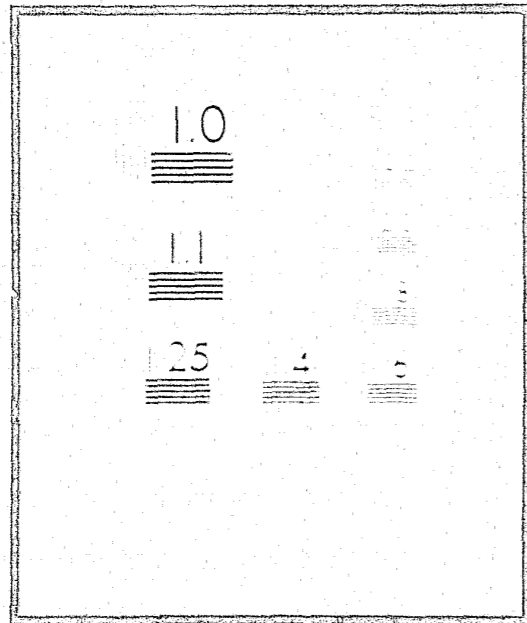


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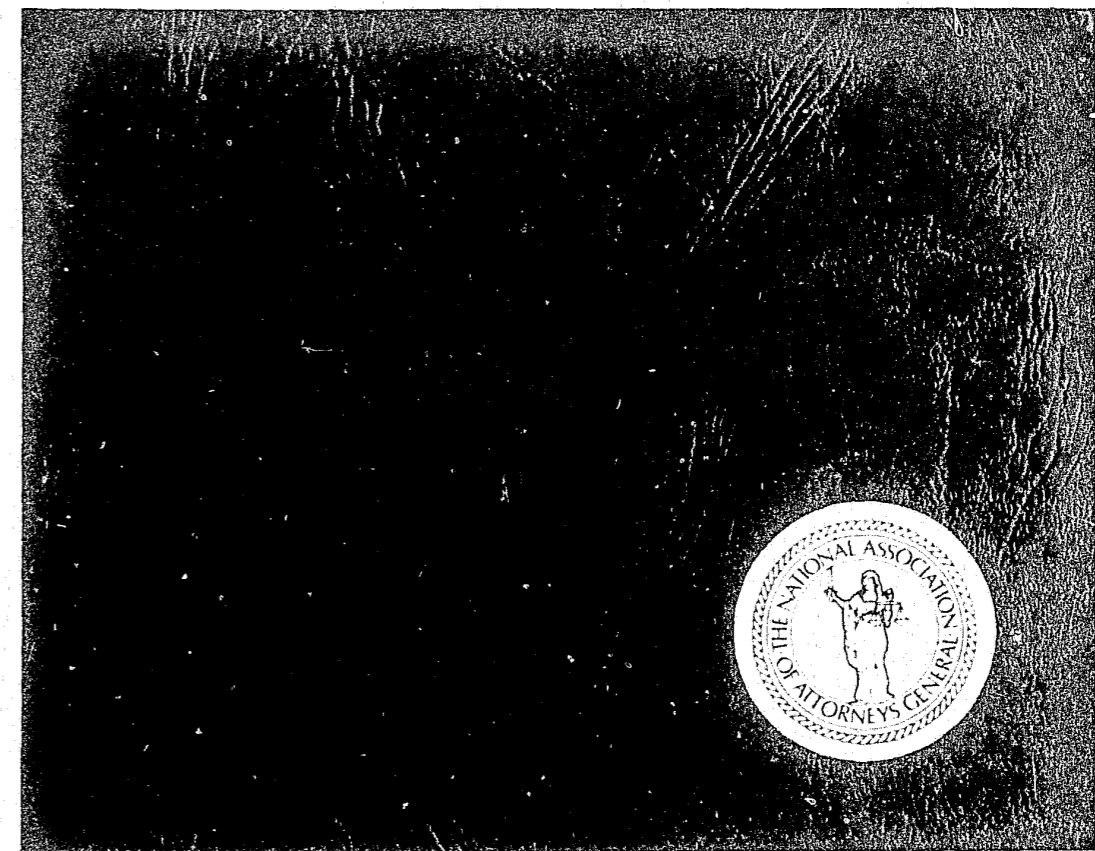
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Indexing of Briefs

May, 1976

The National Association of Attorneys General
Committee on the Office of Attorney General



35004 dup

The National Association of Attorneys General
Committee on the Office of Attorney General

INDEXING OF BRIEFS

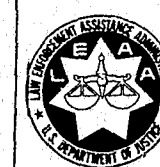
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The National Association of Attorneys General
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1. INTRODUCTION

Attorneys in private practice and government alike have long recognized the benefits to be realized from the systematic indexing of legal briefs. A 1963 survey of the methods of indexing briefs in Attorneys General's offices revealed that, while only a few offices indexed briefs by subject, most "acknowledged the need for such an index and expressed an interest in developing one." The absence of an index was generally considered a "real handicap." Typical survey responses said that "most of the work that has been done upon specific cases is tucked away in the files and forgotten"; many Attorneys General believed that "an index would be invaluable because of the fact that very frequently we have occasion to research a point of law covered in a previous case."¹

In the thirteen years since the survey disclosed this concern with maintaining legal research in readily usable form, less than half of the Attorneys General's offices have established brief indexing systems. In 1974, the Tennessee Attorney General surveyed Attorneys General's offices with regard to brief indexing systems. Of the thirty-eight respondents, only seventeen reported any type of brief indexing system. The Committee on the Office of Attorney General surveyed Attorneys General in the spring of 1975. Twenty-one of the forty-six respondents indicated that brief indexing systems were in use or being planned.

This memorandum examines different brief indexing systems and discusses design and management considerations which affect the usefulness of such systems. It is based on the two surveys mentioned, on additional questionnaires and telephone calls to Attorneys General's offices, on inquiries to selected private law firms, and on relevant management literature.

Purpose of Indexing Systems

Almost all of the court cases which involve the staff of an Attorney General's office require the filing of one or more briefs. This, of course, entails expenditures of time, manpower and money to research the legal points which have been or may be raised. To minimize the expense of legal research, which is often the most demanding and time-consuming aspect of a case, while maximizing its quality is the ultimate goal of any brief indexing system.

Unless legal materials such as briefs are collected, examined, and arranged according to the principles of law they contain so that they can be quickly located, research time will be wasted. Briefs are a particularly valuable form of legal research since they concentrate on narrow points of law and are sufficiently extensive in their treatment as to be of future importance as a reference work. Therefore, an attorney researching a specific question of law should be able to turn to the brief index to locate any relevant arguments. With such an index, the attorney would need only to update the existing research in the area of law concerned and apply it to the facts of the case. Relieved of the task of researching anew each legal argument, the attorney could concentrate on the variables of the particular case and on developing strategy.

As the staffs of Attorneys General's offices increase in size and exchange of work among attorneys on a personal basis becomes more difficult,

a brief indexing system becomes a necessary channel for information retrieval. If the indexed briefs of each attorney are available for use by other attorneys, they no longer will need to depend on individuals' recollections of past work concerning a particular point of law.

A memorandum prepared by the Tennessee Attorney General's office stated the need for a brief indexing system:

It is apparent that one of the best sources of legal research - the work product of each staff member - is not being made available to all other staff members in an organized fashion. Experience in other states has shown and logic dictates, that if each individual's briefs are available for everyone else to use, a great amount of duplication of effort may be avoided. Several staff members have experienced the problem of spending several days on researching a point only to find that someone else has just written an exhaustive brief on the exact same issue. The problem of course, is that there is no way to find out what issues anyone else is or has worked on. When this office only contained a few lawyers, a discussion at lunch time may have been all that was necessary to exchange current topics. Obviously this is not practical now that there are over twenty people in this office. With an ever increasing case load and the addition of even more staff members, the problem is further compounded. Once one accepts the initial proposition that the universal availability of the final work product of each person will expedite legal research, the problem then becomes one of finding the best method of disseminating that information.²

In this way, the brief indexing system can prevent costly duplication of effort and improve the quality of attorneys' work by refining past research, thereby increasing the effectiveness of the work of the Attorney General's office. In effect, a brief indexing system is

a way to make perpetually useful the hours of legal work, the gallons of midnight oil burned, the excursions into law books, the mental exercise, [the] creative imagination, ... [the] intellectual accomplishments, and the thousands of dollars worth of legal work that have gone into preparing the memoranda of law that have been written over the years³

Use by Attorneys General's Offices

Recent information available to COAG indicates that less than half of Attorneys General's offices have some type of brief indexing system. A survey conducted by the Tennessee Attorney General in 1974 found that seventeen of twenty-four responding states had such a system.

