

What to Expect At Oral Argument An Overview of the Process

Before Oral Argument: It is important to know that oral argument is only one part of what happens when a case is reviewed by the Supreme Court. When review is granted (e.g. when the Supreme Court decides to hear a case), all of the paper work in the case, the record (which includes a transcript of the trial or hearing, documents filed in the lower courts, and exhibits presented at trial) and the decisions of the lower courts, are transferred to the Clerk of the Supreme Court. The attorneys for all parties are asked to file “briefs,” that are actually many pages long. The briefs summarize the case, identify the issues which need to be decided and present the arguments of each side in detail.

After the briefs are filed, the court schedules the case for oral argument. Before argument, the justices read the briefs and do research on the issues presented. They may also read all or part of the record. Their goal is to know the case well and to identify any questions they want to ask the attorneys.

At Oral Argument: On the day of oral argument, it is usual for only attorneys to appear in court. Rarely do the parties come. No evidence will be taken, no witnesses called. Oral argument is a discussion of the legal issues raised by the case.

When the case is “called,” (stating the name of the case and its number), the attorneys will come forward and state their names and the parties they represent. Each side only has a set amount of time in which to argue, normally 30 minutes. The appellant (or petitioner) will begin, followed by the respondent, with a short rebuttal allowed for the appellant. Sometimes the attorneys will begin with a statement of the facts, but often, because the court already knows the facts, the argument will begin with a short summary of a party’s position, and then a justice will immediately jump in and ask a question of the attorney. Although this may appear rude, it is not. The lawyers all know the purpose of oral argument is to answer any questions the court might have after the justices have read the briefs and reviewed the record.

Sometimes the discussion will become heated. The justices may not all agree with one another. The issues may raise important considerations for society in general. The justices and the attorneys all know this is an important process and value a lively, intense exchange of ideas. The argument is taped so that the court can listen again if it thinks this is important.

At the end of oral argument, the court will normally declare the matter “submitted” which simply means the case is now ready for decision. Sometimes, the court may ask for additional briefing or ask the attorneys to provide some other information to the court for consideration. Once this information is filed, then the case will be submitted for decision.