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The Many Saliences of Justice Michael D. Ryan:  
A Comparative Empirical Analysis of Concepts of Salience as Applied in State Appellate Courts 

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Abstract 

This Essay began as an effort to honor the work of the late Arizona Supreme Court Justice Michael D. Ryan by examining the impact of his work on Arizona law through the lens of his “most important” opinions. As with all things touched by Justice Ryan it has become something greater than its initial purpose. The Author began this project by surveying three hundred seven Arizona judges about Justice Ryan’s published opinions. The results of this survey were quite surprising. Rather than identifying a common core of important opinions, the survey identified two mutually exclusive sets of important opinions: one for the appellate court and the other for the trial court. In an effort to understand this result, the Author reviewed the salience literature (which identifies measures of case or issue importance) and identified fourteen measures of salience. The application of those measures to Justice Ryan’s published opinions only confirmed the results of the survey because no two measures identified the same set (or even similar sets) of opinions as important. This empirical analysis and review of Justice Ryan’s published opinions demonstrated three things. First, Justice Ryan’s opinions matter to a wide range of people including grandparents, illegal aliens, homeowners, schoolchildren, employees, and convicted felons on death row. Second, the salience literature does not identify a single unitary concept of importance, but rather many different concepts of importance. Finally, the empirical analysis discussed herein unequivocally demonstrates that whether an opinion is important depends upon who you ask. 

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I. Introduction

Beginnings and endings can be difficult. Written introductions to essays celebrating a life ended are all the more difficult because the author must quickly summarize the essay and the life while setting the right tone. This difficulty is compounded by the impossibility of summarizing a life in an essay. So the author must choose a perspective on the person’s life and write from that vantage point. When that perspective generates a new and interesting insight, as in this Essay, it illuminates the life described.

The Author of this Essay has chosen to honor the late Arizona Supreme Court Justice Michael D. Ryan by identifying and summarizing his most important judicial opinions. It is easier to say that you will identify what opinions are most important than it is to identify those opinions—after all, what metric is the right metric to use to measure the importance of a judicial opinion? It is in that identification of metrics and the empirical testing of them that this celebration of Justice Ryan’s work breaks new ground. For this Essay empirically demonstrates that the various concepts of salience (importance) identified in the salience literature do not identify a single concept of importance, but rather many different concepts of importance.

Initially, the Author attempted to identify Justice Ryan’s “important cases” by surveying three hundred seven Arizona judges. As discussed below, these surveys

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2 In doing so, we should never forget that from the litigant’s perspective every opinion is vitally important.
3 “Salience” is a word of art used to mean importance as empirically measured. See Lee Epstein & Jeffrey A. Segal, Measuring Issue Salience, 44 AM. J. OF POL. SCI. 66, 67 (2000) (discussing retrospective and contemporaneous salience).
indicate that appellate judges and trial judges completely disagree on what cases are important. This result left open the question of how to measure importance.

The author then turned to the literature on case salience, identified fourteen different salience measures, and empirically applied ten of them to Justice Ryan’s ninety-six published opinions. The results of this application were quite striking. No two measures of salience picked out the same set of opinions. If an opinion was deemed salient by one measure, it was likely not deemed salient by any other measure.

This Essay draws three (related) conclusions from this analysis. First, because twenty-three of Justice Ryan’s ninety-six published opinions were salient on at least one measure, a great deal of what Justice Ryan wrote mattered a lot. Second, there is no single measure of salience, at least as applied at the state level, but rather many different salience measures. Third, the answer to the question of which of Justice Ryan’s opinions are most important is both surprising and consistent with our expectations: it depends upon who you ask.

II. Justice Ryan: A short life history

Justice Ryan was born in 1945 and grew up in St. Paul, Minnesota. He attended St. John’s University, received a degree in English literature, and, upon graduation, joined the Marines as a Second Lieutenant and infantry platoon leader during the Vietnam War. In 1968, he was wounded, promoted to First Lieutenant, and transferred for treatment at Hines Veteran’s Hospital and the Veteran’s Hospital in Minnesota. He was awarded Two Purple Hearts and a Bronze Star for his service but would never walk

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4 See infra Part III.
5 Some salience measures are not reproducible at the State Appellate Court level. See discussion infra Part V.
6 See discussion infra Part V.
7 This short history is derived from Maureen Kane’s Justice Michael Ryan: Friend, Mentor, Hero, 48 Ariz. Atty 11 (July/August 2012).
again as a result of his injuries. Justice Ryan met his wife Karen at the Veteran’s Hospital where she was volunteering as an occupational therapy student.⁸

After leaving Veteran’s Hospital, Justice Ryan pursued a Master’s Degree with the intent of becoming an English teacher. Justice Ryan decided that English teaching was not the path for him and left the Master’s program to begin law school at Arizona State University’s College of Law in 1974. He graduated in 1977 and passed the Arizona bar. Justice Ryan worked in the major felonies and sex crime unit of the Maricopa County Attorney’s office where he was promoted to bureau chief. During this time, Justice and Mrs. Ryan began fostering high-risk infants—eventually fostering over 80 high-risk infants.⁹

In 1986, Justice Ryan was appointed to the Maricopa County Superior Court where he presided over high-profile trials including the criminal trial of Governor Evan Mecham, the AzScam political scandal, and the Phoenix Suns drug case. In 1996, he was appointed to the Arizona Court of Appeals by Governor Fife Symington III and, six years later, he was appointed to the Arizona Supreme Court by Governor Jane Hull.¹⁰

Even though Justice Ryan retired from the Supreme Court in 2010 he continued to vigorously support the community. He was on the Probable Cause Committee for the attorney discipline process, the Attorney Regulation advisory Committee, Capital Case Oversight Committee (where he was chair), and the County Task Force on the hiring

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⁸ See id. at 10-11.
⁹ See id. at 11-12 (quoting Mrs. Ryan stating “He’d just come in the door after work and fling a baby over his shoulder right away”). In my personal conversations with Justice Ryan it was quite clear that he felt this type of service to others was vital to a good life.
¹⁰ Id. at 14.
and retention of minorities and women. He unexpectedly passed away on January 30th, 2012 and was buried with full military honors in Arlington National Cemetery.\textsuperscript{11}

I had the great fortune to be selected by Justice Ryan to serve as his clerk from July 2005 to August 2006. It is a testament to Justice Ryan’s character that a Republican-appointed, conservative, former marine had no hesitation in hiring a left-leaning academic. He was a soft-spoken man with a keen intellect, a well-honed wit, and a lack of ego who went out of his way to give others a second chance. I was honored when he agreed to officiate at my wedding and found it so within his character when he replied to my future in-laws’ question of “How should we address you?” by simply saying “Mike.”

Justice Ryan’s sense of humor was also legendary. I was able to see it at play during the planning of the winter holiday party when it was decided that each of the Justices would submit a picture of them as a child for a “guess who this is” poster at the party. Justice Ryan’s entry was the framed greeting card (set to look like an old photo) with a picture of a blonde child in a high chair holding a cigar and a bottle of what was clearly an alcoholic beverage.

Justice Ryan approached all of his life with kindness, compassion, dignity, humor, and dedication to others. The world is much worse off with his passing.

\textbf{III. The Judicial Survey}

This Part looks at the results of the survey the Author sent to three hundred seven Arizona judges asking them to rank ten of Justice Ryan’s opinions on a scale of

\textsuperscript{11} \textit{id.} at 15.
zero (not important) to nine (most important). The results were quite surprising: the rankings given to the opinions by the trial court judges were, at best, uncorrelated with the rankings the appellate court judges found important. And, on some ways of looking at the data, the rankings were negatively correlated.