The Committee on the Office of Attorney General contacted Attorneys General's offices during 1975 and 1976 concerning briefs. If the results of the COAG survey are combined with those of Tennessee's survey, it appears that twenty-three of the fifty-four Attorneys General's offices index briefs, while twenty-nine do not. Information on Alabama and West Virginia is not available.

According to these surveys, the following Attorneys General's offices currently have brief indexing systems:

Alaska	New Mexico
Arkansas	New York
California	North Carolina
Delaware	Ohio
Georgia	Pennsylvania
Hawaii	Rhode Island
Illinois	South Dakota
Kentucky	Tennessee
Minnesota	Virginia
Mississippi	Washington
Montana	Wisconsin
New Jersey	

A summary of some of these states' brief systems is given below.

SUMMARY OF BRIEF INDEXING SYSTEMS IN ATTORNEYS GENERAL'S OFFICES

Alaska	Briefs are indexed by statute and subject; the subject headings are general in nature.
Arkansas	Only criminal briefs are indexed. Indexing is according to a list of headings developed by the office.
California	Criminal briefs are indexed, using a number code developed by the office.
Delaware	Civil briefs are indexed according to West Key Numbers, although this system is being re-evaluated. Criminal briefs are indexed by topics and by case names.
Georgia	Briefs are indexed by key words and by topics.
Hawaii	Briefs are indexed by West Key Number, statute, and court case number.
Illinois	Some divisions of the office maintain their own index system.
Kentucky	Briefs are indexed by subject and statute.
Minnesota	Criminal briefs are indexed by subject.
Mississippi	Briefs are indexed by West Key Numbers.
New Jersey	Briefs are indexed by agency serviced, statute, plaintiff, defendant, and point of law.
New Mexico	Briefs are indexed according to a modified form of the Nedrud system.
New York	Briefs are indexed by case name and subject heading.

SUMMARY OF BRIEF INDEXING SYSTEMS
IN ATTORNEYS GENERAL'S OFFICES

North Carolina	Briefs are indexed by subjects, which are designated by the attorneys.
Ohio	Briefs are indexed by subject.
Pennsylvania	Briefs are indexed by title, opposing party, attorney, case number and key words.
Rhode Island	Appellate criminal briefs are indexed by topic, according to a list developed by the office.
South Dakota	Briefs are indexed by subject.
Tennessee	Briefs are indexed by topics, according to a list developed by the office and based on Nedrud.
Virginia	Appellate briefs are indexed by plaintiff's name.
Washington	Briefs are indexed according to case name and a subject index developed by the office.
Wisconsin	Briefs are indexed by computer, using a subject code developed by the office.

Some other Attorneys General's offices indicated to COAG that they are actively considering the possibility of indexing briefs. The Colorado Attorney General reported to COAG in March of 1976 that his office was in the process of developing an interfaced system for indexing briefs, Attorney General's opinions, and a management information system. Colorado had previously used a system based on Nedrud. Nevada and Idaho are also in the process of developing indexing systems. South Carolina reported that it was in the process of preparing a topical index for manual retrieval, and might eventually computerize this.

Several Attorney General's offices have initiated brief indexing systems but later abandoned them. The Chief Counsel of Missouri's Criminal Division reports that its system was abandoned for several reasons:

Paramount was the fact that a great deal was necessary to keep the system updated, requiring someone to sort and file briefs as they were prepared and place them in the system. Furthermore, it was found that only new attorneys in the office benefitted from the system since persons who had written several briefs in effect created a system of this type through their own work. Also, much the same result could be accomplished by simply going to a more experienced attorney and asking if he had ever written a brief on a given issue.⁴

Missouri is, however, considering implementing a new brief indexing system which would use the office's computer capability.

2. THE INDEX SYSTEM

A uniform and consistent set of index headings has been described as "the first, indeed the vital, requirement" of a successful indexing system.⁵ The headings, or descriptors, should make it possible to identify material quickly and accurately. They should be suitable to the material being indexed and to the needs of its users. They should form a coherent and inter-related system.

Designing an index presents a dilemma. On the one hand, an index that is too specific and has too many descriptors will prove difficult to use because the user will have to look under too many headings to find what he wants. On the other hand, an index that is too general will refer the user to material that is irrelevant. A successful index strikes a balance between these two extremes.

Types of Descriptors

There are a number of different types of brief indexes used by Attorneys General's offices. Most use more than one type of index to facilitate retrieval. The major descriptors used are:

- (1) The subject or topic index; this may include the point of law as well as the subject involved;
- (2) The statute or constitutional provision involved;
- (3) The name of the plaintiff;
- (4) The name of the case.

Subject or Point of Law Index

Most Attorneys General use some form of a subject or topic index. There are two general types of subject indexes: the point of law involved such as arrest or appeal, and the substantive area such as corrections or antitrust.

The substantive area type index is obviously useful, but has some limitations. The Law Librarian of New Jersey's Department of Law and Public Safety used to index according to various subject lists, but found that this was unsatisfactory. Her comments illustrate the problem:

As I have worked with the index and with the attorneys using it, I have revised my approach. Most of the time what a deputy wants is a brief which sets out his legal argument and includes citations to the recent cases. I now do much less subject indexing but concentrate on indexing the points of law covered in the brief. Because our deputies are assigned to specific areas such as education, taxation, etc., they are usually familiar with the briefs being done in that area. The index is designed to key them into what is or has been done in the rest of the office.⁶

If an attorney were researching a matter involving search and seizure, he would not find appropriate briefs if they were indexed only by the type of offense, such as "narcotics." For these reasons, most offices do not rely strictly on a subject index.

Many offices index briefs according to the section of the statutes or constitution involved. This facilitates researching subsequent sections concerning the same law. The name of the plaintiff may also be used to index briefs or the name of the case. These latter, however, would be of limited value to an attorney who was not familiar with the case and its subject.

Lists of Index Headings or Authority Lists

Some offices allow the persons who are indexing briefs to choose any subject heading that they consider appropriate. Most, however, restrict the index terms to those given in an "authority list," or pre-determined list of headings. Some Attorneys General have developed their own authority lists, while others have adapted existing lists.

There are several advantages to restricting index terms to an authority list, rather than allowing the indexer an unlimited choice. The authority list assures that information is grouped by accepted headings and that indexing is uniform. Otherwise, the same subject might be indexed under different terms: one person might index a brief concerning absentee voting under "absentee voting," while another would place it under "elections," and still another under "voting absentee." An authority list would designate a single term to be used. Another advantage of an authority list is that it is usually developed carefully, rather than on an ad hoc basis, so more judgment is applied to selecting the terms to be used. The disadvantage is that it limits users in their choice of terms and forces them to refer to a list.

An office may choose to develop its own list of headings. These may draw in part on lists from other sources, or may be based entirely on the office's own experience and work product. The disadvantage of this approach is the great amount of work that may be required to develop a satisfactory list. The advantage is that, if successful, it will fit the office's materials and research needs more precisely than can any list developed elsewhere.

