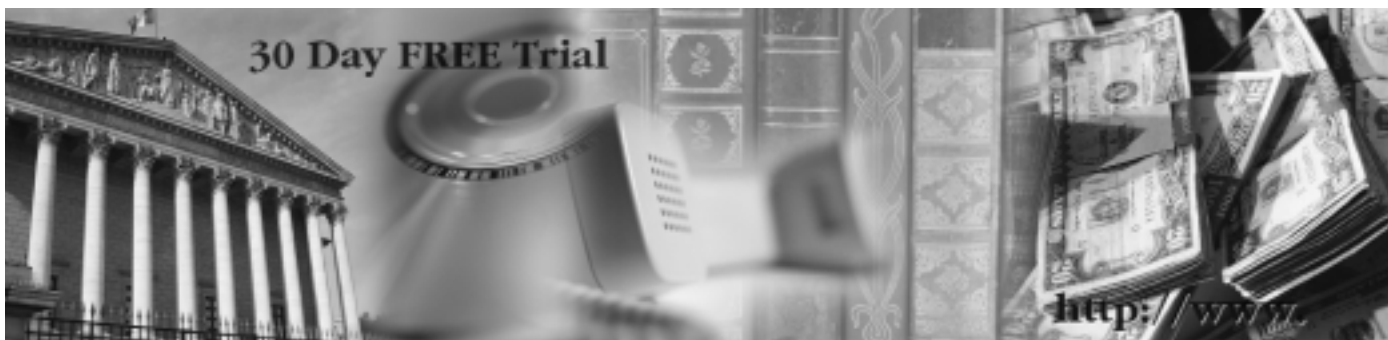


# An Attorney's Best Friend: A Consumer Advocate Speaks

by Lyn Warmath



A sales representative called a busy attorney in a small Virginia firm to let him know a new edition of the SCC's *Virginia Corporation Law* had just been published. The attorney readily placed an order at \$30 each for multiple copies for partners and himself. The attorney could have saved 50% if he had known the SCC was selling the same book for half that price. A year later he paid \$15 each for annual supplements the SCC was distributing for free.

Another busy lawyer at a recently formed Virginia firm ordered a new set of the *Code of Virginia* and *Michie's Jurisprudence* from the local sales representative who gladly placed the order for \$500 and \$1200 respectively. The same sets could have been purchased for \$350 and \$850 from a reputable used law book dealer.

One law librarian, the leading expert in the field of law library expenditures, estimates that the average practitioner could reduce his or her research expenditures by 50% without any essential loss of utility or currency. Kendall Svengalis has written books on law library expenditures and the U.S. Department of Justice hired him as an expert witness in 1996 during the merger of West Publishing and Thomson Group.

Much of what follows in this interview with Mr. Svengalis has been known to law librarians for years. This article, however, addresses those attorneys practicing without the benefit of a law librarian who want to learn more about collecting research materials cost-effectively while conserving those hard-earned dollars.

**LW:** You have written volumes on how attorneys can save money on legal research resources. How can Virginia attorneys in particular benefit from your advice?

**KS:** Lawyers are highly educated people, sophisticated in their knowledge of the law but, Virginia lawyers, like all other busy attorneys, often lack even the most rudimentary understanding of the ways of legal publishing and the marketing techniques

which unnecessarily siphon away their hard-earned dollars. Altman, Weil Pensa has published reports that the average lawyer spends nearly \$4,000 per year on information. A major portion of that \$4,000 is wasted, either because many of the materials are poorly selected, are never or rarely used, are ill-suited to the lawyer's specialty or are overpriced.

Of the 22,000 attorneys actively practicing in Virginia, how many of those practicing in federal courts have time to notice that annual supplements to *Moore's Federal Practice* cost \$834 in 1987 but by 1999 the cost rose to \$2860? My suggestion to practitioners and librarians during that period was to cancel the subscription entirely and reinstate the whole set every 2 or 3 years, if necessary. So many librarians made such a fuss and followed that advice that the publisher froze its prices and became a more consumer friendly legal publisher. At the present time, however, there are many sets of books from West Group, *Am Jur* and *Am Jur Pleading & Practice* among them, whose annual supplementation costs exceed the initial purchase price.

Those Virginia attorneys who answer their own phones already know that publishers aggressively target them in telemarketing efforts and in direct mail advertising as well. Quite frankly, many legal publishers think that lawyers are gullible when it comes to buying law books and resources. Because lawyers are a largely captive and affluent market requiring legal publications to carry on their practices, the cost of legal publications easily outpaces that of the general economy.

During the period from 1973 to 1996, for example, the CPI increased by 253% while the average cost of legal serials rose 495% and legal continuations rose an astounding 1006%.

Millions of dollars are wasted annually by lawyers who simply do not have the time to evaluate their libraries. If Virginia lawyers are anything like the rest of their colleagues across the country, and I am confident they are, then they are too busy

practicing law to question the practices to which they are being subjected by some legal publishers.

