U.S. District Judge Jerry Buchmeyer, who took senior status five years ago, is retiring. President Jimmy Carter appointed Judge Buchmeyer to the bench in 1979, when he was practicing with Thompson & Knight and serving as president of the Dallas Bar Association. As DBA president, Buchmeyer initiated a series of *et cetera* columns for DBA publications.

In 1980, the *Texas Bar Journal* started publishing *et cetera*, which has remained one of the first columns Texas lawyers turn to when they receive the magazine each month. In 2003, Judge Buchmeyer started a blog, *Say What?! Classic Humor from U.S. District Judge Jerry Buchmeyer*, which is available at [www.texasbar.com/saywhat](http://www.texasbar.com/saywhat). He even recorded a podcast, which you can find linked to at that site.

To commemorate Judge Buchmeyer’s years of service to the legal profession and congratulate him on his retirement, the *Texas Bar Journal* is pleased to reprint the very first *et cetera* column he contributed to the magazine, which appeared in the October 1980 issue.

To read more columns by Judge Buchmeyer, visit the *Say What?!* blog or the *Texas Bar Journal* website, [www.texasbar.com/tbj](http://www.texasbar.com/tbj), where you can access a complete, searchable archive of the magazine dating to 1938.

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**ETC.**

*By Judge Jerry Buchmeyer*

*Texas Bar Journal*

October 1980

Nostalgia, as Peter De Vries observed, “ain’t what it used to be.”

Nevertheless, whatever happened to the glorious plans we once made, the dreams which would surely come true when we were just a little older? Yes, yesterday Plans like learning jiu jitsu (“It’ll be quite a while before those three try to knife anyone in the back again.”) ... inventing a formula for becoming invisible (“He meddled with things that man is not meant to know.”) ... learning to tap dance like Fred Astaire (“Remember this step, Ginger?”) ... hitting the crucial home run in the World Series (“Okay, send in the rookie. He’s our only chance.”) ... finishing the Charles Atlas course (“Which one of you ruffians just addressed this lady?”). What *did* happen to those dreams? Well, I know now what happened to one — being the greatest superhero of them all, the world’s mightiest mortal: *Captain Marvel*. How many times did I shout *Shazam!* and, with crippled Billy Batson, await the mighty bolt of lightning, the deafening peal of thunder. But, before that dream came true, Captain Marvel simply disappeared from the comic books. His tragic destruction, I have learned, was accomplished by some
arch-villain — not by Dr. Sivana, or even by Mr. Mind — but by an Unholy Trio: Louis Nizer (renowned attorney), Judge Learned Hand (pre-eminent jurist), and Superman (man of steel).

The gory details: Superman (published by Detective Comics) hired Louis Nizer to file a copyright infringement suit against Captain Marvel (Fawcett Publications). Nizer called supposedly “expert” witnesses to establish the violation. Captain Marvel’s attorneys struck back (ZAP! ZAM!! ZOWIE!!!) with evidence to show that whatever Superman had done before Captain Marvel, Popeye (as well as Doc Savage, Ulysses and Gilgamesh) had done before Superman. Nevertheless, Justice Learned Hand — in a poorly reasoned opinion (which ignored the critical distinction between the two superheroes: the humor in Captain Marvel, as he blundered through his adventures) — held that the Superman “copyright” had been infringed:

“... indeed it takes scarcely more than a glance at corresponding ‘strips’ of ‘Superman’ and ‘Captain Marvel’ to assure the observer that the plagiarism was deliberate and unabashed.”


Holey Moley! The case was remanded (198 F.2d 927). But certainly Captain Marvel had overcome greater odds than this. See, e.g., “Captain Marvel and the Monster Society of Evil,” Captain Marvel Adventures (Feb. 1943-May 1945). Nevertheless, Fawcett Publications, faced with rising costs and the declining comic book market, decided to abandon its entire, then-flourishing line of comics. Fawcett settled, agreeing to suppress and never revive Captain Marvel.

A dream of yesteryear — ended by Fawcett’s infamous decision to enter into a wretched settlement and to get out of the Hero Business. But still, it took Louis Nizer and Learned Hand, as well as Superman, to stop you, Captain Marvel. And we did miss you ... you “Big Red Cheese.”

Hon. Jerry Buchmeyer

1. The plaintiff obviously respected the prowess of Captain Marvel, since Nizer had not been retained to handle an earlier copyright infringement suit in which Superman totally destroyed Wonder-man.”

Detective Comics v. Bruns Publications, 111 F.2d 432 (2d Cir. 1940).

2. Without disparaging their testimony, I must note that neither me nor my brother — quite properly renowned as the Captain Marvel experts in the greater Overton-Arp-Pinner's Junction metropolis — were called as witnesses.


4. After what happened to Captain Marvel, no copyright notice for this column should be necessary. But if one is, be forewarned (as in “Tool Shed,” by Jan Adkins, Walker Publishing) that the Dallas Bar Foundation has gone to “considerable difficulty and expense to assemble a staff of necromancers, sorcerers, chamans, conjurers, and lawyers to visit nettlesome and mystifying discomforts on any ninny who endeavours to reproduce or transmit this [column] in any form, or by any means, electronic or mechanical, including information storage and retrieval systems, without permission from the publisher. Watch yourself.”

EDITOR’S NOTE: During 1979, a series of “Et Cetera” columns by Judge Buchmeyer was published in the Dallas Bar Association’s weekly Newsletter and monthly Headnotes. A collection was published by the Dallas Bar Association.