

Reality Check: Sometimes There Are No Do-Overs
Today's Decisions Can Have Legal and Long-term Consequences

Opening Statements vs. Closing Arguments

Each party in a jury trial has a right to speak directly to jurors once before and once after the evidence is presented. Those two sets of remarks serve distinct purposes and are governed by different rules.

Opening Statement: The opening statement at the beginning of the trial is limited to outlining facts. This is each party's opportunity to set the basic scene for the jurors, introduce them to the core dispute(s) in the case, and provide a general road map of how the trial is expected to unfold. Absent strategic reasons not to do so, parties should lay out for the jurors who their witnesses are, how they are related to the parties and to each other, and what each is expected to say on the witness stand. Opening statements are sprinkled with phrases like, "Ms. Smith will testify under oath that she saw Mr. Johnson do X," and "The evidence will show that Defendant did not do Y." Although opening statements should be structured in as persuasive a manner as possible, they should not include arguments; that comes later.

Closing Argument: Only after the jury has seen and heard the factual evidence of the case are the parties allowed to try to persuade them about its overall significance. Closing arguments are each parties' principal opportunity to remind jurors about key evidence presented and to persuade them to adopt an interpretation favorable to their position. Parties at that point are free to use hypothetical analogies to make their points, to comment on which witnesses were or were not credible, to discuss how they believe the various pieces of the puzzle fit into a compelling whole, and to advocate why jurors should decide the case in their favor.

Key Difference: The critical difference between "Opening Statements" and "Closing Arguments" is that in the first, parties are restricted to "stating" the evidence ("Witness A will testify that Event X occurred"), while in the second, they are free to "argue" its merits ("As we know from Witness A's compelling testimony, Event X occurred, which clearly establishes who should be held responsible in this case."). It is not uncommon for people to refer mistakenly to "Opening Arguments" or "Closing Statements." But the truth is that trials contain neither.