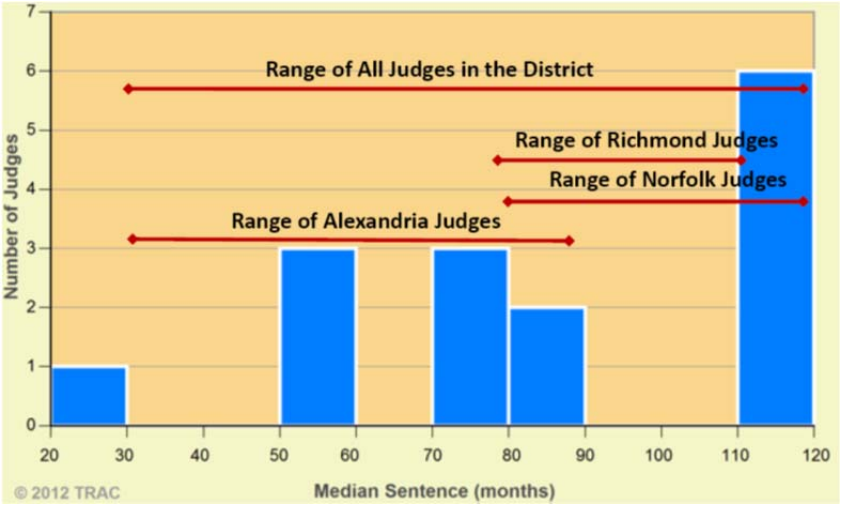
Fact Sheet: TRAC Analysis of Variations in Sentencing Misses the Mark

On March 5, 2012, the Transactional Records Access Clearinghouse (TRAC) announced "Wide Variations Seen in Federal Sentencing." The press release accompanying TRAC's report stated it had discovered "extensive and hard-to-explain variations in the sentencing practices of district court judges." Media reports claimed "widely disparate sentences for similar crimes." (*AP*)

The data released by TRAC might in the future shed light on federal sentencing, but its initial analyses, and media coverage, demonstrate the danger of a little knowledge about a complex subject. TRAC's analysis fails to meet minimal academic standards and should not be a basis for policy making.

- The cases sentenced by the judges in the study are *not* similar.
  - The only similarity among the cases sentenced in each district is that prosecutors categorized them as "drug," "white collar," etc. *All other case differences are ignored.* Heroin or marijuana cases, involving 1 gram or 1 ton, are all called "similar" drug cases. First-time offenders are lumped with lifetime criminals.
  - Academic researchers studying disparity use data from the U. S. Sentencing Commission to categorize cases along dozens of different variables, but this data was not used in TRAC's analysis.

- The intra-district comparisons intended to control for differences among cases are flawed.
  - The study compared median (half below, half above) sentences among judges in a particular district, on the assumption that these judges sentenced similar types of cases. But this is often untrue.
  - Many districts have several courthouses in different cities, which sentence very different types of crimes. Average sentences *should* be different among judges who sentence different types of offenses and offenders.
  - Academic researchers faced with this problem are careful to compare only judges in the *same* courthouse who are part of the *same random case assignment pool*. This helps compensate for individual case differences in the long run.



The importance of city can be seen in this addition to a graph in the TRAC report regarding drug cases. The variation in average sentences among judges in the same city (30-87 months in Alexandria, 79.5-120 months in Norfolk, 78-111 months in Richmond) is much less than among judges throughout the district (30-120 months).

- Some differences among judges are due to random fluctuations.
  - Even in the same courthouse, some judges will, by chance, be assigned more serious cases or more dangerous offenders. Further, some cases assigned to one judge involve multiple defendants, all of whom may be more or less serious offenders than the typical defendant sentenced in that courthouse.
  - Academic researchers use tests of statistical significance to determine whether differences among judges in average sentences are greater than would be expected by chance. TRAC did not conduct or report any significance tests.

- The report's rankings of "judge-to-judge" differences among the various districts are flawed and "stack the deck" against larger districts. They cannot be used to assess whether or how much judges' "pre-existing predilections" affect sentences in different districts.
  - A crude measure of "judge-to-judge differences" was calculated for each district by subtracting the lowest from the highest median sentence among all judges who sentenced at least 50 defendants in FY2007-2011. Academic researchers use means, not medians, and statistical procedures such as "analysis of variance," for these types of comparisons.
  - Larger districts have more defendants, and more judges, in more courthouses, with different caseloads. TRAC's measure of district variation increases due to caseload differences and other differences among courthouses in these larger districts.
  - More judges also increases the likelihood of a wider range of medians in large districts. With TRAC's measure, two judges in a small district might have a *greater* median difference than the average difference among all judges in a large district. In a large district, a single judge with a high or low median can skew the measure for the whole district.
  - The largest district ranked in the bottom ten for least judge-to-judge differences, the Southern District of California, has a high volume of similar cross-border drug importation cases. Many of these defendants are sentenced using an "Early Disposition Program" that rewards guilty pleas with pre-set similar sentences.

- The comparisons conducted by TRAC for the Associated Press illustrate how misunderstanding of sentencing data has the potential to undermine confidence in the criminal justice system.
  - TRAC compared the average (mean) sentences in drug, white collar, and weapons cases of judges appointed by Republican versus Democratic presidents. The comparison appears intended to reveal whether judges of one party or another were more "tough" or "soft" in sentencing criminal defendants.
  - No consistent differences were found. But the risk of misinterpretation of findings in either direction was great due to flawed assumptions underlying the analysis.
  - For example, the AP excluded the nearly 97% of defendants who pled guilty, on the assumption that prosecutors exercise "outsize influence" over sentences resolved by plea. In fact, prosecutors can influence, or even directly control, sentences resolved by plea *or* after trial by charging mandatory minimum statutory penalties and by making, or withholding, motions that are required for certain sentence discounts.

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