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ACS panel showcases women who got their moment at SCOTUS

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Women who want to appear before the U.S. Supreme Court often need to be their own advocates when seeking out argument opportunities, according to panelists who discussed the issue Thursday.

The hourlong event, hosted at Kirkland & Ellis LLP's River North offices by the American Constitution Society's Chicago chapter, delved into the reasons why there are so few women arguing before the Supreme Court and what women can do to close that gap.

The event drew about 50 guests.

The panel included former Cook County state's attorney Anita M. Alvarez, now the managing director at Alvarez Marsal Disputes & Investigation; former Illinois attorney general Lisa M. Madigan, now a partner at Kirkland; retired attorney Fay Clayton, a former senior partner at Robinson Curley & Clayton P.C.; Cindy H. Hyndman, shareholder at Robinson Curley P.C.; Sarah O'Rourke Schrup, a professor at Northwestern Pritzker School of Law; former Illinois solicitor general Carolyn M. Shapiro, now a professor at IIT Chicago-Kent College of Law; and former solicitor general Jill Wine-Banks, now a legal analyst for MSNBC.

The high court hears approximately 70 cases out of the roughly 7,000 petitions for review it receives each term.

Over the last decade the percentage of women arguing before the Supreme Court has ranged from 12% to 21%, according to SCOTUSblog.

Understanding from the outset the few opportunities to go before the nation's highest court, one thing women can do to increase their chances is to position themselves in the right jobs, Wine-Banks said.

She argued before the Supreme Court as Illinois' first-ever solicitor general.

"If you're working in the public sector … or if you're a government attorney, you're far more likely to be able to get to the Supreme Court," she said.

Alvarez, Madigan and Shapiro also touted similar opportunities through their governmental positions.

However, no matter where you are working it's important to speak up for yourself and ask for what you want, Wine-Banks said.

"Too often women think if they do not have 100% of the qualifications, they don't apply for the job and they don't ask," she said.

Schrup, who made her first oral argument before the U.S. Supreme Court in October, admitted she is not one to always ask, and while she had the support of her colleagues, she had to go out of her comfort zone to ensure she had the opportunity.

"Even though it was really great that there was the support by people who knew this needed to happen, it was not as clear cut as it could have been," she said.

The case, *Kahler v. Kansas*, asked the high court to decide whether the Eighth and 14th Amendments to the U.S. Constitution allow states to abolish the insanity defense.

Hyndman, who went before the court in February 2008 on behalf of the respondent in *CBOCS West Inc. v. Humphries*, said the doubt she got from people regarding her ability to present the case did not come from inside her firm, but from strangers.

"I got calls from men I never met offering to argue the case for me … Some going as far to say, 'You really can't argue a case in the Supreme Court; it's really different than arguing in the 7th Circuit,'" she said.

In Hyndman's case the court was tasked to answer whether a worker can sue his employer for retaliation under the Civil Rights Act of 1866.

The panelists also discussed the importance of preparation, especially when it comes to potential questions from the justices.

Madigan, who argued *Illinois v. Caballes* in November 2004, said she spent a considerable amount of time with the Illinois State Police and even read a book on police canines in order to better understand the history of detection dogs.

The case centered around whether the Fourth Amendment's search and seizure clause required reasonable suspicion to conduct a canine sniff during a routine traffic stop.

Madigan also said her experience as AG with press conferences was good preparation.

"I am so used to having crazy, random questions thrown at me. … It's one of the reasons the people in the office were comfortable with me arguing was because of the fact that I had that experience, although I hadn't argued in an appellate court previous to this," she said.
