

## LEGAL INDEXING

**Kate Mertes**

One of the biggest areas of scholarly indexing is law. The legal field is heavily published, and texts are often lengthy, complex documents requiring especially good finding aids. Legal indexes are often more strongly and obviously structured than other scholarly texts, with sectional breakdowns and an outline format, but the indexing process for legal books is not cut-and-dried. It demands special skills. Indexers of scholarly works not infrequently find themselves asked to work on a legal project, or they may wish to break into the lucrative legal indexing market. This article provides an overview of the world of legal indexing for experienced scholarly indexers thinking about entering the field and for people with a legal background considering indexing as a career.

Legal indexing is not a good row to hoe for those unfamiliar with either indexing or the law. The learning curve is simply too steep. Legal texts often require deeply structured, complex indexes, and the subject matter is wide-ranging and complicated. Indexers familiar with the detailed subject analysis and creative structuring often required of academic texts will find law challenging but surmountable. Indexers with a background in history often find law indexing congenial, since much historical study demands familiarity with the law. Lawyers and paralegals clearly have the advantage as far as understanding the subject matter; but many good legal indexers do not have a formal legal background. In fact, lawyers sometimes have difficulty indexing law well because they are almost too familiar with the material; they may provide indexes useful

to the specialist practitioner, but many law books are used by laypeople and students as well as practicing attorneys, thus requiring everyday as well as specialist terminological analysis. Nonlawyers do have to spend more time familiarizing themselves with the subject matter, however, distinguishing specialist from colloquial usage in particular.

### **Types of Law and Law Books**

The law covers all areas of life in which litigation may occur and in which questions of rights and privileges may arise — which means law is universal in the subject matter it addresses. As a result, many legal indexers specialize in particular areas of the law. The legal indexing market is broad enough that one can carve out a niche in, say, family, medical, and criminal law with a side interest in contracts, while avoiding such things as antitrust and securities law (with which one may be less comfortable). Other legal indexers are willing to take on pretty much any topic, but will tend to stick to a particular type of law book. And then there are those of us who will do pretty much anything for a challenge.

While legal subject areas are essentially infinite, there are basically eight types of legal texts one may be asked to index:

1. College textbooks
2. Code books (statutes and regulations)
3. Case law
4. Treatises and monographs
5. Journals, newsletters, and other periodicals

6. Jurisdictionally mixed law
7. Supplemented texts
8. Encyclopedic texts

These categories are by no means mutually exclusive. A legal text on which I once worked, a 17-volume federal tax publication, was a supplemented encyclopedic presentation of the whole of federal tax law, with sections addressing various subject areas by statutory law, regulations, relevant case law, and commentary. Nevertheless, these types of legal text all have their own idiosyncrasies, pitfalls, and pleasures.

#### *College Textbooks or Casebooks*

Legal compositions intended for law school students are often called casebooks because of their typical structure. Generally organized around a specific legal topic such as contracts or immigration law, casebooks present a set of legal resources for the student to analyze, professors hope, in the same sort of way a lawyer would approach a particular case. These resources will include reprints of articles, original treatises, material relating to specific cases illustrative of the subject matter, and a series of questions (and sometimes answers) about the topic and the related cases. Other law school texts will be more straightforward, monograph-type compositions.

Indexers often find casebooks quite hard to index. For one thing, the same information seems to keep being repeated time and again as the same topic is debated in analytic text, then the facts of the relevant cases, and then the questions. Moreover, the topic is not necessarily laid out in the organized, discursive method common to most

scholarly works; instead, it is a kind of Platonic dialogue in which the student may go down a number of paths. This is because the book is designed to turn students into lawyers, and the whole legal methodology is dialectic (an insight for which I am grateful to Mauri Baggiano, "Indexing Casebooks," in Peter Kendrick and Enid L. Zafran, eds., *Indexing Specialties, Law* [2001]). The "questions" sections of casebooks are particularly confusing for the indexer in this regard.

To avoid getting bogged down in details, keep asking yourself, "Why is this case (or this question, or set of questions) here?" What is the legal point this case is being used to illustrate? About what topic are these questions meant to teach students? Case notes and decisions often contain a lot of subject matter that isn't relevant to the actual topic in question. A case in a section of a law book treating the issue of oral promises in contract law, for instance, might be about the sale of diseased avocado trees. The fact that avocado trees are at the absolute center of the case *is not relevant* as a legal point. The case is there to illustrate how the law treats an oral promise regarding, say, the quality of the goods provided adjunct to a contract for the sale of goods.

