



They Lost That Loving Feeling

BY JERRY BUCHMEYER

THIS MONTH'S TITLE CONTRIBUTION is from **Don Swaim** of Irving. The others are from Dallas (**Laura Beshara**), Lubbock (**Robert N. Nebb**), Wichita Falls (**John Brooks**) — and, direct from Little Rock, Ark., a special return appearance by **Judge Vic Fleming**.

PEANUTS ARE A DIFFERENT DEAL

From **Robert N. Nebb** of Lubbock (Robert practices with **Michael H. Carper**), this excerpt from a deposition taken in a case pending before **U.S. District Judge Sam Cummings**, in which the complaint alleged that the construction of a natural gas pipeline caused damage to the plaintiff's cotton and bean crops. The witness is a "crop consultant" expert hired by the plaintiff's attorneys.

Q. And is there — just like with cotton, is there a faster growing variety of peanuts?

A. Yeah, but I don't know if they replanted their peanuts. I don't know, I can't recall. They did hire me to check their — you know, to consult on their peanuts. *Peanuts are a different deal.*

Q. How so? *How are they different?*

A. Well, you wear cotton. You eat peanuts.

Robert adds: "Following this answer, the room erupted in laughter for a number of minutes, after which all attorneys suggested the Q & A be excerpted for *et cetera*."

TELLING IT LIKE IT IS

From **Laura Beshara** of Dallas, this excerpt from the brief filed by opposing

counsel in an appeal in a case that Laura and her co-counsel **Mike Daniel** have in my court:

The Dallas City Council required that certain professionals serve on the Urban Rehabilitation Standards Board to provide some expertise to the Board as a whole. The Council requires that an architect, home builder, structural engineer, mortgage banker, social worker and realtor with at least 10 years' experience in their field serve on the board. ... The City Council does not, however, require that the Board be composed of lawyers trained and skilled *In the finer nuisances* of constitutional law.

VIC FLEMING RETURNS

Victor A. ("Vic") Fleming of Little Rock is a friend and a kindred spirit in the field of legal humor. We have swapped material for a number of years — and Vic returns to *et cetera* with two contributions.

The first is from a domestic abuse hearing that took place before **Judge Ellen Brantley** in the Chancery Court for the 6th Judicial District of Arkansas.

Q. Please tell the judge why you felt it necessary to strike your wife.

A. I needed her to turn loose of me.

She grabbed my *by the utensils*.

Vic adds (unfortunately): "No truth to the rumor that the complainant stood up at that point and yelled, "*Fork you.*"

Vic is also a municipal judge for the Second Division in Little Rock. This excerpt is from a plea and arraign-

ment in one of Vic's cases in July of this year.

Q. The charge is failure to yield. How do you plead?

A. Judge, I'm 80 years old and have driven over 1 million miles without a ticket.

Q. Well, I can give you what we call a "pass to be dismissed" if you don't get another ticket for six months. Or you may plead not guilty and go to trial.

A. I'm not guilty, so I'll take the trial. (A few minutes later, the same defendant was back in front of the court.)

Defendant: It's me again, judge.

Judge Fleming (knowing the defendant had changed his mind): You? Again? Every 80 years you come in here and every 80 years you can't make up your mind. (Pregnant pause, with lots of laughter from the defendant and the courtroom.) You'd like to have the pass, wouldn't you?

A. Yes, your Honor. I drove 20,000 miles a year for over 50 years and never got a ticket.

Judge Fleming: By golly, that's over one million miles. You do another million and then come back to see me.

A. Thanks, judge.

Judge Fleming: Thank you.

Vic has written a legal humor column for years, and he has also published two marvelous (!) books: "*Real Lawyers Do Change Their Briefs*," with a foreword by some former Arkansas governor and his wife, Hillary; and "*Perry's Dead!*"

(And the 'Juice' Is Loose)," with a foreword by some federal judge in Dallas.

THEY REALLY SAY THAT?

From a federal court criminal trial in Dallas:

Mr. Hunter: Your Honor, I understand that our witness had gone to the parking lot to retrieve his glasses. So I understand we're going to be penalized for it, but that's what we're waiting for. And I apologize to the court. I'll take a voluntary five minutes *if people are wanting to go to the bathroom on me.*

The Court: *On you?*

Mr. Held: *I don't think I'll touch that.*

From a civil case I tried a couple of months ago:

Q. Are you related to the plaintiff?

A. Yes, I'm his mother.

Q. And I assume you have been his mother all of *your* life.

Q. Was the plaintiff upset when you arrested him?

A. He was very upset, but *in a relaxed sort of way.*

I'M NOT STUPID ANYMORE, BUT ...

From **John Brooks** of Wichita Falls (Brooks, Campbell & Grubbs), this excerpt from the deposition of an engineer who was serving as an expert in a residential foundation design and construction case.

