



## West's New Annotated Code of Virginia

by the Virginia Association of Law Libraries Ad Hoc Committee on Annotated Codes\*

On October 23, 2001, West Group launched its new *Annotated Code of Virginia* with a luncheon at the Jefferson Hotel in Richmond. Lawyers have relied on Michie's venerable *Code of Virginia* 1950 for more than 50 years, but suddenly Virginia has become one of the growing number of states with competing code publications. While larger law libraries will undoubtedly carry both sets, most law offices will choose between the two, and legal researchers will need to decide where to turn first for Virginia law. How does the new West code stack up against its older competitor?

This report weighs some of the advantages and disadvantages of each code. To a substantial extent, the choice will be a matter of personal preference. For many researchers, the new West code will provide more convenient and comprehensive access to case law and other resources. It appears unlikely, however, that West's publication will supplant Michie's as the code of record for Virginia statutes unless glaring omissions in its treatment of statutory history are remedied.

### The Look

The covers of the West volumes are a cheerful blue and red, a welcome respite from the utilitarian black of the Michie volumes. Their spines and front covers contain maps of Virginia, which would be a nice touch if they had not completely omitted the Eastern Shore. Another problem with the covers is limited to the seven titles that span more than one volume (2.2, 8.01, 15.2, 18.2, 38.2, 46.2, and 58.1). The spines indicate the chapters in each volume (e.g. "Chs. 1 to 5"), but citations refer to Virginia statutes by section number, not chapter. There's no indication on the spine which of the Title 18.2 volumes contains § 18.2-168. This may frustrate people who repeatedly have to pull two volumes from the shelf to find a particular code section.

### The Contents

West's code contains 37 volumes, 10 more than Michie's. This is caused in part by more extensive annotations, but much of the increase is due to the use of a larger, less compressed typeface with more white space between lines. The Michie code occupies less shelf space, but West's format is definitely easier on the eyes.

Both editions of the code contain annotated editions of the Virginia Constitution and state statutes, accompanied by two-volume indexes. (Neither, unfortunately, includes any case notes for the United States Constitution, a useful feature found in some codes from other states.) The Michie code includes several additional resources not provided by West: volume 10, with tables of session laws and recodified provisions; volume 11, containing annotated versions of Virginia court rules; and two unnumbered volumes of legal ethics and unauthorized practice of law opinions from the Virginia State Bar. West may add a tables volume to its set (see discussion below under "statutory notes"), but its only coverage of court rules is found in its unannotated *Virginia Court Rules and Procedure* pamphlets.

### The Price

As one of its editors said at the Jefferson, West is aware that it is "walking into the backyard of a very well respected and worthy competitor." Its introductory price of \$600 (payable interest-free over 24 months) is \$100 more than the Michie set. The price of annual supplementation has not yet been determined, but is likely to be competitive. Because every West volume is new in 2001, the cost for replacement volumes is likely to be minimal.

### Accuracy and Timeliness

The text in the West volumes is current through the General Assembly's First Special Session of 2001, while Michie's 2001 supplements lack five acts that were not approved by Governor Gilmore until July 19. Otherwise we were unable to find any discrepancies between the statutory text in the two codes.

In the past, West has had to wait to update its unannotated CD-ROM code until the publication of Michie's annual pocket parts indicated how the Virginia Code Commission and editors had handled new legislation. This changed on October 4, 2001, when the commission signed an agreement to work on equal footing with each of the code publishers (Geronimo as well as West and Michie). Now publishers will submit questions to the commission; the commission will provide answers; and every publisher will have access to all questions and answers. Summer 2002 will be the first test of whether West can be more success-

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ful than Michie at getting supplements to its subscribers before the July 1 effective date.

## Statutory Notes

The biggest shortcoming of the West code is the scope of the statutory notes following each section. These notes take two forms: the telegraphic list of session law references immediately following the text, and the “historical and statutory notes” describing changes made by each amendment. In the first instance, West is far inferior to Michie; in the second, it offers no improvement.

In West’s statutory notes, unfortunately, the session law references never go back farther than 1950, and in revised titles they only go back to the date of revision. There are no references to earlier codifications or to earlier versions of a title. In title 17.1 (enacted in 1998), for example, the statutory notes provide no help in finding comparable provisions in the earlier title 17. These references can be essential if the current section was not in force when a cause of action arose.

