to international law,[8] noting the major points of conflict, and yet finding a substantial number of rules that are generally observed. These rules, though they are mainly of a utilitarian or instrumental nature, covering matters which do not engage the major interests or convictions of states, would have to be accounted for as either adopted independently by each side in the present power struggle, or as "binding all States independently of their membership in either camp in a kind of partial ad hoc association."[9] Stone's program for action in the absence of what he regards as any present basis for projecting a single world community with a single legal order, though it is consistent with and flows inevitably from his sociological major premise, is still a rather Spartan[10] formula to offer the student of international law during the current world crisis:

> "[T]he international lawyer can only do his best to approach traditional principles and treaty-law as they stand in the books, with a constant awareness that they may not correspond wholly or at all to 'law in action.' At the worst, little will be lost by such an approach. At the best, such activity will preserve, and perhaps develop somewhat, the area of successful universal legal regulation already mentioned, as well as maintain a universal legal framework, which could, if international conditions changed, serve for a truly universal community of States."[11]

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MOORE'S FEDERAL PRACTICE, Vol. 6. By James William Moore. Albany: Matthew Bender & Co., 1954. Pp. xvii, 1377. $16.50.

THIS is the fifth volume—although numbered Volume Six—of the second edition of Professor Moore's treatise on the Federal Rules of Civil Procedure, originally published in 1938. It covers rules 54 through 60(a), the author having indicated that material on subdivision (b) of rule 60 will be included in Volume Seven which is to appear soon. In examining the first edition published some sixteen years ago, one finds that rules 54 through 60 consumed 134 pages. Volume Six of the second edition is more than ten times that size.

Professor Moore's reputation in federal practice is firmly established. *Moore's Federal Practice* is a treatise without equal in that field. Volume Six can only serve to enhance the stature of both. It provides a complete, accurate coverage of all the minutia of the rules included. Yet, at the same time, it places its central emphasis on the points of real, current controversy

8. P. 57 *et seq.*

9. P. 64.

10. *Cf.* Pound's own reaction, in his latter-day writings, against the consequences of "neo-Kantian relativism," POUND, CONTEMPORARY JURISTIC THEORY (1940), and his characterization of the "Give-It-Up Philosophies."

11. P. 64.

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with the thorough, analytical discussion we have come to expect of Professor Moore. It is, thus, very much more than a collection of headnotes.[1] And, while it cites voluminously to the authorities on any given point it is very much more than a skeleton of precedents. Professor Moore has given the rules flesh and pulse by describing their ancestry, their birth, their growth, and their philosophy. To do this he has utilized the Advisory Committee's comments, historical data regarding the common-law and federal precursors of the Federal Rules, discussion of the amendments made, and his own insight. As a result, the reader of his treatise can gain an understanding, as well as a working knowledge, of the rules of federal practice.

Since Professor Moore's treatise is not to be read from cover to cover like a novel, but rather is to be used as a research tool, any evaluation must focus on its usefulness to a lawyer faced with procedural problems. Professor Moore in Volume Six has answered succinctly all the questions that will arise under rules 54-60(a) in the ordinary course of federal practice. But even more than this, in the controversial areas where appeal on procedural grounds is most worthwhile, and where a commentator is put to his test, Professor Moore has done an outstanding job. An examination of several points of law still in a state of flux will demonstrate this.

One troublesome problem within the scope of Volume Six has been whether a summary judgment may be granted under rule 56 when the resisting party has alleged in his pleadings sufficient facts to create an issue but has made no attempt to support his allegations with affidavits or other evidentiary matter.[2] Professor Moore's constant position on this point is reflected with clarity in several sections of the revised treatise:[3] the court has the right to pierce the pleadings to find out whether there is any real controversy of fact between the parties; consequently, the rule requires something in the nature of evidence to avoid a summary judgment. But Professor Moore goes beyond a statement of his position and the supporting authorities. He presents a thorough discussion of the reasoning behind it and shows the weakness of the contrary view adopted by some courts.[4]

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1. See Donworth, *Book Review* of BARRON & HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE WITH FORMS, 59 YALE L.J. 1385 (1950).