**LW:** What are some of the questionable practices they overlook?

**KS:** The most egregious of the tactics employed by certain legal publishers is the use of unsolicited shipments as a means of generating new sales. I should state in fairness to legal publishers that there are actually few totally unsolicited shipments of law books. The vast majority of questionable shipments to lawyers and law libraries do have their origin in a legitimate order. The problem arises because some law publishers take that legitimate order as an open invitation to ship related titles. Publishers know full well that customers are unlikely to return the books because of inertia.

The same inertia applies to the telemarketer's push for customers to take advantage of the 30 day "free trial." A basic sales principle says that if a sales rep can get the material into the customer's hands, the product is three-quarters sold. So avoid both the 30 "free trial" the telemarketer is trying to push on you and return the unsolicited related title.

Another extreme example is the way publishers in recent years have needlessly increased supplementation to secondary sources. Supplementation of titles to secondary sources may appear two, three or even four times a year. In many cases, there is little editorial justification for such excess, despite the publishers' rationalizations. The frequency of supplementation is determined more by profit consideration than by editorial necessity.

**LW:** What specific steps can Virginia lawyers can take to protect their hard-earned dollars?

- Inventory your entire law library at least once a year (twice is better) and determine the proper level of supplementation for each set or volume. I recommend maintaining a database management program indicating how frequently you wish to purchase supplements for each title.
- Determine exactly how much you are actually paying to supplement your collection. The total may amaze you. Don't make the mistake of continuing to supplement a secondary source year-after-year when you no longer have cases in that subject area.
- Clearly distinguish between supplementation to primary works and supplementation to secondary sources. Primary works include statutory codes, case reporters and administrative regulations, as well as the finding tools and citators to make proper use of them including Shepard's Citators and jurisdictional case digests.

To avoid the possibility of malpractice, current supplementation is a virtual necessity for Virginia codes, case reporters, administrative regulations, digests and citators. But secondary sources provide introductory overviews, rarely provide the last word on a given subject and current supplementation is not nearly so vital as with primary materials.

**LW:** Virginia secondary sources are so scarce that practitioners frequently collect and supplement all that is published in certain

practice areas. But attorneys still want to spend wisely in other areas. Where else might Virginia practitioners look to cut waste?

**KS:** Chances are great that your standard legal treatises with their national perspectives will neither cite nor analyze relevant cases or statutes from Virginia. Researchers should keep in mind that the purchase of law books is an expense of doing business, **not an investment**. You are not "protecting your investment" by buying supplements year after year. Pocket parts or free-standing supplements are generally cumulative; and the purchaser always has the ability to bring them up-to-date by simply buying the latest year's issues and any intervening revised volumes. In fact, it is commonly cheaper to buy an entire new set after a hiatus of several years than it is to update an existing set.

Most lawyers would be shocked to learn how little their "investment" will bring on the used law book market. You should never buy law books new when they are available used—unless, of course, the amount of free supplementation with the new set is large enough. Used law books are generally sold with current supplements. If the set is not current, the dealer should adjust the price accordingly unless it was priced and advertised as being out-of-date.

**LW:** And what about LAW-LIB as a source of used law books?

**KS:** Yes, attorneys can certainly monitor the Internet listserv where librarians frequently offer entire sets of reporters and digests for the cost of shipping. Of course, shipping costs can creep quite high too.

**LW:** Now let's talk about legal materials and their availability on the Internet.

**KS:** The greater availability of much primary law on the Internet adds another dimension to decision-making on matters of supplementation. As you know, the *Code of Virginia*, General Assembly's session laws and *Virginia Administrative Code* are available at no cost at Virginia government Internet sites.

**LW:** Yes, along with a number of local city and county codes as well. I know many Virginia firms canceled multiple copies of Virginia primary materials in print because of their availability on the Internet. But librarians repeatedly warn researchers to beware of information that may be out-of-date or otherwise unreliable. While our printed *Code of Virginia* pocket parts were all snugly filed by the July 1 effective date, the official government Internet site was not updated until weeks after the July 1 date had come and gone.

***Inventory your entire law library at least once a year and determine the proper level of supplementation for each set or volume.***

**KS:** Yes, currency, accuracy and quality of information will always be issues on the Internet where anyone can post a Web site. Legal researchers probably cannot be reminded often enough to check the reliability of the sites they visit.

**LW:** Do you have any final advice?

**KS:** Consumers should demand the following from legal publishers:

- Open and accurate pricing for all products, large and small. Some publishers still practice the charade of forcing customers to contact sales representatives to obtain such basic information as price. There is simply no reason why customers should not have access to a publisher's price list. The World Wide Web provides all publishers with the ability to post current prices, recent history of supplementation costs as required by the FTC's *Guides for the Law Book Industry* and standard discounting policies. Yet not one publisher's Web site provides supplementation costs for the previous 2 years as recommended by the FTC's *Guides*. While publishers are getting better about posting initial prices, none are posting supplementation costs, a critical piece of information for decision-making.
- The abandonment of non-disclosure provisions in fixed-rate online contracts that prevent the customer from revealing the terms of a contract to other parties. Such anti-competitive provisions only serve to keep consumers in the dark and hinder their abilities to negotiate for better rates.
- The ability to purchase one CD-ROM which will retain its functionality even after a subscription has been canceled, with the frequency of updating at the option of the consumer.
- The ability of an institution to purchase the number of user licenses to an online service that its usage requires rather than a number dictated by the number of attorneys in an institution. For example, a firm with 50 attorneys may need licenses for only 5 concurrent users but some publishers will dictate that the firm pay on the basis of 50 attorneys in the firm.
- A subscription notification or update alert program for print subscribers not on standing order.



