

**Closing Arguments,
Post Trial Motions, and
Appeals**

**Huntsville/Madison County Bar
CLE**

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CLOSING ARGUMENTS

Do you have a theme?

Do you have a narrative?

What are you going to say?

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CLOSING ARGUMENTS

Empower your jury to vote their INDIVIDUAL conscience.

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CLOSING ARGUMENTS

The jury is the decider(s).

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CLOSING ARGUMENT

There's more than just arguing "NOT guilty."
How about lesser includeds?

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CLOSING ARGUMENTS

Kidnapping down to Unlawful imprisonment

Reckless Murder down to Manslaughter

Murder down to Negligent Homicide

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CLOSING ARGUMENTS

When to go for lesser included offenses?

When your client is culpable.

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CLOSING ARGUMENTS

Culpable vs guilty.

Culpable comes from Latin "culpa." It means client is *answerable*...

Culpable is client did *something*....

538

CLOSING ARGUMENTS

Client accidentally shoots and kills someone. Client admits it was an accident

Client is culpable. Answerable.

But what if client is charged with reckless murder?

539

CLOSING ARGUMENTS

You'd better be gunning for reckless manny or negligent homicide.
Or you can go for an up or down vote on reckless murder.
So, how you make your closing argument matters.

540

CLOSING ARGUMENTS

By now the jury better know who you are and like you.
By now the jury better be listening to you or you've
failed.

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CLOSING ARGUMENT

You've had an entire trial to gain credibility with the jury.
Did you equalize? Did you educate? Did you empower?

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CLOSING ARGUMENT

Equalize – Did you convince the jury see you as equal to the judge and the D.A.?
Educate – Did you explain to the jury their power and their options?
Empower – Did you empower each juror to stand by their verdict?

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CLOSING ARGUMENTS

Learn how to close by:

- 1) Watching good lawyers try cases.
- 2) Trying your cases. Nothing teaches you more than trying a case.

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CLOSING ARGUMENTS

Make sure DA doesn't make illegal comments.

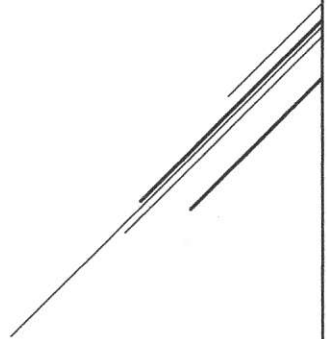
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CLOSING ARGUMENTS

Some DA s will make mistakes.

Some will cheat.

Be awake. Listen.



CLOSING ARGUMENTS

DA will restate her credibility speech.

"Everything I said I'd prove I proved..."

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CLOSING ARGUMENTS

Defendant's failure to testify is off limits.

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CLOSING ARGUMENTS

If DA makes improper comment....

OBJECT RIGHT THEN!

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HOW TO OBJECT DURING CLOSING.

Object. Ask to approach the bench.

State for the record what DA said.

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HOW TO OBJECT DURING CLOSING

(Reporters don't take down closings.)

Make sure you state what the DA said.

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HOW TO OBJECT DURING CLOSING

Then state your objection, the grounds
and ask for a ruling.

538

YOUR CLOSING ARGUMENT

Take your time.

Go through the entire voir dire/opening.

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YOUR CLOSING ARGUMENT

You must give closing argument. If you don't it's ineffective assistance of counsel.

Ex Parte Whited, 24 ALW 7-3 (Ala.Crim.Apps. 2015).

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YOUR CLOSING ARGUMENT

Presumption of innocence

Hypothesis for guilt vs. hypothesis for innocence

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YOUR CLOSING ARGUMENT

Reasonable doubt

The three verdicts – Guilty, innocent, no verdict

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YOUR CLOSING ARGUMENT

Empower the single juror to hang the jury.

Empower the jurors to be independent.

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YOUR CLOSING ARGUMENT

Explain dynamite charge.

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YOUR CLOSING ARGUMENT

Tell jury dynamite charge isn't a hint to change the juror's individual vote.

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YOUR CLOSING ARGUMENT

Then offer your counter-argument to the DA's assessment of the evidence.

