JOHN HARRISON: I'm John Harrison. I will be teaching some of you in civil procedure. But first, we have a table that seats only four people, and as a consequence, somebody has to do two of these. And since I also sometimes teach torts, I'll start by talking about torts.

And we'll tell you a story involving another member of our faculty, also a graduate of this law school, who will not be teaching you this year because Professor Ryan is doing something on the main grounds. But some years ago, he and his family were in New Zealand and decided to go bungee jumping. Has anybody here been bungee jumping? Wow, and lived to tell the tale. Congratulations.

There was a sign at the bungee jumping were you, I guess, attached yourself to the bungee cord, whatever it is, saying you must be 12 years old to do this. One of Jim and Katie Ryan's sons, who was obviously not 12 but came up to bungee jump-- if that's the correct verb-- and was asked by the attendant, are you 12? And the young Ryan said, yes, obviously false. And the attendant said, good on you, mate. Go ahead and bungee jump.

I told that story a few years ago in remedies class, and we all laughed. And one reason we all laughed is because we had all had torts, and we all thought, that would not happen in the United States of America because the American law of torts is somewhat more demanding than, apparently, the New Zealand law of torts is. Well, we all knew that because we'd all taken torts.

What's torts? What is a tort? What is torts about? A tort is a civil wrong done by one person, one private person, but to another private person, that gives rise to a right of recovery. Notice, a civil wrong, that is to say not a crime. Crime and torts to some extent overlap with one another. There is some conduct that is both a tort-- wrongful, giving rise to a right to compensation-- and a crime. So you'll learn, probably, in both torts and criminal law about battery, physically striking somebody else, but both a tort and a crime. That's the basic idea of what torts are.

Torts fall into two large categories, and one of the interesting questions about the first semester torts class is how much to do with each category. Some of your torts teachers will probably spend the entire semester or almost the entire semester on one of the categories. The two are intentional torts-- where one person decides to do something on purpose, to harm somebody else, like battery. Two people get into an argument, it turns into a fight, one of them

slugs the other, that would be battery. Also, as I say, possibly a crime. That's done on purpose.

The larger body of torts, practically speaking, probably, are the torts of accidents, things that happen not on purpose, where one person harms another, causes another some kind of injury, but didn't set out to do it. So some years ago, when somebody backed into my car in the parking lot over here, that was not on purpose-- I hope. That was-- [? "I'm ?] gonna to get that [? car." ?] No, it was it was an accident.

A large part, as I say, I think probably the larger part of the law of torts, at least as taught in the first semester, a great deal of what you'll be dealing with is the law of accidents. What happens when one person, not trying to, injures another? There is, as you can imagine, a large body of law about that.

The master principle of American tort law-- and there is an ongoing debate about whether this principle is really better than its primary alternative-- the master principle of American tort law is negligence. That is the idea that people are liable when they injure somebody else, when they cause that kind of harm to somebody else, if and only if they were negligent.

Well, that's one of those law buzz phrases. A lot of what you'll be doing in the first semester is finding out what the buzz phrases mean. It's very important to be able to use the buzz phrases correctly, and that does involve learning what they mean and thinking a lot about what goes on behind them.

Negligence, great word. What does it mean? It means-- and what I'm about to say may sound like I'm explaining the obscure by means of the more obscure-- negligence is creating an unreasonable risk for somebody else, doing something that-- because lots of things create risks. Negligence, what gives rise to liability, is an unreasonable risk. As you can imagine, that concept requires some kind of unpacking.

The master idea, or a master idea, of tort law is possibly the paradoxical notion that even though there are accidents, and even though this large body of law is about accidents, things that didn't happen on purpose, it is nevertheless possible to regulate accidents.

Well, how can that happen? Because although accidents are not done on purpose, there are all sorts of things-- and this is about unreasonable creation of risk-- there are all sorts of things that create risks of accidents that are done on purpose. So the law of negligence is

overwhelmingly about precautions against accidents-- what people could have done but did not do because, in the cases that come into court, of course, something bad happened, and the plaintiff said, will say, there is something this person who caused the injury could have done but did not do-- an undertaken precaution, a fundamental idea of the law of torts.

The notion of requirement of reasonable precautions makes the point that there are precautions against accidents that would, indeed, prevent them that are too strong to be reasonable. How to avoid anybody ever getting hurt bungee jumping? Don't go bungee jumping. How to avoid anybody being hurt in a traffic accident? Don't have cars. Probably overdoing it. Some risks-- life is like this. Some risks are reasonable; some are not. The law of negligence is about what is reasonable and what is not.

And think again, now, about the idea of negligence and the story I told about Jim Ryan's son and the bungee jumping place in New Zealand. And the reason we all laughed, we all laughed because we thought, well, that wouldn't happen in the United States because American tort law is much more demanding than, apparently, the tort law in New Zealand is.

By that reasoning, you can infer something about the tort, about the law of tort, from what people actually do is based on an assumption-- which is almost certainly true-- which is very important in the law in general and in the law of torts, that people do indeed respond to legal rules if they know about them. And routinely-- not always-- they do know about them.