The most commonly-used outside authority lists are West's Key Number system and the index to Nedrud, The Criminal Law. The Key Number system developed by the West Publishing Company divides the entire body of case law into seven divisions, thirty-two headings and over four hundred digest topics. The divisions are: "Persons," "Property," "Contracts," "Torts," "Crimes," "Remedies," and "Government." The topics describe the character of the points of law placed under them and are subdivided according to the number of principles or points of law therein. "Each point of law within the topic is given an identifying number called the 'Key Number' and all cases applying to this point or principle of law are classified to that Key Number."⁷

The primary advantage of using the West Key Number index for briefs is that the index would then correspond to the West system, which "keys in" court cases from all United States jurisdictions. Once the desired topics and Key Numbers are located, the researcher has access to state and federal cases, as well as to his office's briefs, without the hindrance of different systems of indexing. For example, to locate information pertaining to evidence, one would search the division entitled "Remedies," the "Means and Methods of Proof" heading and the digest topic of "Evidence." The West Key Number classification system does not incorporate more specific headings than the digest in the index.

The other commonly-used system is based on Nedrud, the Criminal Law. This is a monthly looseleaf service which prepares summaries of criminal cases which are published in the Advance Sheets of West's National Reporter System.

The index consists of four general subject sections ("Evidence/Witnesses"; "Procedure"; "Adjudication"; "Appeal/Collateral Remedies") and five specific subject sections ("Arrest/Search and Seizure"; "Confessions/Self-Incrimination"; "Crimes/Offenses"; "Defendant's Rights/Defenses"; "Miscellaneous"). To locate information concerning hearsay evidence, for example, consult the section of "Evidence/Witnesses," the "Evidence" subsection, and the heading of "Hearsay." The index is cumulative monthly, whereas the authority list incorporates changes once each year.

Hawaii's Prosecutor-Public Defender Clearinghouse and Institute employs the Nedrud index for its memo and brief bank. Nedrud was chosen because the system's headings allow flexibility in indexing, and the staff members were familiar with the Nedrud index scheme. Subject headings were added to the index in order to accommodate areas not covered by the Nedrud system, such as the Federal Rules of Criminal Procedure, the Hawaii Revised Statutes and Rules of Criminal Procedure, and other such procedural documents.

There are various other authority lists available. The New Jersey Attorney General's office's law librarian reported that she has experimented with various systems and finds that the Index to Legal Periodicals classification is the most satisfactory. Some topics are added to the list, and each heading is broken down at least once into subheadings.

F. Trowbridge Vom Baur advocates a system for indexing memoranda of law which he developed while employed in a large law firm and expanded when employed by a legal office in the federal government. The indexing system was detailed in the October, 1969 issue of The Practical Lawyer. As an appendix to the article, the complete list of "Main Headings, Subheadings, Divisions, and Cross References" appeared with samples of properly indexed memoranda. Offered as a model index system, the author recommends that an office "...desiring to set up this system should adapt and modify this list [of index headings] to suit its particular jurisdiction and practice." The headings and system are applicable to briefs.

The Committee on the Office of Attorney General published a Standard Subject Index in 1974. This consists of 1,253 entries, of which 561 are index terms and 692 are cross-references. This list, however, was intended primarily for indexing opinions.

Some Attorney General's offices have modified these standard authority lists to more closely meet their own needs. New Mexico has adapted and modified the Nedrud system, "so that the subject headings would be consistent with local needs, yet permit a proper tie into the National Reporting System if in fact no New Mexico briefs in point have been written." The office feels that "the adaptation strikes a balance between an indexing system which is so complete that it is too cumbersome for efficient legal research and a system which is not complete enough to permit proper research into relevant areas."

Format of Index

Several factors should be considered in designing the format of an index. These include the use of subheadings, the use of letter or number keys, and the use of cross-references. Careful attention to these factors will help ensure consistence in indexing and convenience in use.

Most indexing systems use fairly broad headings, with more specific subheadings. This enables the user to locate briefs which are specifically relevant to his interests. It avoids the problem of having too many headings, which would make the index too cumbersome for convenient use, and of having headings that are so specialized that a user might overlook them. All of the examples of indexes given here use subheadings.

Many systems use numbers or letters to identify headings. Some use a letter designation for headings and numbers for subheadings, or vice versa. Others use letters and numbers for different types of information. Thus, numbers may be used for subjects, and letters for different types of case materials. Such systems offer a second method of identification. Computerized systems must, of course, incorporate symbols at some point in the indexing process. Cross-indexing should be used extensively to guide users to the correct subject heading or headings. The word see, underlined or in italics, is used for this purpose.

To help differentiate between index terms and terms used only as cross-references, it may be helpful to show index terms in capital letters and cross-references in capital and lower case letters, as in these examples:

Abandoned Property: see PROPERTY, UNCLAIMED
Absentee Voting: see ELECTIONS

The cross-reference may be to more than one index term if it relates to several subjects. For example:

Amendment: see CONSTITUTIONAL AMENDMENTS; LEGISLATIVE BILLS;
STATUTES
Administration: see ADMINISTRATIVE PROCEDURE; INHERITANCES

The phrase see also may be used to refer users to closely-related topics, such as:

AGRICULTURAL PRODUCTS: see also FOOD; SEEDS
AMBULANCE SERVICE: see also RESCUE SQUADS

Selected Index Examples

Specific index categorization and notation varies according to office needs and preference. The following pages show what some offices have found suitable. Sample pages from their indexes are included.

California. California's Criminal Law Index is divided into six numbered sections: legislation, investigation, pre-trial, trial, post-conviction, and federal courts. There are subheads under each of these and the subheadings are further divided.

CALIFORNIA CRIMINAL LAW INDEX (Sample Page)

100 LEGISLATION	240 IDENTIFICATION
110 CONSTITUTIONAL LAW	241 Photographs
111 First Amendment	242 Lineups
112 Fourth Amendment	242A Crime Scene
113 Fifth Amendment	242B Police Station
114 Sixth Amendment	242C Other
115 Eighth Amendment	243 Right to Counsel
116 Fourteenth Amendment	244 Voice Print
117 Other Fed. Provisions	250 INTERROGATION
118 Calif. Constitution	251 Admissions/Miranda/ Confessions
120 ENACTMENT	252 False Friend
130 REPEAL	253 Tape Recordings
140 PRE-EMPTION	254 Co-Defendants
150 CONSTRUCTION	260 EAVESDROPPING
200 INVESTIGATION	270 SURVEILLANCE
210 ENTRAPMENT	300 PRE-TRIAL
220 DETENTION & ARREST	310 GRAND JURY
221 Cause to Detain	320 PRELIMINARY EXAM
221A Vehicle	330 ACCUSATION
221B Person	331 Indictment
222 Cause to Arrest	332 Information
223 Entry to Arrest 844-1531	333 Arraignment
224 Effecting an Arrest	334 Plea
225 Citizens Arrest	334A Change
226 Arrest Warrants	334B Execution
227 Booking	334C Bargaining
230 SEARCH & SEIZURE	340 COURT & JUDGE
231 Search Warrants	350 COUNSEL
231A Sufficiency (Affidavits, Informants, Probable Cause)	360 PARTIES
231B Execution	370 MOTIONS
232 Plain Sight	371 PC 995
233 Incident to Arrest	372 PC 1538.5
234 Search Without Warrant	373 For Discovery
234A Body	374 To Change Venue
234B Building	375 To Sever/Join
234C Containers	376 Disqualify Judge
234D Vehicles	377 Change Counsel
234E Other	

* * * * *

New Mexico has a brief index based on the Nedrud system. The 5-page list groups subjects generally into nine headings, each of which is assigned a letter. These are:

- A Arrest, Search and Seizure
- B Confessions/Self-Incrimination
- C Crimes/Offenses
- D Defendant's Rights/Defenses
- E Evidence/Witnesses
- F Procedure
- G Adjudication
- H Appeal/Collateral Remedies
- M Miscellaneous

The Miscellaneous heading is sub-indexed into special topics, including prisons, military justice, and juvenile delinquency. Each general heading is subdivided into numerical headings. These, in turn, are subdivided, using a decimal system. Thus, it is possible to locate the specific point of law that is in question.

