The literature of indexing frequently cites a bill proposed in Parliament that every book be required to have an index. An American legal handbook includes statutes mandating the compilation of indexes to marriage records. The serendipitous discovery of these laws stimulated research on other mandated indexes. These exist in numerous domains. The statutes vary in specificity regarding types of index entries and quality of indexes. Implications of mandated indexes for indexers are discussed.

The story of the bill proposed in Britain to require that an index be included in every published book is well documented in the literature of indexing. Collison (1959: 18) is among the sources for this anecdote:

Lord Campbell considered an index to be essential to every book, and proposed to bring a Bill into Parliament to ‘deprive an author who publishes a book without an index of the privileges of copyright, and, moreover, to subject him for his offences to a pecuniary penalty.’ But his idea never became law.

Some months ago I was browsing through textbooks at the St. John’s University Bookstore. Since I have consulted on the indexes to legal texts, I picked up a legal handbook (Gould’s, 2003) and noticed a statute mandating the compilation of an index. This stimulated research on mandated indexes.

In the United States, two primary types of indexes are required by law: (1) those that are to be compiled by government offices, and (2) those that the government requires businesses to maintain. The first category is reflected in the websites of state legislatures; the latter category is discussed in a paper by Skupsky (2000).

Indexes to be compiled by US government offices

The following quotation comes from the first part of Gould’s family law handbook of New York, entitled Domestic relations law, under Article 3, Solemnization, proof, and effect of marriage (italics mine):

§19. Records to be kept by town and city clerks.
1. Each town and city clerk hereby empowered to issue marriage licenses shall keep a book supplied by the state department of health in which such clerk shall record and index such information as is required therein, which book shall be kept and preserved as a part of the public records of his office. (Gould’s, 2003: 13)

The state of Ohio (2004, sect. 317.18) requires county recorders to prepare indexes to property records. Oklahoma (2004, sect. 12-706C) specifies that one of the duties of the county clerk is to maintain a judgment index for debtors. North Dakota’s administrative code (2004, sect. 72-01-02-11) requires the filing officer of Uniform Commercial Code documents to maintain an index.

Most interestingly, Oregon (2003a, sect. 171.275) requires its Legislative Counsel to publish an index to the statutes of the state. That index (Oregon, 2003b) has 17 subheadings of the heading ‘Indexes and indexing’ that lead to other mandated indexes for various departments of the state’s government.

Indexes to be compiled by businesses

Skupsky (2000) reports that the US Department of Agriculture requires that indexes be maintained for the microfilmed records of cotton warehouses and pedigree certificates for animal breeds. The US Department of Energy mandates that manufacturers maintain indexes relating to energy conservation. Skupsky cites further examples of indexes required by the Department of Transportation, the Department of Commerce, and the Department of Health and Human Services. Clearly, mandated indexes touch on many domains.

I find it amusing that the Interstate Commerce Commission places its indexing requirements under the heading Miscellaneous.

Media of mandated indexes

Ohio law (2004, sect. 317.18) mandates that volumes of ‘worn out’ indexes be transcribed or copied. This implies that the indexes are maintained in book form.

A subdivision of the New York statute on marriage records addresses the indexing of information stored on various media (italics mine):

2. (a) In lieu of the requirement of maintaining a book supplied by the state department of health pursuant to subdivision one hereof, each town or city clerk may cause all information as is required by law . . . to be photocopied, photographed, microphotographed or reproduced on film which shall be kept and preserved as part of the public records of his office together with an index thereto. (Gould’s, 2003: 14)

The North Dakota administrative code (2004) specifies that mandated indexes are to be computerized. This is reflected in the title of Chapter 72-01-02: Computerized Central Indexing System. The code even enumerates the filing rules, e.g., that ‘the’ is disregarded (sect. 72-01-02-11, clause 2d).

Skupsky (2000) cites several US laws that require businesses to compile indexes to microfilmed records as well as those on optical disk.
Types of index entries and indexes

Gould’s family law handbook does not specify what kinds of index entries are to be created. Marriage records are presumably entered in the book in chronological order, and an alphabetical index of names is probably created. Oklahoma law specifies this for its Judgment Index: ‘the name of each person named as a judgment debtor . . . shall appear in alphabetical order’ (Oklahoma, 2004, sect. 12-706).

North Dakota’s administrative code (2004) is very specific regarding the types of index entries to be created:

72-01-02-11 Searches
1. The filing officer maintains for public inspection a searchable index for all records of UCC [Uniform Commercial Code] documents. The index shall provide for retrieval of a record by the name of the debtor, social security or tax identification number, and by the file number of the initial financing statement.

