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Book Review [Habeas Codfish: Reflections on Food and the Law]

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BOOK REVIEW

SOMETHING TO CHEW ON: A REFLECTIVE SURVEY OF FOOD AND THE LAW, AND A PLEASANT DIVERSION

Habeas Codfish: Reflections on Food and the Law by Barry M. Levenson. Madison, Wisconsin: The University of Wisconsin Press, 2001. Pp. 263. Hard Cover. \$24.95

*Reviewed by N. Maxwell Cooper**

I. INTRODUCTION

According to its author, Barry M. Levenson, "*Habeas Codfish* began as an act of desperation, a rescue from a boredom only lawyers can understand."¹ Fortunately for readers, his mini-treatise on food and the law is swift and refreshing. It provides a rescue from lawyers' boredom for many who, while admittedly bored, are still too lazy to write their own book.

Habeas Codfish is not solely for lawyers, however. It reads like that best sort of inside joke: if one is outside, one sees some humor and chuckles; if one is inside, one laughs hard, early, and often, frustrating and confusing those outsiders.

If not the title itself, a glance at the table of contents² re-

* Third-year law student. Some thanks go to Samuel J. Connell for still being around after so many years without thanks. Other thanks go to Boris H. Lebowksi—perhaps an even better film critic, but still a fine help during editing. More thanks go to Travis Krepelka and the *Santa Clara Law Review*. Final thanks go to Barry M. Levenson, for writing a book that was worth reading.

1. BARRY M. LEVENSON, *HABEAS CODFISH* xi (The University of Wisconsin Press, 2001). "No matter how you slice it, public utility law is tedious, grim, and lifeless." *Id.* No doubt many attorneys would use the same words to describe their own work.

2. *Id.* at vii-viii.

veals that *Habeas Codfish* will not be the average focus-specific, dull rehashing of comprehensive legal research. With literary intellectual elitism rampant in American academia, Levenson should be congratulated initially for being that most deviant of modern writers: a title-er. But his chapter titles are not simple summaries. Instead, they are tongue-in-cheek puns such as "Assault with a Breadly Weapon," "Ladle and Slander," and "Cruel and Unusual Condiments."³

This levity represents one thing: Levenson, an attorney himself,⁴ is willing to have some fun at the expense of lawyers and the law, a pastime most frequently reserved for average comics. Levenson claims to think of himself as a "recovering lawyer."⁵ There is a seriousness there, just under the surface, that is one of the most arresting aspects of this book. As he steers away from posturing and legalese, Levenson tries to remind readers to lighten up, to tear our noses from our grindstones, and to try not to let our profession or our legal system leave a bitter taste in our mouths.

This review seeks to demonstrate and explain Levenson's process of reminding lawyers to lighten up.

II. OVERVIEW

According to Levenson, we expect four qualities in our food.⁶ These are, in ultimate order of importance: that our food does not harm us, that it is honest (i.e., we actually get what we pay for), that it is nutritious, and finally, that it is tasty.⁷ *Habeas Codfish* is structured to address these concerns; specifically, how we turn to the law to protect us from our food when these principles are violated.

The United States Supreme Court is our highest judicial authority, with power vested by the Constitution.⁸ The Supreme Court has resolved numerous landmark cases involv-

3. *Id.*

4. Levenson practiced law for the Wisconsin Public Services Commission. *Id.* at xi. He has argued in front of the Supreme Court and won. *See Griffin v. Wisconsin*, 483 U.S. 868 (1987). Levenson no longer practices law. LEVENSON, *supra* note 1, at xvii.

5. LEVENSON, *supra* note 1, at xvi.

6. *Id.* at 14.

7. *Id.* at 14-15.

8. "The judicial Power of the United States, shall be vested in one supreme Court . . ." U.S. CONST. art. III, § 1.

ing important issues such as judicial review,⁹ slavery and citizenship,¹⁰ freedom of employment,¹¹ segregation,¹² freedom of speech,¹³ interracial marriage,¹⁴ the privilege against self-incrimination,¹⁵ a woman's right to choose,¹⁶ affirmative action,¹⁷ copyright and fair use,¹⁸ homosexuality,¹⁹ and elections.²⁰ The Supreme Court's most famous (or notorious, as the case may be) decisions provide an illustrious and well-storied outline of our nation's history.