NEW MEXICO BRIEF INDEX
(Sample Page)

A ARREST, SEARCH AND SEIZURE

- A-1 ARREST AND DETENTION
 - A-1.1 Reasonable Grounds
 - A-1.2 Warrant Requirements
 - A-1.3 Misdemeanors
 - A-1.4 Detention: "Stop and Frisk,"
- A-2 SEARCH AND SEIZURE
 - A-2.1 Probable Cause: Warrant
 - A-2.2 Other Warrant Requirements
 - A-2.3 Incident to Arrest--Arrest or Search for One Offense, Seizure for Another
 - A-2.4 Automobiles--Without a Warrant
 - A-2.5 Persons and Places--Without a Warrant
 - A-2.6 Consent
 - A-2.6(a) Abandonment
 - A-2.7 Eavesdropping

B CONFESSIONS / SELF-INCRIMINATION

- B-1 INTERROGATION
 - B-1.1 Voluntariness
 - B-1.2 Massiah-Escobedo
 - B-1.3 Miranda
 - B-1.4 Arrest and Disposition--McNabb-Mallory
 - B-1.5 Youths--Incompetents

B-2 PROCEDURE

- B-2.1 Prerequisite to Suppression--Revealing Inadmissible Confession (Cross Reference: D-2.7)
- B-2.2 Hearings--Jackson v. Denno
- B-2.3 Evidence--Use for Impeachment--Harmless Error (Cross Reference: Re Use of Codefendant's Statement, F-1.6)

North Carolina has a topical index. This has major headings and sub-headings. Thus, briefs indexed under "Aiding and Abetting" are divided into "Presence at Scene" and "Rape," with additional subheads added as necessary. Numerous cross-references to other topics are shown to facilitate research. Attorneys index their own briefs, and are free to add whatever headings they consider appropriate. Thus, the subject list was not pre-determined, but merely reflects the terms chosen by attorneys.

An indexed listing of briefs is distributed periodically to attorneys. This gives the court ("CA," "S Ct") for each case and indicates whether it is state or federal ("S" or "F"). The date is given on the same line. Finally, the name of the author or authors of the brief are shown.

NORTH CAROLINA BRIEF INDEX SYSTEM
(Sample Page)

- A -

ACCESSORY AFTER THE FACT - See also Aiding and Abetting Entry of Judgment - Exceptions to CA S 1972

Murder
CA F 1972
Michael Bryant Williams

James Walter Black
James Breeden
Glenn Edward Darnell
Douglas Mack Davis
Leroy Davis
Jerry Foster
Larry Dennis Hinton
John C. Jackson
Gary Douglas Lee
Bobby Lowery
Curtis McCloud

ACCOMPLICE

Testimony
CA F 1973
William Wood
Daniel Warren
Willard Ronald Wilder

ADMISSIBILITY OF EVIDENCE - see Evidence

ADMITTING ERROR - see Error Admitted

AIDING AND ABETTING

Presence at Scene
CA F 1973
George Lyles, Jr.

CA S 1972 (Continued)
Robert Lee McLean
Russell Wendell Melson
James E. Melton
Calbert Reid
George Stansbury

Rape
S Ct S 1971
James Earl Little
S Ct S 1972
Cephus Jerome Dawson

CA F 1972
Steven H. Dahl
William Floyd Johnson
Tony Gwyn Mink
Willie James Wallace

ALIBI - See Instructions, Alibi

AMNESTY

S Ct F 1971
Johnnie Frazier

CA S 1973
Harry Lee Dunn
CA F 1973
John Floyd
CA S 1973
Albert Hensley

APPEAL

Docketing Time
CA S 1972
Gary Douglas Lee

Error on Face of Record - Exceptions to CA F 1973
John Floyd

Tennessee developed a general topic index. This uses both the type of crime (such as "narcotics" or "automobile and traffic crimes") and the procedure involved (such as "search and seizure").

There are thirty-three general headings, each of which is assigned a number; these are shown on the opposite page. Each of these is subdivided into more specific topics, which are assigned letter designations. Some letter designations have not been assigned to a subject, but are reserved for future additions. A sample of the sub-index is shown below. The complete index is very detailed, enabling the researcher to locate material specifically in point to his needs.

TENNESSEE SUB-INDEX

SUB INDEX

- \$1 ARREST AND DETENTION
 - A. In General, What Constitutes
 - B. Authority to Arrest
 - C. With Warrants, Warrant Requirements
 - D. Without Warrant, Probable Cause
 - E. "Stop and Frisk"
 - F. [RESERVED]
 - G. Mode of Making Arrest
 - H. Resisting Arrest
 - I. "Fruit of the Poisonous Tree" from Faulty Arrest
 - J. Effect of Illegal Arrest
- \$2 SEARCH AND SEIZURE
 - A. In General, What Constitutes
 - B. With Warrant, Warrant Requirements, Defect
 - C. Without Warrant
 - D. Automobile Search, With and Without A Warrant
 - E. Consent to Search
 - F. [RESERVED]
 - G. "Plain View" Exception
 - H. Emergency Situation Exception
 - I. "Inventory" Searches
 - J. Searches for Obscenity
 - K. Wiretapping, Eavesdropping, Right to Privacy
 - L. [RESERVED]
 - M. Standing to Contest Search
 - N. Wrongful Search and Seizure, Motion to Produce/Suppress Illegally Obtained Evidence

TENNESSEE BRIEF INDEX
(complete list of major headings)

- \$1 ARREST AND DETENTION
- \$2 SEARCH AND SEIZURE
- \$3 CONFESIONS, ADMISSIONS, STATEMENTS
- \$4 PRETRIAL LINEUPS, IDENTIFICATION AND SELF-INCRIMINATION
- \$5 PRELIMINARY HEARING, ARRAIGNMENT
- \$6 BAIL
- \$7 GRAND JURY, INDICTMENT AND INFORMATION
- \$8 PRETRIAL MOTIONS: DISCOVERY, CONTINUANCE, CHANGE OF VENUE, JOINDER AND SEVERANCE
- \$9 GUILTY PLEA
- \$10 TRIAL
- \$11 EVIDENCE
- \$12 WITNESSES, TESTIMONY
- \$13 CONSTITUTIONAL CLAIMS
- \$14 JUDGMENT AND SENTENCING
- \$15 APPEAL
- \$16 COLLATERAL REMEDY: HABEAS CORPUS AND POST CONVICTION PROCEEDINGS
- \$17 PAROLE, PROBATION AND EXECUTIVE RELIEF
- \$18 EXTRADITION, DETAINERS
- \$19 JUVENILES
- \$20 thru \$23 [RESERVED]
- \$24 CIVIL RIGHTS ACTIONS
- \$25 COMMON LAW AND STATUTORY DEFENSES TO CRIMES
- \$26 SUBSTANTIVE CRIMES IN GENERAL, CONSPIRACY, ATTEMPTS, PARTIES, LESSER INCLUDED, COMMON LAW
- \$27 HOMICIDE, ASSAULT, WEAPONS, KIDNAPPING, MAYHEM
- \$28 ROBBERY, BURGLARY, THEFT, DESTRUCTION OF PROPERTY
- \$29 SEX, RAPE, OBSCENITY, CRIMES AGAINST MINORS
- \$30 NARCOTICS, INTOXICANTS
- \$31 CRIMES AGAINST AUTHORITY, BREACH OF PEACE, ESCAPE
- \$32 AUTOMOBILE AND TRAFFIC CRIMES
- \$33 OTHER CRIMES

Washington has an index for briefs which includes both subjects, such as "animals," and points of law, such as "adverse possession." Some headings are subdivided into more specific topics. The sample page shown is from a 10-page list issued in 1967, although this has recently been revised.