The audience is another important point to keep in mind regarding the indexing of college textbooks. There are three potential sets of readers. The most obvious is the law school student. What sort of student is this book aimed at? Is it a general text for undergraduates in a prelaw course or for first-year law school students? Is it aimed at more advanced students? The index is also there to serve professors using the casebook to teach. Frequently, professors use the index and other finding aids (such as tables of cases) to evaluate the book's contents when making the decision to adopt a book for their courses, making the index and end matter of special interest to publishers of legal

textbooks. Moreover, college textbooks are widely available in libraries and may be used by the general public. So the indexer has to serve both neophytes with little or no legal background and professors with considerable experience in the field who are looking for specific teaching points.

### *Codes or Statutory Law and Regulations*

Codes are publications of the text of actual laws or statutes, and/or the administrative regulations written to put those statutes into practice. Some types of legal publications, called annotated codes, will include both statutory and regulatory text, followed by an analytical commentary, and organized by subject matter; that is not the kind of legal text we are discussing here. Codes are presentations of statutes and/or regulations without commentary and ordered by code number (which may or may not have much to do with organization by subject matter). They are generally state-specific or federal. Examples include the federal Internal Revenue Service Code and Bender's *Workers' Compensation Laws of California*.

The most difficult aspect of code indexing is that codifications have a very discrete construction. Code sections, often (but not always) quite short information bytes with descriptive (but not always accurate) titles, are almost always dependent on other sections for much of their sense and meaning. For instance, 8 Cal C Reg 30 ("Cal C Reg" stands for "California Code of Regulations") on "QME Panel Requests" does not define either what a QME (qualified medical evaluator) or a QME panel is; the definitions are found in 8 Cal C Reg 1. The actual request form is in 8 Cal C Reg 30.1. Unfortunately, the separate regulations may or may not direct the user to these relevant sections, and the

structure of the code sections may or may not organize the subject matter in a coherent fashion (the request form might just as well have been separated out at 8 Cal C Reg 75 with a bunch of other forms). It's the indexer's job to fill in many of these connections. When a specialized term like "QME" is used, the connections may be fairly obvious; but in many cases a word in general use may have a quite specific definition in the code. The indexer must be alert to such possibilities.

Besides the issue of separation of definitions from the things defined, codes tend to present other terminological problems. Specific laws may have a long, complex formal title, an acronym (which probably will not be used in the code book), an official short title (which may or may not be given in the code book), and a public, common-use title (which will almost certainly not be given in the code book). Users of the index may look up any of these four titles, and the indexer has to know, and provide, all of them. In addition, lawmakers often use idiosyncratic rather than common ("customer protection law" rather than "lemon law"), archaic ("dram shop" for liquor store), overgeneralized (boats as well as trucks and automobiles included in motor vehicles), or overly specific (motor vehicles defined only as automobiles, not including trucks) terms. And because codes develop and change over time, terminology may change (or fail to change), consistently or inconsistently. For instance, many states still use the term "handicapped" rather than "disabled" in statutory law; some have changed terminology in some places but not others, due to the legal amendment process. The indexer needs to be aware of changes in terms and definitions, both as commonly used and as used in the statutes and regulations, in order to pull together scattered information.

Codes have many specialized topics, such as rulemaking, procedures, and notice requirements, and indexers generally have to make decisions (or follow established editorial procedures) about how and when to pick up these areas. It's not uncommon, for instance, to not have a main heading called "rulemaking authority," but to use this as a subheading under other more substantive subjects.

Another thing to look out for in code indexing is the tendency of code sections not to "fit" with the other sections around them, and for sections with specific titles to actually contain material in addition to what they are supposed to be about. Scholarly indexers are inclined to "follow the argument" of discursive texts, but due to the vagaries of lawmaking the structure and order of the codes may not, in fact, follow a logical pattern, nor are they necessarily structurally consistent. For instance, the pattern of a particular code may be to put material on notice requirements in relation to a specific subject matter in its own code section; but then one may suddenly find that, in material on liquor laws, notice requirements have been shoved in willy-nilly with the rulemaking material.