546

YOUR CLOSING ARGUMENT

Final words: Ask the jury to find John
"innocent of the charge against him."

547

DON'T USE WORDS "NOT GUILTY."

Studies show the word "not" actually
enforces the word that follows it....

548

EXAMPLE OF "NOT" USAGE

"How is your lunch?"

"It's not bad."

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CHARGE CONFERENCE

Before the trial ends, the judge will hold a charge conference with the lawyers.

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CREATE YOUR OWN JURY CHARGES

Offer them and if the judge denies them,
object and preserve for appeal.

551

CHARGE TO JURY

Listen to every word the judge says.
Lawyers dozing off during charge to jury!

552

OBJECTIONS TO CHARGE TO JURY

After jury is charged, judge sends jury out and you must offer objections then.

553

OBJECTION TO JURY VERDICT FORM

Make sure jury has option to find client not guilty of each charge.

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THE JURY VERDICT FORM

Object if form says:

"Guilty of murder..."

"Guilty of manslaughter

"Not guilty."

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THE JURY VERDICT FORM SHOULD SAY

"Guilty of murder..."

"Not guilty."

"Guilty of manslaughter

"Not guilty."

556

THERE IS NO SET FORM IN ALABAMA.

Try to argue your way into getting the
fairest jury verdict form you can get.

557

THE JURY VERDICT FORM

Ask for "innocent" rather than "not guilty."
Judge will deny it, but you preserve it.

558

THE JURY VERDICT FORM

Who knows? The judge might agree with you.

559

"INNOCENT" VS. "NOT GUILTY"

One day I hope to change the way this is done to make the process fairer.

560

JUST REMEMBER:

It never hurts to ask. You might get it.

561

JURY BEGINS DELIBERATING.

Don't leave the courthouse.

Monitor the jury as they deliberate.

562

MONITOR THE JURY

Watch your judge.

Make sure he doesn't "visit" the jury.

563

MONITOR THE JURY

Some judges will seek to influence juries.

Rape case. Baldwin County.

564

IF JURY HAS A QUESTION

All parties and lawyers must be present.

Judge brings jury in. Reads question aloud.

565

IF JURY HAS A QUESTION

Make sure judge follows the law.

Some questions can't be answered.

566

IF JURY WANTS TO REHEAR TESTIMONY

Complete reading of all of witness' testimony.
No fragments.

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IF JURY HANGS...

Judge will give dynamite charge.
"Go back and work harder!"

568

DYNAMITE CHARGE

After dynamite charge, judge will ask for objections. Object. State grounds. Get ruling.

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DYNAMITE CHARGE

"You go back and reach a verdict!"
That's an improper directive.

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DYNAMITE CHARGE

Juries are not required to reach a verdict.

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GUILTY VERDICT MUST BE ALL 12

Guilty must be unanimous.

Ask the jury be polled on the record.

572

JURY MUST BE POLLED

Each juror is asked, "Is this your verdict?"

The answer must be, "Yes."

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JURY MUST BE POLLED

If a juror hesitates or says, "No."

LEAP TO YOUR FEET! OBJECT!

574

JURY MUST BE POLLED.

Ask to take the juror on voir dire.

Send the other jurors out.

575

JURY MUST BE POLLED

If juror admits it's not her verdict, or she
was coerced, MOVE FOR MISTRIAL!

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MOTION FOR MISTRIAL

Grounds: This is not this juror's verdict. She has been coerced into this verdict.

577

MOTION FOR MISTRIAL

Make sure the judge rules on the record.

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IF UNANIMOUS GUILTY VERDICT

Judge will declare client guilty.

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PRE-SENTENCE INVESTIGATION

Ask for one.

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SENTENCING BOND.

Client permitted to remain free.

581

SENTENCING

Bring witnesses to argue for leniency.

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SENTENCING

Make sure judge follows the law.

Many sentences have flaws in them.

583

APPEAL

This is a subject for another entire day.

If you preserved error at trial, you can win.

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APPEAL

Give notice of appeal within time frame.

42 days from sentencing.

585

APPEAL BOND

Clients with less than 20-year sentence
entitled to bond during appeal.

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