WASHINGTON BRIEF INDEX
(Sample Page)

ABANDONED PROPERTY

ADMINISTRATIVE LAW AND PROCEDURE

- (a) Administrative Procedure Act
- (b) Judicial Review
- (c) Delegation -- Standards, etc.
- (d) Boards, Commissions and Agencies

ADMIRALTY

ADVERSE POSSESSION

AERONAUTICS

- (a) State Regulation
- (b) Airports

AGRICULTURE

- (a) Fairs
- (b) Foods
- (c) State Regulation

AGENCY

ALIENS

ANIMALS

ANTI-TRUST

APPEALS

APPROPRIATIONS -- STATE AND LOCAL

- (a) Necessity
- (b) Interpretation
- (c) Executive Veto

ARREST

ASSOCIATIONS -- Unincorporated

ASSUMED NAMES

ATHLETICS

ATTORNEY GENERAL

BAIL

Private Firms

COAG obtained information from three private law firms in their methods of indexing briefs.⁸ Each firm indexes briefs according to a subject index which it has developed. The index is used for opinions and office memoranda as well as for briefs.

MORGAN, LEWIS & BOCKIUS INDEX
(Sample Page)

COMPLETE LIST OF KEY WORDS AND PHRASES USED IN
INDEXING M.L. & B. MEMORANDA OF LAW, OPINION LETTERS AND BRIEFS

ABANDONMENT

ACCIDENT

ABATEMENT

ACCIDENT INSURANCE

SEE: INSURANCE - Hospital
Health and Accident

ABSENTEES

ABUSE OF PROCESS

ACCORD & SATISFACTION

SEE: PROCESS

SEE ALSO: COMPROMISE AND
SETTLEMENT

ABUTTING PROPERTY OWNERS

SEE: SIDEWALKS;
STREETS AND HIGHWAYS

ACCOUNT STATED

ACCELERATION

ACCOUNTS AND ACCOUNTING

ACCOUNTS RECEIVABLE

O'MELVENY & MYERS INDEX
(Sample Page)

OFFICE MEMORANDA,
BRIEFS, AND OPINIONS FILE

Index

- | | |
|--|---|
| 1. Administrative Agencies. | 10. Conflict of Laws. |
| 2. Admiralty. | 11. Constitutional Law. |
| 3. Agency. | 12. Contracts. |
| 4. Atomic and Space Law. | 13. Corporations [For Subtopics
see Annex No. 4]. |
| 5. Anti-Trust Law, Trade and
Price Regulation [For Sub-
topics see Annex No. 1]. | 14. Creditors' Rights and
Bankruptcy. [see Annex 9]. |
| 6. Attorneys and Legal Ethics. | 15. Criminal Law and Procedure. |
| 7. Banks and Banking [For
Subtopics see Annex No. 2]. | 16. Damages |
| 8. Charities. | 17. Domestic Relations, Persons
and Minors. |
| 9. Civil Procedure and
Jurisdiction [For Subtopics
see Annex No. 3]. | 18. Economic Stabilization. |

Once a suitable index system has been devised, consideration must be given to staffing, in order to assure that the proper headings are assigned to briefs. This requires someone who is sufficiently knowledgeable to identify the key subjects or points of law in a brief, and who is sufficiently careful to choose the correct index term. Alternative arrangements are discussed in Chapter 5 of this report.

3. THE INDEX FILE

After the kind or kinds of descriptors have been selected, some type of index system must be established. The most common system is a card file, which is usually kept in a law library or other central location. The cards usually summarize the brief as well as identify its subject and the location of the file copy. They may give other information, such as the date of the brief and the name of the attorney who prepared it.

Many offices also print periodic indexes to available briefs, which are distributed to staff attorneys. These may include summaries of briefs. Some offices have attorneys prepare a cover sheet for each brief, and keep these on file.

Index Cards

The design of the filing cards is important for two reasons. First, the card should be simple for the typist to fill out. Second, it should present information that the user will need in a clear and concise form.

The information on a card will depend on the indexing and filing system used in the particular office. However, a card should usually show the following information:

- (1) the subject or subjects under which the brief is indexed;
- (2) the name and number of the case;
- (3) the date of the brief or the case;
- (4) the location of the brief;
- (5) the court in which the brief was filed.

It may also be helpful to show the name of the author of the brief, so the user can then check with the originator for additional material. The name may also help the user evaluate the author's expertise in the particular area. Some states show other information on cards, such as the statutory or constitutional provision involved in the case, or other subjects under which the brief may be indexed.

In New Mexico, the index card gives a capsule summary of the issue that was considered in the brief. It then shows the disposition of the particular issue in the appellate court. For example, the card would note if the argument and authorities presented in the brief for that issue were considered on their merits. If the reverse were true, that would also be noted. If the case was affirmed or reversed on other grounds, that would also be shown on the card.

In addition to content considerations, thought should be given to the physical make-up of the index. Cards should be designed to fit the spacing requirements of the typewriters to be used. Pre-assembled sets of cards may be used, so a whole set of cards may be produced with a single typing. Different color cards may be used to identify different types of indexes, such as a subject index and a case number index, or different types of materials

being indexed, such as briefs or opinions. While 3" x 5" cards are the most common, larger ones may be used to accommodate more information.

Examples of Cards

Some examples of cards used by Attorneys General's offices are shown below and on the following pages.

Iowa uses a system for filing consumer protection complaints that could be adapted to filing briefs. The basic tool is a set of "breakaway" cards, shown below. These are interlined with carbon paper.

The set consists of a top sheet of paper, part of which is pasted on the label of the file folder. The four remaining sheets are cardboard and are filed according to respondent, complainant, category, or any other criteria. Each file card is a different color to facilitate identification.

INSTRUCTIONS FOR USE		
TOP SHEET: TOP PORTION PASTE ON INSIDE COVER OF FILE. BOTTOM PORTION PASTE ON FILE LABEL.		
FIRST WHITE CARD: FILE ALPHABETICALLY BY RESPONDENT.		
SECOND WHITE CARD: FILE ALPHABETICALLY BY COMPLAINANT.		
ORANGE CARD: FILE NUMERICALLY BY CATEGORY.		
YELLOW CARD: GIVE TO FILE HANDLER.		
RESPONDENT		FILE NUMBER
COMPLAINANT	FILE TO	DATE OPENED
CAT. NO.	CATEGORY	DATE CLOSED
		REASON CLOSED
		NOTES
CROSS REFERENCES (LIST ABOVE)		FILE NUMBER
RESPONDENT	FILE TO	DATE OPENED
COMPLAINANT		

Washington. A sample of Washington's file card is given below. This gives the topics ("bond issue," "elections") and the statute or constitutional issue involved. The issue discussed is then summarized. Next, the citation, case number, and court are shown. Finally, the card specifies which party filed by brief, and gives the name of the counsel.

Topic: (1) Bond Issues State G. O.; (2) Elections;
(3) Const. Law, State - Art VIII, secs 1-3
Issue Discussed: Whether state bonds payable out of an excise tax constitute a debt which cannot be incurred without a vote of the people.
Citation: State ex rel Finance Committee v. Martin
; # 37029
Court Wash. Supreme; Brief of Respondent
, pp. 7-35
Counsel Phil Austin

Ohio. Cards used by Ohio's Attorney General's office show the subject in capital letters at the top. Underneath is the case name, number, and date. A short summary of the case is given next, followed by cross-references to other subjects under which the brief is filed.

CIVIL RIGHTS
Edward Martin El v. State of Ohio, et al
75-0354 9/3/75
2743.02(A) denies jurisdiction to the court as to consideration of a demand for damages for an invasion of constitutional rights.
See also: LEGISLATIVE POWER, JURISDICTION

Pennsylvania prepares index cards for each case which show the following information: title of case; opposing party; attorney; number of case; and key words. The client is shown in the upper left corner and the case in the right. The date closed is later stamped on the card.

Justice	11101-74-002510-A-1-110101
	<u>Elman, G.</u>
Bell Telephone Co. of Penna. v. PUC and Commonwealth	
11/14/74 APR 15 1975	CLOSED

Tennessee uses 4" by 6" cards. Yellow cards are used for state or federal court opinions and white cards for briefs written by attorneys in the office. The topic, subtopic, and the reference to the standard topic list are given in the upper left hand corner, as shown on the following card. The case name, court and docket number are shown on the upper right. An abstract showing the proposition of law follows. If the brief includes citations, this is indicated in parenthesis. Finally, the court where the brief was filed and the date of filing are shown.

