



## CAFL APPELLATE PANEL PRACTICE TIP

### Eye contact at oral argument

We each have a system for organizing our thoughts at oral argument and ensuring that important dates, facts, cases, and record citations are at our fingertips. Whatever your method, *don't* bring a narrative that you plan to read at the lectern. Feel free to glance at your notes, but your goal is to have a conversation with the panel. Here's an interesting article—that is, a horror story—from the ABA Journal *Law News Now* web newsletter:

#### ***SCALIA CALLS OUT LAWYER FOR A FAILURE TO EXTEMPORIZE***

(Posted Jan. 15, 2014, 10:12 AM CST) (Debra Cassens Weiss)

A lawyer arguing on behalf of a Wyoming family fighting the government's effort to reclaim a strip of land got off to a rough start in the U.S. Supreme Court on Tuesday.

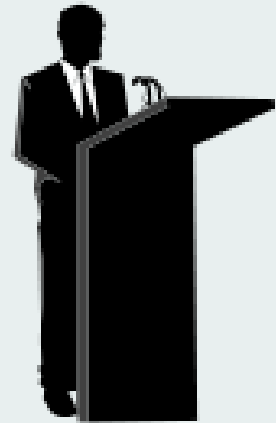
Lawyer Steven Lechner was arguing that the government did not retain any interest in an abandoned railway when Justice Antonin Scalia interrupted, report Josh Blackman's Blog and SCOTUSblog.

"Counsel, you are not reading this, are you?" Scalia asked.

According to SCOTUSblog, "Lechner didn't answer, simply standing silent for a lengthy embarrassed moment. Lawyers at that lectern are, it seems, supposed to extemporize."

Justice Stephen G. Breyer then jumped in, telling Lechner, "It's all right."

What does this tell us about good oral argument? (It certainly tells us something about Scalia and Breyer.) Do your best to keep eye contact. Don't read unless you absolutely have to (for example, if you are quoting a case, a statute, or the transcript). But if you are making an argument that does not rely on specific text, do your best to keep your head up and your tone conversational. That way you can at least create the illusion of extemporaneity. If you are engaged with the judges and truly answering their questions, argument will become an exchange of ideas and not a lecture, which—let's be honest—is much more fun.



### KEEPING ORAL ARGUMENT CONVERSATIONAL

- Make eye contact with each judge.
- Carefully consider each question before answering—it's okay to pause.
- Answer each question first with a "yes" or "no," and only then explain; don't back into an answer.
- Don't tell a judge you will answer her question later—answer it now!
- Never talk over a judge's question.
- If you don't understand a question, admit it and ask the judge to clarify.