One of the most important things you'll do in the first semester is start thinking like that. Adopt what's sometimes called the ex ante perspective. That is to say, before. Legislatures, courts, other government decision-makers routinely evaluate rules and possible rules by thinking about the situation ex ante. But that is to say, using the same kind of reasoning that we all implicitly used when we laughed about the story about Jim Ryan, asking, if this is the rule and people know it is the rule, how will they behave? How will it affect their behavior?

Because one large point of the law of negligence is to keep people from being negligent by making them liable when they are negligent. All of that, which uses the ex ante perspective, operates on the assumption that the law, in fact, modifies people's behavior, as it almost certainly does.

Let me make another point with that story about Jim Ryan and the bungee jumping place in New Zealand. I got that-- and this is a course you won't be taking in the first semester, you'll probably take it later-- evidence. I heard that from Jim Ryan. I wasn't there. As far as I'm

concerned, this is what every watcher of cop shows knows as hearsay.

And I kind of think that's the way I remember the story, but maybe, although they were spending the semester in New Zealand, maybe, in fact, they'd gone to Australia. I don't know. Australians call one another mate. I don't know if New Zealanders call one another mate. So it's possible that I told the story wrong, that in fact, it happened in Australia. But Australia, New Zealand, basically interchangeable as far as I'm concerned.

[LAUGHTER]

The important point for the first year in all of law school being, a large part of what goes on both in lawsuits and in the extensive preparation process for lawsuits-- and now I'm giving you a little prolepsis for when I'm back here to talk about civil procedure in a couple of minutes-- a lot of that is trying to figure out what happened at some point in the past on the basis of inadequate information. I kind of think that's the way I heard the story from Jim Ryan.

Maybe I'm wrong about that. Maybe Jim Ryan recollected it incorrectly when he told the story. A lot of law is about dealing with that problem. But one thing you'll see as you read a lot of appellate opinions decided by courts, higher courts, is they just recite the acts as if, well, this is what happened. They don't really know that that's what happened, but there is a decision-making process that was designed to get them the best possible information about what happened, which, let's hope the decision process is better than me sort of remembering what I think Jim Ryan told me 10 or 15 years-- I'm absolutely, certain, that the story is 100% correct-- or not. That, too, dealing with uncertainty, with the difficulty of excavating facts, another important thing that goes on in law and, in particular, that you'll see in the first-year courses, but notably torts.

The last thing I'll say, again to use the bungee jumping story, that's both about torts-- it's about precautions against accidents. Let's hope somebody looked at the bungee cord before Jim Ryan's son-- who is also here to tell the tale, so apparently it worked-- before Jim Ryan's son jumped off the bridge, or whatever it whatever it was. But notice, there was also this transaction about, well, are you 12 years old or not? Yes I am. Obvious lie.

And that is to say, one of the points about tort law that, again, you'll deal with is, to what extent are the parties, through voluntary agreement, able to modify what would otherwise be their obligations under the law of torts? If somebody says, yes, I understand the risk, I realize there is such a risk, I realize you did your best to take care of the bungee cord, but maybe

somebody made a mistake-- if somebody says that and says, I'm gonna go ahead and jump, will the bungee cord people be liable or not?

The presumption, when we all laughed in my remedies class, was that New Zealand probably allows people to modify their obligations in tort through contract, through voluntary agreements, more than, typically, American tort law does. Let me say, I'm not suggesting that the 10-year-old would have been able to modify the obligations of the bungee people, but probably Jim Ryan could, in New Zealand. Not so clear in the United States, and one important question substantively in the law of torts is to what extent can that be modified by agreement of the parties? Which means I have come right to the line between torts and contracts, and George Geis and contracts are next.

[APPLAUSE]

GEORGE GEIS: John, that was a great segue. I couldn't have asked for it to be put on my plate any better. My name is George Geis. I will be teaching contract law to many of you this semester. And for many entering law students, the study of contract law, how should I put it, doesn't spark joyful anticipation.

[LAUGHTER]

You may be thinking to yourself, the last thing that I want to be doing is poring over these long, complicated, detailed agreements between banks and credit card customers, or online vendors and individual consumers. You might be saying, no one reads those things anyway, so how come I have to do it now as a first-year law student?

Well, if you feel this way, the good news is that you will likely spend very little time in your first-year class actually looking at long, detailed contract provisions. That's not really the central focus of what most first-year contract classes are going to be looking at, so don't worry about the fact that you may need to dig into some of these long, detailed contracts.

Instead, the class in contracts is mostly going to be dealing with a different, more fundamental question. When are you legally obligated to keep the promises that you make? When are you legally obligated to keep promises that you make?

If, for example, you turn to your neighbor here, and you say, I promise that I'll meet you tonight for dinner after this orientation session is over, and you don't show up, then that may

not be very nice, but it's not a contract. Your neighbor is not going to be able to go to you and use the power of the law to sue you and say you breached a legal obligation that you owe to me, therefore you've got to pay me money, damages, or some other type of remedy. That's not the way that contract law works. That's outside the domain of contract law.