In 1893, the Supreme Court decided another important issue—whether a tomato is a fruit or a vegetable.²¹ The Court found that “[b]otanically speaking, tomatoes are the fruit of a vine But in the common language of the people, whether sellers or consumers of provisions, all these are vegetables which are grown in kitchen gardens”²² They are usually served “at dinner in, with or after the soup, fish or meats . . . and not, like fruits generally, as dessert.”²³

Habeas Codfish is replete with such information, and it serves Levenson's purpose well. Within these anecdotes are sound principles of law,²⁴ which are couched in language and

9. *Marbury v. Madison*, 5 U.S. 137 (1803).

10. *Scott v. Sandford*, 60 U.S. 393 (1857). *See also Prigg v. Pennsylvania*, 41 U.S. 536 (1842).

11. *Slaughter-House Cases*, 83 U.S. 36 (1873).

12. *Plessy v. Ferguson*, 163 U.S. 537 (1896). *See also Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Milliken v. Bradley*, 418 U.S. 717 (1974).

13. *Schenk v. United States*, 249 U.S. 47 (1919). *See also New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Texas v. Johnson*, 491 U.S. 397 (1989).

14. *Loving v. Virginia*, 388 U.S. 1 (1967).

15. *Miranda v. Arizona*, 384 U.S. 436 (1966).

16. *Roe v. Wade*, 410 U.S. 113 (1973).

17. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

18. *Sony Corp. v. Universal City Studios*, 464 U.S. 417 (1984). *See also Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994); *Eldred v. Ashcroft*, 537 U.S. 186 (2003).

19. *Lawrence v. Texas*, 539 U.S. 558 (2003). *See also Bowers v. Hardwick*, 478 U.S. 16 (1986); *Romer v. Evans*, 517 U.S. 620 (1996); *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000).

20. *Bush v. Gore*, 531 U.S. 98 (2000).

21. *Nix v. Hedden*, 149 U.S. 304 (1893). “The single question in this case is whether tomatoes . . . are to be classed as ‘vegetables’ or as ‘fruit’” *Id.* at 306.

22. *Id.* at 307.

23. *Id.*

24. For example, in *Nix*, the Supreme Court was actually addressing the tomato issue in relation to the Tariff Act of 1883. *Id.* at 306.

context that make for much smoother reading than the average compendium of torts, contracts, or property cases. For example, a banana peel on a grocer's floor is not per se negligence.²⁵ There must be "substantial proof" that the grocer knew or should have known of the banana peel's presence.²⁶ This exemplifies one of the most fundamental standards in tort law: whether the "reasonable man" knew or should have known.

Another example of Levenson's use of obscure or amusing case law to illustrate legal principles is the California Supreme Court's decision that take-out sandwiches and hot dogs are not meals.²⁷ The state sought to collect a sales tax on these items as "meals," but the court ruled this taxation impermissible.²⁸ The court did not believe that a meal is served when the server "merely prepares a sandwich for consumption, wraps it in a paper napkin and hands it to a purchaser without offering any facilities for its consumption on the premises, and with the intention that it be consumed elsewhere."²⁹

Levenson's early focus on such cases and their relevance to important legal principles is well-calculated, for several reasons. First, he draws his readers into the book quickly, in small, manageable steps. Some may disagree (many among them lawyers and law students), but ultimately, books should be readable. As the eminently quotable Oscar Wilde said, "[b]ooks are well written or badly written."³⁰ Levenson's is a well-written book, in a field of badly written ones.

Second, because readers are busy enjoying the read, *Ha-beas Codfish* manages to instruct and inform without reading

25. See *Kroger Grocery & Baking Co. v. Dempsey*, 143 S.W.2d 564 (Ark. 1940).

26. *Id.* at 566.

27. See *Treasure Island Catering Co. v. State Bd. of Equalization*, 120 P.2d 1 (Cal. 1941). The question of what was or was not a "meal" was important at this time under section 5(e) of the Retail Sales Act (Stats. 1933, p. 2599, as amended). *Id.* at 3.

28. *Id.* at 5.

29. *Id.*

30. OSCAR WILDE, *THE PICTURE OF DORIAN GRAY*, preface (Barnes & Noble Books 2003) (1891). English journalist and economist Walter Bagehot opined, "[t]he reason why so few good books are written is that so few people who can write know anything." The Quotations Page, available at <http://www.quotationspage.com/search.php3?Search=books&Author=&page=1> (last visited Jan. 8, 2005) (on file with the *Santa Clara Law Review*).

like a textbook. It will broaden the scope of legal knowledge of absolutely anyone: from the most skilled attorney through the first-year law student, and on to laypersons who (for inexplicable reasons) are drawn to the Law section of their local bookstores. The book covers a wide range of legal issues,³¹ providing background and insight into each, using food as the unifying thread.

