

OPENING REMARKS

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# HABEAS LIBRIS

## FOR BOOKS IN NEED OF A REPRIEVE

Ross E. Davies<sup>†</sup>

**H**abeas Libris is a website ([www.habeaslibris.com](http://www.habeaslibris.com)) dedicated to the salvation of books – old-fashioned, ink-on-paper books. The thinking behind the website is based on four simple observations about law libraries and law librarians: (1) they are reducing their print collections; (2) they are having a hard time finding buyers – or even takers – for the books they cannot keep; (3) they would rather give away than throw away their unwanted and unmarketable books; and (4) they lack a truly cheap and easy way to offer their unmarketable books to anyone who might want them. Habeas Libris aspires to be that cheap and easy way for law libraries to give away those surplus books.

In addition, in this time of much re-ordering of priorities and re-tasking of facilities, and not so much re-shelving of books, Habeas Libris also aspires to provide book-loving librarians some small consolation that they have done everything they reasonably can before they consign any books to the dumpster – including offering their surplus books to the whole web-connected world for free.<sup>1</sup>

This article briefly puts the current circumstances of surplus law books in context, and then explains how Habeas Libris works.

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<sup>1</sup> *Cf.*, e.g., Ira Brad Matestky, *The Adventure of the New York World*, in 2015 GREEN BAG ALM. 465; NICHOLSON BAKER, DOUBLE FOLD: LIBRARIES AND THE ASSAULT ON PAPER (2001; 1st Vintage Books ed. 2002); *but see*, e.g., RICHARD J. COX, VANDALS IN THE STACKS? A RESPONSE TO NICHOLSON BAKER'S ASSAULT ON LIBRARIES (2002).

## BOOKS ON THE WAY OUT

Law librarians have been painted – not by themselves but by circumstance – into a not-entirely-promising but not-entirely-hopeless corner on the matter of the disposition of surplus books.

In short, a combination of forces relating to budgets, physical space, technology, accreditation and other forms of regulation, and consumer demand are driving law librarians to make hard choices about their collections: What to get, what to keep, and what to get rid of.<sup>2</sup> Reasonable minds differ about causes and effects and long-term consequences, but all agree that for most libraries, one of the most important and unavoidable short-term consequences is significant reductions in the size of ink-on-paper book collections.<sup>3</sup> Naturally, that means getting rid of books, lots and lots of books. Pretty much everyone is engaged in this process, making many of the same choices and acting on them at pretty much the same time. Which means that books are not trickling out of a few libraries. They are gushing out of many.

There is, then, a glut of used law books, all looking for homes now. And there will be many more books of that sort in the near future.

This is not to say that the law book is dead. Indeed, a recent exchange between professor Stephen Bainbridge and library director Kevin Gerson (both of the UCLA School of Law) neatly illustrates (in admirably measured terms and tone) important distinctions between collection reduction and collection usage. Law books are obviously, visibly pouring out of law libraries, but many remain, and remain valuable resources for students, practitioners, and scholars.<sup>4</sup> Our concern here, however, is with those

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<sup>2</sup> See, e.g., Michael Whiteman, *Book Burning in the Twenty-First Century: ABA Standard 606 and the Future of Academic Law Libraries as the Smoke Clears*, 106 LAW LIBRARY J. 11 (2014); Taylor Fitchett, James Hambleton, Penny Hazelton, Anne Klinefelter, and Judith Wright, *Law Library Budgets in Hard Times*, 103 LAW LIBRARY J. 91 (2011).

<sup>3</sup> Compare, e.g., James G. Milles, *Legal Education in Crisis, and Why Law Libraries are Doomed*, 106 LAW LIBRARY J. 507 (2014), with Kenneth J. Hirsh, *Like Mark Twain: The Death of Academic Law Libraries Is an Exaggeration*, 106 LAW LIBRARY J. 521 (2014).