THEFT: concealing stolen property, §28D(5)	<u>Turner, Ronald v. State</u> Hamilton County No. 457
In order to sustain a conviction for concealing stolen property, the State must prove the theft, show def's actual or constructive possession soon thereafter, and also show that the def. knew the goods were stolen. [cites] (Terry) p.8 [] [name of attorney]	
Brief Filed: C.C.A.K. 6/23/75 [] [date of brief]	
[] [Court of Criminal Appeals, Knoxville]	

As these examples show, a card can be designed to convey a great deal of information in a concise manner.

Printed Indexes

Almost all Attorneys General's offices maintain card files for brief indexes. Card files, however, have certain disadvantages. The attorney must come to where the card file is located in order to use it. In decentralized offices, this may be a real inconvenience. If the attorney makes a special trip to check the index, then finds that there is no relevant brief on file, he may be disinclined to make regular use of the index.

To help overcome these problems, some offices prepare and publish periodic indexes which list available briefs. An outstanding example of this approach is the "Lexogram" published by New York's Attorney General. This presents short summaries of briefs and court decisions, arranged by subject. An annual cumulative index is published, which identifies briefs and opinions by subject heading and points of law. An example is shown below.

CONSUMER PROTECTION

FRAUDULENT BUSINESS PRACTICES -

Interest on Rental Deposits - Special Term correctly held that General Obligations Law § 7-103 requires landlords of of properties with six or more dwelling units to maintain all rent-security deposits in interest-bearing accounts commencing September 1, 1970. Furthermore, this proceeding by the Attorney General is explicitly authorized by General Business Law, § 7-107. The judgment of the Court below should be affirmed. [People, by Lefkowitz, Mtr. of v. Parker, et al, App. Div. 1st Dept., 12/26/74, Irving Galt, Appeals, N.Y.C.]

Another approach is to require that a cover sheet be completed for each brief. This shows the subject of the brief and other information used in indexes. One copy of each cover sheet can be retained in a looseleaf notebook to serve as a central file. Other copies can be distributed to particular divisions or other components of the Attorney General's office. The Arizona and Illinois Attorneys General's offices use similar pre-printed cover sheets.

The Illinois Appellate Defender's office prepares a monthly booklet which gives summaries of briefs arranged by subject. The summaries are usually four or five lines in length. These are compiled into a cumulative booklet twice a year. The booklet is distributed to five field offices.

A private firm surveyed by COAG (Reed, Smith, Shaw and McClay) prepares a monthly list of all documents which its library has received for indexing. The list is arranged by subject heading and is distributed to all attorneys.

Whatever index file system is used, an effort should be made to assure that new material is entered promptly. The experience of offices with brief indexing systems indicates that briefs should be received, indexed and available for use within 5 working days. If briefs are allowed to accumulate without being indexed and available for research, attorneys will be less inclined to send them in for indexing, and users will have less confidence in the index.

4. THE BRIEF FILE

Once the index has been used to identify a relevant brief or briefs, the next step for the researcher is to locate that brief. The filing system should be designed to expedite this step, so that briefs are readily accessible and the brief can be retrieved expeditiously. As a general rule, the organization of the brief files should be visually obvious to the user, and retrieval should be easily and quickly accomplished.

Methods of Filing Briefs

The two most common ways to file briefs are by the name of the case and by number. They may also be filed by the name of the first defendant. There are several problems with filing by names. First, new files must be interfiled alphabetically with the old ones, which will require periodic rearranging of the files. Second, names with unusual spellings may inadvertently be misspelled on the index card or the file, so they are difficult to locate. Third, a name file does not show the date of the case.

Filing by numbers solves these difficulties. Each new file is placed behind the last one and no rearranging is necessary. Files are in chronological order. The problem of such a system is that numbers are hard to remember and subject to error.

Location and Equipment

Some Attorneys General keep brief files in a central location, like the library. Others have a central index, but file briefs in various locations, with the locations shown on the index cards. Thus, briefs may be kept in the section or division where they originated, or even in each attorney's private files. In Ohio, for example, briefs are kept in the originating section of the office, but the index cards are kept by the librarian.

Central files have obvious advantages. First, the files are maintained by one person, usually a librarian, so that filing is consistent. It is easier to institute a check-out system to make sure the briefs are returned to the file. If the briefs are filed near the index, they are immediately accessible and the researcher does not have to go to another location to get a copy of a brief he wants.

The primary disadvantage of central files is that attorneys often prefer keeping their briefs in their own files, so that they can readily refer to them. This disadvantage can be overcome by allowing each attorney to keep briefs he writes, but requiring him to send a copy to the central files.

Suitable equipment should be used for filing. The National Center for Prosecution Management cautions that: "Don't assume that because equipment is expensive it meets the needs of the office. Nor should equipment be selected solely because initial costs are minimal; look at future costs of maintenance and operations."⁹ The Center recommends shelf-type filing equipment, because the initial cost is approximately 50 percent less than drawer-type units and floor space requirements range from 20 percent to 40 percent less. It also says that the process of handling file folders is 20 to 30 percent faster with shelf file units than with drawer type units. Shelf filing systems are especially well-suited to numerical filing and, because of their visibility, are apt to be better maintained.

The file folder should be identified on the tab, and additional information may be written on a label posted inside the folder. Other information, such as the date, may be shown on the file folder in addition to the identification used for filing. Colored tabs on file folders may be used to convey additional information.

Some Attorneys General bind copies of briefs as an alternative to filing, or in addition to the file copies. If this is done, the index should refer to the page numbers where the particular brief can be found.

What Briefs are Retained

A decision must be made as to what briefs will be indexed. This involves two questions: what types of briefs should be indexed, and what period should be covered.

Some Attorneys General index only briefs in criminal cases, while others also index briefs in civil cases. At least one state, Delaware, uses different systems for civil and criminal briefs. Some restrict indexing to briefs in appellate cases. Most Attorneys General's offices limit the index to their own attorneys' briefs. Hawaii's Prosecutor-Public Defender Clearinghouse files opening, answering and closing briefs and court decision, so that the user may know whether the brief was successful in court.

If resources are limited, it may be desirable to restrict the indexing system to certain types of briefs and to do a thorough job of indexing those, rather than index a larger number of briefs with less care. There are also advantages to beginning by indexing only certain categories of briefs, then expanding the system to include other types. Tennessee began by indexing state criminal appeals, state and federal post-conviction cases, and prisoner civil rights cases, and subsequently expanded the system.

When a brief index is begun, it may be used only for current and future briefs, or it may be used for past briefs. It may be applied initially only to current briefs, then earlier briefs added as there is time to index them. Hawaii initially indexed briefs written within a one-year period, but planned eventually to incorporate prior briefs. In New Jersey, briefs in specific subject areas were indexed retroactively for a 5-year period. In Georgia, all briefs that had been retained by staff attorneys were reviewed and excerpts taken therefrom for the index. New Mexico initiated a brief indexing system in 1976 and decided to limit it to briefs written after 1973 for the following reasons:

- (1) Since the office submits an average of eighteen briefs per month containing, of course, many different points per brief, we felt indexing briefs prior to the year 1974 would be redundant and duplicitous.
- (2) Briefs written prior to the year 1974 in many cases are of limited value due to the rapid and progressive change in the state and nationally.
- (3) The indexing of briefs prior to the year 1974 would be cumbersome in that it would be more difficult for appellate attorneys to identify specific briefs currently being considered in on-going briefs.¹⁰

Several Attorneys General's offices index only briefs of above-average importance or quality. This greatly reduces the time and effort required to operate the system. It may also make it more useful by weeding out less valuable material. Another approach is to include only those briefs that reflect original research by the author. Arguments that relate only to the specific facts of the case might also be excluded. As a practical matter, the author would have to decide which of his briefs met these criteria.

