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## Gender and the Judge: Sotomayor Encounters a Familiar Bias

Posted: July 16, 2009 01:38 PM

I've been following the Sotomayor hearings, and I've come to some conclusions.

Her "wise Latina" comment was just an observation about the importance of life experience.

It's impossible to say whether it was the white or black New Haven firemen who suffered discrimination.

And...

Gender bias is alive and well.

The direct questioning has been (mostly) civil and (mostly) relevant to the job of serving on the highest court in the land. But it is the flanking actions that say volumes about the realities of women, work and bias.

It started early, even before her nomination, with George Washington University law professor Jeffrey Rosen's article in the *New Republic*. Quoting from anonymous comments the Almanac of the Federal Judiciary and from individuals, he wrote that she was a "bully," "domineering" and a "terror" on the bench. The eruption of blog commentary that followed cast her as irrational, temperamental and overly emotional.

Never mind the numerous defenders who have argued in her court who say she is even-tempered, cordial and unfailingly fair. Never mind that her opinions show her to be consistent and far from extreme.

Never mind that it is the job of any judge to be forceful, direct and skeptical.

Never mind that any lawyer who argues before the Supreme Court knows that he or she is going to be interrupted early and often - and that dealing with that is like earning a campaign ribbon in battle.

Never mind Justice Antonin Scalia's frequent temperamental outbursts, or CBS legal analyst Andrew Cohen labeling him "justice nasty" when he humiliated a student in a public gathering for a question about cameras in the court room. The world shrugs off his frequent outbursts (including angry letters to newspapers that criticize him) as simply a facet of his forceful personality and passion.

Never mind all of that.

What interests me - and what says volumes about the modern day realities of women in the workplace - is how quickly the argument flew to her temperament.

It is one more reminder - as if any woman leader needs reminding - that females in high positions must walk heel to toe along a fine line that is invisible for men. Too aggressive, and you're a bitch. Too accommodating, and you're passive. Universal? No. True? Ask any woman who has been there.

The binary bitch-pushover conundrum is only one of many destructive stereotypes. Men negotiate; women placate. Women nurture; men take charge. Women ask questions; men make statements. Women take it personally; men shrug it off. And on it goes.

The standard comeback: quit whining (like a woman) and get on with the job. Results trump everything. But the fact is that leadership is about perception. And as long as perception is complicated by assumption, it is tremendously destructive to a woman's ability to achieve those results.

The "wise Latina" and New Haven firemen lines of attack sidelined temperament for a time. But Republican Senator Lindsey Graham and (as day follows night) Fox News have kept it alive. Sen. Graham recited all the charges from the anonymous reviews - "bully," "nasty" and "terror" - and asked directly: "Do you think you have a temperament problem?"

Judge Sotomayor handled it all with a calm confidence that says she has played it before, and is well versed in the rules. Until women are in leadership positions approaching the numbers of men; until organizations truly figure out how to move diversity from keeping score to creating advantage - for women leaders, gender issues will be an unwritten part of the job description.