<sup>4</sup> See *Why is W&L increasing its law library budget while cutting everything else?*, PROFESSORBAINBRIDGE.COM, [www.professorbainbridge.com/professorbainbridge.com/2015/02/why-is-wl-increasing-its-law-library-budget-while-cutting-everything-else.html](http://www.professorbainbridge.com/professorbainbridge.com/2015/02/why-is-wl-increasing-its-law-library-budget-while-cutting-everything-else.html) (Feb. 19, 2015, vis. July 19, 2015); *My law librarian responds in defense of the book*, PROFESSORBAINBRIDGE.COM, [www.professorbainbridge.com/professorbainbridge.com/2015/02/my-law-librarian-responds-in-defense-of-the-book.html](http://www.professorbainbridge.com/professorbainbridge.com/2015/02/my-law-librarian-responds-in-defense-of-the-book.html) (Feb. 26, 2015, vis. July 19, 2015); see also, e.g., Joseph D. Lawson, *What About the Majority? Considering the*

books that do not make the cut in the flux through which law libraries are now moving.

## BOOKS WITH NEW PURPOSES

Finding homes for all those surplus books is proving difficult. Supply has so far exceeded demand that some libraries have taken to putting books out with the garbage.<sup>5</sup> Librarians, however, being the resourceful characters they tend to be, appear to be making the best of the situation wherever they can.

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 described the satisfying conclusion to this unusual undertaking in an article in *Spectrum*, an official publication of the American Association of Law Libraries:

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.<sup>6</sup>

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*Legal Research Practices of Solo and Small Firm Attorneys*, 106 LAW LIBRARY J. 377 (2014).

<sup>5</sup> See, e.g., David W. Dunlap, *So Little Paper to Chase in a Law Firm’s New Library*, N.Y. TIMES, Oct. 22, 2014, [www.nytimes.com/2014/10/23/nyregion/so-little-paper-to-chase-in-a-law-firms-new-library.html?\\_r=0](http://www.nytimes.com/2014/10/23/nyregion/so-little-paper-to-chase-in-a-law-firms-new-library.html?_r=0) (vis. June 6, 2015) (“Nearly 95 percent of a library that numbered tens of thousands of volumes was discarded. Outdated books were recycled. Updated books were donated.”); Emmy Erbes, *Thormodsgard trashes thousands of books: Law library ignites controversy after discarding old books for unclear reasons*, [University of North Dakota] DAKOTA STUDENT, [dakotastudent.com/3288/news/thormodsgard-trashes-thousands-of-books/](http://dakotastudent.com/3288/news/thormodsgard-trashes-thousands-of-books/) (n.d., vis. June 6, 2015); Rachel Brown Hackney, *Law Library books in dumpster by Stan*, SARASOTA NEWS LEADER, [sarasotanewsleader.com/law-library-computer-investigation-moor...genda-for-the-city-commission/law-library-books-in-dumpster-by-stan/](http://sarasotanewsleader.com/law-library-computer-investigation-moor...genda-for-the-city-commission/law-library-books-in-dumpster-by-stan/) (May 4, 2012, vis. June 6, 2015); see also, e.g., Jean P. O’Grady, *It Takes More Than a Dumpster to Build A Digital Law Library: 12 Critical Components For Digital Law Library Transformations*, DEWEY B STRATEGIC, [deweybstrategic.blogspot.com/2014/12/it-takes-more-than-dumpster-to-build\\_10.html](http://deweybstrategic.blogspot.com/2014/12/it-takes-more-than-dumpster-to-build_10.html) (Dec. 10, 2015, vis. June 6, 2015).

<sup>6</sup> See Susanna Leers, Pat Roncevich, and Sallie Smith, *Law Books Take the Stage!*, AALL SPECTRUM ONLINE (vis. June 6, 2015); cf. Dunlap, *So Little Paper to Chase in a Law Firm’s New Library* (“[T]hey’re basically decoration,” Ira H. Goldfarb, the senior partner and trial lawyer, said about the books [in the offices of Kaye Scholer LLP]. “They’re an anachronism. We couldn’t give them away if we wanted to.”).

The Pittsburgh law librarians also provide a good summary of other creative “functional” and “ornament[al]” uses to which artists and other clever people have put surplus law books, including “birdhouses, purses, lamp bases, or even ornamentation for mail-order catalog furniture.”<sup>7</sup> It is not difficult to imagine that many law librarians have entertaining stories to tell about repurposing of otherwise doomed books.

