A discussion of teaching methods is a fitting subject for an issue commemorating the centennial of the Law School and the deanship of Scott Bice, because despite the many other important and time-consuming responsibilities his deanship imposed upon him, he always found time to teach. And not only just to teach, but to be the best teacher in the Law School, by the testimony of the majority of students, past and present, whom I have heard express an opinion on the subject.

The law is traditionally taught by the case method, and at least for the subjects I teach (contracts, antitrust, and insurance), all the casebooks are written with this assumption in mind. Each new subject within the larger subject of which the course consists is introduced with a case or a number of cases, which the students are told to read and to be prepared to discuss in class. The teacher’s role in the classroom is not to teach the law itself, but to teach the students how to extract the law from the case or cases they have read. The students are also taught how to read cases adversarially, which is to say, to find ambiguities, vaguenesses, or “gaps” in them which, as lawyers representing clients, they could exploit to make the cases seem to support the views of the law they want the courts to adopt.

The justification for the case method is that the cases are the law, and therefore every lawyer must know how to extract the law from them. This justification dates from the days when most of the important law was still common law, which of course is no longer true. Even statutes, however, quickly become overlaid with cases interpreting them or “filling in” their “gaps,” and at least if the court and the legislature that enacted the statute are in the same jurisdiction, a case interpreting a statute prevails over
anything different the statute may seem to say. So the original justification for the case method is still as valid as it ever was.

The University of Southern California Law School was one of the first to enlarge the case method to include class discussion of the public policies the laws serve—or fail to serve—and what those policies should be. Those of us who were then the younger members of the faculty here were doing this in the sixties. By now, however, almost every law school with a national reputation does it; probably most of the others do, too. Similarly, most casebooks have been enlarged to include excerpts from books and articles or the casebook authors’ own comments on relevant public policy considerations. The inclusion of public policy, however, has not fundamentally changed the case method. It has only enlarged the context in which the cases are discussed, especially since the opinions in most modern cases themselves include considerations of public policy.

Despite these seemingly strong points in favor of the case method, my experience has led me to believe that it is ineffective. Indeed, I think it prevents most students from learning the law. Probably much of the shock, fear, and confusion that besets most law students for at least the first few weeks of their first year is not a result of something inherent in the law, but a result of this method of teaching it. Of course, lawyers must know how to extract the law from cases and how to identify and exploit an opinion’s ambiguities and vaguenesses; therefore, we must teach these skills to law students. But it does not follow that this is how we should teach the law itself.

A lawyer seeking to learn an unfamiliar area of the law would not begin by reading cases. That would waste the lawyer’s time, as much as it would waste the time of a person who wanted to learn the history of a country to begin by researching in the historical archives. The lawyer would begin by reading one or more of the hornbooks, treatises, or practice manuals that exist on the subject, just as the person who wanted to learn the history of a country would begin by reading a history book about that country. The lawyer would begin to read cases only after reading enough in these other sources to know which cases to read, or at least what kinds of cases to read, and how to understand them. Surely this is also the way we should teach the law to students. Students are at least as unfamiliar with the subjects they must learn as a lawyer would be with a new and unfamiliar area of law.

Thus, the case method proceeds through the learning process backwards. The students read cases before they have a basis for
understanding them or even for knowing what to look for in them. Of course there will be exceptions, but the rule should be that students first be given textual explanations of the laws they are to learn. The cases can then be presented to them as demonstrations of the laws’ applications or of interesting problems the laws present.

Another drawback of the case method, at least for the common-law subjects, is that some of the laws to be learned are so poorly understood, or subject to so much disagreement, that a selection of a case or small number of cases to represent the subjects is bound to be arbitrary. This is true of the parol evidence rule in contract law, for example. A person who set out to find a formulation and interpretation of the parol evidence rule that was representative of the rule’s application in courts throughout the United States would probably have to read five or six cases from each state, for a total of more than two hundred and fifty cases! There is simply no way to teach students this rule except to give them a representative formulation of it. There is not remotely enough time for them to extract it from the cases.

A casebook designed to be used in my suggested way of teaching might be organized in the following manner. Each subject within the larger subject—consideration in the law of contracts, for example—would be introduced with a textual explanation such as that found in a hornbook or practice manual, or an even more simple one, if possible. The explanation would include the principles and policies underlying the law. Next would appear a small number of cases chosen for their simple, straightforward application of the law and, preferably, for the human interest in the stories told by their facts.

*Feinberg v. Pfeiffer Co.*[^1] is an example of a case that serves both of these purposes. The law at issue in the case was promissory estoppel. The plaintiff, Anna Feinberg, had worked for the defendant company for almost forty years, beginning as a secretary and rising to the position of assistant treasurer. At the president’s suggestion, the board of directors voted to give her a pension, which she could take anytime she chose. She chose to take it about two years after the president told her about it. Of course she had to retire to take it, and the salary she gave up was more than twice the amount of the pension. Some years later the president died, and the heirs who took over the company stopped paying the pension. By then, Mrs. Feinberg was sick with cancer and too old to have any real prospects of finding new employment even if she had been in good health. She sued,

[^1]: 322 S.W.2d 163 (Mo. Ct. App. 1959).
and the court found in her favor. The company’s promise of a pension was enforceable even though she gave no consideration for it, because promissory estoppel makes a promise enforceable if the promisee foreseeably and detrimentally relies on it, which Mrs. Feinberg had. She foreseeably relied on it by retiring before she otherwise would have; her reliance was detrimental because she gave up a much larger salary to take the pension. The application of the law of promissory estoppel to these facts is simple and straightforward, and the story of Mrs. Feinberg, the grateful president, and the cruel and selfish heirs has human interest. Students should have no trouble remembering the case, and if they remember it, they should also be able to remember and understand the law it applied.

Following the straightforward cases, there would be some cases, or abstracts or excerpts from cases, chosen to show problematic, tricky, or otherwise interesting applications of the law or problems in the law itself. The purpose here would be twofold: to deepen the students’ understanding of the law and to teach them the skills of case analysis mentioned earlier.

In most instances, both kinds of cases would be presented along with textual comments explaining things the student would need to know in order to understand the cases, or making suggestions or asking questions about the cases designed to stimulate the student to think in certain directions. For example, preceding the first English case in the book, there would be an explanation of how opinions in English cases are written, since they are very different from American opinions. I have found that without such an explanation, students are simply baffled. They do not even realize that some of what they are reading is not part of the court’s opinion, but rather the court reporter’s paraphrase of what the counsel for one of the parties argued. The textual comments would also include references to other laws or cases in the book that the student had already learned or read, pointing out parallels or contradictions with them.

I am currently testing this approach to teaching law. I have prepared materials that follow the methods I have outlined here, which I am using instead of a casebook for my Fall 2000 contracts course. By the end of the semester, I hope to have some evidence of how the approach works.