On the other hand, as you know from common sense, many, many, many types of promises will lead to legal, binding commitments. If you breach a contract, and it's a real contract, then you might be obligated under the law to compensate the party that you breached that agreement to. Or in other words, you've got to stand behind the legal promise that you made. And a lot of contract law is going to be asking the question of, why do we empower the law in this way?

If you think about it, this is a little bit of an unusual area for the law to step in. The law could deal with lots of other things. It needs to worry about preventing harms, or criminal activity. Why are we going to use the power of the law to stand behind promises? And when are we going to use the power of the law to stand behind these legal promises? That's the general domain of contract law.

Now, there are a number of different ways to organize contract law, but I think that most of your classes are likely going to talk about three big questions, three big-picture questions in contract law. And I want to go through each of them at a high level, and then I'll come back a little bit and offer some subcontext for what you may get into in a bit of a more detailed sense.

The first big question is, do you have a legally enforceable contract? As I said a minute ago, some promises are not contracts. Some promises are contracts. The first big question is just asking, do you have a legally enforceable contract? If the answer is no, you're going to be out of luck. You're not going to be able to use the power of the law to stand behind that promise or to discipline someone who's broken their promise to you.

If the answer is yes, then you're going to drop down to big question number two. Big question number two is, has the contract been successfully performed? Has the other side done what they're supposed to do? If the answer to that question is yes, then there's no problem. They made a promise, it was legally binding, but they did what they were supposed to do. No problem.

If the answer to that question number two is no, then you're gonna drop down to big question

number three. Big question number three is, what's the remedy for breach? What do you get because the party didn't do what they were supposed to do under the general framework of contract law? .

So let me go back, and I'll go through each of those big three questions in a little more detail. There are some other topics you may talk about in contract law as well. It's a pretty vast domain, and some professors will choose that to cover a little bit of additional ground, but by and large, it's such a vast domain that it's difficult to get through more than those three big questions.

So let me come back again to big question number one, do you have a legally enforceable contract? Well, unlike torts, which is going to be imposed upon you no matter whether you want to be in the system or not, the law of contracts is generally going to govern voluntary agreement, voluntary agreement. You don't have to be in a contract, in most circumstances, unless you want to be in the contract.

And so in order to figure out whether you have a legally enforceable contract, usually you want to start by asking whether there's been some agreement. Have you voluntarily agreed to make a deal with somebody else? If so, then that's going to be a first requirement in order to establish a legally binding contract.

But that may not be enough. We may both agree that the Virginia Cavaliers are going to win all their football games this year. And if do, that would be nice. But we haven't created a contract, right? We just have a subsidiary type of an agreement. So another big requirement you need for a legal contract is some other legal basis, some other legal basis for enforcing the agreement or for taking the agreement into the domain of the law.

You'll study something known as bargain for consideration. That's the primary theory that the law of contracts uses to decide whether you've made a contract or whether you've made something that's just a voluntary agreement that's not legally enforceable. Bargain for consideration is the main event, but it's not the only legal theory. And there are some other theories that you'll probably take a look at in your class that are alternatives that might still allow you to invoke the power of the law under certain circumstances.

Finally, in big question number one, do you have a real contract, do you have a legally enforceable contract, you're going to look at a number of situations where everything looks pretty good, there's an agreement, there's some other legal basis for enforcing the deal, but

something else is going on. There's a problem. We don't want the power of the law to stand behind that contract because there's some other problem.

We've already seen one example of that with our bungee jumping contract. We don't want really young people to be able to enter into binding contracts. So if my son decides that he is going to sell the house to buy the new Xbox video game system, that's not going to be a legal contract because he's too young. He lacks capacity to make a contract, even if everything else looks pretty good.

And there are lots of other situations where there might be a problem that the law has to deal with. If someone holds a gun up to your head and says, sign this contract, and you do, don't worry about it. You're going to have a defense of duress, and it's not going to be a real binding contract. It's not a voluntary agreement. The law recognizes that. But in your class, you have to ask, what happens if something just falls short of a gun to the head, and it's more economic pressure, or slight threats not to do business with someone in the future? I mean, that may, may not cross the line.

So those are the big three sub-questions you'll look at under big question number one, has there been a legally enforceable contract? The second question involves performance. Has the other side successfully performed against the contract? Well, in order to figure that out, you're going to need to understand what the contract really encompasses.

Words are sometimes imprecise, and so a big part of big question number two is contract interpretation, trying to understand what the contract really involves. And you'll look at a number of humorous situations where the parties may think it meant this-- one side thinks it means this, another side thinks it meant that-- and the court has to figure out who's right, and therefore, whether or not there's been a breach of the contract.

There are some other topics in big question number two, including different ways that the parties can structure the risk of what the contract involves, things like giving a warranty, giving a condition, I promise to do this only if this happens. And as you'll see, there's lots of different flexibility in the way that you can write, and structure, and enforce your contracts.

Finally, you'll get the big question number three. Suppose you have a contract. It hasn't been performed. What do you get? What do you get? Well, in contract law, normally what you're going to get is money. You can't usually empower the law to go to the other side and say, you made a promise, you breached it, therefore I'm going to force you to do it under the power of

the law. Instead, you're normally going to get money damages. They may have to compensate you, but they're going to have to do it with money and not with actual performance.

