



Making Your Case: The Art of Persuading Judges

Antonin Scalia & Bryan Garner

Key Insights for Modern Legal Practice

This independent summary distills the core ideas of the book and connects them to day-to-day law practice, advocacy, and operations.



1) Overview: Why This Book Matters

Antonin Scalia, one of the most influential Supreme Court justices, and Bryan Garner, a renowned authority on legal writing, crafted this guide as a roadmap for lawyers who want to become masters of persuasion.

The book matters because persuasion in law is not about theatrics; it is about clarity, credibility, and discipline. Lawyers win cases when they can crystallize complex issues into simple rules and communicate them in a way that judges and juries can act upon.

- Persuasion is a learnable craft, not an innate gift.
- Judges value precision, brevity, and respect for their time.
- Great advocacy blends law, logic, and language seamlessly.



2) The Discipline of Persuasion

Scalia and Garner stress that persuasion is the architecture of every brief and oral argument. It demands rigorous logic and ruthless clarity.

They caution against clever turns of phrase that obscure the reasoning. Instead, focus on building a step-by-step case that the judge can adopt without rewriting.

- Clarity beats cleverness every time.
- Credibility accumulates—concede weak points honestly.
- Order matters: always lead with your strongest argument.

3) Framing Issues the Court Wants to Decide

Judges are pressed for time and overwhelmed with caseloads. If you frame your issues poorly, the judge will reframe them—and not always in your favor.

Effective framing means narrowing the dispute into a crisp, answerable question that emphasizes the rule of law rather than rhetorical flair.

- Frame the issue in one sentence, neutrally worded.
- Avoid sprawling questions—anchor in legal rules, not policy slogans.
- Make it the kind of question that invites a rule-based answer.



4) Brief Writing That Guides, Not Overwhelms

A brief is not a brain dump; it is a guided tour. The goal is to anticipate the judge's questions and answer them in logical order.

Scalia and Garner highlight the principles of primacy and recency: what comes first and last sticks most. Open with strength, end with clarity.

- Use clear roadmaps and headings to orient the reader.
- Quote sparingly—summarize and cite with precision.
- Prefer short, declarative sentences over jargon-filled passages.

5) Oral Argument as Conversational Logic

Oral argument is not theater—it is an interactive test of your rules and reasoning. Judges use questions to probe for weaknesses and implications.

The advocate's role is to listen, respond directly, and then pivot back to the rule being defended.

- State your rule upfront and explain its limits.
- Admit hard facts but show why your rule still governs.
- Treat hypotheticals as opportunities to refine your rule.



6) Style: The Ethics of Plain English

The authors argue that style is ethical: unclear writing wastes judicial time and confuses justice. Plain English is not dumbing down—it is respect.

Typography and layout also matter. Judges skim; white space, headings, and logical numbering increase comprehension and trust.

- Replace legalese with direct, modern English.
- Cut filler words and long prepositional chains.
- Use consistent parallel structures in lists and factors.

7) Applying the Lessons in Modern Practice

These timeless lessons apply directly to digital workflows. With platforms like XLOHQ, lawyers can embed persuasion principles into templates, briefs, and checklists.

By systematizing persuasive practices, firms can reduce training costs, raise the quality of every brief, and make even junior lawyers argue with clarity.

- Create reusable templates for issue framing and argument structure.
- Use AI-assisted drafting tools to flag jargon and excess verbiage.
- Track version history to show how clarity improves drafts over time.



8) Persuader's Checklist & One-Page Takeaway

Before filing a brief or stepping into oral argument, run through this checklist to ensure persuasive discipline:

- Is your strongest point at the start?
- Do your headings state reasons, not topics?
- Are your concessions strategic and honest?
- Would a judge quote your opening paragraph?
- Have you replaced legalese with plain English?
- Does the close summarize the rule the court should adopt?