This result indicates that a judicial survey method of measuring salience is court-specific. In essence, we must examine the trial court results separately from the appellate court results. Once we do so we can use the average ranking of an opinion as a measure of its salience from that court’s perspective.

With those average rankings calculated, we must next attempt to identify the most important opinions using the score generated for each opinion by applying the salience measure. This essay takes an opinion to be among the most important under a given salience measure if its score under a particular salience measure is more than one standard deviation above the mean for scores under that measure (if it has a z-score of 1.0 or higher).

A. Surveying the Trial Court

The survey asked the judges surveyed to rank on a zero to nine scale the importance of Justice Ryan’s opinions. The Author then used the average ranking assigned to each opinion by the trial judges as a salience measure. Using the average

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12 Despite judicial interest judicial surveys often have low initial response-rates. To increase the number of responses, the Author limited the number of case summaries in each survey to ten randomly selected from the thirty most cited opinions. Fifty Arizona judges completed the survey.

13 The trial court judges’ rankings were uncorrelated with those of the appellate court judges. Similarly, there was no correlation based on average score given for each opinion. Finally, there was a negative correlation between the z-scores of the average ranking for appellate and trial judges.

14 Assuming a normal distribution, one standard deviation captures 68.3% of the data. The remaining 31.7% is split across data that is above and below average. By focusing on those opinions that are more than one standard deviation above the mean we identify the top 15.85% of opinions under a given measure as most important. See PEGGY TANG STRAIT, A FIRST COURSE IN PROBABILITY AND STATISTICS WITH APPLICATIONS 194 (1983).
ranking, it was possible to identify five opinions where the average ranking of that opinion had a z-score of 1.0 or greater: *State v. Torres*,15 *State v. Glassel*,16 *Graville v. Dodge*,17 *State v. Clark*,18 and *Scottsdale Healthcare, Inc. v. Arizona Health Care Cost Containment System*.19

In *State v. Torres*, the Court held that failure to inquire into the basis of the defendant’s request for a change of counsel was a violation of the defendant’s sixth amendment right to counsel20 and “that the appropriate remedy for a trial court’s error in this situation is to remand for a hearing on the defendant's allegations.”21

*State v. Glassel* is a death penalty case in which the Court examined Arizona’s death penalty statute enacted in response to *Ring v. Arizona*, 536 U.S. 584 (2002).22 The opinion begins by noting that the application of the new death penalty statute to Glassel’s case does not violate the prohibition against *ex post facto* application of new laws.23 The opinion also discusses the standards for judicial decisions about a defendant’s lack of mental capacity as a basis for competence to stand trial,24 *voir dire* in relation to the death penalty concept of mitigation that is “sufficiently substantial to call for leniency,”25 and excluding jurors when they state objections to the death penalty.

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20 *Torres*, 3 P.3d at 1059 ¶ 7.
21 *Id.* at 1060 ¶ 13.
23 *Id.* at 1202 ¶ 17.
24 See *id.* at 1202-05 ¶¶ 19-31 (discussing Glassel’s argument that he was mentally unable to aid counsel in his defense).
25 See *id.* at 1205-06 ¶¶ 32-39 (discussing *voir dire* standards).
penalty.26 *Glassel* also held that the death penalty statute’s requirement “that any mitigation evidence be sufficiently substantial to call for leniency is” not vague, does not shift the burden of proof, and does not create an unconstitutional presumption of death.27

In *Graville v. Dodge* the court held that Arizona’s grandparent visitation statute28 was constitutional.29 *State v. Clark* contains the court’s argument that its procedure for filing appellate briefs when appointed appellee counsel does not believe there is a colorable appellate issue is constitutional and that it does not violate attorney ethical obligations.30

Finally, *Scottsdale Healthcare, Inc. v. Arizona Health Care Cost Containment System*, addresses the issue of how to determine when the type of medical care given to an illegal alien transitions from “emergency” care to “chronic” or “long-term” care for purposes of reimbursement by the Arizona Health Care Cost Containment System.31 Here the court concludes by defining emergency care as arising in the context of a “medical condition [that is] manifesting itself by acute symptoms”32 such that “the absence of immediate medical attention could reasonably be expected to place the

26 See id. at 1207-10 ¶¶ 45-57 (discussing striking jurors from a panel).
27 Id. at 1211-12 ¶ 65-72.
28 The grandparent visitation statute provided that “[t]he superior court may grant the grandparents of the child reasonable visitation rights to the child during the child’s minority on a finding that the visitation rights would be in the best interests of the child and any of the following is true” “[t]he marriage of the parents . . . has been dissolved for at least three months”, “[a] parent of the child has been deceased or has been missing for at least three months . . . .”, or “[t]he child was born out of wedlock.” ARIZ. REV. STAT. ANN. § 25-409(A)(1997)(West).
32 Id. at 97 ¶ 23.
patient’s health in serious jeopardy, or serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.”

B. Surveying the Appellate Court

The analysis of appellate court judges’ average rankings identified completely different opinions as important (with a z-score of at least 1.0): Powell v. Washburn, Phelps v. Firebird Raceway, Inc., State v. Martinez, Cain v. Horne, and In re Cameron T.

In Powell v. Washburn, the Court was called upon to interpret restrictive covenants that incorporated the zoning restrictions of La Paz County. In interpreting the restrictive covenants the Court expressly adopted the Restatement view that restrictive covenants should be interpreted to give effect to the intent of the parties and rejected the view that they should be interpreted narrowly to favor the free use of land.

In Phelps v. Firebird Raceway, Inc., the Court held that the provision in the Arizona Constitution making assumption of risk a question of fact for the jury applied to express contractual assumption of risk.

State v. Martinez is a death penalty case that discusses a wide-range of issues including prosecutorial misconduct, the proper form of a felony murder instruction,
defendant’s rights to compel witness testimony, and jury instructions during the penalty phase of the trial.

In *Cain v. Horne* the Court found that the State’s efforts to implement a school voucher program that could be used in either religious or secular schools violated the Arizona Constitution. Finally in *In re Cameron T.* the Court held that juvenile courts had the right to transfer juveniles to adult courts for prosecution even after a Constitutional Amendment requiring that jurisdiction affecting “juveniles shall be approved by the legislature or the people by initiative.”

C. Irreconcilable Differences

When the Author first realized that the survey showed no overlap between the trial court’s and appellate court’s most important opinions, he believed there must have been error either in analysis or execution of the survey and turned to the salience literature to resolve or identify the error. But, as discussed below, the Author found only a cacophony of salience measures which, when applied to the opinions, produced results as inconsistent with each other as those found in the judicial survey. As a result, the Author must conclude that there is no single notion of salience, but many different saliences. In essence, whether an opinion is important is dependent upon who you ask.

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45 See id. at 355-56 ¶¶ 24-29.
46 See id. at 359-60 ¶¶ 46-56.
IV. The Salience Literature

The salience literate seems to implicitly recognize that whether a case or issue is salient is a function of asking salient for or according to whom? But those articles also identify a particular right measure of salience. This internal inconsistency only makes sense if we recognize, as this Essay empirically demonstrates, that the different salience measures are, at best, identifying different kinds of saliences. As a foundation for the empirical results, this Part provides a basic outline of fourteen measures of salience.