But there are alternative rules for calculating what those money damages might look like, and sometimes, you might actually get the power of the law to be able to enforce the other side to perform. So big question number three, that's where you're going to be looking at there as well.

And when you put all those three together, right, I think you have a pretty integrated system that basically allows you, if you want to, to create an alternative or a supplementary legal regime that can stand on top of the base regime that we have in place in disciplines like torts, and criminal law, and some other things that are going to be a part of the way that we live, no matter whether we want them to be or not.

Let me just make a couple of other final points here. First off, your study of contract law is going to span two parallel universes. One is the common law universe, and the other is Article 2 of the Uniform Commercial Code.

Why do I call them parallel universes? Well, both of these universes deal with contracts. The common law deals with contracts that involve real estate or services. Article 2 of the Uniform Commercial Code deals with contracts that involve goods.

And in most cases, the law is actually the same in both universes, and that's why you'll study them together. But in some cases, the Uniform Commercial Code may diverge a little bit from the common law, and by studying both, it's going to allow you to have a perspective on how these two different universes may treat certain issues and allow you to decide or to evaluate which system seems to get it better.

In addition, the Uniform Commercial Code is a statute. It's a statute. It's not common law. And what that means is that it will give you an opportunity to study some statutory interpretation, to study how the courts evaluate what Congress or the state congress actually meant when it enacted a certain provision under the Uniform Commercial Code. So there's going to be-- that's sort of a preview of some other topics that you might get a little bit later on in your law school career.

Second additional point, as I alluded to a minute ago, contract law is mostly state law. It's not-- there's not federal law of contracts that governs the entire field and preempts everything else,

but rather, states are going to make individual laws that are developed through common law reasoning, and that means that you will likely study the same issue in multiple states and look at how different courts in different states have handled the same issues in a different way. That's going to, again, give you a comparative basis. You can argue whether New York has a better approach, or Virginia has a better approach, or California has a better approach as a way to further illuminate some of the key tensions in contract law.

Finally, contract law, I think, can be understood as a bit of a building block for other areas of law. Some people have even alluded to contract law as being almost like a set of private laws that a few individuals can make among themselves if they want to supplement public legislation that's applicable to everybody. And that means that if you think about it, it's a really, really flexible body of law. You can accomplish lots of things with contract law. That means that it serves as a basic building block for a lot of more advanced business-related legal concepts, and that's also the reason why you're going to be studying contract law in the very first semester of law school.

[APPLAUSE]

ANNE COUGHLIN: Hi. It's really great to see you all. My name is Anne Coughlin. I'll be teaching criminal law to some of you this semester, and I look forward to having the opportunity to get to know all of you at some point. It's challenging to describe any course, I think, in 10 or 15 minutes, but it was a good exercise for me to be thinking about what exactly is it that our agenda is in the criminal law context. And I'm going to try to give you some basic guidance about what you should expect, certainly in my class, but probably in all of the classes, all of the criminal law classes here as well.

The first thing that you want to keep in mind is that we call the first-year course criminal law. It's a course in substantive criminal law, or the law of crimes. And this is just a small piece of the criminal justice system, or what you might think of as the law enforcement system more generally.

I should stop and say this is an incredibly exciting time to be studying law. That's probably always true, but it feels that way to me. And it's a very exciting time to be thinking as new members of a legal culture about the criminal justice system. And the criminal justice system, the law enforcement system, is in the news, I think, in all seasons, in all eras, but right now, it's under a great deal of pressure and a lot of scrutiny as people from all different walks of life,

political and otherwise, are thinking about this system, about ways to improve it, and so forth. So you're coming into law school, and certainly into the study of criminal law, at a really exciting time, and all of us look forward to working with you as you move forward and find your place.

Now, for many of you, criminal law won't be your cup of tea, and so I want to warn you that you're not going to be studying what we think of as criminal procedure. So this is a course in substantive criminal law. You're going to be thinking about how law defines crime, what are the key ingredients of any criminal case. So you're really going to be thinking about the case. Once a prosecutor has decided, yes, I'm going to go ahead and bring charges, what are the essential ingredients that a prosecutor has to prove? What are the elements, if you will, of the criminal cause of action?

And then, of course, you'll be thinking as well, from the perspective of a defense lawyer, how can a defense lawyer defeat or thwart the prosecutor's objective to establish those ingredients? So what are the key ingredients of every crime? This is a really important part of the criminal justice system. It is the part that kicks off the whole system, if you will. It is the alleged presence of a crime that authorizes police to start doing their work, and prosecutors, judges, juries, ultimately prisons, and so forth. So it's a very important piece, but just a piece.

So you're going to be thinking about questions like, what is the source of crime definition, and then, what are the ingredients that each crime has in common? As George Geis mentioned, one of the things that's fascinating about the United States is that there are 50 states, and criminal justice is largely governed by state law.

There is a federal law of crimes. You'll know that federal law has done a lot of work in certain areas-- think of drugs crimes, for example-- but typically, the vast majority of work in the criminal justice area is done by states. And you can immediately see what the challenge is. Every state has its own penal code, and they're not the same.