III. A PANOPLY OF TOPICS

In the first chapter, Levenson presents the “Magna Carta or Holy Grail in the field of food law”³²—King John’s “Assize of Bread.”³³ The Assize of Bread, enacted in 1202, addressed the pervasive problem of bakers adulterating loaves of bread with stones, dirt, ground peas, beans, etc., to maximize their profits at the expense of the consumers’ health.³⁴ Bakers who violated the law were put into the pillory with a portion of the adulterated dough hung from their necks.³⁵

Levenson uses the Assize of Bread, an archaic and somewhat humorous law placing bakers in stocks for public scorn, to transition into the more serious, prevalent, and continual problem of food adulteration. Levenson asks, “[i]s there another species on the planet that would knowingly harm the food supply of its own kind? It is a sad commentary on our own selves that we need laws to protect our food supply from our own greed.”³⁶

Food adulteration is something of which everyone is

31. Levenson discusses issues across the spectrum of the American legal minefield, including, among others, historical American food policy, health regulation, copyright law, libel, tort law, trademark, the prison system, food-borne diseases, and contract law. *See generally* LEVENSON, *supra* note 1.

32. *Id.* at 13.

33. *Id.* The fewer legitimate baking ingredients the bakers could use in each loaf of bread, the more bread they could make. Similarly, bakers would give consumers who ordered a dozen rolls only eleven, giving rise to the term “baker’s dozen.” *Id.*

34. *Id.* *See also* Jean Lyons & Martha Rumore, *Food Labeling—Then and Now*, 2 J. PHARMACY & L. 171, 171 (1994).

35. Lyons & Rumore, *supra* note 34, at 171 (citing HARRY E. NEAL, *THE PROTECTORS—THE STORY OF THE FOOD AND DRUG ADMINISTRATION* 12 (1970)). It is not entirely clear what this punishment entailed. It certainly involved being placed in the pillory. However, Neal’s account involves dough hung from the neck, while Levenson says that guilty bakers were placed in the pillory “with the offending loaf burned in front of their noses.” LEVENSON, *supra* note 1, at 13.

36. LEVENSON, *supra* note 1, at 15-16.

aware. Urban legends describing the horrors of the rat in the fried chicken, the human secretions in just about anything, the proverbial fly in the soup, abound.³⁷ It is a serious problem the fast-food consuming public cannot address without the aid of the legal system.³⁸ Levenson details American efforts to federally legislate food safety, triggered by an unlikely catalyst: Upton Sinclair's *The Jungle*.³⁹ *The Jungle* is credited with motivating Congress to pass and President Theodore Roosevelt to sign the Federal Meat Inspection Act⁴⁰ and the Federal Pure Food and Drugs Act,⁴¹ the first federal food safety laws.⁴² The Meat Inspection Act required federal inspectors to examine slaughtered carcasses before they entered interstate commerce.⁴³ The Pure Food and Drugs Act penalized false or misleading labels on all drugs or articles of food,⁴⁴ requiring manufacturers to truthfully brand and label their food products.⁴⁵ The failure to do so was a misdemeanor.⁴⁶

Levenson's discussion progresses from these earliest protective measures into various state schemes to protect the eating public from its food.⁴⁷ He spends some time discussing

37. These fears are echoed throughout our popular culture. In only its third episode, for example, the popular NBC situation comedy "Friends" featured a subplot where one of the characters discovers a human thumb in a soda can. See Friends-TV, at <http://www.friends-tv.org/zz103.html> (last visited Jan. 8, 2005). For other urban legends about horrors in our food, see also <http://www.snopes.com/horrors/food/kfc.htm> (last visited Jan. 8, 2005).

38. The law is needed because "[a] loaf of bread does not know if it has been adulterated and cannot be dissuaded from harming its customers by threat of a penalty. A sirloin roast cannot form what the law calls 'criminal intent.' A cup of coffee cannot be 'negligent.'" LEVENSON, *supra* note 1, at 15.