A. Fourteen Measures of Salience

Epstein and Segal’s seminal work Measuring Issue Salience is a useful starting point because they discuss seven previously defined measures of salience and suggest their own (the eighth). According to them, a U.S. Supreme Court opinion has been considered salient if it (1) was reprinted in a constitutional law book, (2) was identified in Congressional Quarterly, (3) was identified as a major decision in The Supreme Court Compendium, (4) generated substantial Supreme Court citations within five years of the decision date; (5) generated at least eight law review articles within two years of the decision date; (6) was headlined on the advance sheets of the Lawyer’s Edition, or (7) generated substantial amicus curiae participation.

49 See, e.g., Saul Brenner & Theodore S. Arrington, Measuring Salience on the Supreme Court: A Research Note, 43 JURIMETRICS JOURNAL 99, 99 (2002) (noting that they are seeking to understand salience from the perspective of the Justices); Todd A. Collins & Christopher A. Cooper, Case Salience and Media Coverage of Supreme Court Decisions: Toward a New Measure, XX POL. RES. Q. 1, 2 (2010) (noting that there is both political and legal salience); Epstein & Segal, supra note 2, at 67 (discussing retrospective and contemporaneous salience).

50 See, e.g., Brenner & Arrington, supra note 48, at 109 (arguing that while the Congressional Quarterly list is best “in some research circumstances the NYT list either alone or in combination with the [Congressional Quarterly] list might be the best choice”); Collins & Cooper, supra note 48, at 3 (arguing that their measure of salience is “an Ideal Measure” (2010); Epstein & Segal, supra note 2, at 67-72 (criticizing other measures of salience as a foundation for arguing that their measure is the right one).

51 See Epstein & Segal, supra note 2, at 72 Table 1.
Epstein and Segal added their own eighth measure of salience: whether the opinion was the subject of a front-page story in the *New York Times* the day after the decision was published. This measure has generated at least two modifications. Collins and Cooper present a ninth measure that considers salience as coverage on any page in at least one of four regional papers. While Vining and Wilhelm offer a tenth measure under which a state court opinion is salient if it was the lead case in a story that appeared on “the state’s most-circulated newspaper on the day immediately following the announcement of a ruling.”

Shifting away from media-based approaches, Johnson, Black, and Ringsmuth give us an eleventh and twelfth measure of salience. According to them, a case is legally salient if it “formally alters precedent or declares an act of Congress unconstitutional”; and a case is salient to the judge if the judge asks more questions at oral argument in a given case.

Citations also play an important role in measuring salience. While Epstein and Segal identify two such measures (the fourth identifying salience with the number of Supreme Court citations within five years of the decision date and the fifth identifying salience with the generation of at least eight law review articles within two years of the decision date), Cross and Springs talk about simply *being subsequently cited by*

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52 *See id. at 72 & n.7. Epstein and Segal’s full approach is explained as “A salient case (1) led to a story on the front page of the *Times* on the day after the Court handed it down, (2) was the lead (‘headlined’) case in the story, and (3) was orally argued and decided with an opinion.” Id. at 73.
53 Collins & Cooper, *supra* note 48, at 6 (giving a score of 2 for front page coverage, score of 1 for appearing on any other page, and a score of 0 for no coverage).
54 *Id.* at 4, 5.
57 *Id.*
another court. Finally, our fourteenth measure uses the case citation measure but goes beyond counting the number of cases to network theory to identify the most salient cases.

**B. Six Types of Measures of Salience**

These fourteen measures of salience can be divided two sets of categories (creating six sub-categories). First, they are all either measures of contemporaneous salience (important at the time the opinion was published) or retrospective salience (important as seen through the lens of history). Second, they all either rely upon an expert’s subjective assessment or whether the measure is based upon some objective feature of the opinion itself. Subjective expert opinion can be further sub-divided into legal and media experts. Table 1 shows where each of the fourteen measures fall within the resulting six classes of salience measures:

<table>
<thead>
<tr>
<th>Subjective</th>
<th>Contemporaneous</th>
<th>Retrospective</th>
</tr>
</thead>
<tbody>
<tr>
<td>Media</td>
<td>8, 9, 10</td>
<td>2</td>
</tr>
<tr>
<td>Legal</td>
<td>6, 7, 12</td>
<td>1, 3, 4, 5, 13</td>
</tr>
<tr>
<td>Objective</td>
<td>11</td>
<td>14</td>
</tr>
</tbody>
</table>

**Table 1**

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59 See, e.g., Fowler et al., *Network Analysis and the Law: Measuring the Legal Importance of Precedents at the U.S. Supreme Court*, 15 POL. ANALYSIS 324, 325-26 (2007) (discussing using a network analysis based upon citation counts to calculate legal importance of U.S. Supreme Court cases); see also Cross & Springs, *supra* note 57, at 439-42 & Table 4 (same).

60 See, e.g., Epstein & Segal, *supra* note 2, at 67 (defining retrospective and contemporaneous salience).

61 For example, measure 11 is based on the fact of whether the opinion formally overturns precedent or declares an act of Congress unconstitutional. While measure 14 measures the interconnectedness of a published opinion. Measure 14 might also be considered a hybrid measure as it is an objective measure of the subjective decisions of judges to cite a case.
V. Applying the Measures of Salience To Justice Ryan’s Work

When we use these standards to empirically identify which of Justice Ryan’s cases are “most salient” we draw two important conclusions. First, Justice Ryan’s published opinions impacted a wide range of people and areas of law. Second, the salience measures are completely different measures of salience from each other.

A. Measures of Contemporaneous Case Salience

i. Newspapers as Experts

There are three basic measures of contemporaneous salience in the context of media experts writing articles about a published opinion: published on the front-page of the New York Times on the day after the case is decided, published on any page in the New York Times, the Los Angeles Times, the Washington Post, or the Chicago Tribune, and published as the lead case in a story “on the front page of the state’s most-circulated newspaper on the day immediately following the announcement of a ruling.”

a. Three Problems With Newspapers

Before attempting to apply the newspaper measure to the Corpus, it is worth pointing out a number of contemporary problems with using newspaper publication as the arbiter of salience. First, Arizona Supreme Court cases are focused on issues that may be highly relevant to Arizonans but that may be rarely relevant to people outside of

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62 See Epstein & Segal, supra note 2, at 72 & n.7. Epstein and Segal’s full approach is explained as “[a] salient case (1) led to a story on the front page of the Times on the day after the Court handed it down, (2) was the lead (‘headlined’) case in the story, and (3) was orally argued and decided with an opinion.” Id. at 73.
63 See Collins & Cooper, supra note 48, at 5-6 (discussing their proposed measure of salience).
64 Vining & Wilhelm, supra note 54, at 562-63.
Arizona. As such, measures that look to large regional papers are unlikely to identify Arizona cases as salient.65

Second, newspaper-based metrics are subject to a competition for space problem—newspaper editors choose what to discuss and where based on what else is happening that day.66 Multiple opinions issued the same day and big-news-days decrease the likelihood that a given opinion will be discussed.67

Third, a paper may post a story to the “front page” of its website and not the front page of the print edition. But, we do not have any archive for those web-pages that would enable us to identify such cases after the fact.

Lastly, the basic assumption of the newspaper metric is that newspapers have editors who have the expertise judge whether a published opinion is salient. This may no longer be true given the expansion of internet news organizations and aggregators.68 As a result, this measure may cease being useful and, at minimum, may no longer measure what it did.

b. Applying The Newspaper Metrics

A search of the archives for the New York Times, the Los Angeles Times, the Washington Post, or the Chicago Tribune turned up no articles relating to any of Justice Ryan’s ninety-six published opinions. This conforms to our expectations that newspapers with a national and regional focus will have little interest in Arizona Supreme Court opinions.