At least one Attorney General's office (Georgia) does not file complete copies of briefs. It was thought that the process of looking through an entire brief to find the paragraph or two that might be relevant would be too time-consuming. So, instead, a brief bank is maintained which consists of an index of the issues, short paragraphs dealing with various topics of a recurring nature, and citations.

Capture of Briefs

Another matter to be considered is at what point briefs enter the filing system and are "captured" for retention. Care must be taken that all appropriate briefs reach the file if it is to be complete.

States take different approaches to this. Tennessee has a collection box in the duplication room and, when a secretary is Xeroxing briefs, she places an extra copy in this box. A more common approach is to make each attorney responsible for sending copies of his briefs to the central file.

Retention of Briefs

A problem that may be overlooked when planning a brief filing system is disposing of briefs. If limits are not set on how long briefs are retained, the files may become too bulky for the available space, and the number of indexed briefs on a given point too large for effective research. Furthermore, changes in statutes or new court rulings may make invalidate old briefs. A records management system should be adopted to determine how long briefs should be kept. An arbitrary time limit, such as 5 years, may be set on retention. Different time limits may be set for different categories of briefs. Alternatively, a systematic "weeding out" of the files may be undertaken periodically.

Another alternative is to move briefs from an active file to an inactive file after a certain time period. The inactive file is usually in a less central location, where space is less of a problem and accessibility less a consideration. For example, New Jersey's record room can house only a 5-year collection of briefs. After that time, briefs are available only in case files, access to which is inconvenient.

Relationship to Other Filing Systems

Only a few states report that their brief indexing systems were designed to interrelate with other filing systems. The New Jersey Attorney General's office color-codes index cards for memoranda and interfiles them with the brief index, using the same index system. Kentucky reported that it was initiating a system of filing briefs which was similar to the system for filing opinions. Hawaii has a unified system for filing briefs, opinions and internal communications. The Ohio Attorney General's office files briefs

with pamphlets and books, while opinions are incorporated into a memorandum file.

Wisconsin has a computerized information system that is completely integrated. Colorado reported in March of 1976 that it was in the process of developing an interfaced system for indexing briefs, opinions and management information, and that it expected the system would be operational in a year.

5. MAINTAINING THE SYSTEM

All systems must consider the operational requirements of staff and funds. With a few exceptions, Attorneys General's offices have not required any special funding for brief indexing systems. They all, however, have faced the question of what personnel should be assigned to develop and maintain the system. The alternative approaches are summarized below.

Staffing Practices

If an office decides to initiate a brief indexing system, someone must be assigned responsibility for its development. Attorneys General's offices report variously that this duty has been given to a law librarian, a legal intern, or a staff attorney. This decision will depend in part on the system used (i.e., whether the indexer must select the topics by which a brief is to be indexed) and on whether past briefs will be indexed. It is, however, important that one person be given definite responsibility for the index and be given adequate time to work on it.

Once a brief indexing system has been established, it will require maintenance and service at several points. First, someone must assign index terms to each brief. Second, someone must prepare the index card. Third, someone must maintain the card file and brief files. The Attorneys General's offices take different approaches to such staffing.

In New Jersey, copies of all briefs are forwarded to the librarian for filing. The librarian assigns headings, prepares index cards, and keeps the files. In Ohio, the originating sections of the office assign headings and keep brief files, but the librarian keeps a central index file. A research assistant, who is a law student, reads all briefs in the Louisiana Department of Justice and assigns them West Key Numbers. The brief is then placed in a central file, according to the number.

The aggregate staff time required to maintain the brief index and assist users varies with the scope and complexity of the system. Attorneys General's offices estimates of the time required ranged from "about 5 to 10 percent" to 75 percent of one professional position. Secretarial time would also be required for typing and filing.

Generally, there are two approaches to assigning index headings to briefs. One is to have each attorney assign appropriate headings to his own briefs. In many offices, the heading must be taken from a predetermined list. The other approach is to have one person read all briefs and assign headings.

The advantage of the first approach is that the author of a brief is thoroughly familiar with its contents and knows the relative importance of the arguments made. Having him assign headings not only ensures the index's accuracy, but avoids the duplication of effort involved if someone else has to read the brief for indexing. The disadvantage is that attorneys may resent this added burden on their time, and may be dilatory or careless in preparing briefs for indexing. The index may also lack consistency; for example, one attorney may tend to cross-reference briefs extensively, while another may use only one topic per brief.

Comments from two private firms illustrate the problems with both approaches. In one firm, material that comes to the library is accompanied by a statement of the substantive questions presented and a list of suggested headings under which it might be indexed. This statement is prepared by the attorney. The librarians then check the statement for form and the headings for consistency. The librarian commented that his position is essential to this process:

The crucial element of our system is having someone who understands the development of a subject heading list or subject authority file, as well as having someone who is substantively qualified to make the digest. If the person attempting to execute this kind of system does not have a proper background and appreciation for subject cataloging, I question whether this system or any other would work very effectively.¹¹

Another firm reported that each attorney decides whether or not briefs are of sufficient import to require filing, then fills out a form giving the topic and subtopics, if any. A spokesman for the firm commented that:

The main difficulty with the system is that it depends upon generation of input (excepting opinion letters) from individual attorneys, some of whom consider themselves so busy that they are reluctant to participate. The Library Committee of the office periodically, by written memoranda and personal appearances at firm meetings, utilizes moral suasion to try and alter those attitudes. We have had uneven success; having considered the possibility that all documents would be routed to the Library and there a determination made to extract items for inclusion in the file, I concluded that even with the present deficiencies, only an attorney can determine whether or not the brief, memorandum or opinion is of sufficient moment as to require its inclusion. We have investigated full-text searching systems utilizing computer techniques and have concluded that, in view of the economics involved, our system worked quite well.¹²

Funding

Attorneys General's offices are not usually appropriated funds specifically for developing, equipping or staffing these systems. Rather, the indexing system's expenses usually are indistinguishably charged to categorical accounts such as equipment, photocopying, and administration and are absorbed as a routine office expenditure. The system seldom has an identifiable budget or special source of funding. It may be helpful, however, to keep separate accounts of its costs. An accurate cost-benefit analysis of the system can easily be computed if separate accounting records are available, and the cost of alternative systems can be evaluated.

Since brief indexing systems can promote the efficiency and quality of legal work, and thereby increase the effectiveness of the criminal justice system, brief indexing systems may be eligible for financial assistance from the Law Enforcement Assistance Administration. Several states have applied for and received grants to establish and administer brief indexing systems. Hawaii's Prosecutor-Public Defender Clearinghouse and Institute, which includes a brief indexing system, was funded in part by a 1971 LEAA grant.

The New Mexico Attorney General's office has recently received a LEAA grant of approximately \$23,000 to "improve the management and administrative capabilities of the Criminal Appeals Division with the establishment of a Brief Bank."¹³

Use of Computers

There is increasing interest in the use of computers for information retrieval in Attorneys General's offices. A recent COAG publication, Computerized Research in the Law, explores one aspect of computer usage. Several Attorneys General have used computers in their brief indexing systems.

Wisconsin appears to be the only state that is currently using computers to maintain a brief index, although Colorado is currently developing such a system and expects that it will be operational within a year. Pennsylvania had a computerized system, but discontinued it due to budgetary restrictions.

Several offices are considering the possibility of using computers to index briefs. The New Mexico Attorney General's office recently implemented a brief indexing system. While this is a manual system, the office hopes eventually to develop an automated legal research, storage and retrieval system. For this reason, meetings have been held with the state Department of Automated Data Processing to assure that the present system is compatible with the computer system for possible future use. Hawaii's Prosecutor-Public Defender Clearinghouse and Institute is considering automating its brief bank system.