2. See, *e.g.*, Reynolds Metal Co. v. Metals Disintegrating Co., 8 F.R.D. 349 (N.J. 1948), *aff'd*, 176 F.2d 90 (3d. Cir. 1949).

3. See 3 MOORE, FEDERAL PRACTICE 3175 (1st ed. 1938); 6 *id.* §§ 56.04[1], 56.09, 56.11, 56.15 (2d ed. 1953).

4. ADVISORY COMMITTEE, PRELIMINARY DRAFT OF PROPOSED AMENDMENTS TO RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS (1954) included this amendment to Rule 56(e): "when a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but must answer in detail as specific as that of the moving party, setting forth the material facts as he believes and intends to prove them to be. If he does not so answer under oath, a summary judgment shall be entered against him." This would seem to provide for something in the nature of a verified pleading, which on the surface appears similar to Professor Moore's desire for something in the nature of evidence. But if only

Another unsettled matter which has troubled practitioners and judges arises under rule 54(b) which permits entry of "final" judgment on less than all the claims for relief in an action. The problem is whether the amendment to the Rule, effective in 1948, can validly make final, for purposes of appeal, an order in a multiple-claims suit which was not final, and appealable, before 1948. Professor Moore maintains that the Rule does have this effect and is valid, even though it increases appellate jurisdiction, because it operates within the ambit of statutes governing appeals.[5]

In an extended discussion of the problem of entry of judgment under rule 58, Professor Moore expresses a point of view which was adopted by the Advisory Committee in its preliminary draft of proposed amendments to the rules last year. The Committee's note is instructive: "the amendment is declaratory of the existing law."

One of the great values of Moore's Federal Practice has always been that its author is not content to be only a reporter of the current status of the law but is anxious always to predict the direction in which the law is moving. In the overwhelming number of instances Professor Moore has indicated correctly the movement of the Rules, often, one feels, because Professor Moore has suggested it *should* move that way. One possible exception, however, seems worth mention. Professor Moore, in his discussion of rule 54 and appeal of a decision by one of several parties jointly claiming or jointly charged, suggests that the rule should be amended to allow such an appeal.[6] The Committee indicated that it had considered the "scholarly suggestion" but has apparently decided against an amendment to rule 54.[7]

Its clarity of presentation, exhaustive coverage and succinctness of expression make this a most effective weapon in the lawyer's arsenal. This writer, however, feels that two steps should be taken by the author to make this treatise even more valuable. First, there is an urgent need for a new index to the complete treatise. The index was compiled sixteen years ago and no attempt has been made to keep it current. Just as a table of rules is needed in a practice book arranged topically,[8] so in this case a good topical index is urgently needed because of its organization by rules. Secondly, the treatise suffers from the lack of a table of cases. Following a case in point is sometimes an excellent

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a sworn statement of what the pleader *believes* and *intends to prove* is required, he can avoid a summary judgment without having anything in the way of *proof*. It will be interesting to see if this proposal is adopted.

5. 3 MOORE, FEDERAL PRACTICE § 54.02 (Cum. Sup. 1950); 6 *id.* §§ 54.28[3], 54.29 (1953). For a critical analysis of Professor Moore's position see Pabellon v. Grace Line, 191 F.2d 169, 176 (2d Cir. 1951) (concurring opinion by Judge Frank); Note, 62 YALE L.J. 263 (1953).

6. 6 MOORE, FEDERAL PRACTICE § 54.34[2] (2d ed. 1953).

7. ADVISORY COMMITTEE, *op. cit. supra* note 4, at 48.

8. See Vestal, *Book Review* of MCCARTY, IOWA PLEADING, 39 IOWA L. REV. 381, 382 (1954).

short-cut research device. It is to be hoped that these deficiencies will be remedied when the second edition is completed.

For the practitioner who appears in the Federal Courts some treatise on federal practice is essential. Of those available, *Moore's Federal Practice* has been the best in the past. Volume Six of the second edition shows that Professor Moore is maintaining his high standard of excellence. As a research tool, it is peerless.

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