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A CENTURY OF CASE METHOD: AN APOLOGIA

James M. Dente*

In 1870, Dean Christopher Columbus Langdell introduced the case method of instruction into American legal education at Harvard law school. Prior to this time, the methods of legal instruction in the United States were first the office apprenticeship, and later the lecture and use of textbooks in law schools.¹ The case method was initially rejected by most law schools in favor of the lecture and textbook.² A controversy over the merits of the case method soon developed and continued for more than 40 years.³ In 1914, Professor Josef Redlich, a distinguished and disinterested Austrian jurist, investigated the method for the Carnegie Foundation and prepared a report favoring it.⁴ His arguments in favor of the method had a great influence in its later acceptance by almost all American law schools.⁵ Although this may have temporarily suspended the controversy, later writings indicate that after a century, the controversy still rages.⁶

Law students have often entered the debate, usually against the method.⁷ The National President of the Law Student Division of the American Bar Association criticized the method in a speech at the Annual Meeting of the Association of American Law Schools.⁸ As a

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1. See J. HURST, *THE GROWTH OF AMERICAN LAW*, 256-76 (1950) (a brief history of legal education in the United States).

2. See L. FRIEDMAN, *A HISTORY OF AMERICAN LAW*, 533-35 (1973). See also Baldwin, *Teaching Law by Cases*, 14 HARV. L. REV. 258 (1900).

3. See, e.g., Ashley, *The "Failure" of Professor Langdell*, 2 AM. L. SCH. REV. 257 (1909); Carusi, *A Criticism of the Case System*, 2 AM. L. SCH. REV. 213 (1908).

4. J. REDLICH, *THE COMMON LAW AND THE CASE METHOD* (Carnegie Foundation Bull. No. 8, 1914).

5. Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J. LEGAL ED. 1, 2 (1951).

6. See, e.g., Brabson, *Twilight of the Casebook System*, 48 TAXES 501 (1970); Austin, *Is the Casebook Method Obsolete?*, 6 WM. & MARY L. REV. 157 (1965); Landman, *The Problem Method of Studying Law*, 5 J. LEGAL ED. 500 (1953); Rundell, *Problems of the Case Method*, 6 AM. L. SCH. REV. 698 (1930).

7. See Landman, *Anent the Case Method of Studying Law*, 4 N.Y.U.L. REV. 139 (1927).

8. See ASS'N AM. L. SCHOOLS 1968 PROCEEDINGS, PART TWO 35.

student at Columbia in the fifties, I echoed the protesting views of many of my fellow students. With the benefit of hindsight, however, after practicing law for 14 years and teaching for the past 7 years, I have altered my views.

The alternatives to the case method generally suggested by its critics are the lecture and textbook method, and more recently, the so-called problem method. This article will review the case method and the alternatives from the viewpoint of a seasoned-practitioner-turned-law-teacher. I will examine some of the criticisms of the method and offer some observations not heretofore made in the debate. It is hoped that this may help law students better understand the wisdom behind the use of the much maligned case method, which is still used in one form or another by the vast majority of American law professors.

I. THE CASE METHOD DEFINED

Because the "case method of instruction" has been somewhat modified since Langdell's time, and because the term is often used, without definition, to refer to the various forms of the method,⁹ it may be helpful to define it as I employ it in the classroom and as I believe it is generally employed today. The case method is the study of appellate court opinions which (in theory at least) have been carefully chosen, edited and logically arranged by casebook editors so as to present the development of principles of law in a certain field, such as torts or contracts. The student is instructed to study each case until able to state clearly and concisely the relevant facts, the issue presented, the decision and the court's reasons for its decision. Class discussion of a case usually begins with either a student's recitation of its facts, issues, decision and reasoning, or the instructor's suggestion of a hypothetical state of facts varying only in immaterial details from the case in the text and request for the issues, decision and reasons. The instructor can then judge whether the case was understood and clarify any misunderstanding, generally by asking or answering questions about it.

