

Deep Dive Episode 30 Transcript

This Florida Woman Got a \$100,000 Fine for Parking in Her Own Driveway

Melanie Hildreth: Welcome to Deep Dive with the Institute for Justice, I'm Melanie Hildreth. Everyone hates parking tickets. Now imagine getting a ticket for the way you parked in your own driveway. That's what happened to Lantana Florida resident Sandy Martinez, but it gets worse without Sandy realizing it, the town was finding her \$250 per day fines that accrued for weeks until she owed an astonishing \$101,000. I'm here with IJ attorneys, Ari Bargil and Diana Simpson to talk about how a trivial infraction like Sandy's can lead to a six figure fine, and what can be done to protect people from financial ruin for harmless code violations. Ari a \$100,000 parking ticket is so outrageous that listeners might think we're exaggerating Sandy's story. Could you describe exactly what happened to her?

Ari Bargil: Absolutely Melanie, sadly, this is no exaggeration at all that your encapsulation of what happened to Sandy was perfect. Sandy is a resident of Lantana, Florida, which is just outside of West Palm Beach. She lives in a very modest home with her mom and her sister and her three kids.

And they're all working adults for the most part. Her two older kids are of driving age. They have cars to get to and from work in school, her sister has a full-time job cleaning houses, and they all need to be able to get around, but the house isn't that big and the driveway isn't all that wide. And so when everybody's home parking in the front can be a little bit tricky.

And unfortunately in Lantana, Florida, parking just a little bit on your own grass is actually an ordinance violation. And so Sandy was fined by the city of Lantana for parking her own cars on her own driveway in a way that was a little bit inconsistent with what the city thinks your front yard should look like when all of your cars are parked there.

Now, there's nowhere else for them to really park their cars. Again, the driveway is not too big and they want to widen it, but that takes money. They can park on the swale, but there are frequently accidents at the intersection where they live. And so it's just not safe. And in fact, just about a month ago, there was yet another accident right in that spot.

And if Sandy sister had been parked there, her car would have been severely damaged. And so. Sandy is sort of, willing to do what the city wants her to do, but it's just challenge. And that challenge led to the imposition of the fines in this case. Lantana has a weird process. Well, I should say it's weird for us, but for the code enforcement world, it's actually frequently how things operate and that process is, once you get hit with a violation it's considered a continuing violation and fines will accrue every single day until you call the city or the county or whoever it is. And you tell them, come back out and inspect and check and see if I'm in compliance. Sandy did that, but couldn't get anybody to come out to her property and eventually like anybody else who's hardworking and busy, she kind of forgot about it.

She went to refinance her home when interest rates dropped very recently and realized that she had a lien on her property and excess of over \$100,000 after she had been incurring fines of over \$250 per day, related to these parking violations. She also found out that she owed another \$43,000 for a downed fence that she fixed and another \$16,000 for cracks in her driveway, that she also repaired again when she had the money.

All told Sandy is in hock to the city of Lantana, Florida for about \$165,000, all for very trivial, small time violations that are all unrelated to health and safety, and simply have to do with Sandy's maintenance of her own property. The city refuses to cave, and so IJ sued on behalf of Sandy and her family in order to get the fines declared unconstitutional under the excessive fines clause of the Florida constitution and we're looking forward to actually getting into court on this very, very soon.

Melanie Hildreth: You mentioned that this sounds crazy to us. But that it's fairly common in the world of code enforcement, at least with respect to the burden being on the property owner to call back and try to schedule something to clear the fine or get the paperwork completed or whatever.

But the nature of these fines themselves, how common is that? It seems like Lantana is an extreme example, but it's not alone in Florida. Based on other cases that you yourself are litigating, could you talk a little bit about what else you've seen? Just in, just in Florida alone.

