

ANNE COUGHLIN: So today I'm really excited. I'm teaching a case to you all that I've not taught before in this context, so we'll see how it goes. I'm hoping that some of you had a chance to take a look at it. Did you? OK. So I'm not going to cold call on anyone. That is a feature of first year classes and upper year classes as well. But there will be the opportunity for me to ask some questions and see what you make of all of this.

So what I've chosen for you is a very important case. It's a very important case in at least three areas of the law-- criminal law, criminal investigation, and constitutional law. It sits at the intersection of all of those courses. I'm pretty sure that many of you will encounter it in one of your classes, maybe more than one of your classes, wherever you go. So this is the famous *Papachristou* case.

It's now, I guess, about half a century old, but welcome to the law. This is a relatively new case as far as lawyers are concerned. Long in the tooth but remains very important. So that is the case that I'm bringing to you. I'm bringing it to you because it's going to give you the opportunity to do a couple, at least, of important things.

One of the things that it will give you the opportunity to do is to think about how criminal law enforcement is delivered through a complex interaction among different bodies of law and among different actors, different institutional actors. So think of prosecutors, think of police officers, think of lawyers, defense lawyers, judges, jurors. It's a very complicated system, and this case gives you a glimpse of some of that complexity. A nice way to think about it.

The other thing that's fascinating about *Papachristou*-- and I want to put this on the table immediately-- is that though the case has a very long history, the history of the vagrancy and loitering laws is fascinating. You'll notice that Justice Douglas spends a little bit of time on it in *Papachristou* itself and our Dean Risa Goluboff has written a really terrific book called *Vagrant Nation* that digs into the history of the loitering and vagrancy area.

But here's the thing. It requires you to think deeply about what's one of, I think, the most important contemporary questions, one of the questions with which your generation has to grapple, and that's violence in policing. So this is a case that is a substantive criminal law case, but if you've had a chance to look at it you can tell that the case is also all about policing and the amount of authority and discretion that are given to police when they are working on the streets.

And again, it's not just me. It's many, many people in the academy, many politicians, many members of communities, many families. This is a very big deal. What can we do to restrain, if not eliminate altogether, the police violence that has afflicted so many of our communities? So there you have it. That's a really heavy topic, but I'm assuming that that's why you're going to law school. Right?

You want to be thinking about how you as young lawyers can participate in-- even if you don't work in the criminal law area, how you can think about making a difference in this area. And you can. You can. You can. I have that for you too. So let's talk about *Papachristou* a little bit. If you looked at the case, I gave you almost the entire case. Sometimes the casebook editions of cases are heavily edited.

This one was not heavily edited. I mean, how could you edit out Thoreau, right? I'd have to be a lunatic to do that. But it's a very lightly edited case. I did remove a bunch of the footnotes to make it more manageable for you, but you have virtually the entire text of the case, and it's a really interesting case. You know what happened in the case.

I think there are eight people, eight different defendants who, at various times, are pulled over or stopped by the police in Jacksonville and they end up being charged with this crime called loitering or vagrancy or common thief, or whatever it is. And so each of these people is arrested, charged, the case goes to trial, they're convicted. They then appeal their convictions up through the Florida Appeals process.

The Florida courts uphold their convictions, which involved fines and jail sentences, and then at the end of all of that procedural stuff they file a petition for a writ of certiorari. The United States Supreme Court grants cert. Boom, here we go. And as you know, at the end of the day the court throws out the convictions on the ground that the Jacksonville ordinance is unconstitutional. Now one of the fun things about the case is the court doesn't cite the Constitution. It doesn't quote the Constitution.

So this is something that I always say to my first year students you'll have to get used to. It's like coming into a room. There are all these people having a conversation. You're a newcomer, and no one bothers to stop and say to you, ah, here's what we're talking about. Right? Here are the things that you need to read. They just carry on a conversation that they've been having for hundreds of years. You have to play catch up. Hopefully your professors will help you.

So it's the due process clause of the 14th Amendment that is at issue in the case. No state shall deprive any person of life, liberty, or property without due process of law. So at the end of the day, what the Supreme Court decides is that that ordinance, which we're going to talk about now, violates the due process clause, and what we need to do is to talk a little bit about what the reasoning is. What's the problem?