65 See Brenner & Arrington, supra note 48, at 104 (discussing the local bias problem).
66 See id. at 103-04 (discussing potential problems for the New York Times list).
67 See id. at 104.
The Arizona Republic is Arizona’s largest circulation paper and also located in Phoenix, the state capital. That newspaper only discusses two opinions, *Grammatico v. Industrial Commission* and *In re McVay*, but neither appears on the front page. *Grammatico* was published on Aug. 10, 2005. Two articles appeared prior to the published opinion discussing the case and one appears one week after issuance of the opinion. *In Re McVay* was published on May 24, 2007. One article appeared prior to the published opinion and two appear one week after issuance. This result is in line with the Vining and Wilhelm’s finding that zero percent of Arizona’s cases were salient on a state newspaper metric. These results support the view that for state appellate court opinions, the newspaper metric is not viable.

ii. Legal Experts

a. Headline on advance sheets of Lawyer’s Edition

Instead of relying upon media experts, it is possible to rely upon the opinions of legal experts to identify salient opinions. For example, we could identify an opinion as salient if it was headlined in the advance sheets of the *Lawyer’s Edition*. Unfortunately, only U.S. Supreme Court opinions appear in the advance sheets for the *Lawyer’s Edition*. In addition, we cannot switch to advance sheets for other reporters because

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69 The *Arizona Republic* has the highest circulation in Arizona and is located in the state capital Phoenix. See [http://en.wikipedia.org/wiki/The_Arizona_Republic](http://en.wikipedia.org/wiki/The_Arizona_Republic).


74 See Vining & Wilhelm, *supra* note 54, at 562-64.

75 See Epstein & Segal, *supra* note 2, at 72 Table 1.
they are not archived anywhere. As a result, this approach is not a useful measure of salience for state appellate courts.

b. Amicus participation

Another way to use the legal expert measure of salience is to count the relative number of amicus briefs filed for a given opinion—with greater amicus participation indicating greater salience. There are some difficulties with the use of amicus participation as a measure of salience. First, amicus participation appears to have increased over time thereby potentially biasing salience in favor of more recent cases. In addition, there is some indication that the number of amicus filings may be a measure of political rather than legal importance.

If we apply this metric to Justice Ryan’s opinions, we find twelve salient opinions. Two of these are supreme court opinions: Cain v. Horne and Grammatico v. Industrial Commission. Cain v. Horne is discussed in the context of other measures and will not be discussed at this point.

Grammatico v. Industrial Commission is a consolidated appeal dealing with the impact of state laws that limited recovery for employees under the state’s worker’s compensation law when the employees had been under the influence of illegal drugs or

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76 Based upon discussions with law librarians at Florida Coastal School of Law and Westlaw’s research assistants, neither libraries nor Westlaw retain these materials.
alcohol when they were injured.\textsuperscript{80} The Court held that because Arizona’s worker’s compensation system was designed to create a no-fault system, the addition of constraints limiting injured employee’s rights under the system was unconstitutional.\textsuperscript{81}

The remaining ten opinions relate to death penalty cases. Nine of these attracted the same five amicus briefs.\textsuperscript{82} When we examine the cases and the briefs, we find that each case arose in response to the Arizona Supreme Court’s decision in \textit{State v. Ring} where the Arizona Supreme Court responded to the U.S. Supreme Court’s decision “that Arizona’s capital sentencing scheme violated the Sixth Amendment right to a jury trial.”\textsuperscript{83} As a result, it seems that the salience of each of these cases is identical to each other.\textsuperscript{84}

The final salient case, as measured by amicus participation, is \textit{State v. Prasertphong} where the defendant argued that the admission of his unavailable co-defendant’s statement violated the right to confront witnesses under the U.S. Constitution’s Sixth Amendment.\textsuperscript{85} In light of U.S. Supreme Court precedent that arose after the trial court’s decision, the Arizona Supreme Court held that while the trial court had applied the incorrect “legal standard regarding the Confrontation clause” this “error did not violate Prasertphong’s Confrontation Clause rights.”\textsuperscript{86}

\begin{flushleft}
\textsuperscript{80} \textit{See} Grammatico v. Indus. Comm’n, 117 P.3d 786, 787 (Ariz. 2005).
\textsuperscript{81} \textit{Id.} at 791 ¶ 23, ¶ 25.
\textsuperscript{84} Moreover, as the true salient opinion here is \textit{State v. Ring}, authored by Vice-Chief Justice McGregor., it seems inappropriate to consider these highly “salient” death penalty cases.
\textsuperscript{85} \textit{Prasertphong}, 114 P.3d at 829 ¶¶ 2-3 (discussing the procedural history of the Prasertphong’s appeal of his death penalty conviction).
\textsuperscript{86} \textit{Id.} at 829 ¶ 3.
\end{flushleft}
c. Alters Precedent and Declarations of Unconstitutionality

Johnson, Black, and Ringsmuth argue that a case is legally salient if it “formally alters precedent or declares an act of Congress unconstitutional.” There are three opinions in the Corpus that formally alter precedent. In *State v. Soliz*, the Court expressly “departed” from *State v. Henley* which held that it was fundamental error to fail to provide a twelve-person jury where there was a possibility of a sentence of more than thirty years. In *Garza v. Swift Transportation Company, Incorporated*, the Court overruled *Reader v. Magma-Superior Copper Company* which held that denials of class certification could be appealed. Finally, in *State v. Smith*, the Court overruled *State v. Song* and *State v. Fagnant* “to the extent [they] preclude” appellate review of legal errors for fundamental error.

There are two opinions in which an act of the legislature is declared unconstitutional. In *Cain v. Horne*, the Court was asked to assess the constitutionality of two programs, enacted in 2006 by the Arizona legislature that “appropriated state monies to allow students to attend a private school of their choice instead of the public school in the district in which they live.” While the Court seemed to find the purpose behind the legislation laudatory, it nonetheless determined that it violated Article 9 section 10 of the Arizona Constitution which states: “No tax shall be laid or appropriation

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87 Johnson et al., supra note 55, at 1574.
88 *See* State v. Soliz, 219 P.3d 1045, 1047 ¶ 9, 1049 ¶ 17 (Ariz. 2009) (describing Henley and noting the Court’s decision to depart from the holding in Henley) (citing State v. Henley, 687 P.2d 1220, 1224 (Ariz. 1984)).
of public money made in aid of any church, or private or sectarian school, or any public
service corporation."\textsuperscript{92}

\textit{Arizona Early Childhood Development & Health Board v. Brewer} addressed an
attempt to shift revenue earned from a particular program for early childhood
development and education into the general fund.\textsuperscript{93} In 2006, Arizona voters “established
a new tax on tobacco products to support early childhood development and health
programs.”\textsuperscript{94} Eight years earlier Arizona’s voters had amended the state constitution to
include the Voter Protection Act which “limit[ed] the legislature’s authority to amend
measures approved by voters in initiative elections and” to require any change to the
way funds are appropriated under those initiatives to (1) “further the purpose of the
initiative” and (2) after “a three-fourths vote of each house.”\textsuperscript{95} Because the legislature
had simply moved the funds from the accounts of the Early Childhood Development and
Health Fund to the general fund, the Court found the action to violate the Voter
Protection Act as enacted at Article 4, Part 1, Section 1(6)(D).\textsuperscript{96}

d. Questions at Oral Argument

Johnson, Black, and Ringsmuth also contend that a case is salient \textit{to the judge} if
the judge asks more questions at oral argument in a given case.\textsuperscript{97} To assess this
measure, the Author reviewed fourteen oral arguments for cases in which Justice Ryan
authored an opinion and for which there was a video recording of the oral arguments.\textsuperscript{98}

