features, borderline intelligence, schizoid personality traits	Unspecified. *Note: Defendant was juvenile at time of evaluation.*
	Two prosecution psychiatrists	• Schizotypal personality disorder	
	Prosecution psychologist	• Mental disease of schizophrenic nature	
	Two defense psychologists	• Schizophrenia, paranoid type	
Mauro	Defense psychologist	• Bipolar affective disorder	Over 10 years. Notes on nine instances of hospitalization for psychotic episodes, schizophrenia and psychosis.
	Prosecution psychologist	• Personality disorder	

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

(Appendix A, continued)

Case[a]	Mental Health Professionals	Diagnosis/Opinion from Court Documents	Duration of Condition
Tankersley	Defense psychologist	• Extensive drug & alcohol history, acute intoxification at time of offense, bipolar	Lengthy substance abuse history. *Note: "Time of crime" intoxification.*
	Prosecution psychologist	• Polysubstance abuse, antisocial personality disorder	
Brookover	Court psychiatrist	• Neurological lesion, minimal brain damage syndrome	Unspecified. *Note: "Time of crime" intoxification.*
Stevens	Defense psychiatrist	• Depression, mental disorder	Unspecified, but previous antidepressant treatment noted. *Note: "Time of Crime" intoxification.*
	Prosecution psychologist	• Passive/aggressive personality disorder, alcohol & amphetamine dependence, extreme intoxification at time of offense	
Hughes	Defense psychologist	• Impaired capacity, impulsivity, learning disability	Unspecified, but history of polysubstance abuse and past diagnoses of antisocial personality disorder noted.
O. Medina	Defense psychologist	• Anti-social personality disorder, persistent pattern of violence, egregious history	Unspecified, but "pattern" & "history" notes by psychologist. *Note: "Time of Crime" intoxification.*
	Prosecution psychologist	• Personality disorder w/ dependent anti-social & compulsive traits	
Epperson	No diagnosis. Jail psychiatrists asked to comment.	• Depression, "not a danger", rehabilitatable From opinions of jail psychiatrists	Unspecified history, no psych. evaluation.
Lavers	Defense psychologist	• Delusional paranoid disorder, obsessive-compulsive personality disorder, alcohol dependence, (binge type), extreme intoxification at time of crime.	Unspecified. *Note: "Time of crime" intoxification.*
	Prosecution psychiatrist	• "Insufficient symptomology" to support Tatro diagnosis	

[a]The available data contain minimal systematic information regarding mental health considerations. At the time of sentencing, approximately one-half of the defense attorneys alleged statutory mitigation factor G-1. In 13 cases the sentencing judge ruled that the factor existed.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Appendix B. Nonstatutory Mental Health-related Mitigation Ruled to Exist by Sentencing Judge: Arizona Death Sentence Cases, 1974–July 1, 2000

Case	Mental Health Professionals	Diagnosis/Opinion from Court Documents	Duration of Condition
Blakely	Unclear.	• Cognitive impairment	History of substance abuse and abandonment.
Canez	Defense and prosecution psychiatrists	• Borderline mental retardation • Personality disorder	Unspecified. *Note: intoxicated on night of crime.*
Carlson, Doris (incomplete file)		• Diminished mental capacity	
Cook	Psychological evaluation not ordered.	• Mental health issues	Significant history of mental health issues.
Gulbrandson	Defense psychologist	• Unusual stress	Significant history of mental health issues.
Hoskins	Unclear. Psychological evaluation mentioned.	• Antisocial personality	Unspecified but history of dysfunctional family, physical/sexual abuse and long term alcohol and drug abuse.
Hurles	Prosecution psychiatrist	• Failure to receive previous psychological care and treatment.	Long-standing significant history of mental health issues. *Note: used LSD on night of offense.*
Hyde	Defense and Prosecution psychiatrist	• Grief	Unspecified.
Jones, D.	Unclear. Psychological evaluation mentioned	• Mental/behavior/psychological disorders from prior head injury.	Unspecified, but abusive childhood and long term alcohol and drug abuse.
King	Defense psychologist	• Anti-social personality • May suffer from PTSD	Unspecified but traumatic childhood and long term alcohol and drug use.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

(Appendix B, continued)

Case	Mental Health Professionals	Diagnosis/Opinion from Court Documents	Duration of Condition
LaGrand, K.	Unclear. Psychological evaluation mentioned.	• Non-G1 mental health issue	Unspecified but evaluation shows an emotionally disturbed man. *Note: ingestion of LSD and alcohol near time of offense..*
Lavers (incomplete file)	Defense psychologist	• Mental impairment	Unspecified.
Lee, D.	Unclear. Psychological evaluation conducted.	• Low intelligence	Unspecified. Intelligence impaired by long term substance abuse.
Mann	Court-appointed psychologist	• Non-G1 mental health issue (anti-social disorder)	Unspecified but significant history of mental health issues.
Martinez, E.S.	Defense psychologist	• Personality disorder	Unspecified but proved exposure to childhood violence.
McKinney	Defense and prosecution psychiatrists	• Cognitive impairment • May suffer from PTSD	Unspecified but proved childhood abuse.
McLoughlin	Prosecution psychologist	• Personality disorder	Unspecified.
Medina	Prosecution psychologist	• Personality disorder with compulsive traits	Unspecified but considered long term and anti-social. Uses intoxication to allay guilt.
Minnitt	Court-ordered evaluation	• Depressed IQ	Unspecified.
Montano	Unclear. Psychological evaluation conducted.	• Documented learning disability • Low intelligence	Unspecified. IQ is low to borderline. History of poly-substance abuse.
Murray, R.W.	Defense Psychologist	• Mental health issues	Unspecified but a result of non-nurturing childhood.
Prince,W.	Defense and Prosecution Psychologists	• Undiagnosed and untreated learning disability • Learning and emotionally handicapped education classes	Unspecified but appears long term.