What's wrong with this little ordinance that would get the Supreme Court activated to throw it out? I'm pulling this out. Did you take a look at the ordinance? Flip over to the last page, and there you have the text of the ordinance. And one of the very first things that my criminal law students learn is that this is always where you start. How is the crime defined?

You've got to go to the criminal code, whether that be a statute book. Here it's a set of city ordinances. You always have to go to the code, read the crime, figure out what are the ingredients, what are the elements, what does a prosecutor have to prove up to convict this person. So you're reading this ordinance, I take it many of you for the first time. What do you make of it? What is the ordinance punishing? What is the stuff that's forbidden? Yeah?

STUDENT: It feels like activities are relatively subjective in definition.

ANNE COUGHLIN: So that's great. That's very abstract. The one non-abstract word that I heard you say was activities, and you're right. They're activities that are subjective, you said?

STUDENT: Yeah.

ANNE COUGHLIN: So what we always want to do is to figure out more precise-- be more precise. So, activities. What activities? What are the activities?

STUDENT: You mean what way that people can--

ANNE COUGHLIN: No, from-- don't look at me. It's on the page. So again--

STUDENT: Gambling and juggling.

ANNE COUGHLIN: Good, good, good. Good, good, good. Good, good, good. Yeah. Yeah. I'm just saying, imagine you're a new prosecutor or you're a defense lawyer and your client came in and goes, it's this. Is the thing, right? So it's gambling. It's juggling?

STUDENT: Yeah.

ANNE COUGHLIN: What else?

STUDENT: Lewd, wanton, keepers of gambling--

ANNE COUGHLIN: Keepers. So lewd wanton, you jumped over that. You don't think that's an activity? Right, but keep going. What other activities? Are there any others? Some of my favorites. See, one of the things that's fun about the statute is-- the ordinance is that a lot of it sounds like fun like I want to juggle like where's my wife I could be living on her earnings.

Where are my minor children and their deep pockets? I want to be habitually drinking while they're working. So you're right, so it's activities. I'm sorry, I'm banging into you. What else? It punishes activities, and we've identified some of them. And how are you going to prove that up? You're going to bring in witnesses who say, this character was juggling. OK. Right? So what else?

STUDENT: Prohibits people from wandering about without a purpose.

ANNE COUGHLIN: Good, so wandering is another. Wandering is another. I don't if the word strolling is in there, loafing, words like that. What else?

STUDENT: It also discusses types of people, so lascivious people or disorderly people.

ANNE COUGHLIN: Good. So it punishes activities and it punishes kinds of people. The kinds of people that you singled out were which ones?

STUDENT: Lascivious and disorderly.

ANNE COUGHLIN: The disorderly and the lascivious. What are the other words? Oh, habitual loafer. Right, who else? First word in the--

STUDENT: Rogue.

ANNE COUGHLIN: A rogue. Right? So you can see there's a whole range of stuff. Now, what is a rogue? No, I want to what is a rogue. Yeah? Well, yes, but that's-- you're saying that because you read the case. OK? Which is fine. I want you to tell me what is a rogue and how are you deciding. What methodology are you as a human being using to decide?

STUDENT: In the 1800s the three musketeers, today--

ANNE You're I want you to prosecute. Who wants to prosecute? What's a rogue? How are you going to figure it out?
COUGHLIN: Yeah?

STUDENT: I'd say rogue is just someone that, like, a [INAUDIBLE].

ANNE OK, so you're saying a rogue-- OK, so where are you getting-- so where are you getting these definitions?
COUGHLIN:

STUDENT: I was going to say socially non-conforming.

ANNE Socially non-conforming. OK. Where did you get the definition from?
COUGHLIN:

STUDENT: Lived experience.

ANNE Lived experience. Where are you getting these definitions from?
COUGHLIN:

STUDENT: Our culture.