In one variation of the method, the instructor begins the discussion by offering hypothetical cases which differ materially from the as-

9. "There is not one but many case methods . . ." ASS'N AM. L. SCHOOLS 1966 PROCEEDINGS, PART ONE, REPORT OF COMMITTEE ON TEACHING METHODS 204.

signed cases and, thus, require the student to form a judgment as to whether the distinctions are of legal significance and whether the application of the rules of the assigned cases would dictate the same or a different result. Where appropriate, a case may be further discussed and analyzed by inquiring whether a different result might have been justified in light of the socioeconomic and political policies involved in the decision and by asking the student to formulate arguments for the plaintiff or defendant.¹⁰ At the end of the study of a series of cases developing a doctrine—*e.g.*, the elements of a battery in tort—the class may be asked to formulate the general principles of law derived from a synthesis of the cases. Thus, the student can be taught to construct his own compilation of the law, as will be required many times in actual practice. Many other variations are employed by different instructors.¹¹

II. THE CASE METHOD V. LECTURE AND TEXTBOOK

Probably the most frequently heard criticism of the case method is that it is an inefficient means of imparting information to students. It is alleged that much more could be taught about a subject in a shorter time with the use of lecture and textbooks.¹² For example, one can learn almost all there is to know about the law of torts much more easily and quickly by reading Prosser's treatise on the subject than by sitting through 90 hours of classroom discussion.

While it is undoubtedly true that by the lecture and textbook method a student can commit to memory many more rules and principles of law than by case study, information "in the air" is of little value in legal education. Principles cannot be learned in any meaningful way by memorizing the black letter texts of rules extracted from the cases by textwriters. Legal principles must be tied to something significant. The student, through the study of cases, is better able to comprehend the true meaning of legal doctrines as applied to particular facts. Studies have indicated that learning generally proceeds from the particular to the general and not vice-versa.¹³ Moreover,

10. See Morgan, *The Case Method*, 4 J. LEGAL ED. 379 (1952) (a good discussion of the method).

11. ASS'N AM. L. SCHOOLS 1966 PROCEEDINGS, *supra* note 9.

12. See, *e.g.*, Patterson, *supra* note 5, at 22; Austin, *supra* note 6, at 164.

13. Weihofen, *Education for Law Teachers*, 43 COLUM. L. REV. 423 (1943).

actual cases hold the interest of the student; they are far more exciting than the dry generalizations of a textbook.

Even if one assumes that rules and principles of law could be understood and applied without studying them in the actual case setting, rules of law should and do change with the times, which change requires a practitioner to review and synthesize new cases. This is true to some extent in all areas of the law and is dramatically true today in the field of constitutional law, which interacts with most other areas. When new decisions are handed down changing old rules and establishing new principles not covered by the treatises, what happens to the lawyer who has not learned case analysis and has not developed the required skills to extract these rules from the new cases? Must he now wait until a new edition of Prosser is published or until a law review article is written purporting to analyze and explain the new cases, and in the meantime lose an appeal that he might otherwise have won?

This is one reason why it is not the function of a law school to teach the student "the law," but rather to equip him with the necessary skills so that he can determine for himself from the cases and statutes, as primary sources, what the law is at a particular time. The case method is designed so to equip the student. It emphasizes development of understanding as opposed to mere acquisition of knowledge. With this understanding of legal reasoning and how and why legal principles developed from particular fact situations in a certain social, economic and political climate, a lawyer may also be able to persuade a court that with social change, the rules should now be changed. This, of course, is part of the advocacy function of a lawyer's work, further discussed below.

Moreover, it should be noted that Prosser on Torts or any other treatise is not "the law." In our legal system, textwriters are given no independent authoritative status as legal experts, so that although the leading treatises may sometimes be considered persuasive, they are merely secondary sources of the law. How well I learned this early in practice when I attempted to quote a new Pennsylvania law encyclopedia to sustain a proposition of law in argument before the Pennsylvania Supreme Court. I was curtly informed from the bench by the chief justice, first, that it was not a correct statement of the Pennsylvania law on the subject, and second, that the court would accept only its own precedents as authority.

Case Method

While the Pennsylvania law encyclopedia did not become noted for its scholarly accuracy,¹⁴ even such eminent authority as Prosser's treatise on torts can be mistaken. For example, in discussing the leading case of *Ultramares Corp. v. Touche*,¹⁵ concerning the liability of a firm of accountants to a third party for a negligently certified corporation balance sheet on which the third party relied, Prosser states:¹⁶

They were *held liable* in deceit, upon the ground that their neglect was so great as to justify a finding of conscious ignorance [of whether the balance sheet was in accordance with the books of account].