\textsuperscript{92} Id. at 1185 ¶ 29.
\textsuperscript{94} Id. at 807-08 ¶ 8.
\textsuperscript{95} Id. at 807 ¶ 6.
\textsuperscript{96} See id. at 807 ¶¶ 3-4, 809 ¶ 17.
\textsuperscript{97} Id.
\textsuperscript{98} Kadlec v. Dorsey, 233 P.3d 1130 (Ariz. 2010); Lips v. Scottsdale Healthcare Corp., 229 P.3d 1008
(Ariz. 2010); State v. Guillon, 223 P.3d 658 (Ariz. 2010); State v. Soliz, 219 P.3d 1045 (Ariz. 2009); Garza
The Author then compared these oral arguments to oral arguments close in time to these but which resulted in opinions authored by other Justices. Interestingly whether a Justice asks an unusually large number of questions or an unusually small number of questions is correlated with whether the Justice will write that opinion.

The difficulty with a count of “questions” approach to oral arguments is that it is not entirely clear what “question” means. For example, does a follow up question count as a new question or part of the original question. To address this issue, the author first counted the number of interruptions—in essence each time a Justice stopped a counselor’s presentation with a question. These interruptions were further sub-divided into interruptions that start a new subject for that Justice (new question interruptions) and into interruptions that ask a question related to the one that Justice had just asked (follow-up question interruptions).

The Author then used the percentage of interruptions asked by Justice Ryan during a given oral argument to calculate a z-score for each case in terms of total

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99 Picking oral arguments close in time, even the same day, decreases the chances that any differences we see in number of questions asked are due to external factors.

interruptions, new interruptions, and follow-up interruptions. This produced the following seven salient cases:

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Total</th>
<th>New</th>
<th>Follow-up</th>
<th>Opinion Author</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona v. Dann</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>Justice McGregor</td>
</tr>
<tr>
<td>Cain v. Horne</td>
<td>1</td>
<td>1</td>
<td></td>
<td>Justice Ryan</td>
</tr>
<tr>
<td>Kadlec v. Dorsey</td>
<td>1</td>
<td></td>
<td>1</td>
<td>Justice Ryan</td>
</tr>
<tr>
<td>Lake v. City of Phoenix</td>
<td>1</td>
<td></td>
<td></td>
<td>Justice Bales</td>
</tr>
<tr>
<td>State v. Guillen</td>
<td></td>
<td></td>
<td>1</td>
<td>Justice Ryan</td>
</tr>
<tr>
<td>State v. King</td>
<td></td>
<td></td>
<td></td>
<td>Justice Berch</td>
</tr>
<tr>
<td>State v. Soliz</td>
<td>1</td>
<td></td>
<td>1</td>
<td>Justice Ryan</td>
</tr>
</tbody>
</table>

If number of questions asked at oral arguments was totally unrelated to whether a Justice wrote the opinion we would expect Justice Ryan to have authored about 20% of these opinions. But our chart indicates that Justice Ryan authored more than half (57%) of the opinions. This indicates that asking a relatively large number of questions (for a particular Justice) during an oral argument is a good indication that the Justice will write the opinion and thinks the case is salient.

We have discussed *Cain v. Horne* and *State v. Soliz* previously. In *Kadlec v. Dorsey*, the Court was asked to address what it takes for a roadway easement to have the effect of a public dedication. The Court held “that the mere creation of a roadway easement does not raise a presumption that the road has been dedicated for public use.”

In *State v. Guillen*, Guillen had been convicted “of possession of marijuana for sale and drug paraphernalia.” The conviction arose as a consequence of a police

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101 There are five Justices on the Arizona Supreme Court. See Ariz. Const. Art. 6, § 2 (requiring there to be no fewer than five justices on the Arizona Supreme Court). If the selection process was unrelated to the relative number questions asked by a justice, we would expect each justice to author one out of five opinions.


103 Id. at 552 ¶ 1.

dog’s sniff at the door of Guillen’s garage which led to the police asking consent of Guillen’s wife to search the garage.\textsuperscript{105} The central question is whether the dog sniff was in violation of Guillen’s constitutional rights and, if so, whether that taint was harmless because of Mrs. Guillen’s voluntary consent.\textsuperscript{106} The court of appeals held “that the consent was tainted because the sniff was in violation of the Fourth Amendment of the United States Constitution and Article 2, Section 9 of the Arizona Constitution.” But the Arizona Supreme Court “conclude[d] that Mrs. Guillen’s consent was valid because . . . intervening circumstances obviated any alleged taint and the first dog sniff conducted from outside the garage was not flagrant police misconduct.”\textsuperscript{107}

When we reverse the analysis and look at those opinions in which the Justice asked more than one standard deviation \textit{fewer} questions than he or she normally did, we get the following list of cases:

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Total</th>
<th>New</th>
<th>Follow-up</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona Early Childhood Development &amp; Health Bd. v. Brewer</td>
<td>1</td>
<td>1</td>
<td>Justice Ryan</td>
</tr>
<tr>
<td>Steven H. v. Arizona Dept. of Economic Security</td>
<td></td>
<td>1</td>
<td>Justice Ryan</td>
</tr>
<tr>
<td>Lips v. Scottsdale Healthcare Corp.</td>
<td>1</td>
<td>1</td>
<td>Justice Ryan</td>
</tr>
<tr>
<td>Lofts at Fillmore Condominium Ass’n v. Reliance Commercial Const., Inc.</td>
<td>1</td>
<td>1</td>
<td>Justice Hurwitz</td>
</tr>
<tr>
<td>Employers Mut. Cas. Co. v. DGG &amp; CAR, Inc.</td>
<td>1</td>
<td>1</td>
<td>Justice Ryan</td>
</tr>
<tr>
<td>Flagstaff Affordable Housing v. Design Alliance, Inc.</td>
<td>1</td>
<td>1</td>
<td>Justice Bales</td>
</tr>
<tr>
<td>Farris v. Advantage Capital Corp.</td>
<td></td>
<td>1</td>
<td>Justice Ryan</td>
</tr>
</tbody>
</table>

\textsuperscript{105} See id. at 315 ¶¶ 2-3.
\textsuperscript{106} See id. at 316 ¶¶ 6-8.
\textsuperscript{107} Id. at 318 ¶ 15.
Here Justice Ryan authored five out of seven of the cases in which he asked the fewest questions. Once again, if opinions were distributed randomly, we would expect him to author twenty percent of these opinions (one to two) not seventy-one percent. This implies that both asking more than the “normal” amount of questions and asking fewer than the “normal” amount of questions are potentially valuable measures for identifying when a Justice may write the related opinion and which opinions the Justice thinks is most salient.