39. UPTON SINCLAIR, *THE JUNGLE* (Urbana: Univ. of Ill. Press 1988) (1906).

40. Federal Meat Inspection Act, Pub. L. No. 59-242, 34 Stat. 1260 (1907).

41. Pure Food and Drugs Act, ch. 3915, § 8, 34 Stat. 768 (1906) (repealed 1938).

42. LEVENSON, *supra* note 1, at 22. "If Harriet Beecher Stowe can be blamed for the Civil War, then Upton Sinclair must be blamed for the entirety of the government's interdiction into American meat quality regulation during the twentieth century." Roger Roots, *A Muckraker's Aftermath: The Jungle of Meat-Packing Regulation After a Century*, 27 WM. MITCHELL L. REV. 2413, 2413 (2001).

43. Roots, *supra* note 42, at 2413 n.3.

44. See generally Robert L. Rabin, *Federal Regulation in Historical Perspective*, 38 STAN. L. REV. 1189 (1986).

45. Roots, *supra* note 42, at 2413 n.3.

46. *Id.*

47. See LEVENSON, *supra* note 1, at 23-26.

Supreme Beef,⁴⁸ in which a meat processor sued the U.S. Department of Agriculture (“USDA”) for allegedly exceeding its authority under the Meat Inspection Act when it used *Salmonella* tests to evaluate compliance with performance standards.⁴⁹ The court found in the meat processor’s favor, noting that the point was not whether *Salmonella* and other pathogens were desirable or acceptable in meat, but simply that the USDA exceeded its authority granted by Congress.⁵⁰

After addressing issues of federal regulation and interstate commerce, Levenson, as he does throughout *Habeas Codfish*, demonstrates a solid knack for timing, an often overlooked and underestimated skill. Not an author to bore his readers, he closes his chapter quickly with an anecdote and moves forward.⁵¹ This ability to close and change subjects smoothly is one of Levenson’s more admirable qualities as a writer. He seems to know that recreational reading may be a largely lost pastime in the legal community, especially when said reading is on the law. Throughout the book, one can perceive Levenson’s conscious restraint from allowing his background in the law and legal writing to take over. The subjects he deals with are important, but he understands that reading about them must not necessarily feel like time spent at the office or in the library. Levenson allows reading about the law to still feel like reading, a remarkable feat.

After instructing his readers on the origins of federal regulation of food health and safety standards, Levenson presents in chapter four⁵² a quick course in false advertising and the Lanham Act.⁵³ His vehicle for this discussion is, of course,

48. *Supreme Beef Processors, Inc. v. U.S. Dept. of Agric.*, 113 F. Supp. 2d 1048 (N.D. Tex., 2000).

49. *Id.*

50. *Id.* at 1055. Levenson notes, “[i]f this strikes you as nonsensical, you are not alone. The government announced its intention to appeal.” LEVENSON, *supra* note 1, at 28.

51. Here, Levenson relates his own “venture into the world of meat safety,” and his struggle to find the perfect rare hamburger. LEVENSON, *supra* note 1, at 31. Ultimately, despite his knowledge of the inherent risks of rare meat, he determined that “[s]tomach and head will just have to learn to live with the conflict. And the law be damned.” *Id.*

52. “Food Fight: A Tale of Two Pizzas.” LEVENSON, *supra* note 1, at 56.

53. The Lanham Trademark Act, 15 U.S.C. § 1125(a) (2000). The Act provides for a civil action against anyone using words, names, symbols, etc., in commerce, which is false or misleading, or likely to cause confusion or mistake as to the origins of the word, name, or symbol. *Id.*

a food case, and one that should be familiar to most: *Pizza Hut v. Papa John's*.⁵⁴ Pizza Hut took exception to Papa John's "Better Ingredients. Better Pizza." ad campaign, which included direct attacks against Pizza Hut's methods of preparing tomato sauce and dough, implying that Papa John's preparations resulted in a "better pizza."⁵⁵ The legal basis of Pizza Hut's claim was false advertising under the Lanham Act.⁵⁶ The Fifth Circuit Court of Appeals held that (1) Papa John's slogan was not objectionable on its face, and (2) even when taken in connection with Papa John's ad campaign focusing on dough and sauce quality, Pizza Hut failed to produce evidence proving that consumers' decisions were affected by Papa John's advertisements.⁵⁷ Levenson's review of this case provides instruction regarding the Lanham Act, "puffery,"⁵⁸ and the various methods large pizza conglomerates use to make their doughs and sauces.⁵⁹

In the same arena of business competition, Levenson also devotes one chapter of *Habeas Codfish* to "The Legacy of Mr. Peanut."⁶⁰ The famous *Planters Nut*⁶¹ case allows him to present a capsule discussion on trademark law⁶² and its meteoric

54. 227 F.3d 489 (5th Cir. 2000).