ANNE You're getting them from your culture. So you're reading the words and you're assigning meaning to these words.
COUGHLIN: You're saying, I know what a rogue is. It's either that 18th century guy or-- right? But what are you doing? You're defining language. What is the source? The statute gives you the words. This is the stuff that can be punished. Lawyers decide what it means. Some of it's activities. I think juggling. I think, right? But rogue, vagabond, where would you turn? You all were saying, oh, it's up to the judge. Hm?

STUDENT: The dictionary.

ANNE The dictionary. Thank you. Did any of you look in the dictionary? No, of course not. But you will. You will, you will.
COUGHLIN: I mean, you'd be insane. If you'd read the case-- you probably haven't had time to read the case, and if you'd read the case you probably wouldn't have looked in the dictionary. But that's where you go. That's what I did. I've got rogue, I've got loafer, I've got dissolute. I've got common.

It's not just a night walker we're after, but it's a common one. A habitual. You see what I mean? So all of those words have to be given meaning, assuming there's a lawyer there to litigate, which there always-- sometimes there isn't. But yes, dictionaries. You're going to see dueling dictionaries. Certainly the Supreme Court will go to dictionaries at times. So that's the stuff, and this is a very strange ordinance.

One of the things that you're going to learn is that typically in criminal law we say we punish conduct. We don't punish people for being certain kinds of people. We don't punish you for being a drug addict. We punish you for possessing drugs. Obviously the conduct that's tied to the status is very closely tied to the status, but we punish conduct. So there's a lot that's wrong with the ordinance. I could go on but I won't. You can just see, that's where you start. How do you assign meaning?

I'm assuming that each of you is flipping through your dictionary cards in your head when you said culture. Right? You've absorbed from a culture what a rogue is, right? When you get to court, you'll rely on a dictionary. So there go. There's the ordinance. What's the purpose of this ordinance? How did the city of Jacksonville defend the ordinance in the United States Supreme Court? Did it say, this is one of the statutes of laborers?

This is part of the Elizabethan poor laws. This is designed to keep serfs from leaving their homes and traveling throughout the country in search of better wages. Now, Justice Douglas treats us to a little tiny glimpse of that history. Trust me, you could read about that for many, many hours. He gives you a little cartoon. Was that the argument that the city of Jacksonville made?

STUDENT: It was to prevent crime.

ANNE COUGHLIN: Right. Exactly. So the answer to my question is no. The city of Jacksonville did not say, this is a collection. This string of words is drawn from those ancient-- or they're not ancient-- medieval statutes. Instead we have a contemporary justification. We have a darn good reason for doing this, and that is to?

STUDENT: Prevent future crimes.

ANNE COUGHLIN: How does that work? What's the claim? That's right. They're saying we need to keep this law. It's got a good purpose. Deters crime. How does that work?

STUDENT: I think they specifically say it to prevent if people are doing these acts habitually, they're maybe more likely to commit the crimes.

ANNE COUGHLIN: Yeah. Something like that. If you're a rogue. Right? I mean, we haven't yet figured out what a rogue is. If you're a vagabond, if you're a loafer, if you're a common night walker, a habitual loafer, if you're someone who lives on the earnings of your wife. But you're right. The idea was we get to nip crime in the bud. Deters crime. What?

STUDENT: The implication is that these things are not crimes.

ANNE COUGHLIN: Yeah. Yeah, yeah. Yeah. Yeah, yeah, yeah. Yeah. That's right. And we have a thing that you're going to learn about soon, and trust me, you're going to absolutely love it. It's called attempt liability. So we already punish people not just for completing crimes. We think we can deter crimes by punishing people who also attempt to commit crimes.

So this is even a more nascent kind of liability. But yeah, something like that. So the idea is these are people who are likely to commit crimes, and if we can pull them off the street, get them off the street, maybe slap them on the wrist, somehow we'll be deterring them, deterring others. Something like that.

So what I want to do is to make the best case, we can for the ordinance. I don't expect you to like it. The one question I'll have for you at the end of the class is, what are we going to do now that we're in the city of Jacksonville. We're the City Council or whoever it is. Let's rewrite the statute. Let's rewrite the ordinance. But is there any good purpose to an ordinance like this?

