

BOOK REVIEWS

MOTION PRACTICE AND STRATEGY. By Leonard P. Moore. *Practising Law Institute*. New York. P4.10.

This pamphlet on motion practice and strategy by Leonard P. Moore treats of the technique of legal scouting, namely preliminary motion practice and strategy. The importance of this subject can hardly be overemphasized. Litigation resembles warfare, and just as a war is not won without scouting patrols, skirmishes, and a series of battles, so, too, the average litigation cannot be prosecuted successfully without the various maneuvers which must be carried out before the issues are finally submitted to a judge or jury. No lawyer should undertake the prosecution or defense of a lawsuit without being thoroughly acquainted with preliminary motion practice and strategy. The fact that the motion usually is not determinative of the action on the merits and may not result in judgment does not lessen the importance of motion practice in any litigation. In this field, the lawyer has the best opportunity to use the strategy which is necessary to insure, or at least increase the possibility or probability of, an ultimately favorable result for the client.

The guiding principles to success in motion practice may be summarized into: (a) careful analysis of the case and (b) an honest, simple and convincing presentation showing that the relief sought will be of benefit to the court in arriving at the ultimate decision, keeping in mind at all times that the court is interested in seeing so far as possible that a just result is obtained.

In motion practice and strategy, the lawyer in order to gain the relief or a fair portion of the relief that he seeks, must see to it that the motion is proper under the circumstances of the case, the pleadings are analyzed, the motion papers clearly and carefully drawn, and the motion argued briefly and directly.

Jurisdictional motions usually require careful consideration from several perspectives. The many substantial law problems relating to jurisdiction must be immediately surveyed. Thought should be

given to the right and desirability of removal to the higher courts. Motions addressed to pleadings, like motion to clarify pleadings and motion to dismiss the complaint, must not be made unless they serve a useful purpose, and for the attainment of this purpose, there should be a careful analysis of the pleadings, of the possibilities of amendment, and of the ultimate consequences of the motions. Motions for bills of particulars and pre-trial examinations should be approached with care equal to that applied to a motion for a decision on the merits as to the entire cause of action. Certainly, clear thinking can cause issues to be resolved and stated in concise form. Once this is done, each side should know what proof is available by discovery, examination or further particularization.

In deciding whether the motion should be made, and particularly in timing the motion, some attention must also be given to the particular judge to whom the motion will be presented. All lawyers know, and the judges themselves recognize, that certain judges are fully disposed to favor one type of relief while others do not favor it. There are judges who believe that a very complete bill of particulars should be granted; others who restrict it rather narrowly to the issues.

In conclusion, the type of the motion and the way it is handled will depend largely upon the facts of the individual case, the substantive law involved, and the procedure authorized by the practice rules and statutes of various States and communities, and a good lawyer should familiarize himself thoroughly with these statutes and practice rules.

All of which, and more, are contained and explained, lucidly and very readably, in this little volume by Mr. Leonard P. Moore.

CLARENCE DARROW, FOR THE DEFENSE. By Irving Stone. *Garden City Publishing Co., Inc.*, New York. 520 pages. P11.20.

Clarence Darrow, the atheist and the Christian. Thus was the Old Lion thought of by many—a paradox personified—for he was a Christian by example and precept, but by intellect he was an agnostic. Clergymen have long claimed that Mr. Darrow was more of a Christian than most of their professed Christian flock.

The author, Irving Stone, has written a magnificent biography