Judges are extremely busy people and, by sheer necessity, must view the onslaught of legal arguments laid before them with a healthy dose of skepticism. They are forced to do this for one very important reason: They must make the wisest decisions possible in the shortest amount of time allowable.

As a result, your job as an advocate is to provide complete, concise, and well-reasoned arguments that can be understood quickly and then confidently ruled upon by the court.

Because of the sheer volume of litigation facing the courts, both trial and appellate benches are more dependent than ever on well-prepared written arguments of counsel. Many—and, in fact, most—appellate cases are now decided without any oral argument. In those courts that still allow oral argument, the time allotted for it is usually highly restricted.

The same situation is increasingly true even in trial courts, where motions for dismissal and for summary judgment are often determined solely on written submissions. Trial briefs and memoranda of law provided to the court likewise assume greater significance than ever.

The result of all these developments is that judges are, more than ever before, dependent upon you to fully inform them about the background of the case, and to carefully construct an argument that candidly and competently applies the facts to the law. Not only is the judge unfamiliar with the facts of your specific case, but most likely is not an expert in the particular area of
substantive law that you will be delving into. The court therefore expects you to highlight the relevant facts and to competently and clearly explain how the applicable body of law governs the case.

An advocate who skillfully builds the argument in a logical and precise way stands a remarkably better chance of influencing the final result in favor of his client. Words, after all, are the salt mines in which litigators work—and a glorious realm it can be.

Many fine treatises on rhetoric are available, and a practitioner can learn something useful from even the most arcane ones. These works, however, largely contain the ground rules of argumentative skills. The book before you takes a completely different tack. Rather than focus on a general list of rhetorical terms, it shows the rules being applied in real-life legal arguments. The emphasis here is on the practical rather than the theoretical. You can read about techniques on how to improve your tennis serve all day long, but at some point it makes sense to actually watch a professional demonstrate it.

The argument professionals whose work is featured in this book are attorneys with the U.S. Solicitor General’s Office, and the examples are largely drawn from their edited briefs. These arguments are prepared by some of the brightest legal minds in the land, and they present interesting (and sometimes very unusual) cases ranging from securities to constitutional to criminal law.

But the subject matter of the selections is not nearly as important as the techniques employed. For the sake of clarity—and to focus our attention on the arguments at hand—the excerpts have been stripped of supporting authority, and case cites and references to the record have been eliminated. We will dissect and delve into these excerpts and, in the process, learn much.

We will discover that there are no magic bullets or secret formulas available when crafting an effective legal argument, but that our job as attorneys is ultimately to assist the judge—through attention to detail, word selection, sentence structure, and organization that is clear, concise, logical, and forceful—to make a fair decision. In the end, we can only earn the judge’s confidence and trust through the hard, honest work of building a sturdy and truly tenable legal argument. Which is exactly as it should be.