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Making the Case – Better: Gardner's Revised Textbook Emphasizes Storytelling and Professionalism

UB Law Forum

Faculty

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to the contextual expectations of your audience."

— UB Law Professor and Vice Dean James A. Gardner, above left

To paraphrase Rod Stewart, every legal case tells a story.

UB Law Professor and Vice Dean James A. Gardner wants to help lawyers-in-training communicate better. That means thinking more clearly, constructing logical arguments, and making their case precisely and vividly – that is, telling the story.

Those are the goals of Gardner's labor of love titled *Legal Argument: The Structure and Language of Effective Advocacy.* A revised and expanded second edition of the legal textbook has just been released by LexisNexis (suitable, Gardner notes, for law firm in-house training for junior litigators, as well as for classroom use).

Gardner, who is the Joseph W. Belluck and Laura L. Aswad Professor of Civil Justice at the Law School, says the new edition was 15 years in the making. He says he wrote the original, published in 1993, because "the students I was teaching had the same questions over and over. I had honed my answers, and I realized it would save me a lot of time to have them in book form." Since then, he says, the publisher "had been after me for years to do a second edition. Finally I felt like I had something new to say."

Legal Argument, which Gardner uses in his classes and which has been adopted as a textbook at Duke Law School among others, focuses on civil law and the written advocacy that makes up so much of the business of civil litigation. "Most of what a civil lawyer does is front-loaded," Gardner says. "Only 1 or 2 percent of cases actually go to trial. Most are either settled or dismissed on some motion."

Now that he has taught for 20 years, Gardner says, he is noticing a new set of challenges for today's law students. They involve both how to think and how to present a written argument.

"People are not usually trained or placed in an environment where they need to think systematically," he says. "People know what they think, but they do not always know why they think that." Again and again in *Legal Argument,* the author comes back to that question: What's the thinking behind the argument?

As well, he says, students often need help in using the most effective techniques for pressing a legal argument. And because human beings think in terms of stories, he says, a certain type of storytelling is the best way to make a case.

"When a lawyer presents a case," Gardner says, "he is trying to win an audience. The way people communicate is by telling stories. Even scientists tell stories when they are trying to communicate. It is all a matter of appealing effectively to the contextual expectations of your audience."

An effective lawyer, he says, will tell the narrative of the case clearly; have a beginning, middle and end to the story; introduce the characters before they speak; tell the tale in a transparent way; and command the attention of the audience. But the lawyer's technique is different from the novelist's; for example, Gardner says, a fiction writer sometimes withholds important information until the end, but that would be suicide for a lawyer. "The judge needs to be satisfied that the law has been complied with in every facet," he says. "If your story is opaque or misleading, you are only hurting your case."

The new edition of *Legal Argument* also includes an exhortation on professional behavior – necessary, Gardner says, in part because today's students have been raised on the anything-goes communications atmosphere of the Internet. "There is a certain informality that pervades communicative relations now," he says. "A lot of students come in not understanding that there are boundaries and that as a professional you need to develop a reputation for doing always excellent work. Part of the perception of excellence comes from being thorough, being timely, being concise.

"A lot of people think that being a good lawyer is about being brilliant. But being careful and workmanlike every day is really what it means to be a professional."

From the introduction to *Legal Argument*:

For students who feel confused by their legal education, the missing part often lies in the middle. These students can read and understand cases and statutes, and they can write up and defend sound legal arguments. The difficulty lies in producing the arguments. I can read and understand the cases, they say to themselves, and I would be delighted to write a brief making the best possible arguments, but what are those arguments? How do I identify them? How do I build an argument that is sound, and persuasive, and well-fortified against attack? Cases and statutes don't yield this information. Once you have assembled them, they just lie there, inertly, on the desk. How, the ambitious law student wants to know, do I make those little suckers stand up and dance?

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