55. *Id.* at 491. Anyone who has been near a Papa John's or turned on his or her television recently will know the outcome of this case, as Papa John's is still using its slogan. See, e.g., Papa John's Pizza, at <http://www.papajohns.com/> (last visited Jan. 8, 2005).

56. *Pizza Hut*, 227 F.3d at 494.

57. *Id.* at 491.

58. Puffery means exaggerated advertising, blustering and boasting upon which no reasonable buyer would rely . . . The slogan "better ingredients, better pizza" is typical puffery, held the appellate court . . . In short, the court of appeals ruled that Pizza Hut failed to prove that America's pizza eaters were so stupid as to be taken in by the Papa John's slogan.

LEVENSON, *supra* note 1, at 62 (internal quotations omitted).

59. *Id.* at 60-63. He concludes the chapter with his own recipe for the "world's best pizza." *Id.* at 65-67:

60. *Id.* at 105.

61. *Planters Nut & Chocolate Co. v. Crown Nut Co., Inc.*, 305 F.2d 916 (C.C.P.A. 1962).

62. The term "trademark" is defined by the United States Code as including: [A]ny word, name, symbol, or device, or any combination thereof—(1) used by a person, or (2) which a person has a bona fide intention to use in commerce . . . to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

11 U.S.C. § 1127 (2000).

rise to importance in the food industry, and most others, over the latter half of the twentieth century. Every area of law has at least one landmark case and Levenson claims that in trademark law, it involved Mr. Peanut.⁶³ The Crown Nut Company tried to register its own humanized peanut mascot with the U.S. Patent Office, to which Planters Nut & Chocolate Co. ("Planters") quite naturally objected in an effort to protect its mascot, Mr. Peanut.⁶⁴ The U.S. Court of Customs and Patent Appeals found in favor of Planters,⁶⁵ although the opinion included questionable logic. Crown Nut Co. argued that the humanized peanuts at issue were clearly different from one another because Crown Nut Co.'s wore a crown while Planters' Mr. Peanut wore a top hat.⁶⁶ The court, however, ruled against Crown Nut Co., reasoning that, "[i]t would not be at all improbable that he [Mr. Peanut] should appear adorned with a crown. It is such a reasonable probability that makes confusion . . . likely."⁶⁷ This is an unusual factor upon which to hinge a decision, because it suggests that the newcomer in a trademark claim may not register its mark if the original trademark owner might reasonably change its own mark to more closely resemble the newcomer's.⁶⁸

The importance of *Planters Nut & Chocolate Co.* in the context of *Habeas Codfish* is the offhand skill with which Levenson explains trademark law, albeit in a cursory manner. He does so in a clear and understandable fashion, in plain language, just as he does with numerous other legal issues throughout his book.

There is a surprising wealth of legal information presented in the relatively few pages of Levenson's book. The author's language is consistently precise and straightforward. *Habeas Codfish* is packed from beginning to end with cases, statutes, regulations, doctrine, policy, and analysis; yet, it never loses its overall readability. This may be the most important aspect of the book; it demonstrates that legal writing

63. Mr. Peanut is the well-known monocled, top-hatted, dapper mascot of Planters Nut & Chocolate Co.

64. *Planters Nut*, 305 F.2d at 917-18.

65. *Id.* at 925.

66. *Id.* at 919-20.

67. *Id.*

68. Levenson was also surprised by this focus. "[T]he court might as well have said that even though the two are quite different, Mr. Peanut might change into something closer to the imposter." LEVENSON, *supra* note 1, at 109.

need not be dry to be concise and informative. Nor does it need to be verbose to be fluid and well-written. A balance exists, and Levenson strikes it. Writers of legal briefs, memoranda, and pleadings should take note.

Somewhere in the middle of *Habeas Codfish*, between Pizza Hut and Papa John's, McDonald's coffee, Mr. Peanut, and New England fish chowder, Levenson's readers find that they are thoroughly enjoying themselves. Some do because they love reading about the misfortunes of others (burned laps, fish bones in throats, and many other food mishaps Levenson discusses), and others because they realize that *Habeas Codfish* is about more than surveying court cases involving food. As we learn more about Americans' conflicted relationship with food—we want it different, edgy, and new all the time, but we also do not want it to hurt us or we will sue for millions of dollars—we learn more and more about ourselves. If we did not already know, we are a nation of hungry, lazy, not-terribly-intelligent people. It is all there in this book. We foolishly injure ourselves, frequently with fast food, and then we attempt to use our injuries to sue for enough money that we never have to work again. Then, if we never worked again, we would have more time to consume products that hurt us. Levenson never directly says this. He does not have to.