## BOOKS TO NEW HOMES

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.<sup>8</sup>

Better World Books 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 law libraries. Having had a look at “How It Works” at Better World, now consider 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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<sup>7</sup> *Id.*

<sup>8</sup> Better World Books, *Library Welcome Kit 5* (undated pdf) (emphasis added), downloaded via a link at [www.betterworldbooks.com/go/libraries](http://www.betterworldbooks.com/go/libraries) (July 19, 2015); *id.* at 2.

- 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<sup>9</sup>

This sounds a bit like a summary of the kinds of books the average law library is probably trying to find homes for. It is as if Better World Books saw law libraries 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 libraries, and their surplus law books, out in the cold.

And then there is that most conventional and historically useful outlet: other libraries. Law librarians are energetic and resourceful communicators among themselves – via personal and professional networks, supplemented in recent decades by listservs and the like – and over the years any number of books have found new homes via such channels. But current pressures on law libraries and the associated glut of surplus books have filled the listservs with offers of books that are doomed to never be accepted. Even now, though, there is still an occasional “wants” message like this one:

Hello! I hope everyone is enjoying this wonderful weather! I am looking to buy (or take off[f] 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?<sup>10</sup>

This person probably was contacted off the list, and a surplus *United States Code* just as probably is being put to good use.

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**B**ut 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

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<sup>9</sup> Better World Books, *Material Guidelines*, [www.betterworldbooks.com/go/library-donation-guide](http://www.betterworldbooks.com/go/library-donation-guide) lines (vis. July 15, 2015).

<sup>10</sup> Email from Melanie Knapp to Ross Davies, June 26, 2015 (forwarding a posting to a DC-area law librarians' listserv).

new homes for), and only so many needy law librarians seeking cast-offs on listservs.

And how must the books themselves feel (treating them for a moment as anthropomorphic creatures)? Listservs and other outlets are where a kind of desperate game of musical shelves plays out. The lucky books attract the attention of a kindly librarian and land safely in a new stack. 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 one of 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<sup>11</sup> – surely a bad sign) is on a bibliographical death row, just waiting its turn for that last, hopeless ride in the dumpster. A surplus law book's only hope is to be speedily claimed by an interested librarian or artist or reseller. A sad scene.

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

## HABEAS FOR BOOKS

What law libraries need to find are ways to reach a larger audience than the one accessible via law librarians' listservs and other professional networks. If they could do that, perhaps they could find good homes for more of their surplus books.<sup>12</sup>

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<sup>11</sup> Cf. Michael Silver, *10 ream box*, URBAN DICTIONARY (Dec. 14, 2005), [www.urbandictionary.com/define.php?term=10+ream+box](http://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.*").

<sup>12</sup> So, a reasonable person might ask, why not just put all those hapless surplus law books on eBay or some other auction site and get at least a small return on them? There are good reasons – at least three of them – to make light of the idea.

First, and most obviously and tellingly: Look at the example of Better World Books, which is experienced at selling books. Better World will, quite reasonably, only accept and attempt to sell books it judges to be reasonably saleable. And it seems to have determined that many law books are not saleable. In addition, dealing with eBay is not cost-free. It takes labor simply to offer items, and more to serve customers if items do sell. And if items do not sell, it is all cost and no benefit.

Second: For many institutions, selling surplus books is not an option. Sales by a public institution (for example, a state university) may be forbidden, or at least tightly constrained, by laws governing the disposition 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 can do well.

Third: Retail sales is a difficult business (so is wholesaling), and doing it right is a full-time job

For starters, law librarians might be able to make good use of a cheap and easy extension of the listserv approach. That is, a tool they can use to:

- (a) let interested parties know about the availability of their surplus law 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.), so they can stay focused on their main mission – operating law libraries.

Which brings us to the Habeas Libris project.

Here is the plan. The *Green Bag*, a small, not-for-profit publishing enterprise whose products include the journal in which the article you are now reading appears,<sup>13</sup> recently launched the Habeas Libris website.<sup>14</sup> The site is there to perform the functions described above. Here is a summary of how it works:

#### How It Works

This no-cost program – it is 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.

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for experts in the field. Just ask anyone who has actually tried to earn a living that way. Librarians already have full-time jobs requiring expertise in librarianship, not marketing and sales.

Moreover, for all three of these reasons, the idea that librarians should not only operate their libraries, but also get into the business of systematically marketing their surplus books and then using the proceeds to balance their own budgets, is not realistic.

