

and publication scores. The problem with this comparison though was that she only joined the bench in 1999 and we were comparing her to a set of judges, all of whom had at least two years of experience on the bench (Posner 2009a).

To estimate a more meaningful comparison, we calculated outside federal circuit citation and majority opinion

publication scores for Judge Sotomayor for 2004-06. As a control, we estimated scores for six court of appeals judges who were rumored either to have been on President Obama's short list or President Bush's short list. In addition, we also included two other Second Circuit judges who were active during the same period, judges Calabresi and Raggi.

Table 8
Sotomayor Data

	Production (Majority Opinions)	Outside Federal Circuit Citations
	2004-2006	
Calabresi	72	784
Clement	81	240
Garland	65	264
Garza	112	255
Jones	77	335
Lynch	215	998
McConnell	119	630
McKeown	67	404
Raggi	53	438
Schroeder	60	120
Sotomayor	90	706
Wardlaw	51	207
Wilkinson	88	537
Williams	123	397
Wood	156	831
	1999-2001	
Sotomayor	73	280

The comparisons here are necessarily rough because there aren't enough judges to control for factors such as circuit effects. That said, Judge Sotomayor's citation scores (from both judges outside her circuit and academics) are among the highest of any of the judges in either president's short list (Posner 2009b; cf. also Anderson 2009).

6. Conclusion

We find little to no support for Preference Story's predictions that female judges would underperform male judges (Hypotheses 1, 3, and 5), as formed from the extant literature. Indeed, the prediction that women will underperform men in

terms of independence scores was patently false. Women were more independent than men (directly contradicting Hypothesis 5), supporting the Selection Story. We also find that the equivalent performance of women and men judges is not driven by any specific subject matter area effects (refuting Hypotheses 2 and 4). Women judges do not perform well because of outsized performance in traditionally women-focused subjects.

Perhaps our most striking finding is that the premise of the Preference Story is true (female judges have weaker credentials and less experience) but its conclusion is false (female judges and

male judges perform about the same). What might account for this outcome?

First, the measures of credential and experience might be inaccurate. We have been told by some female judges that they went to lower-rank law schools in order to accommodate their husbands but did very well while at those schools. Our measures do not capture this phenomenon—that, for example, the type of woman who becomes a judge may be highly intelligent or motivated. It might also be the case that the rank of the law school, a few extra years of practice, and so forth, make little difference for the quality of judging.

Second, the measures of performance might be inaccurate. As we noted before, our measures of performance might not capture high-quality judicial performance. If so, we have a “garbage-in, garbage-out” problem.

Third, it is possible that, as Justice Sotomayor suggested before backtracking, women are naturally more gifted judges than men are. The various psychological differences between men and women might favor women, so that even if women have less training and experience, they end up being superior judges. It might also be the case that women’s experiences give them a distinctive perspective that enhances their judicial talents.

To conclude, a couple of points regarding gaps in our analysis are in

order. First, although we frame the threshold question in terms of the value of gender diversity, we only get at that question indirectly. Judges on the state high courts always sit in teams. Hence, an estimation of the value of gender diversity would compare the performance of gender diverse teams versus those of homogenous teams. These comparisons could be run in terms of various citations scores and perhaps also reversal rates. Second, there are likely inter-generational differences embedded within the reported gender differences. Specifically, the performance predictions for the female judges who attended law school in the late 1960s and early 1970s may be different compared with those who attended law school one decade later, in the early 1980s and yet different again for those who were in school in the early 90s. Our dataset was not large enough to make these comparisons, but we hope to remedy this problem in later research.

To conclude, across a variety of courts, in an analysis of over 1000 judges, over multiple years, we find that women do just as well as the men in terms of basic judging measures. Further, female judges do not seem to demonstrate significant differences in the types of subject areas they are interested in, at least not in any fashion obviously connected to gender.