The procedure by which the case reached the appellate court is not mentioned. Since Prosser is discussing Justice Cardozo's famous opinion in the New York Court of Appeals,¹⁷ anyone reading Prosser without carefully analyzing the opinion itself, might reasonably conclude that the New York Court of Appeals held the defendants liable and that, therefore, liability could be found *as a matter of law* where there was such gross neglect. The case, however, did not so hold; the defendants were not "held liable in deceit." In fact, the court of appeals reversed the lower court's dismissal of the cause of action in deceit and granted the plaintiff a new trial on the deceit count on the ground that the defendants *could be held liable* in deceit to a third party relying on their certification *if a jury found* conscious ignorance; *i.e.*, defendant's certifying the correspondence of the books of account with the balance sheet when they knew they lacked adequate knowledge of this. This, Cardozo stated, a jury *might find* from the facts.¹⁸ Holding that a cause of action would lie in deceit so that the case should have been submitted to a jury is quite different from stating that the appellate court held defendants liable for gross neglect. This demonstrates the importance of reading cases with due attention to the procedural setting, which is further discussed below.

The fallibility of secondary sources brings to mind the significance of the admonition I received as a student from Professor Karl N. Llewellyn in his contracts class at Columbia. When I cited as authority

14. Neither did the chief justice; after all, *I* lost the appeal. *First Nat'l Bank v. Turchetta*, 407 Pa. 511, 181 A.2d 285 (1962).

15. 255 N.Y. 170, 174 N.E. 441 (1931).

16. W. PROSSER, *LAW OF TORTS* 708 (4th ed. 1971) (emphasis supplied).

17. 255 N.Y. 170, 174 N.E. 441 (1931).

18. 174 N.E. at 449.

for an erroneous proposition of contract law the fact that another distinguished professor had told us this in another class, he bellowed, "Don't ever accept as authoritative what someone else tells you the law is, regardless of who he is! Read the cases and determine it for yourself!"

I do not mean to imply by all this that there is no room for some lecture-textbook instruction in law schools. Much of the early criticism of the case method stemmed from the fact that many schools devoted their entire curriculum to it although there are undoubtedly certain areas of law that could better be taught by other methods. For example, even Professor Edwin W. Patterson, a staunch supporter of the case method, admitted that it is an inadequate means of teaching legal history.¹⁹ He also observed that it leaves untouched in the curriculum some practical legal problems which are not susceptible to litigation, such as the proper organization of the courts and the needs of the indigent for legal services.²⁰ I would agree with Professor Patterson that these areas are more easily taught by lecture and textbook. Furthermore, contrary to traditional thought, I believe the case method requires a certain amount of lecturing to summarize the conclusions to be derived from the cases and the class discussion.

Some lecturing may also be necessary to bring into a case-method course relevant non-case materials, which are now often included in casebooks. For example, a currently important proposal for reform in the law of torts is the Keeton-O'Connell plan of basic compensation for automobile accident victims by compulsory insurance without regard to fault.²¹ This plan is much discussed today in the legal literature.²² Several states have adopted "no fault" automobile insurance laws incorporating various elements of the plan²³ and bills based on the plan have been introduced in other states.²⁴ Obviously, in a well-taught torts course this proposal should be discussed, but such discussion will of necessity require a deviation from the case method.

I also do not mean to imply that good treatises, such as Prosser's,

19. Patterson, *supra* note 5, at 22.

20. *Id.* at 23.

21. See R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM (1965).

22. See INDEX TO LEGAL PERIODICALS, under *Automobile Insurance*, for a host of citations commenting on the proposal.

23. See, e.g., MASS. GEN. LAWS ANN. ch. 90, §§ 34A *et seq.* (Supp. 1974); N.J. STAT. ANN. §§ 39:6A-1 to -20 (1973).

24. See, e.g., Davies, *The Minnesota Proposal for No-Fault Auto Insurance*, 54 MINN. L. REV. 921 (1970).

are not useful to both students and lawyers. They are helpful for students in learning to analyze cases by reading an expert's interpretation and in summarizing the case study. They are useful to lawyers as a good beginning point in research to find the relevant cases; but in the final analysis:²⁵

It's the case in point,
Not the textwriter's report,
That will catch the conscience
Of the Court!

III. THE PROBLEM METHOD: OLD WINE IN NEW BOTTLES?

Most recent critics of the case method have been advocating, as either an alternative or a supplement, adoption of the so-called problem method, rather than reversion to exclusive use of the lecture and textbook.²⁶ Although this method also varies in form, as described by its proponents, it generally consists of the preparation by the teacher of a written detailed fact situation presenting a legal problem in one or more areas assigned for study. The student is assigned a specific role, usually as attorney for one of the parties, which requires the student to develop ways and means to resolve the problem. The directions given with the problem may require the drafting of any necessary documents or pleadings.