<sup>13</sup> See [www.greenbag.org](http://www.greenbag.org); [www.journaloflaw.us](http://www.journaloflaw.us).

<sup>14</sup> See [www.habeaslibris.com](http://www.habeaslibris.com). Or go to the *Green Bag*'s website and click on the blue "Habeas Libris" button.

To get a sense of the kind of website we hope Habeas Libris site will eventually be, take a look at the beautifully simple, easy-to-understand, easy-to-use “Finding Aids Online” page operated by the Manuscript Division of the Library of Congress:<sup>15</sup>

Finding Aids (Manuscript Reading Room, Library of Congress) 7/19/15, 8:51 PM

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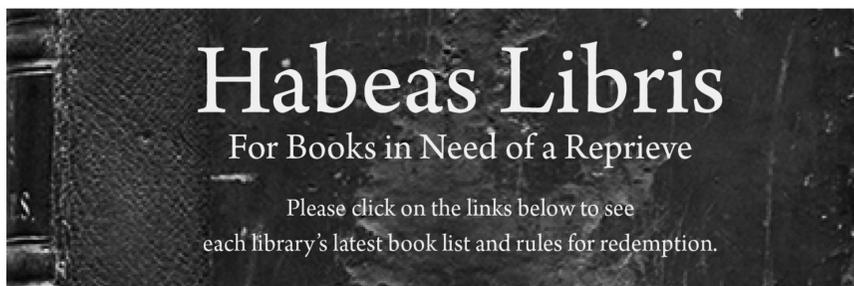
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- [Alex. Brown & Sons Records](#) [[View Finding aid](#)] [[PDF : 87KB / 17 pages](#)]

<sup>15</sup> See *Manuscript Division Finding Aids Online*, [www.loc.gov/rr/mss/f-aids/mssfa.html](http://www.loc.gov/rr/mss/f-aids/mssfa.html).

## HABEAS LIBRIS

The Habeas Libris website, however, is starting out as an even simpler setup. Unlike the Manuscript Division, we do not provide tools for searching our site and the linked-to pdfs as a whole, nor do we provide links for communicating with libraries directly from the site, nor do 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 (and we certainly hope so). 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 it looks like now:



Alameda County Law Library – [book list](#) • [rules for redemption](#)

Law Library of Louisiana, Supreme Court of Louisiana – [book list](#) • [rules for redemption](#)

**Attention AALL members:**

Please send your “book list” and “rules for redemption” to [habeaslibris@greenbag.org](mailto:habeaslibris@greenbag.org).

Thank you!

For a discursive statement of the thinking behind this website, please click [here](#).

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The screen shot above shows that as we go to press two respectable libraries – the Alameda County Law Library and the Law Library of Louisiana at the Supreme Court of Louisiana – are already using Habeas Libris.<sup>16</sup> If we are

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<sup>16</sup> See [www.habeaslibris.com](http://www.habeaslibris.com); see also Email from Francis X. Norton, Jr., Head of Public Services,

useful and fortunate, there will soon be a longer list of libraries for interested, book-loving people to scroll through.

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 law libraries' surplus 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.<sup>17</sup>

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.<sup>18</sup>

At the very least, law 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.

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Law Library of Louisiana, Supreme Court of Louisiana, to Ross E. Davies, (Aug. 20, 2015); Email from Mark E. Estes, Law Library Director, Bernard E Witkin Alameda County Law Library, to Ross E. Davies, (Sept. 2, 2015).

<sup>17</sup> We are also trying to keep quality control simple by only allowing libraries that are members of the AALL to submit lists and rules for posting, at least for now.

<sup>18</sup> An aside: There are alternatives to triage of the sorts proposed 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 copies of famous old publications. One prominent case comes to mind, told by prize-winning journalist Nicholson Baker in his book *Double Fold*. See note 1 above. But such episodes of dramatic bibliophilic heroism do not apply to the situations in which many law librarians (and countless mundane titles) exist now. Baker himself acknowledges this reality in a revealing line in the epilogue to his critique of libraries and preservation practices: “Congress should designate and fund some other archive to do the job.” BAKER, *DOUBLE FOLD* at 270. The key word, obviously, is “fund.” Declaring that Congress should allocate tax dollars to solve libraries' problems is not a solution. It is a fantasy.