BOOK REVIEWS

MOTION PRACTICE AND STRATEGY. By Leonard P. Moore. *Practising Law Institute.* New York. ₱4.10.

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 manuevers 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. ₱11.20.

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

of a great American, a man who had something in him of Tom Paine in his audacity and sagacity, of Thomas Jefferson in his uncompromising belief in the four freedoms, of Abraham Lincoln in his love for the oppressed Negroes, and over and above these, something that was pure Darrow, a man '... who may hate the sin, but never the sinner.'

Irving Stone, in this book, has abundantly made clear the outstanding quality about Clarence Darrow, and that was his integrity. Rare indeed in this life and age is the lawyer who would leave a highly lucrative job to defend a man who might not even be able to foot the costs of a suit, much less pay his attorney's fees. Yet Clarence Darrow was such a lawyer. At the age of thirty-seven, he left a job as counsel for the Chicago and North Western Railway to defend Eugene V. Debs and the American Railway Union. Belief in a man's cause was enough for Darrow to rise to such a man's defense. This was in fact the story of his life—Clarence Darrow, for the defense—always. His was always the unpopular, the "sure-to-lose" side. When other eminent lawyers of his age would refuse to defend what they considered as indefensible, there was always Clarence Darrow to take up the cudgels for the defense. Whenever the issues involved national conflict or intersectional strife, and where prejudice and passion played a part, there was the tall, lean Darrow pleading for brotherly understanding, for Christian forgiveness of a penitent sinner, for the all embracing love for humanity. In all the cases that he handled, from the first to the last, he always showed himself as the intellectual athlete, the consummate orator and the resourceful barrister.

This biography has been meticulously compiled and written, not only to justify and clarify Darrow's stand on controversial issues of his time, but also to serve as a beacon light to bright-eyed young lawyers who have hopes, perchance, of someday sailing through the mossy sea of legal technicalities and niceties. If there is one thing that a lawyer must remember, this book and its subject seem to say, it is this: Above all, believe in the righteousness of your client's cause and all else shall be easy, for "the humblest person ... when clad in the armor of righteousness is more powerful than all the hosts of error."

Though Darrow's life was a turbulent one—for his uncompromising stand on labor rights, open shop, freedom of thought and creed, aroused the ire of the pen-wielders of his day—still when he died in 1936 at the age of 80, the worst of his enemies felt obliged to say, "With the death of Clarence Darrow the nation loses the

most colorful of the older generation of rebels. His achievement was to bring a measure of humanity into the law." A less reverent epitaph, though not perhaps less apt, was that of an admirer, "I'll bet he's confounding the heavenly courts, just as he did here."

A MODERN LAW OF NATIONS. By Philip C. Jessup. *The Macmillan Company*. 221 pages. Distributed by Alemar's. ₱11.00.

The advent of atomic and hydrogen bomb warfare in the field of international politics has made all the more imperative the need for a change in the traditional system of a community of sovereign states. Arrangements of the past are out of step with the demands of the present. There is widespread revulsion against war and against an international system in which war is not only possible but tolerated. Unlimited sovereignty is no longer automatically accepted as the most prized possession or even as a desirable attribute of states.

Some international statesmen advocate a complete change through the immediate creation of a world government—a supranational legal order in the full sense of the term. Others on the other hand are content to wait for the evolutionary development of the present international organization—the United Nations. But all are agreed on the need for changing the archaic sytem of international law we now have for a modern law of nations.

Philip Jessup, able professor of international law at Columbia University, with equally able assistance from the University's Council for Research in Social Sciences, seeks in writing this book to explore some of the possible bases for a modern law of nations. Recognizing that no system of law springs into existence full-panoplied, he proceeds on the basis of the examined ways in which peoples and nations have attempted in the past to govern their interrelationships.

The author particularly debunks two principal characteristics of traditional international law, to wit:

(1) international law is a law only between states, not between individuals, and

(2) international law resembles tort law rather than criminal law in the national legal system.