

## Justice Sotomayor and Murderer Advocacy

By Lester Jackson

*When pro-murderer justices seek -- often successfully -- to focus upon criminals rather than crimes, the result is to grant certain perpetrators greater protection against punishment for their brutality than others who commit identical or less serious acts.*

As [detailed elsewhere](#), [pro-murderer](#) media suppression of the truth has played a major role in enabling a wholesale evisceration of capital punishment. Justice Sonia Sotomayor recently provided a graphic example, one that would be excruciatingly painful to survivors of murder victims if they knew about it. Many people unfamiliar with the practices and philosophy of the Supreme Court would very likely be shocked to learn just what values some justices hold.

In an unreported but highly revealing dissent from the Supreme Court denial (at least temporarily - myriad appeals are endless) of further torturous review of a claim by convicted triple-murderer Benny Lee Hodge, Sotomayor complained of his lawyer's "deficient" attention to Hodge's abused childhood:

[T]he court below concluded that Hodge would have been sentenced to death anyway because even if this evidence had been presented, it would not have "explained" his actions, and thus the jury would have arrived at the same result...This was error. *Mitigation evidence need not, and rarely could, "explai[n]" a heinous crime; rather, mitigation evidence allows a jury to make a reasoned moral decision whether the individual defendant deserves to be executed, or to be shown mercy instead. [Emphasis added.]*

Translating judicial double talk into plain English, what the justice is saying is that a crime so heinous as to be inexplicable can and should nevertheless be "mitigated." Tell that to the surviving loved ones. Tell them that merciless barbarians deserve mercy -- in the eyes of pro-murderer members of the United States Supreme Court.

Just as the media has suppressed reporting on the Sotomayor opinion, she, in turn, has suppressed key facts. First, she confines her discussion to the invasion and more than two million dollar robbery of Dr. Roscoe Acker's home, the attempted murder of this physician, and the multiple stabbing murder of his daughter the day before she was to go back to college. (Needless to say, Dr. Acker is not deemed worthy of mention by name.) Sotomayor devotes not a single word to the fact that Hodge was separately convicted and sentenced to death for committing [two prior extensively premeditated murders](#) -- of an elderly couple). Second, having left out the fact that Hodge faces two separate death sentences rather than just the one she now protests, Sotomayor does not bother to mention that [substantial](#) "mitigation" evidence was [in fact](#) presented in the second trial only to be rejected by the jury. Third, anyone reading Sotomayor's opinion sympathetic to this recidivist attempted murderer and triple murderer might get the impression that he has not been treated fairly or given adequate due process. Nowhere does she mention that the barbaric acts for which she wishes to minimize the

punishment took place in a two-month period in 1985 -- 27 years ago! Fourth, just to be clear, although Sotomayor focuses exclusively upon one of the two death sentences received by Hodge, he was convicted by two separate juries for three murders. Hence, this is yet [another case](#) that has dragged on for nearly three decades (and is likely to continue) where there is no doubt about guilt. What has been going on for a very long time now is an attempt to [minimize sentences](#) for the worst crimes; virtually all delays have little to do with guilt or innocence.

In spurning the view that any crimes could be so heinous that they could not be mitigated, Sotomayor rejects the Kentucky Supreme Court's conclusion that severe child abuse

offered in mitigation might have explained... substance abuse, or... even a crime committed in a fit of rage.... But it offers virtually no rationale for the premeditated, cold-blooded murder and attempted murder of two innocent victims who were complete strangers to Hodge. Many, if not most, malefactors committing terribly violent and cruel murders are the subjects of terrible childhoods....

Sotomayor briefly discusses but does not appear fazed by the Kentucky Supreme Court's findings. She writes:

The murder itself was "calculated and exceedingly cold-hearted."  
 ...Hodge stabbed the daughter "at least ten times," and he "coolly" told his codefendant that he knew the daughter "was dead because the knife had gone 'all the way through her to the floor.'" ...Hodge's conduct after the murder was shocking as well: He and the two other robbers "brazenly spent the stolen money on a lavish lifestyle and luxury goods, including a Corvette," and Hodge told a cellmate he had "*sprea[d] all the money out on a bed and ha[d] sex with his girlfriend on top of it.*" ....Moreover, had Hodge put on evidence in mitigation, the Commonwealth may have sought to introduce evidence of Hodge's "long and increasingly violent criminal history, his numerous escapes from custody, and the obvious failure of several rehabilitative efforts." [Emphasis added.]