Ari Bargil: To get to your original point, I mean, this really does turn the presumption of innocence on its head and it allows for cities to be able to impose really, really high fines in quick and rapid succession. And if a property owner is unaware that fines are accruing against them, they can really snowball into an astronomical amount and that's, what's happening with another one of the cases that we're litigating in Florida on behalf of Jim Fickin. He's a resident in Dunedin which is a town outside of Tampa. And there, Jim was fined \$500 per day for tall grass. Before he even found out about the fines he owed about \$30,000 to the city, money that he didn't have and the city began to initiate foreclosure proceedings against Jim before IJ was able to come in and sue on Jim's behalf, challenging those fines as unconstitutional under the excessive fines clause of the Florida and U.S. Constitution in that case. That case was removed to federal court and about a week and a half ago we got a decision from the the district court judge, unfortunately, a disappointing decision, saying that Jim's fines were not unconstitutional. We are really excited about taking this case up on appeal, getting it in front of the 11th Circuit and having a panel review this issue so that we can hopefully make good law for Jim and for many people in the United States because as you mentioned, this is a problem that exists, not just in the cases we're litigating, but in Florida and throughout the U S.

Diana Simpson: That's right. And this isn't a problem that just happens in Florida, unfortunately. We have a lawsuit right now in the City of Chicago, challenging its impound program.

The city there will impound your car for dozens of different types of things, whether it's a ticketing issue or a criminal related issue or anything. Once they impound the car, they charge you fees for that. Then they charge you fees for the storage of the car, which ended

up being about \$1,000 a month and then they'll charge you a fine for the underlying activity. And they charge you all of this, even if you were not the one committing the crime that led to the car getting impounded. So for example, one of the clients that we represent in this case is a grandmother named Allie, who was in Houston actually getting some medical treatment.

When she left, she left her car with her granddaughter so that her granddaughter could have a ride around. And, and she said you can drive it, but please don't let anybody else drive it. Unfortunately her granddaughter let her then boyfriend drive it. And he got pulled over and they impounded the car and the city told Allie that she had to pay the thousands of dollars that.

All of this led up to, even though she was in Houston when this happened. And so we are suing on her behalf and on behalf of other property owners in Chicago, challenging it's impound program, and we're raising a claim under the Illinois Constitution's version of the excessive fines clause, as well as the United States Constitution's version.

And so that's one other example outside of Florida, and another one is a case that was successfully litigated in Pagedale which is a suburb of St. Louis and under Pagedale city code residents could be ticketed and fined for all manner of sin in that includes mismatched curtains and wearing pants below your waist having a hole in your window screens, having a barbecue in front of your house, all kinds of things that people all over the country do.

So we sued on behalf of residents in Pagedale and we won. And so we're looking to kind of expand that type of victory that we got in Pagedale throughout the rest of the country.

Melanie Hildreth: It's really interesting in each of these cases that the things that are people are being fined for are either so harmless that it's crazy that they would incur a fine at all, or they are something potentially a little bit more serious of which the, the owner of the property. Is completely innocent.

I remember, I think I saw in the news that in DC people listeners may know there've been a lot of carjackings recently in the District of Columbia and something similar is happening there where they are charging anything. Somebody steals your car, does something illegal with it and then the owner of the car is actually being fined for the misbehavior, which is just so crazy.

And it, it seems like there's there's no connection here between what would seem to an ordinary person as a legitimate government interest and what the government is doing. And so I wondered if you could talk a little bit using either of, any of the cases that you discussed as, as an example of how do these things come to be? Why would a city charge you \$500 for grass that's too long? I mean that's just insane.

Ari Bargil: There are a number of different explanations. I think the, one of the most pernicious and unfortunately one of the most common explanations is they're just trying to raise revenue and that's another one of the cases that, that we typically litigate that's, that's sort of like our, our Doraville case that I think Diana mentioned a moment ago where local governments are just looking to raise money on the backs of their citizens. And so they enact

ordinances prohibiting all manner of sin as Diana explained. And they then enforce those ordinances. They have teams of code enforcement officers. They outfit them with cars and badges and they send them into town to start writing tickets, to get people in trouble for all of these picayune violations. And that's how you end up with fines that are this high, because there's a perverse financial incentive on the part of government to not only pass these ordinances, but then to enforce them really heavy handedly.

And that's just one example of some of the things that the government is up to another, in other instances, it's simply just the insistence on a certain sort of community aesthetic, where if you don't have your property look a certain way, we're going to find you into destitution until you sell it to someone who will or until you make it look the way that we want it to look.

