HABEAS LIBRIS:
FOR BOOKS IN NEED OF A REPRIEVE

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George Mason University
Legal Studies Research Paper Series
LS 15-03

This paper is available on the Social Science Research Network at ssrn.com/abstract=2633510
An introduction to

HABEAS LIBRIS

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by Ross E. Davies

presented to the
American Association of Law Librarians
at its annual meeting in Philadelphia
July 21, 2015
This is pamphlet number ____________________

At your table, the holder of the pamphlet with the lowest number may remove the table number sign and take it to the bobblehead table at the back of the room to redeem it for a Justice Stephen G. Breyer bobblehead at the end of the event.
Thank you very much for giving me the chance to speak today. I promise to keep it short.

Permit me to begin with a short statement of my bona fides. I will offer just one proof. In 2001, I received the “Library User of the Year” award from the Shea & Gardner library staff. The presentation was made by the perpetually extraordinary Judith Leon, then head of the library at Shea, and now Manager of Research and Library Services at Goodwin Procter. I have my trophy — an ice cream scoop — here with me today. It is one of my most treasured possessions — one of the few items about which I have left specific instructions for my heirs. I could pile it on, but I won’t, because an endorsement of that sort from a librarian of that caliber, combined with my diligent care for that with which I was entrusted by a librarian, is surely sufficient evidence of my love of libraries and librarians.

† Professor of law, George Mason University; editor, The Green Bag. Copyright © 2015 Ross E. Davies. The original presentation of this paper included illustrations by Debbie Shrager that were used with her permission and my thanks but not appear here. Thanks also to Cattleya Concepcion and Melanie Knapp for their helpful comments.

1 For example, when I was young I was a Boy Scout. In order to earn my “Eagle” badge (this would have been in 1976), I had to complete a substantial public service project. My project was setting up a children’s section in my local public library — the Lyndhurst branch of the Cuyahoga County Public Library system in Cleveland, Ohio. It worked out well enough that I ended up as an employee of the library, working after school and on Saturdays for most of my high school years. It is and probably always will be the coolest job of my life. For another example, my Mom has an MLS from Drexel University here in Philadelphia and was for many years a reference librarian at the Upper Moreland Public Library in Willow Grove, Pennsylvania — just a few miles north of where we sit today. Enough. If all that does not convince you, then I am not up to the task.
And it is about a related object of affection, one that I expect we all care for, that I would like to talk today: the book. The old-fashioned and not-so-old-fashioned ink-on-paper kind of book. I have come, however, neither to bury ink-on-paper books nor to praise them. I am here, instead, just to offer what I would like to think is a workable suggestion about one way to support book-loving librarians and their loved ones in this time of much dramatic re-ordering of priorities and facilities, and much less re-shelving of books.

I will begin with what I hope is a fair-minded summary of the not-entirely-hopeless but not-entirely-promising corner into which law librarians have been painted — not by themselves but by circumstance — on the matter of the disposition of surplus books.

The situation as I understand it — and I admit that I am an under-informed outsider to this business — is that a combination of forces relating to budgets, physical space, technology, and consumer demand are driving librarians to make hard choices about their collections: What to get, what to keep, and what to get rid of. And one of the most important and truly unavoidable choices being made by most if not all librarians is to significantly reduce the size of ink-on-paper book collections. Naturally, that means getting rid of books, lots and lots of books. And pretty much everyone is making this choice and acting on it at pretty much the same time.

Which means that books aren’t trickling out of a few libraries; they are gushing out of many libraries. There is, then, a glut of used law library books, all looking for homes now. And there will be many more books of that sort in the near future.

Finding homes for all those books is proving difficult. Librarians, being the resourceful characters they are, appear to be making the best of the situation. I have heard of some impressively creative uses to which even the most seemingly hopeless books have been put.

Consider, for example, the project undertaken by Susanna Leers, Pat Roncevich, and Sallie Smith of the Barco Law Library at the University of Pittsburgh. They provided the Pittsburgh Public Theater with enough case reporters — books that were, as they ever so gently put it, “destined for the dumpster” — to create a 20-by-24-foot bookshelf backdrop for a production of “Freud’s Last Session” in 2012. They nicely described their satisfaction with this unusual undertaking in an article in the AALL Spectrum:
As lawyers and law students increasingly turn to online resources, it’s reassuring to know that law books, such as our discarded case reporters, may pursue other career paths besides legal research.