STUDENT: It's tailored to what they're experiencing locally.

ANNE COUGHLIN: It is tailored to what they're experiencing locally, right? So you've got that. We know our problems. And what kind of problems might you be thinking about? Is there anything in any of these cases, any of the cases themselves? The big question here is, to what extent is it appropriate?

This is what we call a policy question or a normative question, but, hey, you're the ones. You're in charge. To what extent is it appropriate to manage what people do on the streets? Think of a street, busy street, or an empty street. To what extent is it appropriate for us to have laws, including criminal laws, that regulate stuff that people do on the streets? Is there a legitimate purpose? Any at all?

STUDENT: We have second order crimes. So for instance, if you take people off the street who-- like, co-defendant-- or co-defendant Brown had drugs on him.

ANNE COUGHLIN: Yeah. Yeah.

STUDENT: Whereas Justice Douglas noted the notion of casing places for burglary.

ANNE COUGHLIN: Absolutely. Absolutely. One of the most famous criminal procedure cases, *Terry v Ohio*, involves activity that's almost exactly-- have you read Terry? OK, yeah. So it involves activity almost exactly like that which was involved in the two men who go into the drycleaner shop.

So thank you. There is some-- in this case, you can already see evidence of some kinds of activities that you might say, hey, we do have an interest in some laws regulating some authority. I don't want to use the word police because I don't know. Some of you may be abolitionists. That's fine. The more the merrier.

But there may be a role here because our safety in the community, our safety, our security, our ability to live in freedom depends on being protected against lawbreakers as well as being protected against the police. I mean, that is what I believe. That's one of the lovely parts about being in Charlottesville. Some of the time you just feel safer. You don't lock your car door at the law school. Things like that. You just feel safer.

So that sense of community safety matters. So there could be legitimate reasons for some law. Not this law, but for some law. I just want you to keep that piece in mind. So the doctrine that the court relies on is the void for vagueness doctrine. The court very, very rarely-- and when I say the court, I mean the United States Supreme Court and I mean the federal courts. Very, very rarely declare a state law, state criminal law, to be unconstitutional.

Crime definition is a matter that's left to the locals, to local communities, to states, to state legislators. The fact that a law is really stupid, as we can see parts of this appear to be archaic and no longer applicable at all, just silly, laughably so, that's not the reason for the Supreme Court to get involved. The stupidity of a law does not make it unconstitutional.

You have to have a very precise constitutional argument. So the argument the court relies on is called void for vagueness. Very rarely used. The court does it here, so this is a rare and a fascinating example. A statute that is void for vagueness violates the due process clause. How so?

So now the question becomes-- I want to spend a couple of minutes because I don't have for too much longer. What is the meaning of the due process clause? There are two aspects of due process, only one of which ostensibly is at stake in this case. There is something called procedural due process and there's something called substantive due process. No state shall deprive any person of life, liberty, or property without due process of law.

Here's the procedural aspect. The clause contemplates that states are going to deprive people of life, liberty, or property. They get to do that. But they shall not do it unless they give you due process, which means fair procedures. So before they can take away your life, liberty, property. And here, obviously criminal statute, we're taking away people's liberty and there's a fine, property.

You get to do that. Yep. States can do it, but you got to give due process. That's procedural due process. And since we're talking about vagueness, what do you make of the phrase due process? The process that's due? I mean, nothing could be vague, right? I mean, like, ah. And so you can immediately see, yeah, we tolerate, maybe even endorse a lot of vagueness.

The process that is due depends on the context. Are they taking away your liberty? Is it a criminal case? Got to have a lot of process. You have to have trials. You have to have appeals, and so on and so forth. Other contexts, other kinds of hearings maybe require less, but due process is what's required. Substantive due process? This is the aspect of the due process clause that's at stake where?

In *Dobbs*. Which I could have taught you, but it's very long. It's about 200 pages, and I figured I'd let you wait for that treat until you got to law school. But the due process clause has been held-- up until now, at least. We're waiting to see whether the court reverses the entire substantive due process line of cases. Certainly some of the Justices are prepared to do that.