Should the indexer use code section numbers as index entries? In general it is wise to avoid using them. After all, code section numbers are easily looked up in the tables generally provided in legal texts or through the book's own structure. However, certain items (especially in federal law) are frequently known chiefly by their code section numbers: "401(k) plan" is familiar to nearly everybody. Code section number entries can be indexed all together alphabetically under "Section" and then numerically:

COBRA coverage

Code Section 401(k) plans

Code Section 403(b) annuities

Code Section 457 plans

Control employees

or

S corporations

Section 401(k) plans

Section 403(b) annuities

Section 457 plans

Secular trusts

My preference is to index them as if the initial number were spelled out and then numerically, so “401(k) plans” would be alphabetically listed as under “four{01},” followed by “457 plans” as “four{57}:

Fortune 500 companies, employee benefit plans of

401(k)plans

403(b) annuities

457 plans

Fraternization policies

All of these systems are common in legal texts, which seldom or never separate out number entries at the beginning of the index (unlike scientific texts). Whatever system one chooses, it is important to be consistent, and if one is not consistent, to make consistent cross-references from one style to another. For instance, colloquially, people may be more likely to talk of “401(k) plans” but “Section 457 plans.” If one’s editor wants one to alphabetize the former under “four” and the latter under “section,” it’s important to have a cross from “Section 401(k) plans” to “401(k) plans” (alphabetized as “four”) and from “457 plans” (alphabetized as “four”) to “Section 457 plans.”

Finally, code books have an extremely wide audience. They are routinely used by practitioners with a great deal of legal experience and familiarity with specialized vocabulary, but they are also widely consulted by the general public. The indexer must provide keywords for both audiences.

### *Case Law*

The American and British legal systems are based on common law, and common law depends heavily on precedent — the decisions made by previous judges and juries in related cases. A great deal of the research done by attorneys in common law jurisdictions involves looking for cases that resemble their own, and many of their arguments will be based on the precedents set in those cases. So case law is commonly cited in nearly all types of law books an American indexer is likely to work on. We've already seen how important it is to law school texts. Treatises and monographs always quote from case decisions, and many code books contain annotations to cases in which the laws are quoted. There are also publications that consist solely of case notes and decisions, such as court reporters or administrative agency decisions.

The most important thing for the indexer to remember is *why* these cases are being quoted. They are there to illustrate a point of law, and it is that point of law that requires indexing — not the fact pattern or extraneous legal issues. If a text devoted to employee benefits, for instance, cites a case about the bankruptcy estate of a real estate agent whose estranged wife sued as a beneficiary of his 401(k) plan, what's crucial is the beneficiary rights of a separated spouse, not whether the defendant was a real estate agent or whether he was bankrupt. If five cases on a particular topic are cited, they should be

indexed separately only so far as they may distinguish different points of law relevant to the main topic.

Having said this, in some cases, fact patterns may be significant to certain topics. This is perhaps especially true in workers' compensation cases, where certain professions, practices, and types of accident have seen the development of their own body of case law. Attorneys may look for any information about firefighters, policemen, truck drivers, and coal miners, for instance — these are all dangerous jobs with a great many cases arising. Slip-and-fall accidents, pneumoconiosis in miners, and accident-while-on-lunch-break cases are other examples of significant fact patterns that in some types of publication may require indexing. Once again, though, it is extremely important to place the indexable material in case law into the appropriate context. Is the point you want to index relevant to the section being indexed? One of my favorite workers' compensation cases involves a woman who swallowed a pen while trying to dislodge from her throat a piece of doughnut brought in by a coworker, which she'd consumed at a coffee break. The really significant piece of data in there — and the reason the case was being quoted in this section — was the involvement of a coworker in the choking incident: the poor coworker who'd tried to be a good guy by bringing in a treat. (In a later chapter, the same case was quoted in relation to accidents occurring while on a work break.)

Neophyte legal indexers are often confused as to whether to use the actual title of a case as an index entry. Generally, the book will have a separate table of cases (that the indexer or another person may be asked to compile or that may be done electronically), and the actual case names are not good index entries — remember, the aim is to index the

relevant legal point of the case, not its every detail. (See Enid L. Zafran, “On the Table: The Problems and Challenges of Legal Tabling,” in Peter Kendrick and Enid L. Zafran, eds., *Indexing Specialties: Law* [2001], for a discussion of the production of tables of cases, code citations, etc.) But some cases are so generally well known (*Roe v. Wade*, for instance), or so central to the specific legal topic in question, that the case name is in fact a legitimate index entry, particularly as a subheading. The problem, then, is how to index it. While *Roe v. Wade* is always known by that name, many important law cases are often referred to by their second element. A case formally known as *Colony Inn v. Brown*, for instance, may generally be known, and referred to by the author, as the *Brown* decision. Either form is acceptable as an index entry, and if a cross-reference from one to the other can be included, that is a good thing. There may be editorial preference for one form or the other, or one may choose to follow authorial usage.