Worse yet is the lack of tables providing cross-references from sections in repealed titles to their current counterparts. Researchers often find code references in older cases or law review articles and wish to examine the statute, only to find that its title has been recodified. West’s only cross-reference tables accompany titles 2.2 and 9.1, both revised in 2001. There are no tables for the 59 earlier revised or repealed titles. West editors at the luncheon said that their initial focus was providing the current text, but they acknowledged that they were likely to recognize the need for tracing sections from older titles and would add a tables volume to the set.

The notes explaining statutory changes are roughly comparable to Michie’s. In neither set do the historical notes usually go back more than a few years. Michie’s annual supplements explain new amendments, but these notes are omitted when volumes are revised. West’s notes also focus on recent changes. Of about 3,600 sections with historical notes, more than a third include explanations of changes in the 2001 General Assembly session. The numbers taper off, noting fewer than 150 changes from the 1995 session and just nine from the 1989 session. The West editors explained that the historical notes would be retained when volumes are revised, so eventually their code may provide a more thorough record of statutory changes. For now, however, the notes in neither Virginia code are entirely satisfactory.

One other aspect of West’s historical notes needs to be mentioned. Michie’s notes may be limited to its supplements, but they are comprehensive and cover all enactments since the most recent volumes. The preface in each West volume acknowledges that its notes are selective, limited to “sections deemed to be of special interest to the legal profession.” Some omissions are more glaring than others. West may be correct that changes in the Virginia Seed Potato Inspection Law (§ 3.1-285 et seq.) are of little interest to most lawyers, but it could be frustrating to have no clue what changes were made in 1999 to § 16.1-228, the definitions section for Juvenile and Domestic Relations District Courts.

## Editorial Features

Once we move from the statutory text and its history to cross-references and annotations, the new West code begins to show some decided advantages. It provides the panoply of useful research leads found in other West products, with references to trial aids, digest key numbers, ALR annotations, and both Am. Jur. and C.J.S. (This makes one wonder why the Michie code provides no references to *Michie’s Jurisprudence*, which could often be more useful than the national encyclopedias.) West includes a few Virginia-specific titles, with more promised as the publisher increases its presence in this market. Among the most valuable cross-references in the new code are those to the Virginia Administrative Code, included with more than 800 sections.

Both West and Michie provide cross-references to other sections of the code, sometimes with surprisingly little overlap. West’s cross-references are generally more extensive and more helpful, although it’s not always clear why some are included (e.g. from § 16.1-228, Juvenile and Domestic Relations District Court definitions, to § 18.2-55, bodily injuries caused by prisoners).

The Michie code has a strong advantage in law review citations, with nearly twenty times as many references as West. Many of these are references to old *Virginia Law Review* surveys of Virginia law (a feature discontinued in 1981), but much more recent survey articles are also included. Michie has nearly 250 sections with references to the *University of Richmond Law Review’s* 2000 survey of Virginia law, while West has no citations to the 2000 survey and a total of just 19 sections citing any *Richmond* articles.

For uniform laws, West includes a convenient table of adopting jurisdictions. In some instances, however, such as the Uniform Child Custody Jurisdiction and Enforcement Act, § 20-146.1 et seq., Michie includes the official comments while West has references only to its Uniform Laws Annotated set. This is just one example of why it may be prudent to check a section in both codes to see what references and other features are available.

## Case Notes

The strongest feature of the new West code is its notes of decisions. These classify the annotations in a numbered topical system, bringing a greater sense of order to the case law. Michie’s traditional method of capitalizing catchlines at the beginning of each case note may provide a quick overview for sections with few decisions, but it can be overwhelming and confusing for sections with several pages of cases. Only for code sections with many pages of cases does it provide a subject outline, with roman numerals indicating the major subheadings into which it divides the notes. West’s topical arrangement, preceded by an alphabetical index of the headings, makes it easier to find specific issues. This feature alone may make it a favorite for many researchers.

While West’s case notes are arranged coherently, they are simply reprinted verbatim from the reporter headnotes and not written specifically for the code. Many of Michie’s notes include helpful

pointers relating them to the code section or to earlier landmark decisions. For § 20-109, for example, one case note is followed by a reference to a 2001 law enacted to reverse its ruling and others include helpful references to other cases (e.g. “The rule established in . . . was meant to . . .,” “the Court of Appeals resolved this issue in . . .”).