Problems can be of two types: class problems and research problems. A class problem is given to the student reasonably in advance of the discussion period and should be long enough to exhaust a class session in its discussion and solution. The solution need not be written out by the student. Class time is devoted almost completely to discussion and solution of the problem itself, rather than to consideration of the cases and other assigned materials necessary for its solution.

25. My inspiration to write this scintillating piece of poetry came from another great bard. Cf. W. SHAKESPEARE, *HAMLET PRINCE OF DENMARK*, Act III, Scene ii, at 86 (Penguin ed. 1970):

The play's the thing
Wherein I'll catch the conscience of the king.

26. See, e.g., Cavers, *In Advocacy of the Problem Method*, 43 COLUM. L. REV. 449 (1943); Landman, *supra* note 6. As recently as 1965, however, Austin, *supra* note 6, recommended the almost exclusive use of lectures in the second year, supported by textbook and treatise reading assignments, with a minimum of class discussion.

During the discussion hour, the instructor asks questions about the problem, acts as moderator in the discussion and summarizes the final solution.

The research problem is longer and is used primarily to train students in the techniques and tools of legal research. It requires a written solution and is assigned as an integral part of a course, although it usually leads the student into relatively undeveloped areas of the course material. Several weeks are allowed for the completion of this type of problem.²⁷

The advocates of the problem method claim that it fills many of the gaps left by the case method, because it provides instruction in areas where case law is inadequate and it gives the student the opportunity to use and apply the law in the role of a lawyer. Actually, almost every law instructor utilizes problems to a limited extent by the use of hypothetical cases in today's form of the case method. This is also the basis on which final examinations are prepared. One objection is that the facts in these hypothetical cases are refined so that the student is not required to cope with a raw fact situation similar to that presented by a client. Even where more complete and detailed fact situations are given in final examinations, sufficient time is not permitted to research and reflect on the problem and there is no class discussion. One proponent admits, however, that the problem method is but a form of the case method.²⁸

Some proponents offer the problem method as an alternative to the

27. This explanation of the method is for the most part based on Ward, *The Problem Method at Notre Dame*, 11 J. LEGAL ED. 100 (1958). *But see* Cavers, *supra* note 26 (suggesting other variations). The Association of American Law Schools Committee on Teaching Methods adopted the following definition for its survey and appraisal of the problem method:

1. Regularly or from time to time students must analyze and solve for some future class session one or more problems contained in a statement of facts on [or?] legal issues or both.

2. Students may solve the problems by using materials included in the course-book or otherwise provided or, if problem-solving materials are not provided, the scope and direction of research are so guided that the problem and not the research process is the focus of attention.

3. In subsequent classes, discussion centers on the problems (or on closely related problems) and on student solutions. These may or may not be required or recommended to be in writing.

ASS'N AM. L. SCHOOLS 1966 PROCEEDINGS, *supra* note 9, at 203. The report suggests that the cliché, "There is not one but many case methods," could be as aptly applied to the problem method. *Id.* at 203.

28. Davis, *The Text-Problem Form of the Case Method as a Means of Mind Training for Advanced Law Students*, 12 J. LEGAL ED. 543 (1960).

case method as if the two were mutually exclusive.²⁹ I disagree. Tools are required to solve problems: legal reasoning must be employed, and rules and principles of law must be applied. As suggested above, authoritative rules and principles must be extracted from the cases, and at times from statutes or other official sources. It is therefore difficult to see how the problem method could be effectively employed unless the student has first mastered the case method. This is recognized by some of the proposals for change; several commentators recommend that the problem method be employed only after the first or second years of study, and then not exclusively, but as a complement to the case method.³⁰ I would agree to this limited use of the problem method. It has been, in fact, used for many years by the assignment of research problems in many case method courses; the preassigned class problem is of more recent origin.