Their article also includes a good summary of other creative “functional” and “ornament[al]” uses to which law books have been put by artists and other clever people. My guess is that many of you have stories to tell about creative repurposing of otherwise doomed books.

There are also the book resellers, some of whom seem quite noble. Consider, for example, Better World Books. Here is how they summarize their processes for acquiring and selling books received from libraries:

**How It Works**

This no-cost program is simple and straightforward. You gather and box your surplus materials, and Better World Books coordinates and pays for items to be shipped to our warehouse in Mishawaka, Indiana for sale. Items are sorted and scanned, and each saleable item is listed on 50+ marketplaces. Better World Books handles all aspects of inventorying, marketing, selling and shipping these materials, and you receive a payment from each sale.

And what happens to the books they do not sell?

We never, ever, ever throw away a book. Ever! Any book we can’t find a proper home for is recycled.

It seems like an all-around excellent organization, easy (and perhaps even profitable) to work with. I think I would like dealing with them, if I were a librarian with books I had to get rid of.

A closer look, however, reveals that even a successful and appealing reseller like Better World is unlikely to be of much use in the circumstances confronted by many law librarians. Having heard about “how it works” at Better World, now listen to some excerpts from the company’s list of the kinds of books that it does not even accept, let alone try to sell:

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• Annuals and Yearbooks
• Books Published by Magazines
• Case Law and Procedural Books
• Dated Reference Material (over 5 years old)
• Journals and Periodicals
• Microfilm and Microfiche
• Tax and Government Documents or Forms

It sounds a bit like a summary inventory of the books your average law library is trying to find homes for, doesn’t it? It’s as if Better World Books saw law librarians coming and sought to warn them off up front. This might be a reasonable position to take from a business standpoint, but it does leave law librarians, and their surplus law books, out in the cold.

And then there is that most conventional and historically useful outlet: other libraries. My impression is that you librarians are energetic and resourceful communicators among yourselves — via personal and professional networks, supplemented in recent decades by listservs and other web-based vehicles — and that any number of books find new homes that way. In light of modern pressures on law libraries and the glut of surplus law books, it may well be that nowadays your listservs are filled with offers of books that are doomed to never be accepted. But even now they are also peppered with messages like this one, which my colleague Melanie Knapp recently shared with me:

Hello! I hope everyone is enjoying this wonderful weather! I am looking to buy (or take off[!] your hands) a US Code set. We are looking to buy one for our library and thought I would find out if any libraries may be getting rid of a set this summer. If so, can you contact me off the list?

I’ll wager this person was indeed contacted offline, and that a set of the US Code is being put to good use.

But there are, of course and alas, only so many theater stages to be dressed, only so many retailers willing to accept books for resale (and even they are only willing to take on the very books that are easiest to find new

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5 Email from Melanie Knapp to Ross Davies, June 26, 2015 (forwarding posting to DC-area law librarians’ listserv).
homes for), and only so many needy law librarians seeking cast-offs on listservs. And how must the books themselves feel (treating them for the moment as anthropomorphic creatures)? They probably feel that the listservs and other outlets are a kind of desperate game of musical shelves in which the lucky books attract the attention of a kindly librarian and land safely in a new stack, while the unlucky ones left standing are turned over to the Grim Reaper of books, who is waiting at the edge of the circle of shelves to haul them off to the dumpster and thence to the twin graveyards of unwanted books — the landfill and the pulper. A law book that is removed from a library shelf and placed in an archive box (or perhaps a 10 ream box — surely a bad sign) is on a bibliographical death row, just waiting its turn on that last, hopeless ride in the dumpster. Its only hope is to be speedily claimed by an interested librarian or artist or reseller. A genuinely sad scene.

Those books should get another chance, if a chance can be found.

Which brings me to my suggestion: Law librarians might be able to make good use of a cheap and easy extension of the listserv. That is, a tool librarians can use to:

6 An aside: There are good reasons — at least three of them — to make light of the idea that librarians should not only operate their libraries, but also market and sell their surplus books and then use the proceeds to balance their own budgets, all at the same time:

One: Retail sales is a difficult business (so is wholesaling), and doing it right is a full-time job for experts in the field. Librarians already have full-time jobs, and their expertise tends to lie elsewhere.

Two: For many institutions, selling is not an option. Sometimes because a public institution (for example, a state university) is forbidden, or at least tightly constrained, by laws governing the selling of state property. Sometimes a private entity that is in a service-oriented business (for example, a law firm) does not want to wade into a product-oriented business in which it has no expertise. After all, prudent enterprises, like prudent people, focus on doing what they do well or can do well.