But in addition to affording procedural protection, the idea is that liberty, for example, has some kind of core meaning. There are some things to which liberty entitles us. There are some freedoms that the state can't take away, no matter how much process it provides. Got it? So there's some forms of human conduct that are so integral to liberty, to living as a free person in our society, that no matter how much process the state gives, it can't take that away.

And up until *Dobbs*, we believed that the right to access an abortion, at least within this particular time frame, was part of that substantive liberty. You got it? The Supreme Court has said no. Liberty within the meaning of the substantive due process clause does not encompass this type of reproductive health care, and the court has also said that it-- or at least Justice Thomas has indicated that he is open to arguments that say that substantive due process doesn't protect, oh, access to contraception.

The Constitution doesn't protect gay marriage, and the Constitution does not protect same sex sex. So you guys are coming to law school at such an interesting time. I cannot wait to see what you make of our world. So which of these features of due process are at stake in *Papachristou*?

STUDENT: I think it's the procedure.

ANNE COUGHLIN: It is procedural. And tell me why. So what is the proced-- what does the due process clause require that this ordinance failed to provide? I just asked the right question. I don't always ask the right questions. A little secret. Your professors often ask the right-- wrong questions. Wrong questions. What does the ordinance fail to provide that the due process clause requires? Anybody see? Yes?

STUDENT: Fair notice that their conduct is forbidden.

ANNE COUGHLIN: Notice. Exactly. One of the most important components of procedural due process, the sort of fundamental thing, is notice. Before you do stuff to people, before you take stuff away from people, before the government takes stuff away from you, they've got to give you notice. They've got to give you notice. They've got to give you a hearing. They've got to tell you, here's when you are crossing that red line. Here's when you are leaving your law abiding home and crossing the red line into the criminal zone, and this ordinance doesn't do that. Why is that a problem?

STUDENT: It's hard to avoid committing crimes if you don't know that you could be committing a crime.

ANNE COUGHLIN: Right, so you read the statute and you went, my God, I might be a dissolute person. Right? I mean, and some of you are thinking, well, gosh, I don't know. I might like to dress up like a juggler. Right? Or maybe I do juggle. Right? Right, so there's the problem of notice to citizens. People read the statute and they go, oh-- sorry. I wasn't going to curse, so I'll stop.

They just go, oh my goodness. You know? Gosh darn. I have no idea. I am, in fact, habitually drinking and my wife works. So hey, I better not go out today, right? So there's that problem. Is that really a problem? Did the people of Jacksonville, do you think-- how do you all know what's a crime and what's not a crime? How do you know? Do you read statutes? Yeah? Sir, whoever?

STUDENT: Question. How do signs like trespassing [INAUDIBLE] that knowledge for?

ANNE COUGHLIN: Oh, they help. Yeah. Like don't sit on this park bench or you'll burn in hell, right? Something like that, right? Don't even think about it, right? So yes, there will be-- but good for you. So what you're asking, then-- and this is what I'm trying to get you to think about-- is how robust is this notice concern? Because you're absolutely right.

The court says this is a problem for law abiding people, and it is. To live in a rule of law world, you want to know. Can I wear the juggling costume or not? And if there's a sign that says no juggling costumes, right? But how robust must it be there don't have to be signs? So what I'm trying to ask you is, how do you know? Yeah?

STUDENT: The problem is that it's arbitrary.

ANNE COUGHLIN: I don't want to hear about that. I know it's arbitrary. I want to know something else. I just want to know as a common sense notice-- I mean, the court is relying on this, and what I'm trying to get you to start thinking about is what reason really matters here. Were the people of Jacksonville-- yeah?

STUDENT: I mean, they say ignorance of the laws are an excuse, that you don't actually have to know to be charged.

ANNE COUGHLIN: No, no, no. Stop there. That's right. It's really fun. Ignorance of law is no excuse, right?

STUDENT: If it's not written the way that the layman could understand.

ANNE COUGHLIN: Right, but I'm asking you, do lay people read statutes?

STUDENT: No.

ANNE COUGHLIN: No. I mean-- oh, some of you may. Right? Yeah, yeah, yeah, and that could be the problem. Yeah?