IV. THE PROBLEM WITH THE PROBLEM IS THE PROBLEM

The major shortcoming of the problem method is the construction of the problem to be used. If the primary purpose of the method is to approximate the work of a lawyer, the problems must be complete and realistic. I suspect that professors who have never practiced law may sometimes be ill-equipped either to prepare such problems or to handle properly their discussion in class. The most ardent advocates of the problem method recognize this concern. They suggest that practitioners be invited to participate in the class discussion³¹ and that law professors be required to engage simultaneously in practice or take periodic leaves in order to learn the practical operations of the law.³² I believe these suggestions, although not usually made by law professors, are worthy of consideration.³³ Otherwise, I fear that the problems used may resemble some of the highly unlikely hypothetical cases that issue forth from the minds of some law professors, which "cases" lack even a semblance of reality. Such hypothetical cases may

29. See, e.g., Landman, *supra* note 6.

30. See Cavers, *supra* note 26; Ward, *supra* note 27; Davis, *supra* note 28; Ass'n AM. L. SCHOOLS 1966 PROCEEDINGS, *supra* note 9.

31. Cavers, *supra* note 26, at 459.

32. Landman, *supra* note 6, at 507.

33. Cf. Dente, *Need for More Professors Who Have Practiced Law*, 18 CLEV.-MAR. L. REV. 252 (1969).

sometimes be useful as an interesting variation of the case method to point out a principle of law, but would be inappropriate in the problem method.

The great law teacher and jurist, John C. Gray, observed regarding the case method that dealing with *actual* cases in teaching law "is an effectual corrective to unreal and fantastic speculation, which is the most dangerous tendency of academic education."³⁴ His statement was prophetic in that it was made without exposure to that celebrated hypothetical case scholarly constructed by a distinguished law professor about a group of cave explorers who, when trapped, ate one of their number.³⁵ This they did only after learning from a committee of medical experts, with whom they were in contact via two-way radio (which they happened to have with them), that they could not survive without food during the time required to effect their rescue. The legal issue was whether the cave explorers were guilty of murder or whether this was justifiable homicide under the law of necessity.

Although this ingenious case was composed as a jurisprudential problem, for which it was clearly appropriate, it immediately "turned on" many criminal law professors. It has been discussed and debated in almost every criminal law class across the country. After 25 years it is still cited in many casebooks without explanation that it was a product of professional imagination.³⁶ After having devoted much time discussing this interesting problem in criminal law class when I was in law school, I must confess that in all my years of practice, I never had a client charged with eating a fellow cave explorer (or anyone else, for that matter).³⁷

Such "far out" problems serve to undermine the purpose of the problem method: "The unicorn has no more place in the law school classroom than it has in the menagerie."³⁸

34. Gray, *Methods of Legal Education*, 1 YALE L.J. 159, 160 (1892).

35. Fuller, *The Case of the Speluncean Explorers*, 62 HARV. L. REV. 616 (1949).

36. Compare F. HALL & G. MUELLER, CRIMINAL LAW AND PROCEDURE 646 (2d ed. 1965) (Professor Fuller's article cited in the bibliography under the section on "Necessity") with W. PROSSER & J. WADE, CASES AND MATERIALS ON TORTS 144 (5th ed. 1971) (article cited as work in "theoretical jurisprudence").

37. My criminal law teacher was especially enamored with the case. He also had a peculiar affinity for the Italian Penal Code in teaching American criminal law. See J. MICHAEL & H. WECHSLER, CRIMINAL LAW AND ITS ADMINISTRATION (1940) in which 99 different articles of the Italian Penal Code are cited (which is more than most criminal law casebooks devote to American penal statutes). It is surprising how seldom the Italian Penal Code comes up when practicing law in the United States.

38. Patterson, *supra* note 5, at 18.

V. OTHER CRITICISMS OF THE CASE METHOD

Professor Patterson considered the most serious flaw in the case method, as originally conceived, to be its inadequacy in the study of legislation, because the student needs training in the interpretation of statutory provisions that have not yet been judicially construed.³⁹ He suggested that this flaw could be remedied in part by well constructed hypothetical cases used as the basis for class discussion. I would add that cases construing other statutes are also helpful here because they illustrate the application of settled rules of construction. By studying how these rules were applied to other statutes, a student can learn to predict how a new statute might be construed in a future case and, thus, learn by the case method the technique of interpreting new statutes.

It has also been charged that the case method is too theoretical because the student is not exposed to the practical techniques indispensable to the practitioner.⁴⁰ I cannot agree that the method does not teach some very practical techniques. As Professor Leon Green pointed out in defense of the method, advocacy is the basis of much of a lawyer's work. All lawyers must be advocates in some degree. Important in advocacy is the ability to formulate issues, to analyze, select, weigh and focus the facts on the issues so as to influence the judgment of the court, and to utilize decided cases as authority. Case study and the recitation and discussion of cases in the classroom offer the best practical training in this regard.⁴¹

A related criticism is that the case method deals only with the law at the appellate court level, while the bulk of most lawyers' work is in the law office and the trial courts, for which the case method, it is alleged, does not prepare the law student.⁴² While it is undoubtedly true

39. *Id.* at 23.

