Foreword

Published advice on how to persuade judges is as old as the profession of judging itself. Its sources include Aristotle, Isocrates, Demetrius, Cicero, and Quintilian. So anything fundamentally new contributed by this small volume would probably be wrong. Our purpose is to make the best earlier advice—with perhaps a few suggestions of our own—readily available to the modern practitioner and to adapt it to the circumstances of modern American litigation.

Unsurprisingly, respected authorities on the art of judicial persuasion are not always unanimous. Where there is substantial disagreement with our recommendations, we acknowledge it. Indeed, on four salient points, we’ve acknowledged disagreements between the two of us, leaving readers to make up their own minds, as they inevitably will.

We deal here with both written and oral presentation. Since many points that apply to the one apply equally to the other, we have sought to minimize repetition by presenting preliminary sections dealing with the basics of argumentation—knowing your audience, syllogistic reasoning, etc.—and then offering separate sections first on brief-writing, stressing the peculiarities of that form, and then on oral argument doing the same.

To lighten the journey, we have adopted a conversational style that includes occasional contractions and remarks more flippant or colloquial than one would normally encounter in
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legal commentary. The reader who feels that some of these indulgences fall short of the formality and sobriety expected of a jurist should attribute all of them to the other author, and assume that they have been included under protest.

A.S.
B.A.G.