And, none of these interests. Are legitimate government interests. And that's part of the broader problem is that frequently, this occurs because government is simply just doing things that it shouldn't be doing.

Diana Simpson: Raising taxes is perhaps not the most popular of activities. It's certainly not something that's palatable for a lot of different politicians, but that's the right way to raise revenue rather than imposing these fines and fees that end up being born by perhaps the less wealthy and then it turned into regressive taxation.

And that that's certainly not fair. It's it's not foreseeable. It's not something that people can budget for. It ends up just really causing a lot more harm than it should. And it's really just a backwards way of government trying to get more money into their coffers.

Melanie Hildreth: Yeah, a real lack of transparency as well. A tax increase has to go through a process right? I have no idea what it takes to get some of these fines passed, but even if there is a process, it seems like it would be maybe a little bit less rigorous than a tax increase.

Diana Simpson: The processes are important with everything, with everything that government does. I think a lot of people assume that these kinds of user fees that a lot of fines and fees end up being are somewhat okay. Because, well, then the people responsible for the activity are the ones who have to pay for it. But that just ends up not being the case in a lot of circumstances. And it ends up being a really inequitable amount of money. I mean, \$500 a day for tall grass, that's not harming anybody. And that's an enormous amount of money to impose on a property owner who's otherwise maintaining his property and is just trying to keep to himself in town.

Melanie Hildreth: You both in talking about the different cases that you described mentioned, the claims that we're bringing in the idea of excessive fines, that the state constitutions have protections against excessive fines. The federal constitution has protections against excessive fines, and it goes back even further than that. Could you talk a little bit about the kind of turning to the legal aspect of this fines and fees issue? Where, where do we get the idea of protection against excessive fines, being something that's very important?

Diana Simpson: It goes back a really long way. So this has been a constant protection in Anglo-American history. It traces to at least Magna Carta in 1215, possibly even before then. And so when we say that this is a long time protection, we're not exaggerating. And, and so basically Magna Carta required that sanctions be proportioned to the wrong. And that's really all we're asking for here. That's what the excessive fines clause demands today. And that the Excessive Fines Clause hadn't been applied to states and municipal governments until really quite recently until an IJ case *Timbs* from a few years ago, when that reinvigorated the clause under the U.S. Constitution and brought it back to life so that people can litigate under it and seek its protection.

Ari Bargil: Yeah. And, and in *Timbs*, the U.S. Supreme Court acknowledged precisely what Diana just mentioned, that this is a, a deeply rooted aspect of Anglo-American law. It's been with us for a hundreds of years, if not much longer than that dating back to Magna Carta now almost a thousand years old. And it's, it's one of the core protections because our founders understood that the ability to find is the ability to cripple. It was used and still sometimes is used as a weapon against political dissenters and those who have legitimate disagreements with their government. And our founders understood that in order to protect the ability of people to, to speak out against government and to be able to operate their businesses and earn a livelihood.

There needed to be a limitation on the extent to which the government could impose fines. And so the core of the Eighth Amendment Excessive Fines Clause and all of this state excessive fines clauses is to ensure that people are always able to survive the fine essentially, you can't cripple someone financially. And that's what the fines that we're talking about in these cases really are, these are financially crippling fines but the Eighth Amendment really is pretty clear that you cannot impose the financial death penalty. And that's what we're fighting against.

Melanie Hildreth: So it goes back a long way. It seems it's very clear. I think most Americans have an intuitive understanding of, of that. The idea of being able to cripple somebody, just finding them into compliance or finding them out of your town is just so unjust. But Ari, you mentioned these cases aren't a slam dunk. I mean, even in the one where this is just seems to be the quintessential is excessive fine. First round the court ruled against us. Can you talk about how that happens and, and the things that are still unresolved in the law in modern times?

Ari Bargil: Well, that's right. You know, *Timbs* was a really important case because it said once and for all that, the Eighth Amendment's Excessive Fines Clause applies to the states, but then, you know how that actually applies in practice is a different question. And one of the arguments that we're, we're constantly having to deal with both in and outside the excessive fines context is when the legislature says that there is such a thing as a maximum fine. Is it the case that as long as, the enforcing entity doesn't deviate from that fine or exceed it is it always going to be the case that that fine will be constitutional?

