

DEAR JUDGE SOTOMAYOR: WE FEEL YOUR PAIN

by KATHLEEN J. WU

Although Sonia Sotomayor wasn't grilled as ferociously as Anita Hill, the other famous Yale-educated woman of color to appear before the Senate Judiciary Committee, Sotomayor's recent confirmation hearings for a seat on the nation's highest court contained some unpleasant, stereotypical echoes of those riveting days in 1991.

While Sotomayor was accused of being temperamental and "fiery" (certainly a loaded word when used to describe the first Latina nominated to the U.S. Supreme Court), Hill endured accusations of being mentally unstable and of questionable moral character. The parallels remind me of how much women continue to be dogged by and judged on often unfair and incorrect stereotypes.

Those stereotypes still play themselves out in the public arena — certainly in the Sotomayor hearings, but also in the presidential campaign of then-U.S. Sen. Hillary Clinton, D-N.Y., and in the vice presidential campaign of Alaska Gov. Sarah Palin — as well as in private practice.

Any woman lawyer who has spent hours scrutinizing her own wardrobe, trying to find that sweet spot between



U.S. Supreme Court nominee Sonia Sotomayor.

frumpy and sexy; held her tongue when a client or colleague has made a demeaning remark; been called "shrill" or worse when advocating for herself or her client; agonized over whether to speak up, and risk being branded a "bully," or keep quiet, and risk being seen as a pushover; or done any of the countless diplomatic tap dances that professional women do every day, knows how enraging it can be to be damned regardless of what she does. (I'm not even going to go

into the fashion commentary Sotomayor endured — something I have yet to see any male nominee to any job in the history of the world withstand.)

On the upside, progress continues to be made. In 1991, when Hill testified in Clarence Thomas' confirmation hearings, the Judiciary Committee contained not a single female member. Today, there are a whopping two women — out of 19 committee members — sitting in judgment of Sotomayor. When

Sotomayor graduated from Yale Law School in 1979, there had never been a female Supreme Court justice. She may now be the third. Granted, these indicators barely move the needle on the Progress-o-Meter, but they are an improvement.

The Sotomayor hearings remind us of the power of language in gender politics and how mere words can negatively impact one's career. The woman lawyer who is branded "difficult" or "mean" can find herself missing out on plum assignments and, ultimately, partnership, while a male lawyer with the same personality is typically accepted with a "what are you gonna do?" shrug.

What's so enraging is how obvious the disparity is — that men are given a free pass for behavior for which women are criticized. One of Sotomayor's male colleagues on the 2nd U.S. Circuit Court of Appeals was so alarmed by the criticism of her that he took it upon himself to compare her questioning style to that of the other judges on the court. "And I must say I found no difference at all," Judge Guido Calabresi told NPR's Nina Totenberg in a June 15 story. "So I concluded that all that was going on was that there were some male lawyers who couldn't stand being questioned toughly by a woman. It was sexism in its most obvious form."

In her own analysis of Sotomayor's questioning (taken from tapes of those

hearings), Totenberg also concluded that her style was no more aggressive than that of her male colleagues — and certainly no worse than what Chief Justice John Roberts Jr. or Justice Antonin Scalia dish out on a regular basis to lawyers before the U.S. Supreme Court.

The evidence is more than anecdotal. A 2006 study by Catalyst titled "Damned If You Do, Doomed If You Don't" found that women who portray female stereotypes — such as being relationship-oriented and expressing "concern for other people's perspectives" — are considered less competent. But if they act in ways that typically are more "male" — meaning they "act assertively, focus on work task, display ambition" — women are seen as "too tough" and "unfeminine."

According to an article in *The New York Times*, in 2007 a Yale researcher found that while men gain stature and clout by expressing anger, women who express it are seen as out of control and they lose stature. Study participants watched videos of a job interview and were asked to rate the applicant and choose his or her salary. The videos were identical except for the gender of the applicant and the reaction of the applicant to a setback.

The participants were most impressed with the angry man, followed by the sad woman, then the sad

man, and finally, at the bottom of the list, the angry woman. The average salary assigned to the angry man was nearly \$38,000 while the angry woman received an average of only \$23,000, the *Times* reported in the Nov. 1, 2007, article. A \$15,000 hit just for getting ticked off — sheesh.

The good news is that the same women who are judged harshly for their behavior today, 50 years ago wouldn't have had the option of being nominated to anything higher than PTA president. So, as I keep reminding myself, things *do* get better.

In the meantime, until women are sized up by the same ruler as men, we should remember that words have power. When we brand a female colleague or boss as "mean" or "difficult," ask whether we would say the same thing about a male in that position and, more importantly, whether we would hold it against him.

All we want is an even playing field.



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