



The Strategic Approach to ECA:
Practical Tips from the Trenches to Sharpen Your ECA Technology and Process
with
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The world's most exclusive debate club

There is a tie that binds many Supreme Court advocates, and it has nothing to do with Ivy League law schools, clerking for a justice or service in the solicitor general's office. It is high school and college debating, a common trait that will be celebrated Sept. 8 in a panel discussion at Georgetown University Law Center.

Tony Mauro

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There is a tie that binds many Supreme Court advocates, and it has nothing to do with Ivy League law schools, clerking for a justice or service in the solicitor general's office.

It is high school and college debating, a common trait that will be celebrated Sept. 8 in a panel discussion at Georgetown University Law Center. The discussion will be preceded by a screening of the [new documentary on college debating](#), "Fast Talk."

Arnold & Porter appellate partner Lisa Blatt, herself a competitive debater (Bellaire High School, Texas, 1982-3), organized and will moderate the discussion among other top advocates who were once debaters: Paul Clement of the Bancroft firm; David Frederick of Kellogg, Huber, Hansen, Todd, Evans & Figel; Thomas Goldstein of Goldstein & Russell; Neal Katyal, newly of Hogan Lovells; and Judge Brett Kavanaugh of the U.S. Court of Appeals for the D.C. Circuit, formerly with Kirkland & Ellis. Also on the panel will be "Fast Talk" filmmaker Debra Tolchinsky, who is also on the faculty at Northwestern University.

"So many debaters end up in the law," said Tolchinsky, who has been surprised at her film's appeal to the D.C. legal crowd. The documentary follows Northwestern's championship debate team and its fast-talking debate style, which either amazes or turns off those who watch. Lawyers who have seen it say it gives a window into their argument styles.

"Debating is incredible training for conducting an oral argument," said Kellogg Huber's Frederick, who debated in high school and college (Thomas Jefferson High School, Texas, 1975-79; University of Pittsburgh, 1979-81.) He researched a wide range of topics from energy policy to the importance of the merchant marine, and had to be able to argue on either side. It sharpened his intellectual curiosity as well his ability to identify issues and dissect arguments. "In Texas, the debaters were mostly pretty bright, but not such good athletes."

Frederick's firm has just hired a Northwestern star debater featured in "Fast Talk" named Josh Branson. After Northwestern, Branson went on to Harvard Law School, where he worked with longtime professor and Supreme Court litigator Laurence Tribe, himself a Harvard debate champion 50 years ago.

Asked if debating helps Supreme Court advocacy, Tribe said in an e-mail, "Up to a point: It instills a respect for tireless research and some discipline of mind as well as facility in responding concisely to new arguments and questions." But, he added, the fast talking style of many debaters can be a problem. "Successful debaters," Tribe said, "often have to unlearn the habit of equating speed with success and must learn to talk more conversationally if they are to succeed in appellate advocacy."

Arnold & Porter's Blatt swears she can tell if a Supreme Court advocate she is listening to has had experience as a debater. It is not just the ability to think on one's feet, she says, or the skill at organizing an argument. It is also, among other things, the ability to "turn a question from a justice around and use it to expose a problem with the other side's argument," she said. "Former debaters don't back down. We're fighters."

Goldstein has exemplified that high-speed, forceful style in many of his 23 high court arguments. He lived and breathed

debating in his high school and college years (Twin Lakes High School in Florida, 1983-4, Irmo High School in South Carolina, 1986-88, University of North Carolina, 1988-92), sometimes to the detriment of his grades. "There is nothing that compares to spending 60 to 80 hours a week preparing for an argument," he said.

There is a down side to his forensic training, Goldstein said. "After a decade of standing up and speaking as a debater, you sometimes get too comfortable up there," he said. "When I go awry, it's probably because I am too comfortable."

In his early arguments, Goldstein said, "I would show the justices all the things I could do," such as answering a justice's questions with references to comments that or other justices made earlier. "It was a distraction."

Goldstein's unique style still [raises eyebrows](#). In his argument last April in *Sorrell v. IMS Health*, Goldstein used a tone that was part professorial and part commanding when he directed the justices to open their briefs to certain pages so he could walk them through key legislative language. That approach is rarely seen at the Court. But most justices followed his lead, and he won the case.

That emphasis on key texts came from a debater's toolbox, Goldstein said. "Debating helps you decide what matters in an argument, and what doesn't, and you focus on what matters most. If it's statutory text, you just focus on that."

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