And the court in Jim's case essentially said, yeah, that's probably what that means because the state of Florida has a statute that says you can't impose more than a \$500 fine for a

certain type of violation. And they imposed a \$500 fine for a certain type of violation. And we're just going to say that what the legislature said is.

The ceiling of accessibility and because they didn't deviate from that in this instance. Then the fine isn't unconstitutionally excessive. And the reason why that's wrong of course, is because then there would be no need for an excessive fines clause. If all it did was prevent fines that already were illegal under a statute.

But that's, that is how hard these cases are to win. That's why it's important to get them up on appeal to, to resolve some of these harder issues. Because I think it certainly is the case that the Excessive Fines Clause has to have some meaning, right. And right now after the U.S. Supreme Court's decision in *Timbs*, it's now going to percolate in the lower courts for a little while.

Like what precisely that meaning is going to be, and that's, that's why it's important we're litigating these cases and, and we're getting these important questions answered.

Melanie Hildreth: Does the idea of, okay, well, the legislature said \$500, but obviously that's not what Jim's was fined, he was fined \$30,000 to the point where he lost his house. So it seems like the, the aggregate nature of the fines should matter. Is that something that's also unresolved?

Ari Bargil: I mean, to the extent it's slightly resolved and it's, it's actually unfortunately resolved sort of going in the other direction where a number of courts have said, we're not going to consider the total amount of the fines. We're actually just going to take them day by day. And as long as one fine would be fine. It doesn't matter if you got hit with that same fine, 10,000 times in a row, and now you owe a million dollars or more a billion, pick a number. A court will say that that's not unconstitutionally excessive, and there's been now some pushback, I think, from some courts, including the Colorado Supreme Court, not too long ago, at least in a concurrence, a justice indicated that actually turns this analysis and to a total exercise in futility.

Why on earth would we only look at individual fines, obviously in order to calculate whether or not a fine is excessive, we've got to consider the total amount of \$500 fine once might not be unconstitutionally excessive, but asking somebody to pay up over \$30,000 and possibly losing their home for tall grass, obviously rings a little bit differently and the courts should treat those two things as distinct.

Melanie Hildreth: What about the flip side of that, which is rather than what the legislature intended or what the law says the situation of the person being fined, their ability to pay, does it matter? Maybe I could absorb if I'm, an extremely wealthy person, I could absorb \$30,000. It might be annoying, but you could potentially do it. But if you're Jim or Sandy or somebody who is, just earning a wage, like that's, that is something that is, is as you said, crippling. Does the situation of the person being fined come into play at all when courts are looking at these cases?

Ari Bargil: That that's much more of an open question and that's one of the things that we're actively litigating right now is that it should matter. Of course it should matter. And in the

Colorado case, I mentioned a moment ago that wasn't an IJ case, but there was a cert petition taken from that decision. Ultimately the Colorado Supreme Court's decision there was, yes, you should consider the ability to pay of the person or in that case, the entity, the corporate entity being fined and the U.S. Supreme Court declined to hear that case.

And so I think it's going to be something that that's going to continue to be litigated over the next couple of years. But that's obviously something among other factors that courts should be taking into consideration when they're weighing the excessiveness of a fine.

Melanie Hildreth: And Diana the, the case that you described in Chicago, one of the most important aspects of it is unlike tall grass, maybe the reason a car was seized was something more serious. But the people that we are representing in that case were not the ones who did the thing. What is the situation right now in the law with respect to innocent owners or someone who is innocent, but still on the receiving end of a fine, is there something inherently excessive in fining even \$1 to a person who hasn't done anything wrong.

Diana Simpson: That's our position and that's what we're arguing for in this case, because if you're innocent, you you've not done anything. You, you haven't done anything that is worthy of being punished. And that's what these fines do is they serve a punitive purpose on behalf of the government, in addition to whatever criminal prosecution can come with the activity.

It's another way of punishing someone for this activity, but if you haven't done anything, there is nothing to punish you for. And so it's a very frustrating experience having to talk with a client who's just like, I didn't, I didn't do anything. And I understand I'm sympathetic and I'm suing on their behalf and I would like very much to win.