B. Measures of Retrospective Case Salience

Thus far we have examined measures of contemporaneous salience—measures that purport to identify cases that are considered salient at the time an opinion is issued. In this section the Essay examines the salience of opinions as seen after the passage of time—retrospective salience.

i. Media Experts

One form of retrospective salience used to identify salient U.S. Supreme Court opinions is to rely upon a media-expert to identify retrospective salience. For example, our eighth listed method for identifying salience is to see if a case is listed as a major decision in Guide to the U.S. Supreme Court published by Congressional Quarterly (the “CQ List”) and written by David G. Savage of the Los Angeles Times. The CQ List, by definition, does not deal with Arizona State Supreme Court cases and there is no comparable Arizona-specific media-based resource that we could use to assess the salience of Arizona specific cases.

ii. Legal Experts

As with contemporaneous measures of salience we also have measures of salience that are based upon the opinions of current legal experts as to an opinion’s retrospective salience.

a. Reprinted in a constitutional law book

There are many problems with relying upon legal experts to identify retrospectively salient cases. Casebooks and monographs on a specified topic discuss opinions based upon the author’s choice of opinions and that choice may arise not from the salience of the case but from pedagogical, rhetorical, or political reasons. An additional problem can arise if the author ceases to update a series or textbook or that series transfers to another author/editor who may have a different view. This undermines the use of the text over time. Lastly, at the state court level it is very difficult to find case books on state constitutional law, let alone books focused on a state’s appellate law. For Arizona, the Author could find just one book on Arizona Constitutional law: Leshy’s *The Arizona Constitution*. (The Author could not find any books focused squarely on Arizona intermediate appellate law.)

Focusing on Leshy, we find mention of ten of Justice Ryan’s Supreme Court opinions and five appellate court opinions. On one level, simply being mentioned

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by Leshy might make the case “salient.” But that is not consistent with this Essay’s
general approach of looking for instances that are more than one standard deviation
away from the mean. In this instance, the Author chose the number of words used as
the measure and found two cases that were most salient: *Cain v. Horne* and *In re
Cameron T.*

*Cain v. Horne* and *In re Cameron T.* have been described previously and will not
be described at this point.

b. Identified as a major case in the Supreme Court Compendium

Another media expert measure of retrospective salience is *The Supreme Court
Compendium* which provides data on the U.S. Supreme Court.\(^ {114}\) It currently contains
two lists of major cases: one based upon the *New York Times* measure, the other
based upon the CQ Index.\(^ {115}\) Even if we ignore the problems with these measures
described previously, they are not helpful as there is no comparable text on Arizona
appellate and Supreme Court cases.

c. Citations

The final measure of salience examined in this essay is the idea that salience
can be measured by the number of citations to a particular opinion. One method of
counting citations is to focus on the number of times an opinion is cited by the courts.
For example, Ulmer identified opinions as salient during the period 1953 to 1960 if it

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In & For Cnty. of Maricopa (State ex rel.), 949 P.2d 539 (Ariz. Ct. App. 1997); Princess Plaza Partners v.

\(^{114}\) See LEE EPSTEIN, JEFFREY A. SEGAL, HAROLD J. SPAETH, & THOMAS G. WALKER, THE SUPREME COURT

\(^{115}\) *Id.* at 86-140 Table 2-12, 140-161 Table 2-13.
was in the top 10% of cases cited by the court in the five years after the date of the decision.\textsuperscript{116} This approach, looking at the precedential value of an opinion by “counting” the cases that cite to it,\textsuperscript{117} seems promising as a measure of salience because it conforms to our understanding both of the centrality of the doctrine of precedent in American law\textsuperscript{118} and that an important case should not merely be seen to be important at the time, but should stand the test of time.\textsuperscript{119}


\textsuperscript{117} A case citing to another is not precisely the same thing as citing case using the cited-to case as precedent. \textit{See} William M. Landes & Richard A. Posner, \textit{Legal Precedent: A Theoretical and Empirical Analysis}, 19 J.L. & Econ. 249, 251 (1976) (identifying a problem with analysis of precedent by counting citations because “a case citation is not the same thing as a precedent. Sometimes a case is not cited as a precedent; an example is a citation of the decision of a lower court (or courts) in the same case”).

\textsuperscript{118} The doctrine of precedent has been recognized as central to our judicial system since the earliest days of the Republic. \textit{See}, e.g., Thomas R. Lee, \textit{Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court}, 52 VAND. L. REV. 647, 662-66 (discussing the use of precedent as authority in like cases subject to error correction at the time of the founding); \textit{see also} Carrol v. Caroll’s Lessee, 57 U.S. 275, 286 (1853) (noting that the doctrine of \textit{stare decisis} is a “maxim of the common law”); Anastasoff v. United States, 223 F.3d 898, 901-02 (8th Cir. 2000) (vacated on other grounds by Anastasoff v. United States, 235 F.3d 1054 (8th Cir. 2000) (en banc)); cf R. Ben Brown, \textit{Judging in the Days of the Early Republic: A Critique of Judge Richard Arnold’s Use of History in Anastasoff v. United States}, 3 J. APP. PRAC. & PROCESS 355 (2001) (disagreeing with Judge Arnold’s contention that “the colonial judiciary was bound by common law precedent . . . [because] the English government did not extend common law rights to the colonies”); John Harrison, \textit{The Power of Congress Over the Rules of Precedent}, 50 DUKE L.J. 503, 522-25 (2000) (arguing that at the time of the founding the principle of \textit{stare decisis} was a “principle[] of general jurisprudence” not a power “fixed by the Constitution”). Moreover, the doctrine of precedent continues to hold a central role in our judicial system. \textit{See}, e.g., Barger v. Brock, 535 S.W.2d 337, 341 (Tenn. 1976) (noting that “[i]t is a controlling principle that inferior courts must abide the orders, decrees and precedents of higher courts. The slightest deviation from this rigid rule would disrupt and destroy the sanctity of the judicial process. There would be no finality or stability in the law and the court system would be chaotic in its operation and unstable and inconsistent in its decisions. Personal and property rights would be insecure and litigation would know no end.”); Mortimer N.S. Sellers, \textit{The Doctrine of Precedent in the United States of America}, 54 Am. J. COMP. L. 67, 86 (2006) (concluding that “[t]he use of precedent by courts in the United States of America should be viewed as a tradition or a practice, rather than a legal doctrine in the strictest sense of the word, because it is so deeply embedded in the culture of the legal profession and the judiciary that it takes place without much reflection by judges”).

\textsuperscript{119} Because citations to a case unfold after the case has been published, it provides a direct basis for measuring the impact of that case on the law. \textit{See}, e.g., Cross & Springs, \textit{supra} note 57, at 416 (arguing that “[f]requency of citation is a reasonable standard for measuring case importance[]” because “if a[n] . . . opinion is never cited, that suggests that its content is not useful in the resolution of subsequent litigation. . . . Conversely, if an opinion is frequently cited, that very fact suggests that it provides valuable governance or information”).
A second citation-based approach looks not to case citations, but to law review articles citing the opinion. This measure, counting the number of notes by law reviews published on an opinion, holds some promise. There is an empirical study that demonstrates a statistically significant correlation between the number of law review articles on a topic and whether the U.S. Supreme Court will take up a case relating to that issue. Although, there are some indications that this measure is lacking.

Counting citations is not necessarily as easy as it appears. First, it has been shown that citations to cases decrease over time. There has also been some work that indicates that the type of case effects the rate of decrease in citations, although, these results seem to be undermined by recent research.