Q. When you need to hire a lawyer, who do you call?

A. Myself.

Q. Are you a lawyer?

A. No, but I practice as a *pro se.*

Q. *Have you ever hired a lawyer, sir?*

A. *Yeah, when I was stupid, I hired a lawyer, I'm not stupid anymore.*

THEY LOST THAT LOVING FEELING

From **Don Swaim** of Irving (Kern & Wooley) this marvelous (!) opinion by **U.S. District Judge Terry R. Means** of Fort Worth in a case that "involved the Anheuser-Busch blimp that flew over the plaintiff's ostrich farm," allegedly causing the ostriches to stop breeding. In granting Don's motion for

summary judgment, Judge Means wisely opined:

Plaintiffs further allege that the [loud noise and frightening appearance of the blimp's] fly-over so scared the [ostriches] that they ceased exhibiting the amorous behavior associated with the onset of the breeding season. The males did not puff themselves up and strut around the pens, announcing their romantic intentions; the hens did not extend their wings and drop, fluttering, to the ground, as they had only one day before the fly-over. Plaintiffs allege that the birds' apparent lack of interest in procreation for the remainder of the 1992 breeding season was caused by their unnerving experience with the airship. In 1993, however, the birds' courtship resumed....

Although Defendants' counsel *laid an egg* by overlooking the offspring recovery issue, this Court *will not bury its head in the sand* and ignore clear Texas precedent. Plaintiffs simply cannot recover the value of the offspring they estimate would have been produced but for the airship invading their ostriches' conjugal nest at the height of breeding season

Plaintiffs have failed to show the existence of a material factual dispute regarding whether Defendants' actions caused a physical injury to the birds resulting in a decline in their market value. For such an injury, damages could be recovered. Plaintiffs' only proof of injury to the birds, however, is that *they lost that loving feeling* during the remainder of the 1992 breeding season. Texas courts have not seen fit, however, to fashion a remedy for such harm, and *this Court is not free to hatch one.* ...

It is, therefore, ORDERED that the Defendants' March 3, 1994 motion for summary judgment should be and is hereby GRANTED.

Contributions to *et cetera* should be mailed to:
Chief Judge Jerry Buchmeyer,
U.S. District Court
Northern District of Texas
1100 Commerce St., 15th Floor
Dallas, Texas 75242

ADVERTISERS INDEX

Abacus Data Systems, Inc.	735
Robert B. Alexander, Inc.	756
Allied Rehabilitation and Therapy Services.....	801
Attorneys Insurance Marketplace.....	772
Automated Legal Systems, Inc.....	813
Avis Rent A Car Systems, Inc.....	805
Matthew Bender.....	794, 795, 797, 799, 825
Best Case Solutions.....	847
Blake & Blake.....	755
Blumberg Excelsior.....	810
Capitol Services, Inc.....	IBC
Dick Cummings & Associates.....	846
Daniels-Head Insurance Agency, Inc.....	IFC
Dragon Systems, Inc.....	791
Empire Corporate Kit of America, Inc.....	747
Esquire Deposition Services.....	793
First Indemnity Insurance Agency of Texas, Inc.....	860
GeneScreen.....	750
John Gladney.....	788
Global Tracing Services, Inc.....	833
Gold Lantern Publications.....	838
Government Liaison Services, Inc.....	847
Individual Career Solutions of Texas, Inc.....	801
Insurance Law Section.....	785
International Genealogical Search, Inc.....	759
Jurisco of Texas, Inc.....	826
Keeling Law Firm.....	789
Lawyer's Aid Service, Inc.....	753
Lawyers Research, Inc.....	841
Legal Directories Publishing Co., Inc.....	850
Legal-Ease.....	759
Lerner, Dr. Steven E. & Associates.....	853
Lexis Law Publishing.....	821
Lexis-Nexis MVP.....	769
Lexis-Nexis.....	761, 828
Lione & Lee, P.C.....	787
Martindale-Hubbell.....	796
Medical Experts, LLC.....	806
National Legal Research Group, Inc.....	806
National Mediation Academy, Inc.....	814
Noteboom and Gray.....	778
Wayne H. Paris.....	789
Physicians for Quality.....	854
San Antonio Court Reporting.....	748
Security Trust Company.....	804
SmartLine.....	827
Specialization, Texas Board of Legal.....	856
State Bar of Texas Institute Schedule.....	786
State Bar of Texas Insurance Trust.....	764
State Bar of Texas PDP.....	816
Stewart Title Guaranty Co.....	738
Texas Association of Legal Secretaries.....	809
(TCBT) Chase Bank of Texas, N.A.....	835
Texas Corporation Supplies, Inc.....	743
Texas Lawyers Insurance Exchange.....	859
United Consultants Trust.....	763
Update Legal/Update Staffing Services.....	802
US Tax Marketing Corp.....	819
The Wallace Law Registry.....	831
West Group.....	736-737, 775, 82, BC
Zunker, Butler, Estes & Crane, L.L.P.....	790