And so, one of the things that we're trying to do in our Chicago case is get overturned a case that's about 20 years old that says, well, it's not excessive. And it doesn't really matter that the owner wasn't driving the car because they were probably involved anyway. Well, but that's not what the Constitution requires.

That case was wrong then, and it's, it's. Even worse now in light of, I think some recent Supreme Court precedent that the last five years that has really made clear that, a conviction is necessary to hit people with punishment for that underlying activity. And if you don't have a conviction you really need to be careful about punishing them. And so we're trying to, to push that theory. Once we get up to the Seventh Circuit, we're still in the trial court now, but once we get up to the seventh circuit, I look forward to arguing that pretty aggressively.

Melanie Hildreth: This is the last question on this sort of area. There are so many different aspects of these kinds of cases and a lot of different things kind of at play all at once. I know that a lot of the cases that are coming up kind of in this area have to do or at least a lot that I've seen recently with a penalty that potentially is irrational. Like for instance or specifically taking away somebody's driver's license. So maybe that with the thing they lost the license for had nothing to do with their, their safety as a driver, but it was just sort of like, well, this is a way we can escalate a penalty against you. You can't pay the fees anymore, so you lose

your license. And then of course you can't go to work to get the money, to pay the fees. And it becomes, just kind of a Kafkaesque irrational situation. What is going on in those cases?

Diana Simpson: So those cases are really split across the country. And so some of the courts are saying that this is irrational and we have to stop. Some of the courts are saying, oh, it's perfectly reasonable to do that. I have a hard time understanding the cases that say it's perfectly reasonable because you're creating in essence, this debt spiral for people who, they end up owing the government for something. And then the government takes away their license. So they can't get to work to earn the paycheck, to pay off their fine. And then they get into more debt, and then more debt and they're just cycling through. And the government doesn't care, they just stand in the way. And so thankfully I think there's been some political pressure on that front to stop that. And so, the City of Chicago I know has actually been quite good on that.

Recently they've been trying to kind of put a stop to suspending licenses for that. Not every government entity has kind of gotten, gotten that in their heads yet. And it'll be much better when they do, because it really shouldn't be the case that people are losing their ability to drive their kids to school, drive themselves to the doctor's office to work, to make money, to go anywhere just because of some debt they owe the government. There's got to be a better way to collect on that debt.

Melanie Hildreth: As we've talked about this we we've talked about the excessive fines clause. We've talked about the fines for this, the fines for that. But you know, within IJs practice in this area, we describe it as fines and fees cases. And I think for most people, those words seem interchangeable. Certainly to me, they seem interchangeable a fine a fee, it's like something that you owe for maybe a cost of doing business, maybe irrational. They seem like basically the same thing. Is that actually true? In the law?

Diana Simpson: No. So fines and fees are distinct in the law. And so a fine is meant to be a punitive measure. It's meant to punish somebody for some activity they did, whereas a fee ends up being kind of a user fee is how you can think of it. And so there's a lot of user fees with people who end up going to court and get involved in the criminal justice system. You've got a probation fee, you've got 16 other kinds of fees, it seems like.

They ended up getting a lot of different treatment when challenged as unconstitutional. And so fines have standard due process analysis, and then they also get the Excessive Fines Clause analysis. Fees don't get that Excessive Fines Clause analysis. Fees are seen as just something that kind of goes to the system they're not punitive. And so therefore they're not treated. They're not subject to the Excessive Fines analysis. And I think that that ends up being kind of wrong in, in, in practice because the people who are getting hit with these fines and fees that they have to pay, it's all coming out of the same pot of money.

And it's not that, they have these kind of big budgets, the way the municipalities have, where they have different pools of money going to different different areas. It's all coming out of the same thing. And so if you end up having to pay a thousand dollars in fines and \$3,000 in fees at the end of the day, you're paying \$4,000. And that is a problem for a lot of

people, especially if the courts are only going to analyze that thousand dollar fine, it's much worse than that.

Melanie Hildreth: It seems like there's the potential for, if courts start to go the right way on fines, could cities kind of be like, oh okay, well our fine now is only \$25, but the fee, every time you get a \$25 fine is \$5,000. And then all of a sudden there's, there's no oversight at all. Like, is that something that. That is a potential path that cities could take?