40. Austin, *supra* note 6, at 164.

41. See Green, *Advocacy and Case Study*, 4 J. LEGAL ED. 317 (1952).

42. Cf. ASS'N AM. L. SCHOOLS 1966 PROCEEDINGS, *supra* note 9, at 207:

A chronic criticism of conventional case method teaching is that it either puts the student on the bench of a super-supreme court or elevates him to the scholar's ivory tower. In neither event does he readily see the cases and other legal materials which he studies from the viewpoint of the practicing lawyer or government counsel.

Where this is so, I would suggest that the fault may lie not in the method, but in the teacher, who may not be equipped to approach the material from the viewpoint of the practicing lawyer. See Dente, *supra* note 33.

that the greater part of the work of most lawyers is below the appellate court level, the case method can in fact do much to prepare the student in this regard. A great part of a lawyer's office work involves counseling of clients and negotiation of disputes. Both of these functions involve predictions of probable judicial outcomes. By analyzing the courts' reasoning via the case method, the student becomes familiar with the attitudes which prevail in our courts. With the use of *realistic* hypothetical cases in the class discussion of the assigned cases, students are continuously gaining practical experience in predicting what a court will do in future cases.

As to the lawyer's function in the trial court, it must be emphasized that the appellate court passes upon the correctness of the rulings made by trial judges. The appellate court opinion contains the procedural setting of the ruling, and this setting affects the problem raised.⁴³ Until that setting is understood, neither the trial nor the appellate process, nor the substantive rules of law, can be understood. It is for this reason that I require the students in my torts class to state both the procedural and substantive issues involved in the cases.⁴⁴ As a student learns to read cases with due attention to procedure, he begins to learn both the trial and the appellate processes and better understands the rules of substantive law.⁴⁵ In short, it is the adjective and substan-

43. By ignoring this, I believe Prosser fell into error in his statement of the holding in the *Ultramares* case. See notes 15-18 and accompanying text *supra*.

44. For example, in a case in which the uncontradicted evidence of both parties disclosed that while driving an automobile, defendant was suddenly stricken with an illness which he had no reason to anticipate, making it impossible for him to control his car and resulting in an accident in which plaintiff passenger was injured, the trial court directed a verdict for defendant and plaintiff appealed. The procedural issue on appeal would be whether the trial court erred in directing a verdict for defendant. This depends on the answer to the substantive issue of whether one who is suddenly stricken by an illness which he had no reason to anticipate which caused him to have an automobile accident is chargeable with negligence. The appellate court held that he was not and therefore the trial court did not err in directing a verdict. See *Cohen v. Petty*, 65 F.2d 820 (D.C. Cir. 1933) (aff'g the trial court).

I also require my students to include the relevant facts in their statement of the substantive issue so that the question is not simply whether defendant was negligent, but whether one who is suddenly stricken by an illness, etc., is negligent. If it is not too cumbersome, both the procedural and substantive aspects of the case can be combined into one issue, such as whether the trial court erred in directing a verdict for defendant in a negligence action where defendant was suddenly stricken by an illness, etc.

45. Obviously, it is one thing for a court to hold that certain conduct does or does not constitute negligence as a matter of law, and another to hold that whether such conduct constitutes negligence is a question for the jury. See text accompanying note 15 *supra*.

tive law enunciated in the appellate courts that is or should be applied in the trial courts. Furthermore, the advocacy function of a lawyer mentioned above is at least as important in the trial courts as it is in the appellate courts, if not more so.