### *Treatises and Monographs*

Treatises and monographs — legal texts analyzing a particular subject area — will look very familiar to scholarly indexers. They are structured and written in the same sort of discursive style as scholarly texts and are indexed in much the same way. Legal treatises are distinctive, however, in three ways: they have clear text headings that nevertheless may be misleading; they contain case law and statutory and regulatory law material that may require special handling; and, in sheer size, they tower over standard scholarly texts.

A look at the tables of contents of legal treatises shows that they tend to be tightly organized, highly structured documents. This can be a real boon for the indexer. Legal

writers of treatises and monographs tend to follow closely argued paths, with fewer of the digressions and side-arguments down which scholarly writers may traipse. Legal writing style also demands the use of text headings, which are a great guide to “chunking” the text into discrete parts. There are only a few problems with this: the author may drop important information into an apparently unrelated section or drop in a whole section that doesn’t tie properly into the structure of the text, and the text headings are not always informative and may in fact be misleading.

Here’s a typical table of contents section from a legal treatise, in this case *Bender’s New York Practice Guide: Business and Commercial*, chapter one, section five:

#### 1.05 Partnership

[1] Participation in Management

[2] Capital Formation

[a] Partner Contributions

[b] Loans

[c] Additional Capital Contributions

[3] Growth Potential

[a] General Partnership

[b] Limited Partnership

[4] Exposure to Liability

[a] General Partnership

[i] Joint and Several Liability

[ii] Partner by Estoppel

[iii] Liability of Incoming Partner

[b] Limited Partnership

Now, at first glance, this might seem like a very easy scheme to follow, and in some ways it is. In fact, you might almost be tempted to index it directly from the table of contents if you're strapped for time (something legal indexers have been known to do). Indeed, this particular publication is quite true to its structure. But many legal texts are not. For instance, section 1.05[1] contains a whole paragraph on comparisons of partnership versus corporation participation in management styles. Since Section 1.06[1] is on "Corporate Participation in Management," the indexer needs to pick it up in the earlier section as well. Or the author might want to include a section on transfers of interest and be unsure where to put it; he or she might arbitrarily drop it in as 1.05[4][c], making it look like transfers of interest is a subtopic of exposure to liability, which it is not.

In other cases, the text headings themselves can be misleading. There may be material in the text beneath them that isn't covered topically by the text heading. In some publications, you may find a tendency toward "cutesy" headings that catch the reader's eye but that are not fully informative about the subject matter. And since many legal texts are frequently revised — some publications, like *Larson's Workers' Compensation* and *Corbin on Contracts* have been around for decades and are subject to multiple revisions — a text heading may continue to exist as a relict of a previous text but with a dubious relationship to the current text. There's no substitute for close reading of the document and a good knowledge of the subject matter.

Statutes, regulations, and case law present the same sorts of problems in treatises as in casebooks and codes, as presented above, and are subject to the same sorts of solutions. The final problem with legal treatises that scholarly indexers may find is their sheer size. Scholarly books average 250-400 pages. The average legal treatise is probably

at least twice that, and some are far longer; of those already mentioned in this section, *Larson* is 17 volumes, *Corbin* is 12 volumes, and the *New York Practice Guide* is 5 volumes — and these are monographs. For legal indexers, an index of 5,000 entries or so is a small index, not a large one. This size element requires legal indexers to start making tough choices about what to index and what not to index, and to start building deep structure into the index, from the very first entry. While scholarly indexes have 2 and sometimes 3 levels of entry, legal indexes always have 3 and often 4 or more levels.

### *Journals, Newsletters, and Other Periodicals*

Legal periodicals are indexed in much the same way as other scholarly journals, and nonlegal indexers wishing to break into the field often find them a congenial way of learning the trade. The main challenge in indexing these publications is in finding ways to handle the different elements included in legal journals. While scholarly periodicals generally consist of a series of short monographs, legal journals and newsletters tend to have a more varied makeup. Some articles cover legislative developments, others address regulatory changes and promulgations, and still others offer short summaries of recently passed laws or court case decisions. The journal's editor often will have established the appropriate indexing treatment for these sections, but indexers are sometimes called upon to develop styles for them. The case sections may require a great deal more attention than their size and appearance indicate; the items have been chosen because of their importance as precedential case law. There may be twelve short case summaries on two pages of text, and each summary will require as much attention as a two-page news item. Legislative summaries, on the other hand, may not require much attention; they are more

ephemeral items providing information about a bill's passage or progress through Congress rather than substantive material.