There's some very significant overlap, and you'll spend a good bit of time focusing there, but it's impossible for us to teach you criminal law comprehensively, and it's not prudent for us to teach you the criminal law of any specific state because you're going to leave here and go and practice throughout the nation, and potentially internationally. So instead, what we do is we focus on what we call criminal law, the general part.

What are the fundamental ingredients that you can expect to find in every criminal case? There are two. You have to have conduct, something that counts as conduct, from the perspective of the criminal law, and then something that counts as mental state. And a good bit of the semester you will spend focusing on these two ingredients-- what do we mean by conduct, and what do we mean by mental state? And that way, when you go out and practice, you're going to know what questions you have to ask in any criminal case.

So those are the fundamental ingredients that you'll be focusing on, and then, too, many of the professors focus on specific crimes so that you can get to see how it is that these general ingredients play out in the context of particular crimes. Some of us cover homicide, some of us cover homicide and sexual assault, many of us cover attempt liability, and some of us also think about the ingredients for group criminality, and so forth. So you're going to get a range of the general focus plus some specific focus.

The other piece of the course that most of us cover and delve into are defenses to criminal liability. In cases where a prosecution can establish that the criminal law has been violated, are there contexts in which we would relieve the culpable actor, or the allegedly culpable actor, of liability? So here you'll be thinking about defenses such as self-defense, duress, and insanity, for example. So what are the conditions in which the law decides, yes, this is a person who has violated the criminal law, we are satisfied that the technical requirements of the law can be proved up, but there is some larger reason, some larger reason in justice, for relieving the person of liability. So you'll be looking at those kinds of questions as well.

The course involves a lot of really significant and difficult normative questions. Some of us delve into those questions more than others, but you'll need to be thinking about questions such as, why do we do this? What is the point of having a criminal justice system in the first place?

As John mentioned in his remarks, we have a tort system. Tort and crime have a fairly substantial overlap in terms of the types of harmful conduct that's covered. We could relegate many criminal actions to the realm of torts. Why bring something into the criminal realm as opposed to leaving it in the tort realm? That's a really interesting and difficult question, and one that, obviously, we're all interested in because of the use, the devotion of public resources to the criminal law area.

Then another question that's really important, that you might spend a little time thinking about,

is what do we punish? It turns out-- and of course, this is something that's of great joy to criminal law professors-- is that legislators have been very busy criminalizing just about everything that you do, right? So criminal law has become incredibly expansive. What is the proper scope, what should be on the list of criminal prohibitions, is another fascinating and difficult question that you may touch on or at least be thinking about-- the justifications for the system, and then what is it that should be covered?

The other thing that I want to mention to you, too, is that the course will set the stage for you to begin thinking about even larger questions. And I alluded to some of these in my earlier comments when I talked about the fact that this class is a component of a complex system in which there are a whole range of actors-- everything from police to prison officials, right?-- that are playing a role in the system.

And so you'll want to be thinking about some of those larger questions as well. In the course, you're going to be looking at an individual appellate case, and you're going to be worrying about questions like, well, was there a sufficient voluntary act, or was the definition of mens rea satisfied? And you'll be thinking in those sort of narrow, internal terms.

But you'll also want to-- or, you'll have occasion in your legal career, or certainly in your law school career, to step outside and to think about broader questions. You'll remark that in the United States, we incarcerate more people than any other country in the world. We have the highest rate of incarceration anywhere.

That's really interesting. Why? What is it that contributes to that pattern of incarceration? Then, of course, you'll also remark, who is it that is in jail, right? Who is charged with a crime, and who is not? Who gets a favorable plea bargain? Think of all the attention we've been paying to Jeffrey Epstein in the news. You know, who gets a favorable plea bargain? Who does not? How does that work?

And then, of course, you'll need to be thinking about the very high rates of incarceration of people of color. African-American men, black and brown men tend to be-- are, not tend to be-- largely are overrepresented in the prison population. Why is that? What are the forces that contribute to those kinds of conditions, and what, if anything, can substantive criminal law do about it?

Some of these things, most of these questions, the latter questions that I allude to, will be the subject of criminal procedure courses, which you also we'll have the opportunity to take. But

substantive criminal law, as I said, sets the stage for all of these questions. We take for granted there is a crime, and we're going to investigate it, and then we need to be thinking, of course, about the actors at the margin who have the power to decide, should this case go to trial or should it not? Thank you.

[APPLAUSE]

JOHN HARRISON: Well, I'm back, this time to talk about the real law part, civil procedure. As Anne said, in criminal law, you will learn substantive criminal law, not criminal procedure, not the part that is the first half of law and order. You will learn procedure this coming semester in civil procedure, and that, as I said, is the real law part in a number of ways, one of which is that the assumption on which the legal system rests that I mentioned is that people, by and large, know something about their substantive obligations.