Schad v. Ryan, No. 07-99005; archived on March 20, 2013

(Appendix B, continued)

Case	Mental Health Professionals	Diagnosis/Opinion from Court Documents	Duration of Condition
Ramirez	No psychological evaluation ordered	• Non G1 mental health issues	Unspecified.
Rossi	Unclear.	• Personality disorder	Unspecified. Disorder has underlying feelings of inadequacy and inferiority.
Sansing	None cited.	• Impaired mental capacity	Unspecified but long term drug abuse. *Note: ingested crack cocaine prior to offense.*
Schurz	Unclear. Psychological evaluation conducted.	• Non-G1 mental health issues	Unspecified.
Scott	Unclear. Psychological evaluation conducted.	• Non-G1 mental health issues (mixed personality disorder with passive/aggressive, avoidant and anti-social features coupled with opiate and alcohol dependency and mixed substance abuse.)	Unspecified but long standing history of alcohol and drug abuse.
Shackart	Defense psychologist	• Impaired judgement (not sufficient to constitute G1)	Unspecified.
Smith, T.	Unclear but psychological evaluation conducted	• Non-G1 mental health issues (behavioral and personality disorder and long-term effects of head injury).	Long-term addiction to drugs and alcohol.
Spoon	Defense psychiatrist	• Schizophrenia; paranoid type	Unspecified but long-term.
Thornton	Defense and prosecution psychiatrists	• Anti-social personality	Unspecified but long-term.
Williams, R.T.	No psychological evaluation ordered.	Personality disorder	Unspecified.
Webster	Unclear but psychological evaluation conducted	• Documented learning disorder • Impulsivity • Emotional and mental immaturity • Borderline intellectual functioning	Unspecified but long-term.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Appendix C. Explanatory Notes for Time Intervals, Exhibits 25–31

The time interval data are complex and difficult to portray in a meaningful way. Frequently, intervals that appear "extreme" are accurate, but they may follow an unconventional path in the appeal process or intervening factors may have influenced the long time interval. The following are examples:

Time Interval and Explanation

Crime to Arrest

2,722 days Defendant was not apprehended until featured on a television crime show.
1,573 days Defendant was apprehended five years later.
2,573 days Defendant was apprehended while in prison for a separate crime.
1,706 days Defendant was apprehended after an anonymous tip on the 88-CRIME phone line.
1,835 days Defendant was extradited to Arizona from the Utah prison system.

Indictment to Trial

1,894 days Continuances of trial for DNA testing as well as new counsel appointed over a five-year period.

Notice of Appeal to Record Complete

601 days A court reporter moved to another state without transcribing several days of an evidence suppression hearing. There was difficulty in locating her and she was initially somewhat uncooperative in preparing the transcripts. In addition, the court reporter eventually admitted that she could not prepare one of the transcripts because she lost the notes. The case had to be remanded to the superior court for reconstruction of the record for that day of the hearing.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013

Record Complete to Opening Brief

908 days After the original notice of completion of record, the record on appeal was expanded to add a large number of additional transcripts that had to be prepared. Those included proceedings in the defendant's case, his co-defendant's case, and grand jury proceedings. There was also difficulty ascertaining the exact dates of the numerous grand jury proceedings and obtaining transcripts of same.

Opening Brief Order to Opening Brief

469 days Three requests for extension of time to file.

Opening Brief to Answering Brief

301 days Motion to strike revised opening brief; motion for extended time to file answering brief; motion for extended time for clerk to file; motion to impose sanctions.

Response to PCR to Reply to Response

812 days Motion to extend time to file; petition dismissed; telephonic status conference; motion to continue; extension to file.

PCR Petition to Response to PCR

1,321 Request for investigator; reprieve hearing scheduled, commutation hearing, request new trial.

PCR to Order PCR

1,525 days Motion to extend time to file response and reply; assignment of judge.
1,062 days Motion to extend time to file amended PCR; request funds for investigator; motion for discovery; plea agreement.

PWCert to Opposition Brief

3 days Docket dates show date received petition not date filed

Habeas Intervals

Seemingly extreme intervals at the federal level may be due to a case being held in abeyance while action is taken at the state appellate level.

Schad v. Ryan, No. 07-99005 archived on March 20, 2013