STUDENT: You know people who've been charged for crimes, you read about it, and you--

ANNE COUGHLIN: Your mother tells you. Right? I mean, I'm sorry. And of course, I'm immediately-- but I'm trying to think about different kinds of mothers and different kinds of communities. So we don't, I think for the most part, get our notice from reading statutes. I don't think we do. The court alludes to business activities and it says, well, in the area of business activities, more latitude, more vague language is allowed because business people, they read statutes. Right? They're up on it.

Do you think it was a surprise to the people of Jacksonville that this loitering law was on the books? Of course not. They were being arrested for it right and left. At least the people who were being arrested right and left knew about it. Right? Eight people. Right? So again, I don't mean to suggest that the notice to citizen argument is meaningless. I'm just trying to ask you to start reading creatively and skeptically and to rely on your own intuitions as human beings, because you've all been around the block more than once.

You live and come from different communities. You can talk to each other. Some of us read statutes. Not too many of us do until we become lawyers. The notice function matters. So what's the other part of the case? This is the part you all wanted to get to, right? When you're talking about subjectivity from the very beginning and arbitrary. What does the court say? Ah, somebody else. Somebody who hasn't talked. Yes, sir?

STUDENT: It criminalizes seemingly normal activities.

ANNE COUGHLIN: OK. You've given the perfect wrong answer. So I love that answer. Is that a procedural due process problem? And what you want to say back to me is, but you-- that would be me-- Anne said this is not a case about substantive process. So you're right.

There's a whole lot in there where Douglas is wringing his hands about the fact that the statute punishes innocent, innocuous, perhaps even common behaviors for some people, including some very rich people, people who like to hang out at golf club-- golf course or whatever they do there. I'm not sure. Apparently they drink constantly while their wives are working. Right? I don't know. Is that a procedural argument?

STUDENT: I'm not sure.

ANNE COUGHLIN: Well, it sounds to me like it's more substantive. And that's what's interesting about the case because what he says is that the statute-- the ordinance, rather, punishes good stuff, stuff that contributes to a happy life. And I don't if any of you loaf anymore. I don't know. Do you stroll? Do you wander? No, I don't think so. Right? And that's sad.

So I'm not sure-- I'm going to assign Thoreau. Go read it, and you get where the word saunter comes from. But he's saying that these are amenities of life. This stuff contributes to a life that's happiness, that's rich, and so on and so forth. But that's really a substantive argument. In other words, it's saying liberty should include the ability to stroll around. It's not a due process argument.

The due process argument is that it gives too much discretion to police. There are two notice problems here. One is fails to give citizens notice. But that's a little bit fictive because ignorance of the law is no excuse, and people don't really read statutes to absorb what it is the criminal law forbids. We get notice, sometimes from signs, often from our community members, but police get notice.

Police are consumers of substantive statutes. Police know what the statutes forbid. And this statute, ordinance, the court says is problematic because its vagueness means that the police get to pick and choose. It throws out a very wide net some of the definitions are highly subjective, very unclear. A lot of ambiguity.

And the police get to decide who annoys them, who displeases them, who's problematic. And that is a real problem when you think about wanting to live in a rule of law society, that you let the police decide who it is that constitutes a rogue or a vagrant. And the court doesn't put the equal protection case before you, but you can see that it alludes to this because the couples, the four that are arrested-- it's two white women and two Black men.

The court's telling you that for a reason. It believes that the police objected to the fact that it was seeing interracial dating. That's why they pulled the car. Likewise, it mentions that one of the people who's arrested on the casing case, the pacing back and forth, was an organizer for an African-American community group. Right?

So the court is clearly-- though it doesn't surface this for you-- concerned about racist policing. It says when you have an ordinance that's this vague, it creates the ability not just for arbitrary policing, like I think all the rest of the guys at that golf course but not that golf course. I guess that was arbitrary. Was that arbitrary?

But bias, that they are going to exercise their discretion based on racist reasons or other similarly reprehensible discriminatory reasons. So that's the crux of the case. Does it fix the problem? It helps, right? That ordinance is gone.