Midway through *Habeas Codfish*, Levenson shifts gears to focus on fact patterns that are, for many, more interesting—those involving injury and civil suits. Americans love to see people get hurt.⁶⁹ Although the most outrageous and egregious cases in the food realm are probably the most fun, Levenson wisely skirts past them early on. He summarizes:

Pieces of glass, metal washers, worms, needles, and the like have all been found in food and, more often than not, they have provided the basis for successful lawsuits Those are easy cases and we are hardly surprised to learn that Plaintiffs come out on top. What about the tough cases, where the offending objects might not seem so outrageous?⁷⁰

Most lawyers and law students remember the case of

69. Take, for example, television shows like "America's Funniest Home Videos" or "Fear Factor," the popularity of 1978's "Faces of Death" (although largely staged, its success still speaks volumes), or the "Darwin Awards."

70. LEVENSON, *supra* note 1, at 89.

Priscilla Webster and the fish bone that became lodged in her throat.⁷¹ After settling for fish chowder because the Blue Ship Tea Room was out of clam chowder, Ms. Webster, after three or four spoonfuls, felt something catch in her throat.⁷² The item, of course, was a fish bone, and two esophagoscopies later, Ms. Webster was left with injuries the court called, in classic legal double-negative speech, “not insubstantial.”⁷³ The court found no breach of implied warranty, however, remarking, “It is not too much to say that a person sitting down in New England to consume a good New England fish chowder embarks on a gustatory adventure which may entail the removal of some fish bones from his bowl as he proceeds.”⁷⁴ The court’s decision produces a kind of *caveat emptor*⁷⁵ for food patrons, placing the burden to take care upon the eater, not the chef. Levenson points out that, for all its “precious language and quirky style . . . legal scholars have never been able to pinpoint the precise theoretical basis for the court’s decision.”⁷⁶

Even more widely known is Stella Liebeck’s hot cup of McDonald’s coffee.⁷⁷ Ms. Liebeck, then seventy-nine years old, purchased the infamous cup of coffee at a McDonald’s drive-through, pulled her vehicle over to the side of the road to add cream and sugar, put the coffee cup between her legs, and spilled it.⁷⁸ She sustained second- and third-degree burns to her thighs and required skin grafts.⁷⁹ Ms. Liebeck was awarded \$160,000 in compensatory damages and \$2.7 million in punitive damages.⁸⁰

71. Webster v. Blue Ship Tea Room, Inc., 198 N.E.2d 309 (Mass. 1964).

72. *Id.* at 310.

73. *Id.*

74. *Id.* at 312. Perhaps Ms. Webster would have had a better chance of recovery had she embarked on this gustatory adventure of New England fish chowder consumption in, say, Omaha.

75. Latin for “let the buyer beware.” BLACK’S LAW DICTIONARY 1622 (Deluxe 7th ed. 1999).

76. LEVENSON, *supra* note 1, at 104.

77. Liebeck v. McDonald’s Restaurants, P.T.S., Inc., No. CV-93-02419, 1995 WL 360309 (D.N.M., Aug. 18, 1994).

78. LEVENSON, *supra* note 1, at 84.

79. *Id.* at 68.

80. Liebeck, 1995 WL 360309. The Liebeck case sparked national publicity, even resulting in the “Stella Awards,” described as “Opportunists and Self-Described Victims vs. Any Available Deep Pockets and the U.S. Justice System.” See Stella Awards, at <http://www.stellaawards.com/> (last visited Jan. 8, 2005) (on file with the *Santa Clara Law Review*). The name Stella Award has

Levenson enjoys telling us about them as much as we enjoy reading about these tales. A man bites into a slice of pie and breaks his tooth on a nail.⁸¹ A man feels ill after taking a plug of his favorite chewing tobacco, and a few chews later, he discovers in the tobacco a human toe in a state of putrefaction.⁸² A man wins a box of chocolates in a game of Bingo, bites into one, and encounters a silver filling not his own.⁸³ A woman takes a bite of a ham-and-cheese sandwich to find it literally crawling with cheese-worms, or maggots.⁸⁴

The list of cases seems endless. After some time, one is sickened enough to consider never eating again. Does Levenson include this litany of stomach-turning incidents in *Habeas Codfish* for shock value? Maybe a little, but he begins the several chapters on injuries sustained from objects found in food with this snapshot overview because stylistically it keeps him within his structure. Recall his list of the four things we desire from our food.⁸⁵ At the top of that list is for our food to not harm us. By describing a series of sometimes gruesome cases, Levenson makes sure that his readers are paying attention; he appeals to a common fear that keeps many people nibbling and examining their food very closely.