West claims to have twice as many headnotes as its competitor—60,000 versus 30,000. This does not, however, represent twice as many cases. Many decisions have several notes following the same section. Under § 20-107.3, one case shows up 21 times in the West notes. In all, West has 657 case notes for this section, but these represent only 166 cases. For the same section, Michie has 455 notes representing 303 cases. The main reason for this discrepancy in the number of cases is that Michie, but not West, includes notes of unpublished decisions from the Virginia Court of Appeals. Michie’s § 20-107.3 includes notes of only 162 published cases, four fewer than West, but it also notes 141 unpublished decisions. In areas where the Court of Appeals plays a major role (such as criminal law, domestic relations, or workers’ compensation), these decisions can provide major guidance even if they cannot be cited as precedent.

Setting aside the unpublished Court of Appeals decisions, the two codes provide access to roughly the same number of cases. It is worth noting that these are not necessarily the same decisions. Of the 166 published cases cited under § 20-107.3, only 138 are listed in both codes; 25 appear only in Michie and 29 only in West. For in-depth research, the two works complement each other.

A major advantage of the West case notes is that they include references to Virginia Attorney General opinions. These opinions may not be binding authority, but their interpretation of a statute can be highly influential and they are included in the notes for more than 700 sections in the West code. Their omission from the Michie code has been a significant weakness.

Neither code, unfortunately, includes references to decisions of the Virginia Circuit Courts. Shepard’s Citations, and tables published with the *Virginia Circuit Court Opinions*, remain the only printed sources for convenient access to these by code section.

One final contrast in case notes should be noted. Although the West volumes were just published in October, they include not a single case from 2001. Michie’s 2001 supplements were published in late June, with notes of cases as late as April 4, 2001. West’s extensive lag time between the cutoff date for cases and publication should be ameliorated in the 2002 pocket parts, when the editors are not rushing an entire 37-volume set to publication. Until then, the Michie case notes are several months more current.

## Indexes

Both of the codes have extensive two-volume indexes. Their indexing approaches, however, are quite different, and they will satisfy different demands. Michie generally offers more points of entry and quicker access to statutes, while West emphasizes uniformity of language and avoidance of split developments—situa-

tions where the user thinks she’s getting all the relevant references under one heading, but isn’t. The West index has fewer, broader main headings and numerous cross-references leading to lengthier entries. For example, the section covering the crime of sexual battery can be found in the Michie index under “assault and battery,” “battery,” or “sexual battery.” In the West index, looking under “battery” leads to “assault and battery,” and thence to “sex offenses” before the section number is divulged.

West is quite correct, however, about Michie’s discrepancies in treatment under various headings. There are just four subheadings under “Battery/Sexual battery,” so one might erroneously conclude that she was seeing all relevant entries. The main entry “Sexual battery,” however, has 22 additional subheadings. Similarly, “Robbery” has sixteen subheadings while “Armed robbery” has just four.

On the other hand, Michie’s “Armed robbery” leads directly to the robbery statute, § 18.2-58, while West has nothing at all, not even a cross-reference, under that heading. Michie’s index may still be preferred by users eager to turn quickly to a specific code section, while the West index provides a more thorough and careful overview of the statutory framework.

## Electronic Access

Westlaw, at least for the duration of its current contract, provides access to both annotated codes, while Lexis has the Michie code. The online versions are generally no more up-to-date than the print versions, although the Lexis version of the Michie code does include the most recent amendments approved by the governor in July. To find relevant decisions since the most recent published volumes or supplements, one must still turn to KeyCite, Shepard’s Citations, or a full-text case law search.

Key numbers are attached to almost all headnotes in the West code. These may not be a significant research aid in the printed version, but online these key numbers are hot-linked directly to case search screens. This feature, making it easy and convenient to use the code as a springboard for finding related cases, is found only in West’s newest codes—Mississippi, North Carolina, the District of Columbia, and now Virginia.

A CD-ROM version of the new West annotated code is not available as of this writing, but one is promised soon.

## Conclusion

West’s *Annotated Code of Virginia* is a welcome addition to Virginia legal bibliography. Its well-organized case notes will provide enhanced case-finding capacities for legal researchers, and its presence can only help to spur improvements in the Michie code. Whether a library or a researcher switches its allegiance from Michie to West depends on needs and priorities as well as personal preferences. Either code provides accurate and current access to the language of the statutes, but West’s code may provide a better springboard to case law and other research. West’s inadequate statutory history notes, however, make it unsatisfactory for retrospective or historical research.

Unless a tables volume is added and more extensive statutory notes are provided, West's *Annotated Code of Virginia* is unlikely to supplant Michie's *Code of Virginia 1950* as the leading source of statutory authority in Virginia. ☞

\*This report was written by Kent Olson, with contributions from Alyssa Altshuler and Gail Zwirner. Thanks also to Professor Richard Balnave of the University of Virginia School of Law for his insightful comments.

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