They know roughly, I'm not supposed to commit arson. They may not know it's called arson, but burning somebody else's house down is a crime. They are assumed to know something about there being a law of tort. They know, if I make this kind of promise, I can be held to it. They know there's a lot of contract. They are much less likely to know, well, what happens if something goes wrong? What is the procedure? How does the legal system, in particular the judicial system, deal with it if something goes wrong? That's what civil procedure is about. Civil procedure is half of that, and the other part is criminal procedure.

And I'm going to tell another story, but not just because I like to tell stories. But one reason that I started with the bungee jumping episode and that I'm going to tell you what I'm about to tell you-- notice, I'm creating intolerable suspense by not telling you the story and instead saying I'm going to tell you the story-- is because a feature of the American legal system and some of its relatives is that it is very much about stories. It is about the facts of particular cases.

That's true both as a pedagogic matter-- American law is taught out of cases. Not all law schools throughout the world work that way. American law schools did not work that way so much 150 years ago, but they do now. The primary tool of learning is appellate opinions, maybe because-- and this is sort of where pedagogy and the substance of the law come together-- as you've heard, a large part of American law is what's called common law. That is to say, it's not statutory. It's nowhere written down.

Where is it found? It is found in the explanations that courts gave for the decisions they made in particular cases on the basis of particular facts that, as I said the first time, may or may not have happened, but they did their best to find out what happened. Common law is based on facts, which is to say in large measure it is based on stories, on learning to understand them, learning to tell them.

So I'm going to tell another story, which is yesterday-- and this time, this is not hearsay. This is just yesterday, so I hope I recollect it pretty well. Yesterday I had my car in before its annual inspection. I walked down from my house to a place where I could get the-- you'll learn Charlottesville geography, toward what's called The Corner, where I could get the bus to go down to where my car was and happened to run into another member of our faculty-- another graduate of the law school, as it happens-- who is also not going to be teaching you because she, Liz McGill, is being provost of the university. There are accusations that the law school has taken over the university. I say nothing about that.

I ran into Liz. We talked for we talked for a few minutes. I hadn't seen her since she came back to be provost-- she'd been dean out at Stanford. And then went on my way, got the bus, picked up my car. In the process from going from the bus stop to picking up my car, I went right past somebody on one of those scooters who was going what seemed to me to be an unreasonable speed, who did not, in fact, run into me.

Interesting question, was the person on the scooter being negligent? Was that an unreasonable risk? I think so, but of course, I wasn't getting the benefit of using the scooter, and unreasonable risks is about both costs and the benefits. The person on the scooter did not, in fact, run into me, so there was no tort. There may have been negligence, but there was no tort.

Then, once having picked up the car, I went and picked up an audio component that had just gotten a new power supply. Everything went fine. That is to say, I was operating at the bottom of that triangle, the Great Pyramid. The Great Pyramid is pyramidical because the up-down dimension there is about how much is the government actively involved in what people are doing?

At the base of the pyramid, there are millions and millions of things that happen every day that are, to some extent, shaped by legal rules, like my contractual relationship with the place that inspected my car, my contractual relationship with the people who fixed my processor, gave it

the new power supply, my potential accident relationship with the person going by on the scooter.

And routinely, down at the base of the pyramid, people engage in what is called self-application of the law. They have a rough idea of what it is. Don't go to your neighbor's house and set it on fire. That's arson. You're not-- so I keep using arson because it's my favorite crime. You're not supposed to commit arson.

And routinely, everything goes fine. As far as I know, everything went fine with my car. I put the processor back in place last night. It was working fine. The person with the scooter, although engaged in astonishingly irresponsible behavior, nevertheless did not run into me. All that was people without a lot of involvement in the government.

There can be a lot more involvement in the government as you move up the triangle, the pyramid. Sometimes the government engages in the kind of regulation that involves, quite specifically, telling people what to do rather than adopting general rules like the law of tort, law of contract, criminal law that people just adhere to. Then, toward the top of the pyramid, the situations that civil procedure and criminal procedure-- but I'm talking about civil procedure-- the situations where the government is so involved that the court system gets involved. And that's the top of the pyramid.

And what I did with the other drawing-- and from a lot of law professors, many of them use excellent PowerPoint, but there are a lot like me who do nothing that's more useful than drawing completely abstract and [? what-is-he-getting-at-with-those-drawings ?] on the blackboard? So one of the things you'll learn in law school is how to make sense of that sort of thing.

At the top, that's-- the second one's sort of the funnel, or cone, whatever it is, is kind of the top of the pyramid turned on its side. And this time, the dimension along the bottom is time. And that's about-- that's about the situations where something goes wrong, where there is a contractual dispute.

Maybe there was some confusion between me and the people who inspected my car about just what repair work I had authorized to do. Maybe the person on the scooter would have run into me. Sometimes, something goes wrong. And when something goes wrong, there is a publicly-operated dispute resolution system, and that's the court system. Civil procedure is about how the court system actually makes decisions. It's about the tip of the pyramid on its

side.

And there is a process. The process begins before a lawsuit begins. If two people who have some kind of legal relationship-- maybe they're strangers but one says, you torted me; maybe they made a contract-- think that something has gone wrong, usually, what happens is they begin to negotiate.