The law specifies six types of indexes to be maintained and then states, ‘A search request must indicate which index or indexes are to be searched.’ The difficulties that end-users have with split indexes are well known. One of the first writers on indexing, Henry B. Wheatley (1902: 134), advocated one index, indivisible, but it is not clear from the North Dakota administrative code whether the headings for the six required indexes (including ‘Agricultural statutory lien notice index’ and ‘State tax lien index’) contain different types of notation that would render interfiling of the entries impossible. Wellisch’s bibliography of indexing (1980: 286–7) contains separate author indexes for non-Roman scripts as there is no way to interfile Hebrew and Cyrillic name headings, for example. The various indexes compiled by the state of North Dakota may have conflicting alphanumeric heading structures.

The Ohio revised code (2004, sect. 317.18) has detailed guidelines for ‘Direct and reverse indexes,’ which represent grantors and grantees of property, respectively. The law even discusses locators: file numbers versus volume and page. Even more interesting is Ohio’s requirement that the county recorder make and keep up the indexes ‘[a]t the beginning of each day’s business’; filing and indexing are often left for last in many organizations.

The same code (sect. 317.20) has detailed guidelines for ‘Sectional indexes’ of real estate. What is notable about this statute is that it specifies where the index entries are to be positioned, e.g., ‘on the left-hand page or on the upper portion of that page of the index book.’ Similar guidelines are provided for the ‘Notice index’ (sect. 317.201); the law enumerates data elements to be entered in four columns on left-hand pages.

As for mandated indexes for businesses, Skupsky (2000) observes, ‘The law generally does not require organizations to maintain any particular type of filing system or index.’ He does, however, quote a law of the Department of Health and Human Services that specifies types of index entries: ‘The hospital must have a system of coding and indexing medical records. The system must allow for timely retrieval by diagnosis and procedure.’

Quality of mandated indexes

The statutes quoted in the preceding paragraphs call for indexes without saying anything about their quality. (This
brings to mind the note often found in bibliographic records: ‘Includes index.’ I have suggested modifying this note for poor specimens: Includes index – if you want to call it an index!

A section of Article 3 of the New York Domestic Relations Law addresses the quality of indexing (italics mine):

§20. Records to be kept by the state department of health and the city clerk of the city of New York.

All original affidavits, statements, consents and licenses with certificates attached, and also all written contracts of marriages outside of the city of New York shall be kept on file and properly indexed by the state department of health, and such similar evidences of marriage in the city of New York shall be kept on file and properly indexed by the city clerk of the city of New York. (Gould’s, 2003: 14–15)

It is not clear what ‘properly indexed’ means, but it is good that the law recognizes that indexing can be poor. North Dakota (2004, sect. 72-01-02-11, clause 1) uses the phrase ‘searchable index.’ The first word is unnecessary because searchability is part of the definition of index, as quoted from the 1968 ANSI Standard by Borko and Bernier (1978: 8): ‘An index is a systematic guide to items contained in . . . a collection. These items . . . are represented by entries in a known or stated searchable order, such as alphabetical, chronological, or numerical.’

Ohio law (2004, sect. 317.18) mandates the revision of indexes in ‘incomplete condition’; this implies an evaluation of these access tools.

Skupsky (2000) observes that ‘Even without specific . . . indexing requirements, an organization must be able to find relevant records within a reasonable time frame.’ This too is a qualitative statement regarding indexes. He quotes a law from the Department of Commerce: ‘A detailed index of all micrographic data shall be maintained, and arranged in such a manner as to permit the immediate location of any particular record.’ Skupsky also discusses the ‘adverse legal consequences . . . for poor indexing and filing systems.’

Identifying mandated indexes

It is not easy to identify mandated indexes by using either print or machine-readable indexes. Although the foreword to Gould’s family law handbook says ‘A complete, up-to-date, integrated index is . . . included’ (Gould’s, 2003: iii), there is no entry for ‘indexes’ or ‘indexing,’ which demonstrates that the index is not exhaustive. (My passion for comprehensive indexes has previously been documented: Weinberg, 1999.) How can one determine which legal codes mandate the compilation of indexes if that concept is not indexed?

The quoted laws regarding domestic relations are indexed under ‘Records’ (Gould’s, 2003: 1161). There are 22 subheadings for this heading. The subentries that relate to the quoted passages are ‘department of health, clerk of city of New York – DRL 20’ and ‘town and city clerks – DRL 19.’ These subheadings are clearly derived from the titles of the statutes. The first quoted subheading is particularly flawed because it conjoints two unrelated concepts: the state department of health and the city clerk of New York.

An incomplete index to a printed legal handbook suggests that a computerized full-text index would simplify the problem of identifying mandated indexes. Yet a search done by my graduate assistant on the concepts of ‘law’ and ‘index’ yielded many false drops, of two types. (1) The word ‘index’ is a homograph; the sense not of concern here is numeric indicator, but this meaning occurs in the context of tax law. (2) There are many aspects of indexes to legal literature that have nothing to do with mandated indexes.

