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Moore's Federal Practice (Second Edition).  
Volumes 1 and IA. (Co-authors, Volume 1: James  
Wm. Moore, Lindsey Cowen, Felice R. Cutler,  
Howard P. Fink, Warren J. Kaps, Allan D. Vestal)  
(Co-authors, Volume IA: James Wm. Moore, Alan  
Y. Cole, Howard P. Fink, William Van Dercreek,  
Allan D. Vestal). Matthew Bender & Co., 1961.

George W. Pugh

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not put an end to competition? It would seem that a rate cut based on an "added traffic" theory would be plausible mainly in a context of such marginal pricing, *i.e.*, the recovery of "out-of-pocket" costs plus some contribution toward constant or overhead costs.

This is but one of the many teasing problems competently treated in the treatise; throughout, the author's many penetrating insights are put forth modestly and, to quote, as no more than "an experimental synthesis." It seems likely that this work received a thorough thumbing in the preparation of the President's recent message to the Congress on "An Efficient Transportation System."

*Melvin G. Dakin\**

*Moore's Federal Practice (Second Edition)*. Volumes 1 and 1A. (Co-authors, Volume 1: James Wm. Moore, Lindsey Cowen, Felice R. Cutler, Howard P. Fink, Warren J. Kaps, Allan D. Vestal) (Co-authors, Volume 1A: James Wm. Moore, Alan Y. Cole, Howard P. Fink, William Van Dercreek, Allan D. Vestal). Matthew Bender & Co., 1961.

On September 16, 1938, the Federal Rules of Civil Procedure went into effect. That same year, the first edition of *Moore's Federal Practice* was published, and it is not an exaggeration to state that this monumental work had a profound influence on the development of the law, for it afforded the bench and bar an authoritative guide for the interpretation and implementation of the Federal Rules — to the end that they would achieve their goal, "the just, speedy, and inexpensive determination of every action."

The author of the treatise, Professor James Wm. Moore of the Yale Law School, served as Chief Research Assistant on the Reporter's Staff of the Supreme Court's Advisory Committee in its preparation of the Federal Rules, and the treatise reflects not only his mastery of jurisdiction and procedure, but also his intimate knowledge of the formulation and intendment of the Rules.

Ten years later, the author, taking cognizance of the myriad

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decisions which had been rendered interpreting the Federal Rules, commenced publication of a second edition. One might quite naturally have expected that the first published volume of the new edition would be Volume 1. But, surprising enough, this was not the case. Volumes 2 and 3 were published in 1948, Volumes 4 through 7 appeared in succeeding years through 1955, and still the many addicted to the Moore treatise could search in vain for Volume 1 of the authoritative set. Volumes 2 through 7 afforded complete treatment of the Federal Rules themselves, and Volume 1 had been reserved for important materials of a general nature.

The same year that the Federal Rules went into effect and the first edition of Moore's treatise was published *Erie R.R. v. Tompkins* was decided; and as every law student knows, the impact of this decision was great indeed. Ten years later, the Judicial Code of 1948 was enacted. Although, as Professor Moore suggests, the changes introduced by this Code were modest, it was more than a mere restatement of the law; it was a revision, albeit a conservative one. Professor Moore's Commentary on the Judicial Code, published a year after its enactment, was of considerable assistance in its interpretation, but it was not nearly as extensive a treatment as envisioned for Volume 1.

Perhaps because so much had transpired since the second edition of *Moore's Federal Practice* was originally conceived, a single volume for the general treatment would not suffice. Those who waited expectantly for the publication of Volume 1 are now rewarded by the publication of not only Volume 1, but also Volume 1A as well. The result of a team effort by a number of scholars in addition to Professor Moore, the two volumes are excellent indeed. They constitute a unit, divided into five parts. The first part, "Courts and Jurisdiction," affords an excellent survey of the history and nature of the federal judicial system and its present-day courts, a fairly brief discussion of original jurisdiction, and a very extensive coverage of jurisdictional amount, venue, and removal jurisdiction. In view of the brevity of the section on original diversity and federal question jurisdiction, this reviewer surmises that it is contemplated that more extensive discussion will be available for insertion in the present volumes at a later date. Because of the excellent loose-leaf Bender binder, insertion of additional material is easily accomplished. Part 2 provides coverage of the very important and

quite delicate problem of "Conflict of Jurisdiction" between state and federal systems. Part 3 on "Law Applied," Part 4 on "Effect of Prior Decisions and Judgments," and Part 5 on "Modernization of Federal Procedure" complete the unit.