Spending only a paragraph or two on each case is another technique Levenson employs throughout the book. He understands that he will lose his readers' interest if he bores them. This does not mean that he writes only to please; Levenson

become synonymous with "any wild, outrageous, or ridiculous lawsuits." *Id.* Levenson, at one point, refers to "the great American pastime of suing the pants off anyone who walks down the street." LEVENSON, *supra* note 1, at 220.

81. *Conn. Pie Co. v. Lynch*, 57 F.2d 447 (D.C. Cir. 1932). The court held that the pie manufacturer was not liable to the dealer's customers because of the lack of privity. *Id.* at 448.

82. *Pillars v. R.J. Reynolds Tobacco Co.*, 78 So. 365 (Miss. 1918). "Tobacco," the court said, "may be relatively harmless, but decaying flesh, we are advised, develops poisonous ptomaines, which are certainly dangerous and often fatal. Anything taken into the mouth there to be masticated should be free of those elements which may endanger the life or health of the user." *Id.* at 366. "We can imagine no reason why, with ordinary care, human toes could not be left out of chewing tobacco, and if toes are found in chewing tobacco, it seems to us that somebody has been very careless." *Id.*

83. *Bagre v. Daggett Chocolate Co.*, 13 A.2d 757 (Conn. 1940). The breaking of Mr. Bagre's tooth killed a nerve, which caused an abscess, which resulted in the necessity of the tooth's extraction. *Id.* at 758.

84. *Klein v. Duchess Sandwich Co.*, 14 Cal.2d 272 (Cal. 1939).

85. That it be harmless, honest, nutritious, and tasty. LEVENSON, *supra* note 1, at 14-15.

has a message and he intends to convey it.

As Levenson nears the end of *Habeas Codfish*, he includes a chapter on food in prison, which focuses on last meals before execution and on legal regulation of prisoners' daily meals.⁸⁶ This is the most delicate of ventures. Levenson seeks to wrap up a book that has been, on the whole, less than heavy. He has dealt with numerous topics important to many, as well as many other topics important to lawyers. But he has done so, for the most part, with tongue in cheek.

A last meal request, and how and whether that request is honored, is not light material and there should be no attempt to make it so. Because the rest of the book has been lighter, and perhaps for fear that his time spent on this topic would be subsumed into the tone of the greater whole, Levenson chooses to touch very briefly and pointedly on prisoners' last meals. This discussion reads as if it was written separately and simply inserted in the appropriate place. Even if not in keeping with the flow of the book, this was an intentional technique. Separating the tone from the rest of the book separates the subject matter as well. This stylistic change impliedly asserts that while Levenson may be prone to too many food puns, he will not unsympathetically include the last meal issue with the rest he has discussed. Every other legal issue and/or regulation in this book ultimately reflects poorly and somewhat humorously on the government, the producer or dealer of food, or the consumer. Readers are happy to point and laugh at any of those. Not so for men requesting their last meal. Levenson, thankfully, knows and respects this difference. "This may seem trivial to some, but when the law takes the life of a man, his last meal is no trivial matter to him."⁸⁷

IV. AN IMPERFECT CONCOCTION

Habeas Codfish is not perfect. It is, by Levenson's own admission, incomplete.⁸⁸ It is also limited in scope; its focus is

86. "Cruel and Unusual Condiments: Food in Prison." *Id.* at 199.

87. LEVENSON, *supra* note 1, at 231.

88. *Habeas Codfish* is not the complete and definitive work on food and the law. You may wonder why I have omitted certain topics, such as the federal milk price support programs and various tax and tariff issues. The lawyer in me would say to you, 'Go write your own book!' The human being in me says, 'I apologize; there

primarily the United States, while food law issues are international in origin and modern scope.⁸⁹ Other than the Assize of Bread and a handful of early anecdotal cases,⁹⁰ Levenson pays no real attention to international scope. However, it is not the position of a critic or reviewer to question the selective choices of an author of a survey regarding, at least, his selection. Decisions of what to leave in and what to leave out can be second-guessed, but nothing constructive results therefrom. One can only analyze with authority what the author puts between the book's covers.

