

Shameful WaPo Hit Piece on Judge Sotomayor

by [leevank](#)

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If there were any doubt left about whether the Washington Post that once existed is dead after the recent revelation that it was willing to prostitute its reputation and integrity by selling access to its journalists, and to Washington policy-makers, to the highest bidder, that doubt should be removed by its publication today of an absolutely shameful hit piece on Judge Sonia Sotomayor, headlined **"Uncommon Detail Marks Rulings by Sotomayor: She Almost Oversteps Her Role, Experts Say."**

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The article criticizes Judge Sotomayor's rulings for having "a level of detail considered unusual for an appellate judge." I would point out that this is also a characteristic of the opinions of Justice Souter and former Justice O'Connor, both of whom, like Judge Sotomayor, were once trial court judges. As someone who practiced law at both the trial and appellate levels for nearly 30 years, my reaction is that it is a VIRTUE in an appellate judge to carefully review the record in a case. Nothing is more frustrating than to painstakingly try a case, building a record that will either support a favorable verdict or support reversal of an unfavorable one, only to have an appellate court issue a ruling that is so broad and seemingly divorced from the record that one wonders whether the appellate judges even bothered to read any portion of the record.

But in criticizing Judge Sotomayor for her thoroughness, which I think most lawyers would regard as a virtue, the WaPo article includes the following quote:

"It seems an odd use of judicial time, given the very heavy caseload in the 2nd Circuit, to spend endless hours delving into the minutiae of the record," said Arthur Hellman, a University of Pittsburgh law professor and an authority on federal courts.

Well, that's certainly an interesting take on the issue, especially given the fact that there has never been the slightest indication that Judge Sotomayor's thoroughness in analyzing the record has caused her to be unable to carry her fair share of the workload on the Second Circuit. Elsewhere, the article quotes Professor Hellman as follows:

Hellman, the law professor, called Sotomayor's approach "a kind of carpet-bombing, a relentless mustering of facts. She goes well beyond what is necessary for the case and is determined not to just defeat the other side, but to annihilate it."

These observation seemed so odd to me, and the "carpet-bombing" language so completely over-the-top, that I decided to do a little research on Professor Hellman, and whether he might bring some bias to his point of view. It doesn't exactly take a degree in journalism or the resources of a once-proud newspaper to do this. All it takes is going to Google (or some other search engine) typing "Arthur Hellman" and "contributions," and then reading the first couple of hits. Here's what I found at

<http://www.campaignmoney.com/...> : Over the past 2 election cycles, Professor Hellman has made \$3,000 in contributions to individual candidates, all of them Republicans, or to the Club for Growth PAC. One of the individual Republican candidates to whom he made a contribution was the thoroughly loony Michelle Bachmann. For some reason, OpenSecrets.org doesn't list the Club for Growth PAC contributions, but does list contributions to some additional candidates, all Republicans, including the thoroughly execrable Bill Sali, who is so extreme that even many Idaho Republicans can't stand him, and who publicly objected to the election of a Muslim to the Congress and the delivery of a Hindu Opening Prayer in the House, and who thinks abortion causes breast cancer.

One might hope that a major newspaper, when it publishes quotes from someone attacking a Supreme

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Court nominee, would do at least a couple of minutes of research (and that's literally all it took) to tell its readers about any possible bias on the part of the person being quoted. There was a day, not so long ago, when its readers could have counted on the Washington Post to do that, but those days are obviously long gone, because there's nary a hint in the article that Professor Hellman is even a Republican, much less a member of the most extremely conservative wing of the Republican Party. I would hope that a decent reporter for a high school newspaper would do more checking on her sources than the Post's reporter did here, but then I expect that most high school journalists would immediately recognize that it would be improper to charge the students most interested in sucking-up to teachers for the privilege of private access to them at an ostensibly social occasion. I think it's not too much to say that the journalistic standards of the once-proud Washington Post are no longer any better than those of Fox News, and worse than those that one would expect from a decent high school or college newspaper.

The article also relies upon an evaluation system for whether a judge is "liberal" or "conservative" that, while probably not ideologically biased, seems so simple-minded as to be largely useless. Under this system, developed by University of South Carolina political science (not law school) professor Donald Songer, who does not have a law degree, any opinion in a non-unanimous appellate decision in a criminal case is termed "liberal" if it finds for defendant and "conservative" if it finds for the prosecution, etc. I've got no particular problem with Professor Songer, since this is the kind of thing that non-lawyer political scientists do when looking at the judicial process, but any lawyer would recognize that the actual questions presented in real cases can't be so simply characterized, and that the fact that a judge is on the "liberal" side in 59% of split decisions tells one virtually nothing about the judge's ideology (other than that, under this simple-minded analysis, that Judge also comes out on the "conservative" side 41% of the time).

The article also seems to cherry-pick the most outrageous-sounding decisions Judge Sotomayor has rendered and to describe those decisions in a manner that sounds like she's some kind of a nut, all without bothering to tell the reader what the issue in the case was actually about, or even to describe the case in sufficient detail to enable the reader to find it himself. For example, there's the following:

In one case, Sotomayor and seven mostly Democratic colleagues voted to set free a convicted murderer who did not contest his guilt but had been tried on what the court called the wrong murder charge. In another, she joined an opinion that cited flawed jury instructions in throwing out a man's conviction for enticing someone he believed was a 13-year-old girl into sex.

What was the actual issue in either of these cases? I guess the Post doesn't think we need to know, because it certainly doesn't tell us, but I'd bet my house that if we knew what the actual issue was, the decisions wouldn't seem nearly so outrageous as this one-sentence description of each case makes them sound.

If one were to receive an assignment in a journalism class to "write the most outrageously biased article you can that purports to be a news analysis, rather than an opinion piece," this article would deserve an "A." But as an effort at objective, unbiased journalism, it miserably fails. It's so bad that a part of me wonders whether, having been thwarted in their effort to make some extra money by selling access to its journalists and policy-maker contacts to the highest bidder, the Washington Post is now selling the by-lines of its reporters to the denizens of Washington "think tanks," and permitting them to ghost-write articles that are then published under the byline of an actual Washington Post reporter. They're probably not actually doing that, but if they were, the Heritage Foundation or Cato Institute couldn't produce a much better, or less fair, hit piece than this one.

Poll

When did the Washington Post die as a respected newspaper?

- More than 20 years ago
- 10-20 years ago
- 5-10 years ago
- Within the past 5 years
- It's not quite dead yet, but it's in critical condition
- I think this was a fair and balanced article

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