Some offices have considered the use of computers in indexing briefs, but have rejected this approach. The Kentucky Attorney General's office believes that "most computer systems are not very satisfactory for retrieving information for a lawyer seeking the answer to a question or point of law. The computer operator would have to have expertise in both computers and legal bibliography, and he would need to be on a continuous salary to keep the data up to date." The New Jersey Department of Law and Public Safety, which had considered establishing a computerized system, decided that a manual system would be more flexible in the development stage than a computer system. It may, in the future, employ computers if the amount of information requires this for efficiency and economy. After a study of other states' brief indexing systems, Tennessee concluded that "realistically, the only viable alternatives are either a manual system or no system at all."

Wisconsin's computerized brief index is part of its legal information system, which consists of over ninety programs, producing more than forty reports.¹⁴ All indexing is done according to a list of subject codes which is also used for Attorney General's opinions. A law clerk assigns at least two subject codes to each brief and prepares a two-line summary. This information is then fed into a computer which automatically integrates it into existing index in alphabetical order. Attorneys refer to the index by using microfiche readers, which are placed at several locations in the office. They then use bound copies of the briefs.

ISSUES TO BE CONSIDERED IN INDEXING BRIEFS

1. What types of index headings or descriptors will be used?
2. Will subject headings be limited to a predetermined list?
3. Will the office develop its own list, or use one developed by another authority?
4. What information will be shown on the index cards?
5. Where will the index file be located?
6. Will printed indexes to briefs be published periodically?
7. Will briefs be filed by name, case number, or other system?
8. Where will brief be stored?
9. Will all briefs be indexed, or only selected categories?
10. Will past briefs be indexed when the system is put into effect?
11. How long will briefs be retained in the files?
12. Will the brief indexing system interface with any other filing systems?
13. Who will assign subjects or index headings to the briefs?
14. Who will maintain the index and files?
15. Who will be allowed to use the system?
16. What procedures will be used to familiarize attorneys with the system?

6. USE BY ATTORNEYS

A brief index will be of little value unless it is used by staff attorneys on a regular basis. Acceptance by the staff depends partly on how much they participate in developing the index and how they are introduced to it.

Encouraging Use of the System

Familiarity with the indexing system can be best promoted through a written explanation of its scope and purpose. The introductory sections of a Model Manual of Policies and Procedures for Attorneys General's Offices, published by COAG in 1974, gave some advice on preparation of such an instructional manual or memorandum. Some of these suggestions are applicable to preparation of a guide to the index:

It should be recognized that even a well-prepared manual is of little value if it isn't used by the staff. States which are adopting manuals often note resistance or hostility toward adoption of a manual, particularly on the part of more senior attorneys. Therefore, the preparation process should also be concerned with gaining acceptance of the manual by the staff. Key personnel should be consulted in defining policy matters that relate to them. The entire staff should have an opportunity to submit suggestions on content and every effort should be made to explain that the purpose of a manual is to clarify existing policies, not necessarily to change them

Procedures for review and approval of manual sections should be specified in advance. Authority to settle disputes and to give final approval should also be clarified, to facilitate resolution of conflicts. A temporary committee might be set up to determine the content of the manual and to review drafts. This also serves to familiarize key people with the manual and help insure acceptance. Representatives of the clerical and stenographic staff should be involved in reviewing portions of the manual which pertain to them.

It is also helpful if the Attorney General expresses personal interest in the indexing project and urges staff members to use it. Staff meetings may be used to explain the system and to discuss any problems that may develop with its use.

Explanatory Memoranda

Several offices have prepared memoranda explaining their brief filing systems. These serve not only to clarify use of the system and announce periodic changes, but to explain its advantages and disadvantages to staff attorneys.

Hawaii distributed a 9-page "Explanation and Instructions" about its brief index. Among other things, it cautioned that the material indexed might initially be inadequate, but would gradually expand. The North Carolina Attorney General's office circulated a memo to all attorneys about the brief index. It noted that "the usefulness and quality of the Criminal Brief Index System depends proportionately on the knowledge each one of us has of

the system." New Mexico prepared a 2-page instruction sheet on its brief bank that described its purpose and structure, plus the procedure for using and updating it.

The Tennessee Attorney General's office prepared a 1-1/2 page memorandum, with detailed attachments, that was circulated to all staff members to explain the brief index bank when it was instituted. This stated staff responsibilities in very specific terms, e.g.:

All that is required from each individual staff member is that a copy of all outgoing criminal briefs be given to the person indexing the briefs. A box will be provided in the duplicating room, for collection purposes. Please advise your secretary that when she is making copies of briefs, to make one extra copy and put it in the collection box. There will be absolutely no requirement that you index the brief yourself or write any headnotes on your own briefs. If you desire to write a synopsis of the issues involved in your briefs, you may do so on the brief itself if desired, but this latter procedure is purely voluntary. The brief system will involve no changes in any office procedure, except for the collection of briefs in the manner described above.¹⁵

This kind of memorandum should help create a favorable attitude toward the new system.

Restrictions on Use

Use of brief indexes is usually restricted to the Attorney General's office. Louisiana, however, reports that the district attorneys in the state have been made aware of the brief bank and use it extensively. The New York Attorney General's "Lexogram," which includes an index to briefs, goes to approximately 1,200 attorneys, judges and law libraries.

Some type of check-out system for briefs should be established, so that file copies do not disappear. To ensure that briefs are accurately refiled, attorneys should give them to the person responsible for the files to be replaced in the proper order.

Evaluation of System

A brief indexing system should undergo periodic review to determine how much and how successfully it is being used.

Not all staff attorneys, of course, will make equal use of the brief index. New Jersey reports that about half of the lawyers in the office use the system, but those who have success use it often and even start their research at that point. It should be remembered, however, that some offices have initiated brief indexing systems, then abandoned them because of lack of staff support. One of the purposes of an evaluation should be to determine why some attorneys use the index while others do not.

The evaluation should involve all potential users in helping to evaluate the system's strengths and weaknesses. It should seek answers to such questions as whether the index headings are satisfactory, whether the card file is conveniently located, and whether the system requires too much attorney time in submitting or indexing briefs.

FOOTNOTES

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1. Letter from John B. Breckinridge, Attorney General of Kentucky, to all Attorneys General, April 16, 1976.
2. Memorandum from Assistant Attorney General David L. Raybin to all staff members, Tennessee Office of the Attorney General, July 18, 1974.
3. J. N. DeMeo, Preserving Past Efforts, THE PRACTICAL LAWYER'S LAW OFFICE MANUAL NUMBER 2, 101.
4. Letter from Preston Dean, Chief Counsel, Missouri Attorney General's Office, to David A. Guth, March 29, 1976.
5. F. Trowbridge Vom Baur, How to Develop and Use a Pamphlet File, THE PRACTICAL LAWYER, XX, No. 6 (December, 1974), 86.
6. Letter from Moira O. Strong, Law Librarian, New Jersey Department of Law and Public Safety, to David A. Guth, April 2, 1976.
7. WEST'S LAW FINDER, A RESEARCH MANUAL FOR LAWYERS 17 (1967).
8. These firms are: Reed, Smith, Shaw and McClay of Pittsburgh, Pennsylvania; Morgan, Lewis and Bockius of Philadelphia, Pennsylvania; and O'Melveny and Myers of Los Angeles, California.
9. National Center for Prosecution Management, Managing Case Files in the Prosecutor's Office 22 (1973).
10. Letter from Assistant Attorney General Donald Montoya, New Mexico Department of Justice, to David A. Guth, April 20, 1976.
11. Letter from Stanley K. Pearce, Law Librarian, O'Melveny and Myers, to David A. Guth, April 20, 1976.
12. Letter from Andrew N. Farley of Reed, Smith, Shaw and McClay, to David A. Guth, March 30, 1976.
13. Letter from Assistant Attorney General Donald Montoya, New Mexico Department of Justice, supra note 10.
14. See Ronald L. Semmann, Applications of Data Processing, in NAAG SUMMARY OF PROCEEDINGS - THIRD MANAGEMENT INSTITUTE 15 (1975).
15. Memorandum from Assistant Attorney General David L. Raybin to all staff members, Tennessee Office of the Attorney General, July 24, 1974.

END

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