Three, and perhaps most tellingly: Look at the example of Better World Books, which is expert in selling books and which will, quite reasonably, only attempt to sell what it judges to be reasonably saleable.

7 Cf. Michael Silver, 10 ream box, URBAN DICTIONARY (Dec. 14, 2005), www.urbandictionary.com/define.php?term=10+ream+box (“top definition”: “v. To fire someone. Companies typically buy paper in a 10 ream box (each ream of paper holds 500 sheets). When someone is fired or let go, they are often given a 10 ream box to pack their stuff in. Larry got 10 ream boxed this morning. We sure are going to miss him around here.”).
(a) let interested parties know about the availability of their surplus books; and

(b) do so without having to follow anyone else’s rules about the terms on which those books are available (no eBay, no PayPal, no Better World Books, no etc.).

It is that simple. And it is, indeed, simple to do.

Here is the plan. The Green Bag, a small publishing enterprise that I head, has just launched a new website. Its title is the same as the title of this talk: “Habeas Libris.” Its web address is www.habeaslibris.com. There isn’t much there yet, but I hope there will be soon. The website is there to do what I just described. Here is a summary of how it will work:

How It Works

This no-cost program — it’s not quite no-cost, because you must do the work of giving information to the Green Bag and then dealing with people who are interested in your books, and the Green Bag must do the work of maintaining the Habeas Libris website — is simple and straightforward (it really is). You send the Green Bag two things: (1) a list, in pdf or Word, of books you want to dispose of and (2) a pdf or Word document with the terms on which you are willing to dispose of them. The Green Bag posts the documents, as soon as it reasonably can, next to your library’s name in the list of libraries on the Habeas Libris website. You can send the Green Bag updates whenever you like and we will post them. Anyone can visit the website and poke around on it in search of books, and anyone can reach out to you based on what they find in your book list and in your rules. That is all.

To get a sense of what we aspire to, take a look at the beautifully simple, easy-to-understand, and easy-to-use finding aids page maintained by the Manuscript Division of the Library of Congress:

8 The Green Bag’s products include a quarterly law journal called “The Green Bag,” an occasional law journal called “The Journal of Law,” an annual “Almanac & Reader” that honors and promotes good legal writing, and various books and works of art and odds and ends, See www.greenbag.org.

9 Or go to the Green Bag’s website at www.greenbag.org and click on the blue “Habeas Libris” button.

The Habeas Libris website will, however, start out as an even simpler setup. We will not provide tools for searching the site as a whole, nor will we provide links for communicating with libraries directly from the site, nor will we provide even a FAQ page (after all, each library is in charge of its own terms of engagement, and so the answers to FAQs will vary from library to library). All of that and other things may well change over time, but for now the idea is to make Habeas Libris cheap and simple and easy to
use and maintain, and therefore more likely to be actually used and actually maintained. Here is what the website looks like now:

*Habeas Libris*

*Books on Death Row, Ready to Be Reprieved*

Please click on the links below to see each library’s latest book list and rules for redemption.

- Hypothetical Library A — [book list](#) • [rules of redemption](#)
- Hypothetical Library B — [book list](#) • [rules of redemption](#)

For a discursive statement of the thinking behind this website, please click here.

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If we are useful and fortunate, there will soon be a long list of non-hypothetical libraries for interested people to scroll through.

In addition, I must confess that there is another reason for this simplicity at the start: We at the Green Bag are not librarians, so we really do not know what we are doing. We just know that we would like to help these books find homes. By making the Habeas Libris website simple now, we leave ourselves maximum room for easy maneuvering in the future as we hear from librarians about how to make this idea work better.¹¹

For now, Habeas Libris will simply give librarians a place to share news about their books that are on a bibliographical death row, and give the world — the interested part of it — one last chance to grant those books a reprieve.¹²

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¹¹ We are also trying to keep quality control simple by only allowing librarians who are members of the AALL to submit lists and rules for posting.

¹² Another aside: It is true that there are alternatives to triage of the sorts I focus on here. Once in a while, for example, people with substantial wealth or good connections to it will — quite admirably — spend money and otherwise exert themselves to preserve rare
At the very least, librarians who list their last-gasp books on Habeas Libris will be able to sleep a little easier at night, knowing that they gave those books a chance to survive and serve more readers.