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120 Dennis Haines, *Rolling Back the Top On Chief Justice Burger’s Opinion Assignment Desk*, 38 U. PITT. L. REV. 631, 641 & n.30 (1976-1977) (identifying a “noteworthy” opinion as one for which eight or more law review notes were published). Haines credits a book review of a biography of Justice Stone with suggesting this measure. See id. at 641 n.31 (citing Allison Dunham, *Book Review: Harlan Fiske Stone: Pillar of the Law. By Alpheus Thomas Mason*, 24 U. CHI. L. REV. 794, 796 (1957)). Epstein and Segal note that this approach limits itself to generating eight or more law review articles within two years of decision. Epstein & Segal, supra note 2, at 69 Table 1 (defining measure 5 as “Cases Generating Eight Or More Law Review Articles Within Two Years of Their Decision Date”). I have reviewed both Haines and Dunham and do not see them limiting themselves to the two year period. Nonetheless, as it provides a version of the citation measure of salience that close in time to opinion period and, as a result, provides a measure of contemporaneous salience, I will use the two year period at this point.

121 C. Scott Peters, *Getting Attention: The Effect of Legal Mobilization on the U.S. Supreme Court’s Attention to Issues*, 60 POL. RES. Q. 561, 567 (2007) (“According to the estimate in the second model (b = .156), the Court will hear an additional case from one year to the next for roughly every 6.4 law review articles written during the previous year . . . while the Court is setting its agenda.”).

122 For example, Brenner and Spaeth note that “[i]n the two years after *Brown v. Board of Education* (1954), only 11 law review notes featured it, while *Fuentes v. Shevin*, 407 U.S. 67 (1972), was the subject of 63 notes in its first two years. . . . Apparently, *Fuentes* addressed more interesting legal questions than *Brown*. Note also that *Brown* was unanimous, a condition associated with fewer law review notes, while *Fuentes*, in contrast, was decided by a 4 to 3 vote.” Saul Brenner & Harold J. Spaeth, *Stare Indecisis: The Alteration of Precedent on the Supreme Court* 25 (1995).

123 See, e.g., Ryan C. Black & James F. Spriggs II, *The Citation and Depreciation of U.S. Supreme Court Precedent*, 10 J. EMPIRICAL LEGAL STUD. 325, 327-28 (2013) (summarizing the authors’ findings that precedent, as measured by citation count, depreciates over time); Landes & Posner, supra note 116, at 280-82 (same).

124 See Landes & Posner, supra note 116, at 284-88 (discussing the differences in depreciation rates for a variety of different kinds of legal opinions).

125 See Black & Spriggs, supra note 122, at 346-47 (discussing their general result that in the long term most differences in depreciation rates between different types of cases vanish).
A second problem is whether we count the citations of different citing bodies differently. In essence, does being cited by the Arizona court of appeals count as being cited by the Ninth Circuit? Does being cited in an Article in *Harvard Law Review* count as much as being cited in *Florida Coastal Law Review*?

A third problem is whether we take into account the depth of discussion related to the citation. Is something that is merely mentioned counted the same as something that is discussed across two pages of the opinion?

Given these difficulties, the Author attempted to generate a citation-based measure of salience that balanced these concerns. First, the Author limited the set of case citations to just those issued by Arizona Courts. This makes sense because we are looking at Justice Ryan’s work within the context of Arizona law and citations outside of Arizona are relevant to that jurisdiction’s law, not Arizona’s. Second, law review citations were excluded because they are more likely to measure salience on a national scale rather than within Arizona. (So the measure only counts citations by other Arizona courts.) Third, each opinion was measured against opinions of the “same” type: Supreme Court vs. Supreme Court, Death Penalty vs. Death Penalty, and Appellate Court vs. Appellate Court.

Finally, an opinion received points for each citation, but the point values were different based upon court of citation and depth of citation. Supreme Court citations received a full point, Arizona state appellate and Ninth Circuit citations received two thirds of a point, and federal district court citations received one third of a point. Those points were then multiplied by “depth” of coverage where an “examined” citation had a
one multiplier, a “discussed” citation was multiplied by two thirds, and a “cited” citation was multiplied by one third.\textsuperscript{126}

1. Supreme Court

There are six Supreme Court opinions that have a case-citation measure that is at least one standard deviation above the mean: \textit{State v. Torres},\textsuperscript{127} \textit{State v. Aguilar},\textsuperscript{128} \textit{Bilke v. State},\textsuperscript{129} \textit{Falcon ex. Rel. Sandoval v. Maricopa County},\textsuperscript{130} \textit{Powell v. Washburn},\textsuperscript{131} and \textit{Mejak v. Granville}.\textsuperscript{132} We have discussed \textit{State v. Torres} and \textit{Powell v. Washburn} previously and will not return to them here.

\textit{State v. Aguilar} concerns Arizona Rule of Evidence 404 which permits the introduction of relevant evidence of other crimes “to show that the defendant had a character trait giving rise to an aberrant sexual propensity to commit the offense charged.”\textsuperscript{133} Aguilar was charged with sexually assaulting three women and filed a motion to sever that was denied.\textsuperscript{134} The trial court held that “the evidence as to each victim would be admissible under Arizona Rule of Evidence 404(c) as to the charges involving the other victims.”\textsuperscript{135} The Arizona Supreme Court found “that evidence of other sexual assaults may be admissible in a case charging sexual assault”\textsuperscript{136} but the trial

\textsuperscript{126} The Author examined a range of possibilities for counting case citations and found most to produced fairly similar results.
\textsuperscript{127} State v. Torres, 3 P.3d 1056 (Ariz. 2004).
\textsuperscript{128} State v. Aguilar, 97 P.3d 865 (Ariz. 2004).
\textsuperscript{129} Bilke v. State, 80 P.3d 269 (Ariz. 2003).
\textsuperscript{130} Falcon ex rel. Sandoval v. Maricopa Cnty., 144 P.3d 1254 (Ariz. 2006).
\textsuperscript{131} Powell v. Washburn, 125 P.3d 373 (Ariz. 2006).
\textsuperscript{132} Mejak v. Granville, 136 P.3d 874 (Ariz. 2006).
\textsuperscript{133} See \textit{Aguilar} 97 P.3d at 873 ¶ 20 (quoting Ariz. R. Evid. 404(c)).
\textsuperscript{134} See \textit{id.} at 866 ¶ 2.
\textsuperscript{135} See \textit{id.} at 866 ¶ 4.
\textsuperscript{136} See \textit{id.} at 874 ¶ 29.
“court’s findings on . . . Rule 404(c)(1) were insufficient to support the cross-admission of . . . three allegations of sexual assault.”\textsuperscript{137}

In \textit{Bilke v. State}, the Court was called upon to determine whether an interlocutory appeal was proper “when the trial judge ha[d] signed an order that contain[ed] language indicating that the judgment is a final determination of the rights of the parties and the only remaining issue [wa]s the amount of recovery” and whether such appeals were “limited to cases in which an account or similar equitable proceeding has been ordered to determine the amount of recovery.”\textsuperscript{138} The Court found that orders with such language permitted interlocutory appeals and that the appeals were not limited to equitable proceedings.\textsuperscript{139}

\textit{Falcon ex rel. Sandoval v. Maricopa County} concerned the death of Guadalupe Falcon at “a facility owned and operated by Maricopa County.”\textsuperscript{140} Before suing a public entity, the plaintiffs must provide notice to the public entity within 180 days of the injury.\textsuperscript{141} “If the public entity is a county, the persons authorized to accept service under Arizona Rule of Civil Procedure 4.1(i) are either ‘the chief executive officer, the secretary, clerk, or recording officer thereof.’”\textsuperscript{142} Ms. Falcon’s children attempted to provide notice of their claim by mailing a “certified [letter] to Supervisor Andrew Kunasek, a member of the Maricopa County Board of Supervisors.”\textsuperscript{143} Regardless of whether the letter was received by Supervisor Kunasek, the letter was not passed on to

\textsuperscript{137} \textit{See id.} at 875 ¶ 35.
\textsuperscript{139} \textit{See id.} at 275 ¶ 28.
\textsuperscript{140} \textit{Falcon ex rel. Sandoval v. MaricopaCnty.}, 144 P.3d 1254, 1255 ¶ 3 (Ariz. 2006).
\textsuperscript{141} \textit{See id.} at 1255 ¶ 1 (citing \textsc{ARIZ. REV. STAT.} ¶ 12-821.01(A)(2003)).
\textsuperscript{142} \textit{Id.} at 1255 ¶ 1 (quoting \textsc{Ariz. R. Civ. P.} 4.1(i)).
\textsuperscript{143} \textit{Id.} at 1255 ¶ 4.
the Board. The Court found that even if the letter was sent to Supervisor Kunasek it was not sufficient notice under the statute because Supervisor Kunasek was not one of the identified persons. As a result, the claim was barred.