### *Jurisdictionally Mixed Law Materials*

Many if not most law publications primarily deal with a specific jurisdiction: federal, state, or local law; international law; or the law of a single foreign country. In such cases, one may assume that if the general topic of the book is, say, federal law, one will not expect to have many entries under that topic. There will probably be a section called something like "state and local laws" with subheadings indicating correlations, distinctions, and interrelationships with federal law as well as some headings for specific states whose laws on a topic significantly vary from or strongly enforce federal requirements (many state minimum wage requirements, for instance, are higher than those given by federal law).

Some books, however, cross jurisdictions. A text on employment law, for instance, might discuss both the federal requirements and the individual requirements of each state. In such cases, it is extremely important to make clear to the reader what jurisdictions are being covered in which sections, in both the main headings and subheadings of an entry, and to do so consistently. For instance, if in such a book under a main heading "discrimination prohibitions" one pulls out a subheading "disability discrimination" from a section discussing federal rules, one should make sure to create entries for the same topic in state sections. Depending on the structure of the book, this can be quite simple or quite complex. The trick is to treat the different jurisdictions as if they were "multiple metatopics" (to borrow a phrase from Do Mi Stauber's "Facing the

Text” workshop and recently published book [2004]), that is, to treat the book as having more than one general subject area that requires specification in entries.

### *Supplemented and Revised Texts*

While scholarly indexers not infrequently work with textbook revisions, most academic books they work on are not repeatedly edited, updated, and republished. Exactly the opposite is true for legal texts, regardless of type: they are very frequently revised and reissued, often over decades. The most frequently revised law texts are those issued as supplemented publications, usually in loose-leaf form, and meant to be revised on a yearly, quarterly, monthly, or even weekly basis. The number of pages to be revised in each issue may vary from as few as two or three to several hundred in each issue. Supplementation makes a lot of sense for legal topics that would quickly become outmoded by new cases and changes in statutes. But what effect does this have on the index?

Publishing houses that produce supplemented legal texts may have an editorial protocol for updating text, or it may be up to the indexer to figure out how to keep these indexes in order. The key to keeping a supplemented index current is good data management. One thing that makes legal texts easier to update is that they are usually referenced to a section number instead of a page. That section number will have a fixed relationship to the text to which it is assigned, rather than a flowing relationship dependent on space, type size, etc. So, if you know that only two sections in one chapter have actually been changed, you can ignore entries for the other sections — they won't be affected by the changes. If you are dealing with page numbers, however, you do have

to isolate the changes in each chapter and look at every entry following the first change, in order to see how other existing entries are affected. If page numbers are used, they usually are by chapter, as 1-23, 2-12, and so on, where the first number indicates the chapter and the second is the page. I personally have never seen a supplemented legal text with continuous page numbers from the beginning to the end of the book. This is one area of work where the ability to compile a reverse index (that is, one sorted in page number order) in your software is a big help.

In communicating with the editor on such a project, be sure that he or she understands that you must see redlines (or revisions, or whatever you choose to call them), that is, pages showing the actual deletions, additions, and rearrangements of text that have been made for each issue. Some editors think you can make do with a comparison of the new and old pages, or simply the existing index entries and the new pages, and you can; but it costs the publisher more, because it takes much more time to locate the changes and figure out how they affect the text. (Some indexers bill this sort of work at an hourly rate, or significantly raise their page rates.) When working from a comparison of new and old pages, I sometimes use a technique called “topping and tailing” — comparing the first and last words on the page sets. If they are the same, the page is less likely to contain many big changes requiring an index revision.

Supplemented texts also require regular maintenance. Trying to do a quarter’s worth of weekly revisions in one sitting can be confusing and fatiguing. It’s easier, and the results are usually cleaner, if one revises the issues as the redlines arrive. In most cases, the index itself will be published on a delayed basis; revised index pages or the entire index will be issued, say, the first of every quarter for the previous quarter (or the

revised index may only be issued once a year). Some publishers also provide current indexes compiled from recent additions to the main index entries. The mechanics of doing the index updates can be complex, and it's a good idea, if the editor has not already done so, for the indexer to work out and *write down* the protocols. That way the wheel does not have to be reinvented each time a revision is done, and the indexer is less likely to miss crucial steps in a complex procedure.

