

Make space on shelf for 'Making Your Case'

When asked what quality was most important in a lawyer, renowned Supreme Court advocate John Davis was fond of quoting Daniel Webster: "The power of the clear statement is the great power at the bar."



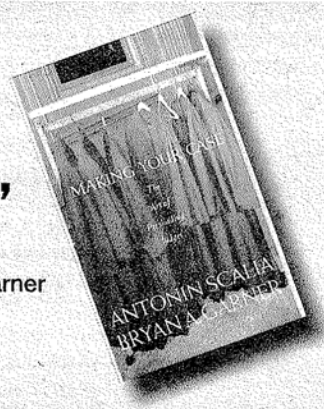
BOOK REVIEW

PAUL PERLMAN

In their new book, "Making Your Case: The Art of Persuading Judges," Hon. Antonin Scalia and Bryan Garner offer practical advice to lawyers on how to achieve the goal of most clearly and persuasively arguing to a court.

"Making Your Case: The Art of Persuading Judges,"

by Antonin Scalia and Bryan A. Garner
(Thomson West, 2008)



Scalia and Garner bring to the task their different backgrounds and perspectives. Scalia, of course, is an associate justice of the U.S. Supreme Court. As such, he is the

target of others' efforts to persuade him of the correctness of their arguments, with strongly held views of what works and what doesn't. Garner is president of LawProse, the

author of many books about legal writing and usage, and the editor of Black's Law Dictionary. In his seminars, Garner has taught more than 90,000 lawyers how to write more simply, clearly and persuasively.

"Making Your Case" is designed to be a practical guide. The book is organized into into four main topics: general principles of argumentation, legal reasoning, briefing and oral argument. Within each topic, the authors offer a number of tips, each discussed in a separately numbered section; there are 115 tips in all. Most of the tips are one or two pages, with a few of them, such as how to structure a brief, somewhat longer.

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REVIEW: Not an 'academic tome'

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This is meant to be a how-to book and does not pretend to be an academic tome. "Making Your Case" can be easily read from cover to cover, but it serves equally well as a permanent reference.

Most of the book is written without attribution of particular sections to one author or the other. There are several tips, however, where the authors disagree (as they do, for example, on whether contractions are proper in legal briefs, substantive footnotes should be used, or case citations should appear in the text or in footnotes). Where that occurs, Garner first states his position, launching it into the air like a clay pigeon, and Scalia then responds by shooting it down with his well-known caustic wit. Scalia's responses, which are unburdened by self-doubt, are both informative and entertaining.

Some of the book's tips on brief writing are covered more exhaustively in other books, such as Garner's "The Winning Brief." But the sections on argumentation, legal reasoning and oral argument break newer ground, discussing fundamental precepts in a readily accessible format.

For example, the section on oral argument provides advice on how to prepare and organize an argument, how to choose who should argue a particular motion or appeal, how to dress, who to seat at counsel table, what tone to adopt with the court, how to respond to questions and deal with judges who take over an argument, how to adjust the structure of your argument depending on whether you are an appellant or appellee, and when to make concessions.

Tips are given, as well, on what not to do during oral argument. Reviewing these tips before an important argument will provide the advocate with a checklist of issues better considered ahead of time, instead of decided on the fly in the heat of the argument.

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"Making Your Case" is aimed at lawyer-advocates with all levels of experience. The newer lawyer will undoubtedly acquire the type of practical advice — taught all too rarely in law schools — about how to construct an argument and how to brief and argue a motion or an appeal. The experienced lawyer will appreciate the more technical advice about how to structure a syllogistic argument, how to most persuasively argue the interpretation of a statute, and how to frame an issue in order to center the argument on your most defensible terrain.

This is a book for all lawyer-advocates to read, to read again immediately before beginning to write a brief, and again immediately before oral argument. As a lawyer gains more experience, it is likely that he or she will understand and assimilate the book's advice on a more advanced level.

"Making Your Case" is destined to work its way into law-school curricula, and should occupy a place on every advocate's bookshelf as a continuing reference.

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