Docket Chat: Women Take Lectern in Upcoming SCOTUS Arguments

Tony Mauro, October 3, 2016

The calendar for the first two weeks of oral arguments at the U.S. Supreme Court is unusual in several ways, not the least of which is that nearly half of the lawyers stepping up to the lectern will be women.

In all but one of the eight arguments in the October cycle, at least one woman will argue—eight out of 18 lawyers total. In spite of large numbers of women entering the profession, female Supreme Court advocates are not as common as might be expected—especially women coming from private law firms rather than government entities.

At a recent American Constitution Society briefing, Kristen Clarke, president and executive director of the Lawyers’ Committee for Civil Rights Under Law, called attention to "the lack of diversity that we see in the bar of attorneys who argue before the U.S. Supreme Court."

She made the comment to highlight the fact that Christina Swarns, litigation director of the NAACP’s Legal Defense and Educational Fund Inc. and an African-American woman, will argue Oct. 5 in Davis v. Buck, an important death penalty case involving issues of race and ineffective assistance of counsel.

Clarke said it was extremely rare for African-American women in private practice to argue before the high court. The last time it occurred was three years ago, when Shanta Driver of the Detroit firm Scheff, Washington & Driver decided at the last minute to argue in favor of affirmative action in Schuette v. Coalition to Defend Affirmative Action. Driver said at the time that she took over the case because she wanted the justices to see someone “who really could speak for the movement” appearing before them.

Last term, only three of the 33 women who argued before the court were from law firms with established Supreme Court practices. Two of the women arguing this October—the first of seven argument cycles—come from firms that appear frequently at the high court.

One is Lisa Blatt of Arnold & Porter, who will be arguing her 34th case on Oct. 4—more arguments than any other woman in history. Blatt used to trade that superlative back and forth with Patricia Millett, but Millett in 2014 became a judge on the U.S. Court of Appeals for the D.C. Circuit, putting her on the sidelines with 32 oral arguments for now.

Blatt will argue in Bravo-Fernandez v. United States, a double jeopardy case. It is one of seven criminal cases set for argument in the October cycle, an unusually high number given the Jewish holidays and the Columbus Day federal holiday, which limited the total number of argued cases to eight. Elizabeth Prelogar, an assistant to the solicitor general, will argue against Blatt.

The only noncriminal case is the design-patent dispute Samsung Electronics v. Apple, which will feature veteran Kathleen Sullivan of Quinn Emanuel Urquhart & Sullivan arguing her 10th case
on behalf of Samsung Electronics Co. Her adversary Oct. 11 will be former Solicitor General Seth Waxman of Wilmer Cutler Pickering Hale and Dorr, who has 75 Supreme Court arguments under his belt.

A third woman from private practice is set to argue her first Supreme Court case on Oct. 5. Alexandra Shapiro of Shapiro Arato, a former law clerk to Justice Ruth Bader Ginsburg and a former federal prosecutor, will represent Bassam Salman in the high-profile insider-trading case Salman v. United States.

One of the women set to argue on Oct. 4 is currently a federal public defender in Los Angeles who is about to enter private practice.

Koren Bell will represent Lawrence Shaw in Shaw v. United States, an important challenge to the federal bank fraud law. Last month the trial boutique Wilkinson Walsh + Eskovitz announced that Bell would soon join the firm.

"Several of us will be watching and rooting for her," said Lori McGill, a partner in the Wilkinson firm. McGill said it was a coincidence that the hire came around the time Bell was preparing for a Supreme Court appearance. "But of course the fact that she set up this issue for her client as a public defender and got cert granted is impressive, and certainly didn't hurt her in the interview process."