



By Antonin Scalia and Bryan A Garner

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Reviewed by Karen Carmody

115 Chapters and 206 pages of text. Who would have thought that such a small book would pack such a punch? If you have spent years wading through tomes on the art of persuasion you will probably regret that you were not able to turn to this book years ago. Antonin Scalia is the Senior Associate Justice of the Supreme Court of the United States and has co-authored this book with Bryan A Garner, lawyer and Editor in Chief of the current editions of Black's Law Dictionary. Together they have written an easy to read but intellectually challenging text based on the critical question of "How do effective advocates persuade Courts to decide cases in favour of their clients?". Most of the old standards are there such as "Never Overstate Your Case", "Know your Adversary's Case", "Know Your Audience", but there are additional principles such as "Understand that reason is paramount with Judges and that overt appeal to their emotions is resented" and "Assume a posture of respectful intellectual equality with the Bench" which really go to the heart of the book - that is the art of persuading Judges.

Even the introduction offers some pithy points which Judges would no doubt deny but that we as advocates suspect may have some truth in them (and even if they don't we will try them just in case). For example the authors refer to the "human proclivity to be more receptive to argument from a person who is both trusted and liked.....all of us are more apt to be persuaded by someone we admire than by someone we

detest...you show yourself to be likeable by the lack of harsh combativeness in your briefing and oral argument, the collegial attitude you display toward opposing Counsel, your refusal to take cheap shots or charge misbehaviour, your forthright but unassuming manner and bearing at oral argument – and, perhaps above all, your even tempered good humour. Some people, it must be said, are inherently likeable. If you're not, work on it. “

One of the principles cited in the book is “Control the Semantic Playing field”. By way of example (admittedly in an American context) the authors cite a case involving American Airlines and explain that some lawyers abbreviate their client's name and refer to their client as AA. The authors explain that that passes up an opportunity for subliminal reinforcement. If your client is American Airlines and knowing that every Judge sitting on your case is American, the use of the word “American” can give your client an oh so slight advantage but an advantage nevertheless. By way of contrast if you are Counsel for the opponent you would call your adversary “the Company”, “the Corporation” or perhaps even “the carrier”. Other examples would be to describe a significant event as simply an “incident” rather than an “accident” and therefore subliminally reduce the seriousness of the event in the minds of the bench.

The book is not confined simply to oral arguments but also sets out important steps to be taken when evaluating and researching your case and preparing your written submissions or your outline of argument even if that document is not one which is handed up to the Court.

Mastery of the preferred pronunciations of English words, legal terms and proper names is also discussed. The authors explain that generally speaking one pronunciation can be considered an example of educated speech while the other would be uneducated. They, therefore, suggest that you stay within the mainstream of standard pronunciation meaning “preferred pronunciation” being “preferred by well-educated people”.

Even the strategic positioning of “the pause” is evaluated. For advocates it is often a case of knowing when not to speak or to pause rather than to speak – particularly when a Judge interrupts.

Finally they even touch on one of my favourite subjects that is to remain expressionless when your opposing Counsel proffers an argument which you know is a killer with respect to your case. It took me back to my good old days when my junior master (Shane Doyle SC) kicked me under the Bar table because I sat up like a Jack Russell Terrier when an opposing Counsel raised an issue we expressly hoped to avoid.

Setting aside some minor differences due to the fact that the book is essentially written in an American context and therefore occasionally presents points or terms which are not relevant to us, the book is insightful and practical – an all too infrequent combination. Highly recommended.