



Artistry Lessons for Lawyers

Book Review by Daniel E. Cummins

Making Your Case: The Art of Persuading Judges
By Antonin Scalia and Bryan A. Garner
Thomson/West, 245 pp. \$29.95

Who better to provide tips on appellate brief writing and oral argument than Justice Antonin Scalia, a justice of the U.S.

Supreme Court with nearly 25 years on that bench? So thought Bryan Garner when he combined with Scalia to create their recently published book, *Making Your Case: The Art of Persuading Judges*.

Co-author Garner is no lightweight himself. He is a lawyer and an expert grammarian who, in addition to serving as the editor in chief for *Black's Law Dictionary*, has written several books of his own on legal writing and proper grammar.

The overriding message of both authors is to strive for simplicity in all areas of brief writing and oral argument. As they succinctly state, a lawyer's job is "to make a complex case simple, not a simple case complex."

In terms of brief writing, the authors exhort the reader to "treasure simplicity" through the use of tight sentences and coherent paragraphs that flow easily into one another. Both Scalia and Garner rail against the use of bold typeface and underlining of words and citations. The authors also humorously warn against the excessive use of italics, noting that "[c]onstant italicizing gives your brief the tone of an adolescent diary. ..."

While primarily consistent with each other's opinions on proper brief writing, Scalia, as he is wont to do, dissents on a few points. For example, while Garner suggests that the use of contractions ("can't," "don't," "that's") may not be entirely improper in a brief and can serve



to assist in the flow of a sentence, Scalia, showing his conservative bent, summarily rejects contractions as having no place in proper legal writing.

Scalia also scoffs at Garner's separate suggestion elsewhere in the book that perhaps legal writing would benefit from citations being taken out of the text and placed instead in footnotes, again to ease the flow of the brief-reader's eyes across the page. Scalia counters by arguing that attorneys' eyes are trained to read through citations in the text.

Scalia also notes that it is important that the signals at the beginning of citations be in the text to show the reader the import of the citation. And he makes the additional excellent point that the placement of citations in footnotes would frustrate the normal flow of the reading of a brief by causing the reader's eyes to shift continually back and forth from text to footnotes in an irritating fashion in order to follow the argument.

Having a proper flow is also the underlying theme of the tips provided with respect to oral argument. The authors again emphasize the goal of keeping matters as simple as possible in oral presentations as there is no credit given by the court for eloquence.

Common sense recommendations such as using simple words, avoiding words you do not know how to pronounce and looking the judge in the eye during argument are provided. The authors also promote simplicity in recommending that attorneys come to court with only the materials they need so as to avoid any frantic and distracting shuffling of papers during argument.

The authors also give excellent advice on how to structure the order of one's argument, depending upon whether one represents the appellant or the appellee. Numerous tips are also given on how to prepare for interruptions in the form of comments and questions from the bench.

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Scalia and Garner also emphasize the always-applicable advice of preparing for argument by viewing the case from your opponent's perspective in order to cover all possible grounds and weaknesses applicable to one's own case.

With regard to the oral presentation to the court, Scalia and Garner also strongly urge the reader to voice his or her argument in a firm and positive fashion as if presenting a correct statement of the law and its application to the case at hand as opposed to one's opinion on what the decision should be.

Making Your Case by Justice Antonin Scalia and Bryan A. Garner is an excellent resource that has its place on the shelf of every law office library to consult time and again. Written in a conversational style, the book is an easy read that, on its surface, consists of detailed lessons and reminders useful for improving one's written and oral argument skills.

On a deeper level, the book can also be used as a motivating tool that can give one the confidence to appear before any court, at the trial or appellate level, armed with the knowledge that the case is being advocated through brief writing and oral argument in a manner that would be approved by a learned justice of the U.S. Supreme Court. Such could be the difference between making your case or not. ♦



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