



Supreme Court Nominee Judge Sonia Sotomayor: Tough on White-Collar Crime

A case-by-case examination of the sentences imposed by Judge Sonia Sotomayor during her six years as a trial judge in the Southern District of New York has determined that she was more likely than her colleagues to send a person to prison. As shown in Figure 1, this was particularly true for convicted white-collar criminals.

These new findings about President Obama's nominee to the Supreme Court have emerged from an analysis by the Transactional Records Access Clearinghouse (TRAC) of 7,750 prosecutions handled by the 52 judges who served in the federal district court covering Manhattan, Westchester and several other neighboring counties from FY 1993 to FY 1998. The record shows that Judge Sotomayor handled 261 of the district-wide total of prosecutions.

Since her nomination on May 26, the casual remarks, formal speeches and court of appeals decisions of Judge Sotomayor have been subjected to extensive review by scores of legal scholars, reporters, women's rights groups, gun advocates, civil rights organizations and many others. But her activities as a trial court judge have not previously been systematically examined.

In this first-of-its kind analysis, based on very detailed Justice Department information obtained under the Freedom of Information Act (FOIA), TRAC examined Judge Sotomayor's handling of all of her criminal cases and then compared this record with that of all judges who had served in her district during the same period.

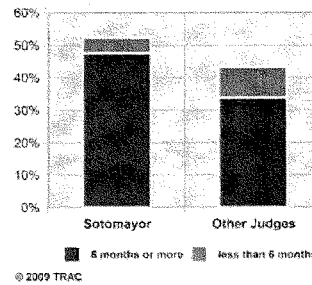


Figure 1. White Collar Criminals Sentenced to Prison.
([click for details](#))

The Senate Judiciary Committee hearings considering Judge Sotomayor's nomination by President Obama are scheduled to begin on July 13. If as expected she is confirmed, the judge would be the first Hispanic to serve on the Supreme Court.

What Do the Records Show?

The federal court in the Southern District of New York handles a wide array of criminal cases. For example, during the FY 1993 to FY 1998 period when Judge Sotomayor was a trial judge one in five cases (20%) were white-collar crime matters involving different types of financial frauds, a little over a quarter of the cases (27%) concerned illegal drugs, and the remaining half (52.5%) covered other federal offenses, such as immigration and regulatory violations, official corruption and organized crime.

Type of Offender	Sotomayor New York South		Sotomayor New York South	
White Collar	47	1,570	18.0%	20.3%
Drugs	76	2,115	29.1%	27.3%
Other	138	4,065	52.9%	52.5%
Total	261	7,750	100.00%	100.00%

Table 1. Criminal Cases in U.S. District Court (Southern District of New York), FY 1993 - FY 1998

In accordance with the court's long-held policy that criminal cases are assigned to judges on a random basis, Justice Department data show that the makeup of Judge Sotomayor's caseload closely mirrored that of all of the judges in her district. Thus, during the same six-year period, 29% of the criminal matters assigned to her court involved drugs, 18% white-collar crime and 53% other offenses. See Table 1.

When district-wide sentences were compared with those imposed by Judge Sotomayor, however, real differences emerged. Most striking was the finding that across the board Judge Sotomayor was more likely to send the person to prison than her colleagues. This was true whether the offender was a drug dealer or had been convicted of a white collar crime. But the record also shows that she was notably tougher in her sentencing of white-collar criminals than was typical in this district.

White-Collar Crime

From 1993 to 1998, the judges in New York South were credited with handling the prosecution of 1,570 white-collar crime cases. Of these, 47 white-collar crime prosecutions were handled by Judge Sotomayor.

For this group of criminals, Judge Sotomayor's colleagues sent 43% to prison, with only one out of three of the total receiving a sentence of six months or longer. Judge Sotomayor, in contrast, handed out prison time more often. In her case, a bit more than half (52%) were given some prison time and nearly half (48%) -- rather than one-third (34%) -- were given a prison sentence of 6 months or more. (See earlier Figure 1 and [accompanying table](#) details.)

For the comparatively few white-collar criminals who were sentenced to significant time in prison, the TRAC analysis again shows that Judge Sotomayor was tougher. For all the judges in the district only slightly more than one out of ten white-collar offenders -- 12% of the total -- received a sentence of two years or more. By comparison Judge Sotomayor handed out such sentences twice as frequently, 24% of the time. (See Figure 2 and [accompanying table](#) details.)

Drugs

Under the EOUSA classification rules, 2,115 prosecutions were determined to involve narcotics or drugs in the Southern District of New York during the study period. The data further show that in this same category 76 of the total ended up in Judge Sotomayor's court.

With a median sentence of 48 months, the district-wide prison terms for drug offenses were a great deal harsher than they were for white collar crime. However, not all drug offenders received prison time. For the convicted drug offenders handled by Judge Sotomayor's colleagues about four out of five or 81% were sentenced to prison and 79% received at least 6 months of prison time.