They talk to one another. At some point, maybe, one of them hires a lawyer. Let's hope so. Better yet, they both hire lawyers. That's more beer for us. They negotiate, and maybe they can work something out. Maybe they can't work something out and one of them sues the other one. That's the point at which the law of civil procedure kicks in.

And what I'm going to do in the next couple of minutes is describe the process of a typical civil suit. And I'm going to talk about this quite generally. One of the themes you've heard is American federalism. Now, that applies both to the substantive law-- there is substantive federal criminal law, there is substantive state criminal law-- and to the court systems. There are state courts and federal courts. Most of the procedure you'll learn will be that of the federal courts because there is one system of procedure, the federal rules of civil procedure. The state courts are roughly similar.

So somebody sues somebody else. What happens? First question is, and this is an especially important question in federal court, is this the right court for this lawsuit to go forward? There are rules of what are called jurisdiction. Personal jurisdiction-- can this court exercise authority over this defendant?-- and subject matter jurisdiction.

Those rules are especially important in the federal courts because the federal courts have rather demanding rules, but they don't handle all cases. The state's courts generally handle any case that comes in. Not true of the federal courts. Indeed, so not true of the federal courts that there is an entire other course about it called, oddly enough, Federal Courts. Those questions arise at the outset.

Another question that arises at the outset for a civil procedure teacher is, where do I start? Do I start with those rules, about is this the right kind of court, rules of jurisdiction, personal and subject matter-- which is one logical place to start? Or do I start with the life cycle of a lawsuit, the series of moves that go on in a lawsuit?

Some of your civil procedure courses will start with jurisdiction. Some will start with the life

cycle of a lawsuit. Those of you who will be in my civil procedure class, I'm going to give away the big surprise, but we will start with the life cycle the lawsuit, and then we will get to procedure later in the semester.

Having mentioned procedure, I am going to talk about the life cycle of a lawsuit for just a couple of minutes, making the point that as a lawsuit proceeds, one of the big things that's going on is the parties are getting more and more information. There are then a series of points at which the court can decide something, or at which, as they've had more information, the parties can settle the suit.

Notice the fundamental character of the law of contract in American law, once again. First point, plaintiff files something called a complaint. This is federal terminology. Defendant files something called an answer. They exchange information. And at that point, they learn a lot about the facts. They learn something about the facts, and they learn a lot about their legal theories. And in particular, the defendant learns something about the plaintiff's legal theory.

So there is a decision juncture, either for the parties to settle now that they know more, or for one of them to go to the court and say, we can decide this case right now. Not necessary to go on because the plaintiff's legal theory is defective. In federal court, that would be a motion to dismiss for failure to state a claim on which relief can be granted under rule 12(b)(6) of the Federal Rules of Civil Procedure. That's a juncture.

Then comes the most important part of lawsuits, because this is the part that makes it possible for partners in law firms to have vacation homes. This is discovery. And I'm sure some of you have worked in a law firm and know something about discovery. Yes, I see some heads nodding. Exactly.

And this is the civil equivalent of the cops and robbers part of criminal procedure. Discovery is much more fun. The parties learn a lot more about the facts by getting information from one another by conducting depositions, taking testimony from one another's witnesses, reading their expert reports, and so forth. As they learn more, they may settle the case.

Notice, that's a funnel. It's narrowing. And when discovery is over, there's another decision point for the court. Either party can move for summary judgment-- say, we now know enough about the facts to say that clearly, we win. Often, there will be motions for summary judgment, often granted. It's a very important part of practice, especially federal practice.

Sometimes not. Parties proceed. There is a trial. Yet more information comes out. At the end of what we call the plaintiff's case-in-chief, there is an opportunity for the defendant to say, now we know the plaintiff loses. They put on their case, and it's a loser.

The court can decide there. Funnel narrows a little bit. Defendant puts on evidence, then both parties can say, you don't even need to take this to the jury. Any reasonable jury would decide in my favor. Federal terminology for that, motion for judgment as a matter of law. The parties know more, the court knows more, the funnel is narrowing.

Then, if it's a jury trial, the jury enters its verdict, and there's another opportunity for one of the parties to say, somewhat embarrassedly, well, you know, I said any reasonable jury would decide this way. This jury decided the other way. Must be they're unreasonable. 12 lay people doing their best, but we all make mistakes. Another opportunity for a judgment as a matter of law.

Then the case is over in the trial court, but of course, well, the pyramid continues to narrow. There are appeals. In addition, in civil procedure-- you'll learn about the Federal Rules of Civil Procedure-- there are also Federal Rules of Appellate Procedure.

You'll probably learn only the very basics of appellate practice in introductory civil procedure. Notice, the funnel continues to narrow. Most cases that are tried are not appealed. Most cases that are appealed once are not appealed to the next stage. Every jurisdiction has a highest court.

And you might think that the point of-- I don't mean the point I'm getting at, I mean the geometric point that is at the point where the funnel or the cone, whatever it is, ends-- well, that must be, where does everything end? What's the last stage in this process in which the parties got more information, the parties could decide or the court could decide, surely that's whatever is the highest court of the jurisdiction. In federal court, that would be the Supreme Court of the United States.