In her zealous condescending lecture to the Kentucky Supreme Court about its "error" in "misunderst[anding]" that cruel savagery that cannot be explained can nevertheless be mitigated, Sotomayor unwittingly reveals the extent of abuse of power by her own court's justices. "We have made clear for over 30 years," she admonished, "that mitigation does not play so limited a role.... the sentencer in a capital case must be given a full opportunity to consider, as a mitigating factor, 'any aspect of a defendant's character or record'...." Sotomayor thus implicitly concedes that, for nearly two centuries previously, the court did not make that "clear" -- for the obvious reason that there is not and [never was](#) such a requirement in the [actual written Constitution](#). It was put there by justices who believe their power to **interpret** the Constitution gives them [license](#) to **rewrite** the Constitution to impose their own [personal values](#) on everyone else -- in the absence of any constitutional amendment whatsoever. Thus, in the cause of saving brutal murderers, justices have "[gone from pillar to post](#)... completely sacrific[ing]" Constitutional predictability, as stated by Justice Rehnquist in a case cited by Sotomayor. In sum, what she says has been "clear" for over 30 years was a completely unconstitutional concoction out of thin air that had never before even existed, let alone

being clear.

Sotomayor's goal is the quest of all murderer advocates: to find "at least one juror" who could be hoodwinked (not her word) into saving the life of a barbarian who had a bad childhood (notwithstanding that most people who have suffered extreme child abuse do not commit multiple premeditated murders). Of course, the flip side of her stance is that barbaric murderers who had good or even privileged childhoods should be more harshly punished than those with unhappy childhoods. Is that "fair"? In the infamous [Leopold-Loeb case](#), Clarence Darrow made just that point, [arguing](#) (n327) not only that his clients were being singled out for harsher punishment because of their privileged upbringing but that they actually suffered from the "curse" of wealth, itself a ground for mercy.

When pro-murderer justices seek -- often successfully -- to focus upon criminals rather than crimes, the result is to grant certain perpetrators greater protection against punishment for their brutality than others who commit identical or less serious acts without Supreme Court succor. The *reductio ad absurdum*, of course, is the Court's fiat proclaiming a Constitutional right, nowhere to be found in the real document, for the most depraved and vicious barbarians to commit murders and rapes with [no punishment at all](#). In the Court's [Alice in Wonderland](#) world, "fairness" means that those with the worst records receive little or no punishment for the worst new crimes, while those with no criminal past can receive harsh punishment for far less serious transgressions.

Those steeped in the mire of Supreme Court death penalty subversion by pro-murderer justices might recall Justice's Scalia's [complaint](#) two decades ago that, using a "fog of confusion," the justices had

decreed -- by a sheer act of will, with no pretense of foundation in constitutional text or American tradition -- that the People (as in We, the People) cannot decree the death penalty, absolutely and categorically, for any criminal act, even (presumably) genocide.... Today ... the Court strikes a further blow against the People in its campaign against the death penalty.

Nothing can better illustrate the "fog of confusion" than Sotomayor's straight-faced claim that "especially heinous" murders cannot and need not be "explained" but can and should be "mitigated."

Although the Hodge dissent was joined by no other justice, Sotomayor is far from the only pro-murderer justice. Just last year, four justices wanted to save a barbaric murderer by brazenly applying a law they conceded was [never passed](#) and disingenuously pretended would be enacted with the support of just one legislator. Other justices, especially Kennedy, have joined this quartet.

Only in a relentless campaign to inform the public along with a highly organized opposition is there any hope of preventing more brazenly and zealously pro-murderer justices from being placed on the Supreme Court.

Sotomayor's full opinion is [here](#); lower court opinions are [here](#) and [here](#).

---

*The original is slightly modified here.*

**Lester Jackson, Ph.D., a former college political science teacher, views mainstream [media suppression of the truth as essential to harmful judicial activism](#). His recent articles are collected [here](#).**