Time is also an enemy in grappling with supplemented texts. Errors inevitably creep in especially with split subject matter; no matter how strict one's double-posting and cross-referencing rules, it's very easy to split the same concept between different terminologies over time. Legal terminology evolves quite quickly. What was once widely called the timely-mailed-as-timely-filed rule was, less than a year later, renamed the mailbox rule (which was, in fact, the common term for the same concept at an earlier date). A single missed relict entry for a now-deleted section can linger like a dodo bird. And over time, the whole aim or angle of a section may slowly change its tone without raising any red flags for the indexer. Supplemented texts require regular review and editing as a whole to keep them truly up-to-date.

### *Encyclopedic Texts*

One thing that daunts most nonlegal indexers when facing legal publications is their sheer size. Legal texts can be vast, almost unwieldy documents that cover an awful lot of subject matter in exhausting detail, and this affects how the index is put together.

While monographic material can stretch to many volumes, encyclopedic texts —

covering multiple major topics over one or several major areas of law — are the most common type of very large legal text, and they present their own problems.

Encyclopedic texts, almost by definition, cover multiple metatopics. Most nonlegal texts have a single metatopic: for example, the Boer War, the relationship between music and the human body in the Middle Ages, or the 1964 World's Fair. All the entries in the index relate to this metatopic, so if it is used as a main entry at all it likely will have very few subentries under it: "Boer War, dates of," for instance, or "World's Fair, defined." Some texts do have contain than one metatopic; a book called *A Comparison of the Artillery Techniques at Shiloh and the Battle of the Marne*, for instance, if it is structured in a particular way, might have two metatopics, Shiloh and the Marne, both with significant numbers of subheadings under them; and other main topics and subheads in the index might require significant qualifiers to indicate the metatopic to which they chiefly refer. But this is a relative rarity for scholarly texts. In contrast, legal documents very frequently have multiple metatopics.

For instance, an encyclopedic legal text might cover the vast range of employment law. The term "nondiscrimination" will be used to cover both discrimination prohibitions against people with disabilities, by race, age, and sex, and so on, as well as for the nondiscrimination rules required for employee benefit plans to be qualified for tax-exempt status, a totally different subject. A topic "reportable events" might refer either to changes in an employee plan participant's status or to changes in employer plans themselves. Both state and federal laws may be discussed, and these different jurisdictions may need to be indicated. The indexer must make sure these topics are all

clearly distinguished. The complexity of terminological relationships in an encyclopedic text usually demands deep structure, that is, more than one level of subheading.

Deep structure is also required simply by the amount of information presented in a large text. Discussions of a small topic may range over many pages and section numbers, requiring intensive breakdowns. Legal indexers are seldom able to restrict their work to fewer than three levels, and they spend a great deal of time finding creative ways to “break out” subsets of main entries and give them their own main headings. Multiple metatopics in and of themselves may add a whole level to the entire index.

Because legal texts are often very long, their indexes are often very large, and their arrays (a main heading together with all its subheadings) are proportionately longer as well, with multiple columns over several pages. As a result, the wording of subheadings becomes very important. Users can’t simply scan all the subentries under a main topic to find what they want; they have to be able to locate it alphabetically or chronologically. Legal indexes seldom allow prepositions and “small words” as initial subheading terms, since they get in the way of quick scanning, and reverses are very common. The indexers spend a lot of time formulating strong subheadings and are likely to list the same topic multiple times under the same main heading to cover all the bases:

#### Fiduciaries

bonding requirements of supervisors handling plan funds, 3.04

supervisors handling plan funds, bonding requirements for, 3.04

These two entries might be separated by 20 or more other subheads, so it’s important to post both.

One of the blessings of legal indexing is that the final page count of the index seldom emerges as an issue, and one doesn't have to worry about cutting the index to fit a predetermined space. However, the size of indexes for encyclopedic texts does introduce data management issues. It can take half a day simply to spell-check one of these monsters. A proper edit can take a week — or two. One must make sure to allow plenty of time for the polishing of the final product.