We know that the court has said that your statutes, your crime definitions have to be sufficiently precise to guide police discretion so the police don't have-- this gives them utter, total discretion over who gets arrested and who does not. They get to pick and choose. So one question for you is, great. That's great. Get rid of it. Does it solve the problem?

What now for police? What now for us as a city council? Can we rewrite that ordinance so that it is no longer void for vagueness? Sure. Cities, states, all kinds of legislators have done that. We have second and third generation loitering statutes. They get challenged. Some get tossed, some don't. We have to keep working on that problem.

But I want to bring to your attention another problem that I think could make a huge difference in some of the most egregious cases that we've seen in recent days. I was going to say years, but it's just-- it's days. What now for the police? The police can't pick up *Papachristou* and her companions for prowling by auto, which was held to be a form of loitering. Right? It's gone. They don't have that power anymore. What can they do though?

STUDENT: You can point to the aspects of the driving and make it a justifiable reason to pull over for reckless driving.

ANNE

Yep. What are you going to do?

COUGHLIN:

STUDENT: Antagonize.

ANNE Hm?

COUGHLIN:

STUDENT: As the police or as--

ANNE
COUGHLIN: Yeah, I'm sorry. You're the police. You don't have to be the police. You don't have to be, but I'm just saying. If you imagine-- and we don't have to assign it to individual police. What I want to know is what are the police doing now, and they're doing exactly what you say. They can't arrest that group of people for prowling by auto, but what can they do?

They can wait for 2 seconds, 3 seconds, 4 seconds, 5 seconds. They can follow that car and within, I bet, 5 seconds, 10 seconds, 20 seconds, a minute, they will witness an infraction of the traffic code. Now I've learned from my students of color that what I just said may be empirically false. I'm assuming that everyone violates the traffic code all the time because I do, all the time. Right?

Once in a blue moon I get picked up, but the police say to me, oh, you're not a threat to anybody-- which kind of upsets me. I want to be scary, right? But I am waiting for them to pull me and arrest me for having a hang tag in my car, which is what they did to a young man of color, and they shot and killed him. They pulled him, arrested him, and he is now dead. That's heavy.

But what my students of color say to me is, oh, you violate the traffic laws all the time because you're a white woman. We were taught by our parents, don't even think about doing 56 and a 55. And of course, it doesn't matter because they'll be stopped anyway. I have a whole list of cases. Tyree Nichols, the most recent.

Are the traffic laws vague? Did you know this about your traffic code? Did you know that your traffic code allows the police to stop you for failing to signal a turn, for having a broken tail light, for having all these minor vehicle problems? They can pull you, and they then get to choose. They can ticket you or they can arrest you.

Complete discretion. Total, total, total. Because as I said, 99%, 98%, some huge percentage of all drivers all the time are committing an infraction. Are those laws vague? The reckless driving, maybe. The rest of it, absolutely precise. Don't do 56 in a 55. Right? Couldn't be-- so what are you going to do?

You are going to convince your legislators, your city councils, your police that they should cut this out. They should no longer have police in traffic enforcement. What is the point of placing someone under arrest for a crime for which no jail time is usually authorized? None. If we took policing out of that, that would be a good start.

STUDENT: Is there full discretion across every traffic violation?

ANNE
COUGHLIN: This is where I get to say what? Read your traffic code. But the pattern overwhelmingly in the country-- it's starting to change because people now realize, Sandra Bland, she failed to signal a turn. She was placed under arrest and committed suicide in a jail cell.

I'm sorry. I know it hurts you. It hurts me to repeat these words, but this is the reality. Why was that young woman arrested? Why? Why was she in a jail cell that night? Do you see what I mean? Just stop doing it. Give people a ticket. Let them go. They let me go. Why don't they let Tyree Nichols go?

So that is really, really, really helpful, isn't it? You can make this change. You can insist that you get police out of traffic enforcement. It won't solve all the problems either. A lot more reforms need to be done, and hey, I know a bunch of you are abolitionists, but that's a place to start. So welcome to law school, and thank you so much for your time.

[APPLAUSE]