The primary and secondary electronic sources listed here were identified by a lawyer, a law librarian, and a legal indexer (see Acknowledgments). The legal indexer reported that she found mandated indexes ‘through some educated web searching since I know the name of state codes and what I was looking for’ (Enid Zafran, personal communication, June 30, 2004).

Incidentally, the first quoted passage in this article is not to be found under ‘law,’ ‘Bill,’ or ‘Parliament’ in the index to Collison’s book (1959). The anecdote is indexed under ‘Campbell, Lord’ (p. 194), but that entry would not serve the user who recalls only the concept of the proposed law (as I did), but not the name of the person who proposed it (as I did not).

Cost of searching mandated indexes

Gould’s family law handbook (2003: 13, sect. 19) cites a law that establishes fees for searching marriage records: ‘a fee of five dollars for a search of one year and a further fee of one dollar for the second year for which such a search is requested and fifty cents for each additional year thereafter.’

In contrast to New York, North Dakota law (2004, sect. 72-01-02-11, clause 3a) specifies that ‘Any person may obtain from any filing office at no charge the following information: (1) Whether any records exist for a specific name, or . . . number, within the computerized central index system; (2) If any records exist for the specific name, or . . . number, the index in which they appear.’ In the library world, the opposite situation typically obtains: searching of card or printed indexes is free, while accessing commercially produced machine-readable databases incurs a charge. Fees for searching indexes reflect Robert Taylor’s (1986) notion that indexing is a value-added process. The compilation of indexes takes time and money, but indexes save time at the searching stage. The cost of indexing can be recouped by search fees.

Fees for access to indexes produced in government offices raise interesting questions regarding citizens’ right to information, and whether the public should be charged twice – first for the compilation of indexes with tax dollars, and again for the searching of those indexes. (Not being charged twice is the rationale for US government publications being in the public domain, i.e., not subject to copyright.)

Implications of mandated indexes

Mandatory indexes suggest employment opportunities for professionals in this field. It may be difficult to determine which government bodies require the compilation of indexes, for the reasons stated above in the section entitled ‘Identifying mandated indexes.’ Indexers could advertise
their services to government bodies that are required to compile indexes.

Ohio law (2004, sect. 317.20, clause D) mandates a bidding process for its sectional indexes. It requires that the contract be awarded to the ‘lowest and best bidder’ and specifies that ‘no more than five cents shall be paid for each entry.’ This does not sound very lucrative.

Mandated indexes are presumably compiled most often by government workers with no training in indexing. Professional indexers could examine publicly available indexes (hard copy or electronic) and offer to correct those that are poorly structured, to consult on improved design, or to train government workers. Oregon charges its Legislative Counsel Committee with establishing policies for the indexing of its statutes (Oregon, 2003a, sect. 171.275, clause 2); there is a definite consulting opportunity here. The home page of the General Index to the statutes (Oregon, 2003b) invites comments and suggestions to be submitted to the Index Department, but as a colleague of mine advises, ‘Don’t give away what you do for a living.’

The fact that New York law specifies a search fee for each year of marriage records implies that there is no cumulative index. This suggests another employment opportunity for indexers. Presumably, all 50 states of the United States require the compilation of indexes to marriage records. I learned from a friend who is an immigration lawyer (Tobin Kohane) that there is no national listing. If it were decided to merge the 50 state indexes, that project would present all the challenges of large genealogical indexes and name authority files, and especially the need to distinguish homographic names.

It has been established that indexes are independent creative works (Mulvany, 1994: 4) and that one does not need the permission of the author of a work to create an index to that work. This principle should certainly apply to government records in the public domain. Indexers should look for unindexed records and create access tools that save the public’s time. There could thus be fee-based indexes to freely available records.

**Violation of indexing laws**

A statement made by Alan Taylor in a report on the 2003 conference of the Society of Indexers suggests another angle to the subject of mandatory indexes. In discussing Bernard Levin as a champion of indexes, Taylor wrote:

> For Levin, a book without an index was like a boat without oars. As a reviewer he often devoted more attention to the index than to the contents. But nothing was worse than a book without an index. That was criminal negligence. (cited in Lennie, 2003)

Thus we need to consider what would happen if the cited laws were broken. New York law specifies:

> Any town or city clerk who shall violate any of the provisions of this article... shall be deemed guilty of a misdemeanor and shall pay a fine not exceeding the sum of one hundred dollars. (Gould’s, 2000, 16)

I leave it to experts in legal research to determine whether there has ever been such a case. In any case, it is good to know American law recognizes that searches of public records cannot be performed unless the records are well indexed.

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