### *Law Online*

Everything about legal indexing that's been discussed up until now applies equally to all media: print materials, CD-ROMs, and Websites. But online indexing of legal materials has a few special quirks. Legal publishers have a rather staid public image, but they were one of the first industries to really take advantage of electronic media to manage and access large volumes of information, starting way back in the 1980s (when dinosaurs roamed the earth). As a result, many legal publishers had to develop proprietary systems, since there were few commercial software packages available to handle the size and complexity of legal materials, and many of those are still in place, in whole or in part. So the first thing the indexer should do, when asked to work on an online legal site, is to find out its history and locate any documentation or manuals available. Due to their history, these sites often have byzantine ways of doing things and a fixed and not necessarily intuitive way of creating entries.

The online legal indexer will probably not have to worry about embedding, but nevertheless locator issues may arise. Since electronic legal indexes are often large, complex, and frequently updated, embedding doesn't usually work for these products —

it takes too long, the updates are too frequent and close together to turn the files over to an indexer, and maintaining structure in an embedded product is difficult enough in a simple index, let alone a complex one. Moreover, most legal publishers large enough to maintain such a site usually have good information technology professionals working for them. Commonly, the indexer is asked to use an already-placed anchor as the locator, and the IT department runs a program that turns all page locators in the index into hypertext links. This usually works quite smoothly. However, the locators themselves are often problematic. They are not usually designed with ease of use in mind (since they are seldom seen or used in the “live” electronic environment), so they are often a confusing jumble of letters, numbers, and symbols that take a long time to enter and are fatally easy to mistype. Further, electronic legal texts often represent only the latest rendition of a particular publication, involving both print and CD-ROM versions (not to mention condensed and expanded versions), and these versions may all employ different types of locator. The indexer may be asked to maintain a single index for all these versions, with different sets of locators. This can be kind of fun if you like puzzles — or a real problem to maintain. For instance, the index database may contain entries like this:

Bankruptcy

pension plan distributions, effect on, {45.673}[45.6(a)(12)(c)]

In which the number in curly brackets represents the locator for the electronic product, and the number in square brackets the locator for the paper product. The indexer is probably the person who gets the job of stripping out the unneeded set of locators and setting the (usually different) set of general publishing rubrics for each publication of the different indexes.

The role of the indexer in online publications is expanding. Indexers have become involved in the information architecture of legal sites and in developing the taxonomical structures and search features whereby users “drill down” through a Website to find the information they need. Since online legal material is so complex and so lengthy, users are always going to need very good finding aids — and indexers are some of the best people to construct these, whatever form they take.

### **Getting Legal Indexing Work**

Okay, so nothing I’ve said has put you off, and you’ve decided you’d like to try legal indexing. How does someone break into the field? First, build on the skills you have in related fields. Medical indexers often have to deal with legal issues; you may be able to take on a legal book dealing primarily with medical issues (such as malpractice). And don’t forget your life skills; if you spent a few years as a paralegal, went to law school, or have been a practitioner, utilize it.

Sometimes it’s who you know. Find a mentor. Talk to editors and other indexers who know your work. They may feel comfortable starting you off on a small project without tough time constraints. Small projects generally are good for beginning indexers and for people entering a new subject area. Unlike other fields, law textbooks are not generally a good starting point for beginners. As I’ve mentioned above, casebooks can be quite confusing to index even for experienced people. But there are many texts aimed at nonpractitioners (human resources law is one obvious area where many of the users will not be lawyers), and these are good projects for people new to indexing or law.

Alternatively, working with another, more experienced indexer or editor on a large project can be a good way to break into legal indexing. A project manager overseeing the indexing of a large publication may need someone who can do specifically defined tasks or index prescribed areas. If you are quick, reliable, and accurate within the limits of your beginner's knowledge, you can provide assistance, gain experience, and come off as a good hiring prospect for future work.

### **Seven Features of Legal Indexing**

To summarize, there are seven features of legal indexing that both novices and experienced persons need to keep in mind.

*Size matters:* Legal indexes are frequently large, complex, multivolume works; and size is a complicating factor in indexing. Size affects depth of structure and often leads to multiple metatopics and to geometric as well as mathematical increases in the editing process.

*Multiple metatopics:* A lot of legal books cover more than one major field. Identifying the metatopics and figuring out a scheme for accommodating them is a major initial step in setting up the structure of a legal index.

*Deep structure:* Size and multiple metatopics often mean that legal indexes require a very deep structure to cover the subject matter adequately. But since deep structure can be very confusing, it's important to plan the index architecture as clearly as possible and to find ways to "de-nest" complex entries.