**Ken Svengalis** has been a law librarian for more than 20 years and has served as the State Law Librarian in Rhode Island since 1982. He is adjunct professor for the Library and Information Studies program at the University of Rhode Island where he teaches a graduate course in law librarianship.

His award winning book, *The Legal Information Buyer's Guide and Reference*

*Manual*, contains more than 1250 comparative book reviews, thousands of prices and supplementation costs, "practitioners guides" to local law materials and much more. The 2000 edition is available from Rhode Island Law Press, 17 Mosher Drive, Barrington, RI 02806 or by FAX at 401-247-2163 for \$99.

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- Postage costs which more accurately reflect the actual cost of shipping materials rather than some fixed percentage of the materials' costs. Some publishers will send, for example, a package containing 3 small pocket parts and charge shipping costs of \$15 based on a percentage of the materials' costs rather than on anything remotely resembling the real shipping costs.
- And finally, there is no reason why law book consumers should be willing captives to the supplementation practices of law publishers. While publishers are willing to send you all manner of supplements, pocket parts, free-standing supplements, revised volumes, interfiled pages and special reports, there is no reason for consumers to accept blindly everything they send your way. Taking control over this flood of material will save you and your law firm thousands of dollars annually. 📖

### Cost Saving Tips At a Glance

- Subscribe to "lawlib" listserv to obtain books for the cost of postage.
- Exercise strict controls over the purchase of duplicate copies. Make an effort to force lawyers who desire personal copies of items already in the library to purchase them at their own expense.
- Avoid telemarketers. If one gets through to you, do not buy anything from them unless you want to end up on the publisher's list of hot prospects. Request a flyer if you are at all interested. Finally, ask to be taken off the publisher's telemarketing list.
- Evaluate shipments before marking with a date or property stamp. Be prepared to return unsolicited or unnecessary. If unsolicited, request return label or claim at no cost under terms of U.S. Postal law (39 U.S.C. §3009).
- Beware of solicitations disguised as invoices. These often follow trial subscriptions. The tactic is based on the assumption that you are more likely to renew a subscription to which you already subscribe even though you never actually subscribed by conscious decision.
- Pay in cash to avoid shipping and handling charges or to obtain a discount (Matthew Bender's 5% cash discount, for example).
- Remember that obtaining information for "free" on the Internet may not be the most cost-efficient solution when a proprietary service can deliver the information more quickly.
- Law firms without librarians should assign responsibility for the library to one member of the firm.

**SAMPLE COSTS OF VIRGINIA CORE MATERIALS IN HARD COPY**

	NEW COSTS	RECENTLY ADVERTISED USED COSTS	ANNUAL UPKEEP
Code of Virginia	\$500	\$350	\$300 (3 year average)
Virginia Administrative Code	\$195 Looseleaf (state) \$335 Looseleaf (public) \$140 Softcover (state) \$230 Softcover (public)	Not seen on used market*	\$130 (3 year average)
Virginia Reports Current Volume: 256	\$18.74 Current volumes each	\$4000 for 245 volumes, \$1200 for 199 volumes	
Virginia Court of Appeals Reports Current Volume: 29	\$31.75 Current volumes each	\$300	\$76.25 Advance sheets alone \$38.15 Combined with books
Virginia Court Rules & Procedure Virginia Rules Annotated	\$44.50 (West Group) \$47.50 (LEXIS)	\$44.50* \$47.50*	Annual, not supplemented Annual, semi-annual supplement included in purchase
Code of Virginia, Volume 11	\$29 (LEXIS)	\$29*	\$6
South Eastern Reporter 1st	Out of print	\$1000	—
South Eastern Reporter 2nd	\$6,320	\$695	\$840
South Eastern Digest	\$3712.50	\$2195	\$2464.63 in 1999
Virginia and West Virginia Digest	\$916.50	\$675	\$169.60 in 1993 \$721.50 in 1999
Shepard's Virginia Citations	\$555	\$325	\$660
Shepard's South Eastern Citations	\$1790	\$1100	\$850
Black's Law Dictionary	\$39	\$39*	—
Michie's Jurisprudence	\$1200	\$850	\$395 in 1998
Virginia Lawyers Weekly	\$259	—	\$259
National Law Journal	\$149	—	\$149

\*New prices provided because used books are not available or offer negligible cost savings