About the Data

This analysis is based on an extensive database which tracks the case-by-case record of each federal district court judge. It was developed by TRAC and is available on a subscription basis at <http://tracfed.syr.edu>. Updated monthly, TRAC uses a variety of data sources including detailed case records obtained through a series of lawsuits under the Freedom of Information Act. [See more...](#)

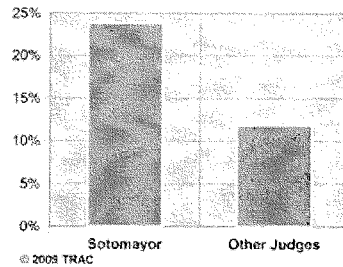


Figure 2. White Collar Criminals Sentenced to 2 Years or More in Prison.
([click for details](#))

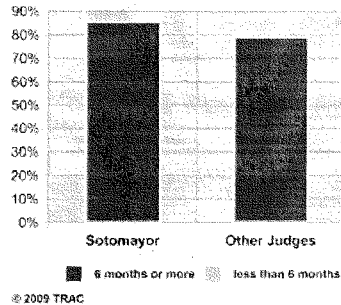


Figure 3. Drug Criminals Sentenced to Prison.
([click for details](#))

comparable to Judge Sotomayor's of 66 months. Judge Sotomayor's and her colleagues' median sentences were both 48 months. That is, whether in Judge Sotomayor's or in her colleagues' courts, half of those convicted received longer times than 48 months and half shorter times.

Other Offenses

The remaining prosecutions cover a combination of small numbers of many different types of crimes. Together they added up to 4,065 cases. Judge Sotomayor handled 138 of them.

Despite their diversity, the overall pattern that emerged for white-collar and drug offenses repeats itself -- Judge Sotomayor was more likely to give prison time. For Judge Sotomayor, six out of ten (59.5%) received some prison time, and 56% received at least 6 months. Her colleagues, on the other hand, handed out prison sentences of at least 6 months less frequently, in only 46% of their cases. (See Figure 4 and [accompanying table details](#).)

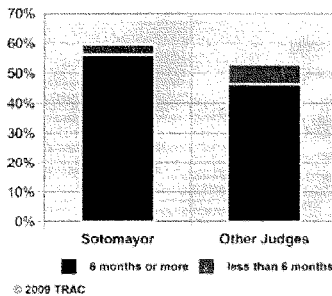


Figure 4. Other Criminals Sentenced to Prison.
([click for details](#))

Slightly higher proportions received prison sentences of up to five years under Judge Sotomayor -- 31 percent versus 29 percent for other judges. But the data further showed that a slightly smaller percentage -- 9.5 percent versus 15 percent -- received sentences of 5 years or more. Considered together, Judge Sotomayor's median sentence for this wide range of different kinds of cases was 8 months -- twice the length of the median sentence of 4 months handed out by her colleagues. (See table detail.)

The tendency for Judge Sotomayor to send individuals to prison is nowhere more evident than for immigration offenses. However, this finding can only be suggestive because there were just 385 immigration prosecutions completed for the entire district and only 14 of them in Judge Sotomayor's court. Nevertheless the findings here are striking. All but one immigration offender (91%) received prison time from Judge Sotomayor, while only 63% received prison time from her colleagues.

Summary

An examination of the 7,750 cases involving all of the Justice Department's many different categories of cases handled by all of the judges in New York during the 1993/1998 period show at least two consistent findings with respect to criminal sentencing.

First, by a range of different statistical measures, Judge Sotomayor was -- across the board -- a comparatively stiff sentencer, a judge who imposed prison time more often than was typical for her colleagues in the same district.

Second, for white-collar criminals who at that time typically did not receive any prison time at all from her colleagues, Judge Sotomayor's record was particularly tough. This conclusion is confirmed by two facts. First, the chance that a white-collar defendant would end up serving any prison time was higher in her court than it was for the district as a whole. Second, a higher proportion of the defendants in Judge Sotomayor's court were sentenced to longer prison terms than those who were sentenced by her colleagues.

Special Note: Federal Sentencing Guidelines

In 1987, after years of widespread public concern about the sentencing disparities that then existed in the federal courts, an overall sentencing reform package was formally adopted. These guidelines, largely the result of a bi-partisan effort by Senator Edward Kennedy, at that time the chairman of the Senate Judiciary Committee, and then Attorney General Edwin Meese, applied to offenses committed on or after November 1, 1987. The key objective of the guidelines was to assure that federal sentences would be primarily based on two factors: the offense committed and the defendant's past history. The broad goal was to better assure that similarly situated defendants would be treated similarly at sentencing.

A January 12, 2005 Supreme Court decision, *United States V. Booker*, held that the mandatory requirements of the original guidelines were not constitutional and in subsequent years a series of steps were adopted to make them advisory. But during the period Justice Sotomayor was a trial court judge, the sentencing guidelines would have applied to most of her cases. The only ones excluded would have been those where prosecution had been brought against an old offense -- that is, offenses committed prior to November 1, 1987 when the sentencing guidelines went into effect.

The sentencing guidelines, however, normally set a range of permissible sentence lengths for a given offense and offender criminal history. In addition, if there were extenuating circumstances a judge could hand down a higher or lower sentence than set by the guideline range. Thus, the guidelines did not impose lockstep uniformity on sentencing decisions.



Copyright 2009, TRAC Reports, Inc.