Although coverage afforded in some areas is not as extensive as in others, which is probably a consequence of the fact that the volumes are a product of a team-effort, there is extensive cross referencing, both to sections of Volumes 1 and 1A, and to the other volumes, making the entire set an integrated whole. The intricacies of federal jurisdiction and procedure are certainly challenging, and yet the authors happily have been able to achieve the simplicity of style and clarity of analysis so characteristic of Professor Moore's other writings.

But the work affords more than mere analysis and research: it provides constructive criticism of current decisions and trends, and suggests practical guide lines for the future development of the law. The section on modernization of federal procedure is of particular import to persons interested in procedural reform. The history of the work of the Supreme Court's Advisory Committee is excellent, and the authors' recommendations for the utilization of the Judicial Conference of the United States as a continuing Advisory Committee for the Supreme Court, and the use of advisory committees appointed by the Chief Justice as head of the Conference to do spade work and formulate proposals to be considered by the Judicial Conference have already been implemented by legislation.

It is interesting to note in passing that the oft-criticized diversity jurisdiction is defended. Observing that "diversity jurisdiction still flourishes," the authors state: "We believe it should continue to do so. Litigants are entitled to the best remedies available, for the best is never too good. And diversity jurisdiction often affords litigants a better remedy in the federal court than is available in the state court. This should suffice as a continuing support of diversity, irrespective of whether the reason — possible discrimination by a state court against a non-resident citizen — has validity today." (1, p. 4) Although taking the position that since normally only questions of state law are involved in diversity cases, and "it will not do for the federal courts to dismiss diversity actions merely because the question of state law is difficult of ascertainment," (1A, p. 2120) the authors nevertheless plead for "some play in the joints," feeling

that at times state law may be so confused or uncertain or the subject matter concerned so important that the parties should be remitted to state court for an authoritative determination of state law. But this should not be taken as an endorsement of indiscriminate use of equitable abstention. Noting the interminable course of the *Spector Motor* litigation,<sup>1</sup> the authors recognize the evils inherent in a Brobdingnagian approach of permitting two lawsuits to grow from one sprout. (1A, p. 2114)

Despite the many significant developments of the past quarter century in the field of Federal Jurisdiction and Procedure, the authors recognize the real need for additional reforms. Rule 43, which deals with evidence, is aptly characterized by the authors as a "makeshift," and new rules of evidence, applicable to all cases (civil, criminal, and admiralty) are advocated. Advances in this direction have already been made by a Special Committee on Evidence (of which Professor Moore is Chairman) appointed by the Chief Justice at the direction of the Judicial Conference of the United States.<sup>2</sup> Considering the Judicial Code of 1948 "a step in the right direction," the authors nonetheless contend that a comprehensive, careful, and scholarly re-evaluation of the entire federal judicial system and the allocation of judicial power between federal and state courts is needed. Cognizant of the difficulties involved in such an undertaking, the authors urge, however, that the task is not insurmountable, and "one that should be discharged." Volumes 1 and 1A, as well as the rest of *Moore's Federal Practice*, will be of invaluable assistance, not only for the judge and practitioner, but also for those engaged in formulating much-needed further reforms.

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1. *Spector Motor Service, Inc. v. McLaughlin*, 323 U.S. 101 (1944) and 340 U.S. 602 (1951).

2. See RULES OF EVIDENCE: A PRELIMINARY REPORT ON THE ADVISABILITY AND FEASIBILITY OF DEVELOPING UNIFORM RULES OF EVIDENCE FOR THE UNITED STATES DISTRICT COURTS (COMMITTEE ON RULES OF PRACTICE AND PROCEDURE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES) (February 1962).

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