In his preface, Levenson promises to try to avoid legalese, "the perversions of the English language . . . that have made the legal profession seem so arrogant."⁹¹ He is largely successful in this endeavor. Certainly, there are no glaring passages full of heretofores or therefroms. However, this conscious aversion from legalese at some levels cheapens the work. Levenson is dealing with legal issues. He is writing about federal regulations, statutes, common law, and public policy. Certain legal discussions actually require more effort and verbiage to explain at a lay level than they would with so-called "legalese." The danger of Levenson's "stripped-of-legalese" approach is that, as it finds a wider audience, his writing itself will find wider criticism. Once Levenson removes himself, or attempts to, from being dismissed as more legalese, he sets for himself a higher bar of actual writing ability. With that in mind, his writing does not always meet such a standard. It is frequently repetitive, and at times one feels as though he is trying too hard to play the storyteller. At the same time, it is more endearing than if *Habeas Codfish* were the typical, prosaic, legal writing.

is just so much that can go into this first attempt at looking at food and the law.'

Id. at xvi. Levenson also notes that he did not address organic food labeling, genetically modified foods, or mad cow disease, either, although they are each huge topics, worthy of whole books unto themselves. *Id.* at 235-37. This review is incomplete in the same way as Levenson's book. The simple fact is, a writer will and must choose what to cover. Levenson covered much that I have not discussed: regulation of margarine vs. butter, rare beef, labeling, trade dress, protection of recipes, libel and slander, kosher food law, and more.

89. *Id.*

90. *Id.* at 3-6.

91. *Id.* at xvii.

V. CONCLUSION

First, the recommendations: whether or not *Habeas Codfish* is for any given reader depends on that reader's motives in browsing the shelves at his or her bookstore. If that reader is an attorney or a law student looking for a read that is within the legal field, yet not so tedious as to be nearly deadly, then Levenson's work comes highly recommended. It is informative, it is insightful, and it never forgets that, in the end, the law is not the end-all or be-all. If that reader's field of knowledge or interest is unrelated to the law, then he or she should promptly exit the Law section and head for Literature. If he or she insists on reading something about the law, read Kafka's *The Trial*,⁹² Mailer's *The Executioner's Song*,⁹³ Dostoevsky's *Crime and Punishment*,⁹⁴ or any number of other books that are more than worthwhile and may well be mandatory. Ultimately, *Habeas Codfish* is best suited for lawyers and law students. They are the readers who will understand the jokes. They can empathize. They are the ones who understand what Levenson means when he says his "brain was approaching a state of irreversible lethargy"⁹⁵

Levenson wrote *Habeas Codfish* to lead by example. He ultimately seeks one thing, and one thing only: to demonstrate that there is more to life than the law. Rather than succumb to life as a lawyer, Levenson opened the Mount Horeb Mustard Museum and Gourmet Foods Emporium.⁹⁶ As he admonishes in his book, "[d]o your very best to stay in the dining room and out of the courtroom."⁹⁷ This is the real lesson of *Habeas Codfish*. It is one that is easily spoken, and

92. FRANZ KAFKA, *THE TRIAL* (Willa Muir & Edwin Muir trans., A.A. Knopf 1946) (1925).

93. NORMAN MAILER, *THE EXECUTIONER'S SONG* (Little, Brown 1979).

94. FYODOR DOSTOYEVSKY, *CRIME AND PUNISHMENT* (Constance Garnett trans. Carlton House 1950 (1866)).

95. LEVENSON, *supra* note 1, at xi. This was while Levenson worked for the Wisconsin Public Service Commission. He describes sitting in the law library, "researching some obscure and remote point of administrative procedure (designed, no doubt, to cloud some greater issue)," and realizing first that his brain was reaching this terminal lethargy, and second, that he was hungry. *Id.*

96. See <http://www.mustardmuseum.com/> (last visited Jan. 8, 2005). Levenson's self-dubbed "America's Favorite Condiment Museum & Gourmet Foods Emporium" offers over 800 different kinds of mustards, sauces, and gourmet food gift box collection, as well as news and events, Mt. Horeb area attractions, recipes, and gift ideas. *Id.*

97. LEVENSON, *supra* note 1, at xvii.

sadly often easily forgotten.