*Time goes by, and so does the index:* Many, if not most, legal indexes are frequently revised as the law changes and material is added, subtracted, or substantially

rewritten. Indexers dealing with supplementation must figure out strategies for keeping their work accurate and be prepared to periodically reindex texts that have undergone substantial changes. Even the best-planned indexes and updating schemes can begin to collapse under the weight of frequent changes; minor mistakes and missed alterations pile up, and sometimes the whole emphasis of the text changes subtly over time so that the index structure no longer reflects the text properly.

*Text structures and topic headings:* Legal texts tend to be highly structured, with lots of topical headings. Don't make the mistake of thinking that you can index the text from the outline. Important information can lurk in unexpected places; topic headings can be misleading. There's simply no substitute for reading the text. With many big legal texts, usually with multiple authors, the indexer may be the only person who has actually read the whole thing (kind of a scary thought).

*Where's the beef?* Especially when it comes to case law, the indexer of legal texts always has to be thinking, "Where's the beef?" What is the real point of a particular case or set of circumstances? How does it relate to the main topic? Just because the case is about, say, avocado trees, doesn't mean it's there because avocado trees are important. It's there to illustrate a point of law. Many people think of law as a very concrete, straightforward topic, but legal writers are often curiously allusive, and the indexer must discern the real topic and capture it for reference.

*Location, location, location:* In many legal indexes, locators are not page numbers, but section numbers. Using section numbers makes it much easier to maintain indexes for supplemented texts and allows the indexer to work in advance of final pages with more ease. But section numbering also "chunks" the text and can affect the final

structure. As with use of topic headings, indexers need to watch that use of section numbers doesn't just lead to a regurgitation of the text outline in alphabetical form. The section numbers can offer great help in discerning relationships between topics, but they can also be incomplete or inaccurate.

But the final point is: *law is fun*. Law is a blast. It's not boring or dry. Law is every quirk in human behavior. Law is life. Give it a try.

## References

### *Print*

*Ballentine's Law Dictionary*. 1969. Rochester, NY: Lawyers Cooperative Publishing.

[All legal indexers should have a decent law dictionary to hand. I'm using this rather ancient edition of *Ballentine's*, but *Black's* and several others are just as good. While new terms are added and definitions are revised, law dictionaries don't change much over time; I bought this version new in 1990.]

Brenner, Diane, and Marilyn Rowland, eds. 2000. *Beyond Book Indexing: How to Get Started in Web Indexing, Embedded Indexing, and Other Computer-Based Media*. Medford, NJ: Information Today and American Society of Indexers.

*Brief Entry: A Newsletter for Law Indexers*. [This was an international legal indexing journal. It only ran to a few issues and is now defunct, but several law libraries subscribed to it "Indexing for CD-Rom Products," "Plain Legal Language," "Wellisch on Legal Texts," "Indexing Textbooks for Secondary and Tertiary Level Students of Law," "Surfin' the Law (Using the Internet for Legal Research in the U.K.)," and "The Computer Teaching Initiative Law Seminar."]

Kendrick, Peter, and Enid Zafran, eds. 2001. *Indexing Specialties: Law*. Medford, NJ: Information Today and American Society of Indexers. [Contains many useful and highly specialized articles about law indexing.]

*Managing Large Indexing Projects: Papers from the 24<sup>th</sup> Annual Meeting of the American Society of Indexers, San Antonio, Texas, May 23, 1992*. 1992. Port Aransas, TX: American Society of Indexers. [Full of excellent articles about handling big projects, legal or otherwise.]

Moys, Elizabeth M. 1993. *Indexing Legal Materials*. London: Society of Indexers Occasional Papers on Indexing, no. 2. [Nuanced toward British law, but with much of relevance to American indexers.]

Mulvany, Nancy C. 1994. *Indexing Books*. Chicago: University of Chicago Press. [The best general book about the art and science of indexing.]

Stauber, Do Mi. 2004. *Facing the Text: Content and Structure in Book Indexing*. Eugene, OR: Cedar Row Press. [A superb guide to scholarly indexing, with many practical examples.]

### Websites

You may want to look at the Websites for BNA ([www.bna.com](http://www.bna.com)), Lexis ([www.lexis.com](http://www.lexis.com)), and Westlaw ([www.westlaw.com](http://www.westlaw.com)), all of which have extensive finding aids. These are private sites that charge for full access, but usually allow partial or trial use of the site. Government sites such as the Department of Labor ([www.dol.gov](http://www.dol.gov)), which are free, will also give you some ideas about online indexing.