

# Making Your Closing Argument — Where Exactly is the Beef?

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Closing arguments are one of the most anticipated parts of any jury trial. They are the last opportunity for both sides to “make their case” before the jury begins its deliberations. Consequently, it’s important for the advocate to choose his or her words carefully for maximum impact.

In a recent IP trial we worked on together, the last 60 seconds or so of the closing argument for the defendant (our client) repeated a theme that had been initiated in jury selection a week earlier. This theme drew from the iconic 1984 ad campaign for Wendy’s. Oh, we bet you remember it. The three elderly women staring at an enormous hamburger bun containing a tiny sliver of meat, while one of them repeats, over and over, “Where’s the beef?”

It is sometimes challenging to articulate a simple but compelling theme in a case involving complex and unfamiliar technology. One familiar approach is to invest the jurors from the beginning in the burden of proof and its importance. It sounds trivial, in one sense. After all, isn’t the burden of proof the stuff of the most basic kind of trial advocacy? It is. Yet we’ve both found that its value as a defense argument is often overlooked as “too basic.” There is also a nagging concern that by focusing on the lack of proof, there will be the subtle suggestion created that the approach is more of a “technicality” and not “the truth.” Moreover, it’s more “exciting” and more dramatic advocacy to point to witnesses caught in inconsistencies or squirming over damaging emails.

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