Mejak v. Granville concerns Jeremey Mejak who was indicted for luring under A.R.S. § 13–3554 as a consequence of arranging to meet a thirteen year old girl “for purposes of engaging in sexual conduct.” Under the statute, a person was guilty of luring when they “offer[] or solicit[] sexual conduct with another person knowing or having reason to know that the other person is a minor.” The statute further stated that “[i]t is not a defense to prosecution . . . [that] the other person was a peace officer posing as a minor.” The difficulty in this case was that the “thirteen year old girl” was, in reality, an adult television reporter. Mejak’s argument was that “the statute did not criminalize his conduct because there was no minor or peace officer lured.” The Court, using the rules of statutory interpretation, held that Mejak could not be found guilty of luring under the statute as written.

2. Death Penalty

State v. Newell is the only death penalty opinion that is cited at least one standard deviation above the mean but it is cited nearly four standard deviations more often than the mean. Newell addresses a wide range of issues. It begins by discussing

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144 Id. (noting that the record is silent as to whether the letter was received and stating the office policy would have been to forward it to the clerk of the board of supervisors).
145 Id. at 1259 ¶ 34 (holding that “the chief executive officer of a county for purposes of Rule 4.1(i) is the board of supervisors”).
146 Id.
148 Id. at 876 ¶ 11 (quoting A.R.S. § 13-3554(A) (Supp. 2003)).
149 Id. (quoting A.R.S. § 13-3554 (Supp. 2003)).
150 Id. at 875 ¶ 3.
151 Id. at 875 ¶ 4.
152 See id. at 557-58 ¶¶ 14-18 (analyzing the statute using rules of statutory interpretation to respond to the State’s arguments).
the obligations of police during a custodial interrogation where the suspect requests an attorney.\textsuperscript{153} After reviewing the evidence and law, the Court held that because Newell’s requests for counsel where either equivocal in themselves or made equivocal because they were spoken at the same time the detective asked a question, Newell did “not clearly invoke[] his right to counsel . . . .”\textsuperscript{154}

The Court then discusses and rejects Newell’s (1) argument that his confession was involuntary (and should therefore be suppressed),\textsuperscript{155} (2) \textit{Batson} challenge to the prosecutor’s peremptory striking of a juror,\textsuperscript{156} (3) argument that prosecutorial statements made during closing arguments were misconduct supporting “a mistrial because they improperly vouched for the State’s evidence and impugned the integrity of defense counsel,”\textsuperscript{157} (4) contention that use of rebuttal testimony was improper,\textsuperscript{158} and (5) argument that the trial court’s preclusion of Newell’s mental health expert testimony when Newell refused “to submit to a mental health examination by the State’s expert violate[d] his privilege against self-incrimination.”\textsuperscript{159} Finally, the Court engaged in an “independent[] review [of] the jury’s findings on ‘aggravation and mitigation and propriety of the death sentence’”\textsuperscript{160} and affirmed the jury’s sentence of death.\textsuperscript{161}

\textsuperscript{154} Id.
\textsuperscript{155} See id. at 843-44 ¶¶ 38-50.
\textsuperscript{156} See id. at 844-46 ¶¶ 51-58.
\textsuperscript{157} Id. at 846 ¶ 59. The Court found that while the prosecutor did not vouch for state evidence, \textit{id.} at 846 ¶ 63, the prosecutor did improperly impugned the integrity of defense counsel, \textit{id.} at 847 ¶ 65. Nonetheless, the Court found that these statements did not support a mistrial. \textit{id.} at 846 ¶ 63, 847-48 ¶ 70.
\textsuperscript{158} Id. at 848 ¶¶ 71-77.
\textsuperscript{159} Id. at 848-49 ¶ 78; see also \textit{id.} at 848-49 ¶ 70-80 (rejecting Newell’s argument).
\textsuperscript{160} Id. at 849 ¶ 81 (quoting ARIZ. REV. STAT. § 13-703.04 (Supp. 2003)).
\textsuperscript{161} See \textit{id}. at 850 ¶ 87.
3. Appellate Court

As with the death penalty cases there is only one Appellate Court opinion, *State v. Clark*,\(^{162}\) that is cited at least one standard deviation above the mean but it is cited nearly six standard deviations more often than the mean. This opinion has been discussed above.

d. Networked

A final method of measuring salience by counting citations relies upon using network theory to measure the citation counts.\(^{163}\) While the author believes such an approach has great merit, the complexity of such an analysis will require a subsequent work.

VI. Conclusion

In the end, this Essay demonstrates a number of key points. First, Justice Ryan's opinions were deeply salient to many different people including grandparents seeking visitation rights,\(^{164}\) defendants seeking a change in counsel,\(^{165}\) defendants on death row,\(^{166}\) illegal aliens seeking medical care,\(^{167}\) homeowners seeking to understand restrictive covenants,\(^{168}\) employees injured on the job,\(^{169}\) and children in the Arizona educational system.\(^{170}\) Second, while the many concepts of salience used in the salience literature may each identify a concept of importance, this essay has shown, at


\(^{163}\) See, e.g., Fowler et al., *Network Analysis and the Law: Measuring the Legal Importance of Precedents at the U.S. Supreme Court*, 15 POL. ANALYSIS 324, 325-26 (discussing using a network analysis based upon citation counts to calculate legal importance of U.S. Supreme Court cases); *see also* Cross & Sprin, *supra* note 29, at 439-42 & Table 4 (same).


\(^{165}\) *State v. Torres*, 3 P.3d 1056, 1059 ¶ 7 (Ariz. 2004).

\(^{166}\) *See* State v. Glassel, 116 P.3d 1193, 1202 ¶ 12 (Ariz. 2005).


\(^{168}\) Powell v. Washburn, 125 P.3d 373, 374 ¶ 1 (Ariz. 2006).


least at the state appellate level, that they do not identify some unified platonic ideal of importance. Third, the empirical analysis of the concepts of salience discussed here shows that whether an opinion is important is a matter of whose opinion you ask.

This Essay began with the problem of the difficulty of beginnings and endings as well as the difficulty of summarizing the life or work of a person in a short essay. While it is the Author’s hope that this Essay highlights the importance of Justice Ryan for Arizona’s common law and that the Essay helps build and improve upon the salience literature, it is perhaps worthwhile to remind ourselves of what really mattered. Justice Ryan served our country in the Vietnam war where he was grievously injured. He returned to the United States and became a vital and highly respected member of the Arizona legal community. And while doing all of that he and Mrs. Ryan fostered nearly ninety at-risk infants. Some people set a standard we would all do well to live by. Justice Ryan was one such man. I was proud to be his clerk and miss him greatly.