APPENDIX
Judge-Level Variable Definitions

Variable	Definition
Chief Judge	For year-level data, indicator variable equal to 1 if the judge in question is the chief judge of the court in the year in question and 0 otherwise. For pooled data, indicator variable equal to 1 if the judge in question is the chief judge of the court for any year from 1998 to 2000 and 0 otherwise.
Court Experience	For year-level data, the difference between the year in question and the year the judge first joined the high court. For pooled data, the difference between 1998 and the year the judge first joined the high court (if the judge started on the court in 1998 or later court experience is set to 0).

APPENDIX - continued Subject Matter Categories

Variable	Definition
Post-Law School Experience	The difference between 1998 and the year the judge graduated law school.
Retirement Close	Indicator variable equal to 1 if the judge in question retired from the bench in 2001 or earlier and 0 otherwise.
Age	Age of the judge in years.
Married	Indicator variable equal to 1 if the judge is married as of the year 2000 and 0 otherwise.
Number of Children	The number of children a judge had as of the year 2000.
Divorced	Indicator variable equal to 1 if the judge is divorced as of the year 2000 and 0 otherwise.
Private Practice	Indicator variable equal to 1 if the judge had private practice experience before becoming a judge and 0 otherwise.
PAJID Score	PAJID score for each judge as developed by Brace, Hall & Langer (2000). These scores locate judges on a political continuum from highly conservative (0) to highly liberal (100).
US New JD Ranking	The US News rankings of the judge's law school measured as of 2002
In-State Law School	Indicator variable equal to 1 if the judge is went to an in-state law school and 0 otherwise.
Administrative	Review of Agency/Government Decisionmaking (not in another subject matter category). Also includes Government Actions (e.g., State suit to comply with state statute that does not fit in other categories); private actions suing state actors for negligence, etc (unless the case involves prisoner rights which is included in the "Criminal" category of cases).
Attorney and Client	Attorney Misconduct; Attorney fees (unless fits in one of above categories); Disbarment; Contempt of court order against attorney.
Capital Punishment	Capital Punishment-related actions.
Church and State	Pledge of Allegiance; Funding for Private Religious Schools; Prayer in School; Ten Commandments.
Commercial	Contracts; Insurance; Private arbitration; Creditor v. Debtor; Lessor-Lessee; Usury Laws; Franchise v. Franchisor; Employment Contractual Disputes; Corporate Law; Piercing the Corporate Veil; Tax; Bankruptcy; Enforcement of mechanics lien; Implied warrant of merchantability.
Criminal	Sentencing Guidelines; Prisoners Rights; Murder; Rape; Drugs/ Controlled Substances; Attorney-Client Privilege in Criminal Context; Grand Jury-related; Juvenile Criminals. Excludes Capital Punishment cases.
Family	Divorce; Adoption; Child Support; Probate/Inheritance.
First Amendment	Employment issues (excluding employment contractual disputes); ERISA; National Labor Relations Board (NLRB); Occupational Safety and Health Act (OSHA); Fair Labor Standards Act (FLSA); Wrongful Discharge; Labor Management Relations Act (LMRA); Family and Medical Leave Act (FMLA); Employee Benefits; Worker's Compensation claims; Retaliatory Discharge claims.
Labor	Employment issues (excluding (1) employment contractual disputes that are not Workers Comp or state administrative wage rate related—these go to "Commercial" and (2) excluding discrimination-type claims that fit in "Civil Rights"); ERISA; NLRB; Occupational Safety and Health Act (OSHA); Fair Labor Standards Act (FLSA); Wrongful Discharge;

APPENDIX - continued Subject Matter Categories

Variable	Definition
	Labor Management Relations Act (LMRA); Family and Medical Leave Act (FMLA); Employee Benefits; Worker's Compensation claims; Retaliatory Discharge claims; State Wage Rate Claims.
Property	Takings claims; Zoning issues; Property rights; Property Licensing-Related or Permit-Related; Landlord-Tenant-Related.
Rights	Race Discrimination; Sex Discrimination; Affirmative Action; Civil Rights; Age Discrimination; Privacy; Handicap Discrimination; Abortion (includes discrimination in employment context cases); Voting Rights-Voting Related.
Torts	Federal Tort Related Act; Medical Malpractice; Products Liability; Wrongful Death; Libel; etc.
Other	All other cases.

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