


# **TRIALS, TRIBULATIONS AND TRAVAILS**

**STEVE MOONEY**  
**Weinberg Wheeler Hudgins Gunn & Dial**

Litigation Management in a NEW YORK Minute – 2008 Edition

 **WINTERS, WILLIAMS,  
HIRSMAN, GLASS & DELO, LLC**  
ATTORNEYS AT LAW

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## TRIALS, TRIBULATIONS AND TRAVAILS

A Serious and Humorous Review of Some of the Best (and Worst) Trial Strategies and Victories

By Stephen W. Mooney

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## SELECTING THE RIGHT CASE

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OPENING STATEMENTS:

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**WHAT DOES HOLLYWOOD  
TELL US?**

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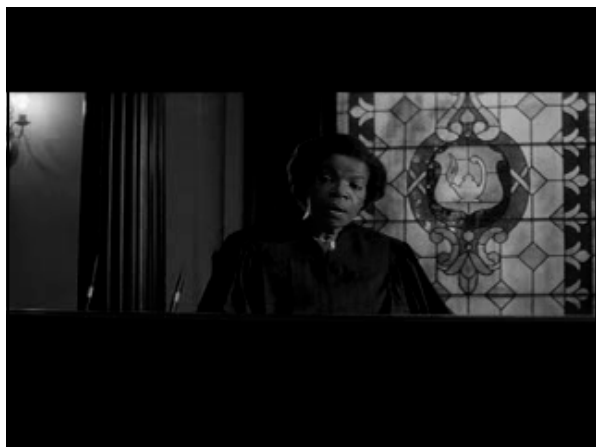
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**FAILING TO CONNECT  
WITH THE JURY**

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**Average Juror**  
*Watches Roseanne*  
*Reads the National Enquirer*

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**Younger Generation of Jurors  
Requires More  
Visual Stimulation**

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**Language Juror Understands**

*Red Herring*

*Foreperson*

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**Demonstrative Evidence  
Can Be Appropriate**

*But Don't Screw it Up!*

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**CROSS-EXAMINATION:  
Asking the Right Questions**

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**“How Far Can You See  
at Night in the Dark?”**

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**“How Far is the Moon?”  
“I Could See It.”**

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**CROSS-EXAMINATION:  
“Silence is Golden”**

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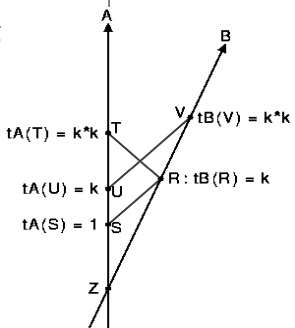
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**CLOSING ARGUMENT:**

**“The Lion That Got Away”**

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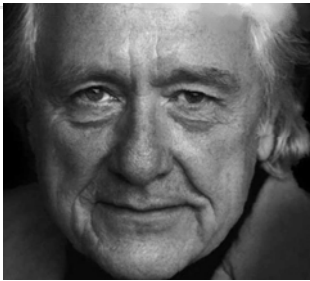
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**“If the Lion Gets Away,  
Kerr-McGee Has to Pay.”**

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**CLOSING ARGUMENT:  
Letting the Evidence  
Speak for Itself**

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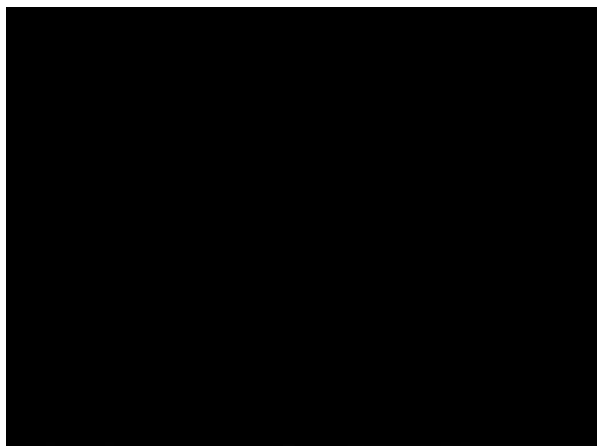
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**FAILING TO SELECT THE  
CORRECT LAWYER**

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**MR. "BARLADAHG"**

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**Kimzey v. \_\_\_\_\_ Stores, Inc.**

107 F.3d 568 (8th Cir. 1997)

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**Title VII Sexual Harassment Case:**

**Plaintiff was subjected to unwelcome sexual comments and advances.**

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**Verdict**

**\$35,000 compensatory damages**

**\$1 back pay**

**\$50,000,000 punitive damages**

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The district court found that the \$ 50,000,000 punitive damages awarded by the jury was excessive and theorized that "the disparity arose from the aggravating behavior of defense counsel at trial." <sup>2</sup> In reducing the [\*577] award to \$ 5,000,000 the district court considered management's participation in the harassing behavior, its failure to improve Kimzey's situation or to educate [\*\*24] supervisors about the "Civil Rights Act," and its attempt to punish Kimzey by forcing her to change jobs. The court found no mitigating factors.

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2 For example, the district court noted that defense counsel waved his middle finger in Kimzey's face and "rudely shouted" during cross-examination, "Ma'am, do you know that to most of us [this] means [f\*\*\*] you?"

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**Hire a  
(Network)  
Trial Lawyer**

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 **WEINBERG, WEISLER,  
HUDGINS, GUNN & DIAL, LLC**  
ATLANTA LAS VEGAS MIAMI

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*Thank You!*

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## **Steve Mooney**

404.832.9541  
smooney@wwhgd.com

Practice focuses on representation of employers in labor relations cases, including all aspects of equal employment law, National Labor Relations Board (NLRB) matters, development of employment policies and procedures, and executive compensation issues. Has served as lead counsel in a variety of civil trials, arbitrations and appeals nationwide; and, in particular, has served as lead counsel in more than 250 employment-related lawsuits. Has also represented clients in cases encompassing premises liability, catastrophic injury and commercial transactions.

### **Representative Cases/Experience**

- Successfully tried to verdict class-action lawsuit in Mississippi alleging claims of racial discrimination in hiring, promotion and termination.
- Successfully tried to verdict employment, commercial and personal injury lawsuits in Georgia, Tennessee and Florida.
- Successfully petitioned NLRB regarding the status of registered nurses as supervisors under National Labor Relations Act.
- Won seminal decision from the Georgia Court of Appeals involving libel and slander claims in the private sector.
- Has successfully obtained injunctions in both enforcing and prohibiting the enforcement of non-competition clauses in employment agreements.
- Successfully defended national pharmacy chain in wage-hour dispute concerning exemption of pharmacists from overtime compensation requirements under Fair Labor Standards Act.
- Awards & Professional Recognition
- Named an employment litigation “Super Lawyer” as published in Atlanta magazine and the inaugural issue of the Georgia Super Lawyers magazine.

### **Publications/Speeches**

- Frequent speaker at CLE seminars throughout the country on a variety of legal topics, including union avoidance, employment litigation, and the use of demonstrative evidence at trial.
- Has authored several publications and been a contributing editor to the Personnel Law Manual published by the Georgia Chamber of Commerce, and is a contributing author to Labor Relations for Georgia Employers.
- Author, “Annual Eleventh Circuit Survey: Labor Law,” Mercer University Law Review