In addition, the case method does not necessarily preclude seminar courses, such as practice court, where pleadings can be drawn and lower court procedures applied. Clearly, the case method alone cannot teach a student to conduct a voir dire, examine witnesses, or make a closing argument. As indicated above, however, in such a course knowledge of the rules of substantive law and evidence as extracted from appellate court cases will be required to enable the student properly to state and prove a cause of action and to see that the court properly instructs the jury. There are also cases defining the law concerning voir dire⁴⁶ and closing argument.⁴⁷

Finally, mention must be made of the first year students' perception of faculty hostility in the classroom which is often linked to criticism of the case method. Without passing upon the desirability of such hostility,⁴⁸ it is submitted that where hostility exists, it is generated not by the case method, but by the instructor's personality and use or abuse of the Socratic method.⁴⁹ For example, in my first year of law school I was fortunate to have as an instructor Professor Karl N. Llewellyn, who often frightened or embarrassed students in his attempt to get them to "think like a lawyer." I also was fortunate to have Professor Edwin W. Patterson, a very gentle man, who I am certain never frightened or embarrassed anyone. Yet both these great teachers employed the traditional case method. Thus, although Socratic dialogues are generally employed in the case method, I submit that these need not be frightening or humiliating, as I am certain the young followers of Socrates would attest.

46. See, e.g., *Allen v. Dorris*, 16 Ill. App. 3d 980, 307 N.E.2d 225 (1974).

47. E.g., *Hill v. Newman*, 126 N.J. Super. 557, 316 A.2d 8 (1973).

48. There are those who believe that such hostility is not destructive to the students and argue that it has advantages in sharpening analytic skills and developing the ability to participate in an oral adversary exchange under pressure. See Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 409-14 (1971).

49. See Kennedy, *How the Law School Fails: A Polemic*, 1 YALE REV. L. & SOCIAL ACTION 71, 72-73 (1970). See also Watson, *The Quest for Professorial Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91, 122-24 & 145-47 (1968).

VI. CONCLUSION

I commenced work on this article with a primary purpose of defending the case method of instruction against its critics past and present and explaining the value of the reasoning behind the method. In so doing, I sometimes employed the technique of *reductio ad absurdum*, not as a criticism of anyone, but in an attempt to make a point in an interesting or humorous manner. My partisan viewpoint is perhaps due to my baptism in the fires of legal controversy as an advocate. I am convinced of the case method's value. Too often in my practice of law I observed that colleagues who have been inadequately trained in the method miss the point of an important case and lose an argument or misadvise a client. I do recognize, however, that there are some things the case method does not teach. Modifications to the method over the past century have corrected many of its shortcomings, and the use of the method will continue to improve with the concomitant use of variations such as the problem method.⁵⁰

There is much discussion today about revising the law school curriculum.⁵¹ This is advisable because vast new fields of law have developed in this century and because the interests and career plans of students are far more diverse than they were in Dean Langdell's time. With the introduction of new courses that do not lend themselves well to case method teaching, there will no doubt be a reduction in its use, especially after the first year. Every law school will have to balance its curriculum in light of the nature of its student body and assess the overall time to be devoted to the case method. With our present legal system, however, I cannot see how it can be completely eliminated as a vital technique for training lawyers.

A vociferous and constant critic of the case method has argued that

50. I find it of value to vary or limit the method in the second semester of my first year torts class by usually requiring only statements of the issues of the assigned cases, *see* note 44 *supra*, and concentrating more on the use of hypothetical cases. This enables coverage of more material and helps eliminate some of the boredom that arises from the continued recitation of briefs of the assigned cases.

51. *See, e.g.*, ASS'N AM. L. SCHOOLS, TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW (1971) (known as the Carrington Report); Boyer & Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221 (1974).

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it should be completely discarded in favor of the problem method because⁵²

reason and righteousness must be put at a premium as against mere precedent. Our tribunals are altogether too much bound by a self-imposed obligation to respect decisions made by their predecessors in similar cases.

I would suggest that in so arguing, he has unwittingly stated what is perhaps the most cogent reason for retaining the case method: So long as our tribunals are bound by *stare decisis*, we should continue to teach our students to read, analyze and understand appellate court decisions if, as lawyers, they are to succeed in similar cases. Thus, as Professor John C. Gray stated:⁵³

To extract law from facts is *the* thing that a lawyer has to do all his life; to do it well makes the successful lawyer; to do it pre-eminently well makes the great lawyer; a student cannot begin it too early.

This statement, offered in defense of the case method in 1892, still rings true today.

52. Landman, *supra* note 6, at 506. See also Landman, *Anent the Case Method of Studying Law*, *supra* note 7; J. Landman, *THE CASE METHOD OF STUDYING LAW—A CRITIQUE* (1930). *But cf.* *THE FEDERALIST* No. 44 (J. Madison):

The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more industrious and less informed part of the community. They have seen, too, that the legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society.

53. Gray, *supra* note 34, at 160 (emphasis in original).