Not exactly. No, there can be another step. Sometimes, when the courts are completely done with what they are doing, the party that lost doesn't comply. Then-- and you may learn a little bit about this in civil procedure; maybe not-- then it may be necessary for the government to engage in actual physical coercion of somebody in order to carry out the judgment of the court. That's the point I'll conclude with, something my evidence teacher wrote. "Behind every American judge stands, ultimately, the naked power of the 101st Airborne Division of the

United States Army." This is serious stuff.

[APPLAUSE]

SARAH STEWART WARE: Last but not least. Hello, I'm here to welcome you on behalf of myself and professors Buck and Fore. One of the three of us will be teaching you legal research and writing for the whole school year. So this is not just a fall course, but one that goes into the spring. It's also affectionately known as LRW. And LRW is a year-long course that's a little different than the courses you've heard, because instead of setting a particular area of law, like contracts or torts, we're going to focus on particular skills that you're going to use when you are out there working as a lawyer or something law-adjacent.

And that might start with your next summer job. So the name of the course tells you something, right? Research and writing, so we are going to do those two things. But I'm going to fill in a few details.

So imagine for a moment that there you are next summer at your job. I know that seems far off, but roll with me for a second. A supervisory person comes and asks you to come to her office, so you grab your notepad. Tip number one, always take a notepad. You grab your notepad, you go down to her office, and she says, our client, blah-blah-blah, legal jargon, legal jargon, acronyms. You might work in DC. Acronyms, acronyms. Great, thanks. Have it to me in a week.

And you say, OK. And you go back to your desk. What do you do? Well, first you're going to do some research because you need to figure out what she was talking about. What are those acronyms? What is this area of law? I don't know anything about it.

Can you Google it? Yes. Yeah, you already know how to do that. But that's not going to be the end of the story, because unlike research you've done in the past where you need to find some stuff, or maybe a lot of stuff, when you're researching the law, you need all the stuff because the case you're missing might have that exception that saves your client from some big pile of trouble. So we're going to talk in LRW about strategies for tackling research so you have confidence that you've found all the stuff, and you've understood the law correctly, and you're advising your supervising attorney in the right way.

Brilliant. You've educated yourself about the law. You've collected your statutes, and cases,

and so on. Now you need to know what to do with it all. So in LRW, we'll talk about how to read. I know you know how to read, but we'll talk about how to read efficiently. We'll talk about how to understand those statutes and cases. We'll talk about the different weight given to various authorities, so why you might prefer to use an opinion from one court instead of an opinion from another court. We'll talk about how you reconcile and harmonize court opinions that don't really seem to mesh well together.

We'll talk about how to boil it down, weave it together, stack it up, whatever metaphor you want. And then we'll talk about how to take that beautiful understanding of the law that you've developed and write it down or communicate it to someone else in your own words. Here's what the law requires, here's an exception, here's the problem our client is going to have given their factual circumstance.

So we'll talk quite a lot about how to write your analysis, because that's a big, big, big part of what lawyers do. And we'll cover everything from large-scale organization to when you should capitalize the word "court." We'll talk about who your audience is, what their expectations are, and how you can make them very, very happy with your work. Yay.

In your legal research and writing class, you're going to learn by doing. So you have a memo due in a couple of weeks. It'll be short, and then you're going to get feedback on that, possibly way more feedback then you're used to getting. Just fair warning.

But that's a good thing because you'll take that feedback, and then you'll write another memo--a little bit more complex one, the second memo. You'll get feedback on that. You'll rewrite it based on that feedback, and then you'll get more feedback. And then we'll give you an even more complex legal situation, and you'll write about that, and you'll get feedback on that, and you'll respond to that feedback and rewrite it and get one more round of feedback. And it's through that process that your work will get better, and more sophisticated, and more polished.

Now, along the way, you'll have some great help. You're going to work closely with a 2L or a 3L who will be your legal writing fellow, and these are students who were selected to help you to be your mentor and your best friend in LRW. You'll get feedback from them, and you'll have a chance to meet with them, and ask questions, and review your progress, and see how you're doing all through the school year.

In the spring semester, you'll have a chance to write an appellate brief. So if you're chomping

at the bit to argue, this is where that fun stuff comes in. So you'll have a chance to talk more about writing, and being persuasive, and being compelling. You'll take a side in the case we've been working on and try to write it up in the way that there's only one answer. You win. And your classmates are going to be arguing the other side that says they win.

Once all those briefs are turned in, we'll have a couple hundred alumni who come back every year to put on robes and act as judges, and you will stand up in front of them and argue your case. But first, your oral arguments program-- which happens in the spring. It's a long time; you'll be ready. It's a great tradition here at UVA Law, and it's sort of the culminating experience of your legal research and writing course.

So our goal through all of this is to give you confidence to work as a lawyer, this summer and going forward, so you can move away from that nice little cute introductory intern assignment and get involved in that really interesting thing that's happening down the hall. That's our goal. I really look forward to working with you. About a third or slightly more of you will be in my class. And so, welcome, and I will be seeing some of you soon.

[APPLAUSE]