Diana Simpson: Yeah, I think it's certainly possible, but I would caution against it and I would certainly hope that they, that they wouldn't do that, that they would just shift back to a more even handed approach to raising revenue. And that's as, as I've already said, and I'll say until I'm blue in the face until I'm six feet under, I think that they should be raising taxes instead of imposing fines and fees as a revenue raiser.

Ari Bargil: I will say though, Melanie, that I think you're a hundred percent correct. That is precisely what would happen in the same way that, because we require certain constitutional protections for criminal defendants, we now have this entire system of civil enforcement in order to evade in many instances, those protections. The government's not above accounting tricks in order to evade constitutional scrutiny. And I strongly suspect that\ as long as there's an appetite for revenue generation on the backs of, of citizens people in government will be creative about how they characterize those, those revenue generating mechanisms.

Melanie Hildreth: I know that that is something that happened in I think it was some towns in Missouri where either the state or the counties capped the amount of revenue you could raise on speeding tickets, and so they started to enforce other things and that leads to the kind of property code enforcement that Diana was describing. Thinking about it, that it really gets underneath this. It seems as the core issue that really brings IJ's sort of mission interest to it, which is the idea of property rights, and I wondered Ari, if you could talk a little bit about the property interest in that the owner of the property has, that the owner of the car has that the person who is innocent, but is getting this fine has how does that, that idea come into play in these cases?

Ari Bargil: Well the property interests here are really kind of two-fold, especially when you're dealing with fines as a result of some sort of property violation that probably shouldn't exist. Right? So Jim probably should be allowed to let his grass grow a little bit without getting in trouble. And Sandy should be able to park her cars the way that she wants, because these are the benefits of property ownership. You don't get to harm your neighbor with your property, but you also get to use it and have it in a way that's, consistent with harmoniousness and fairness to all.

And that's. That's that's the first side of it, right? Like you shouldn't just be getting penalties and punishments for the way that you park your cars and the way your grass grows. Then obviously you have a property interest in your money. And that's another area where this comes into play because if the Eighth Amendments Excessive Fines Clause protects the property interests that you have in your money and in your wealth and your ability to keep it without having to fork it over to the government because they've decided to come after you,

or because they've decided to hit you with daily fines for picayune violations. And so those two things kind of come together. There's a, a doubling of property interests here in a place that we don't, or in a way that we don't always see it in our typical property rights types of cases. But here, I think that the property rights interests are amplified because of the way that we're typically dealing with property being at risk, because property is being over-regulated.

Melanie Hildreth: Let's say you have people who want to do the right thing. Can we give them some good ideas? If you, if perhaps someone in city government or county government has never really thought about it this way. They'd never stepped back and looked at like, oh my gosh, this is, this gets out of control kind of fast. The way it can be used is just really unjust. I want to fix it. Or even just, I don't want to be sued by the Institute for Justice or someone like us. What advice would you give to those policy makers? What can people do to make the law better and more just in this area?

Ari Bargil: I think there are a few things that, that any city government can pretty easily and quickly do in order to resolve some of these issues and the first is to stop making so much stuff illegal. Stop with the heavy handed enforcement for relatively trivial violations like tall grass and cracks in a driveway. If somebody is posing a threat to their neighbor or the community there should be ordinances already on the books that can deal with those things and local governments can always enforce those, and you won't hear from the Institute for Justice, if you're going after somebody for being a menace to their neighbors but leave people alone otherwise. Another thing that local governments can do is consider caps on the amount of money that they'll be willing to impose on people for any sort of violation.

They can be moveable caps, they can be caps that will slide one direction or the other, depending on how a violation is classified. There are a lot of different ways to do this to make sure that people who need to be punished get punished, but that those who, who don't or who don't deserve such excruciating fines don't end up on the receiving end of them.

And another thing that local governments can do is create an actual sort of amnesty program or, or a mechanism by which people can come in and explain what their circumstances are. Explain whether or not they have an ability to pay and get the government to actually weigh these violations on a case by case basis, rather than just saying you fall into, X or Y box and therefore you're going to get fined X or Y amount, because if there's anything that's clear in the case law here, it's that the touchstone consideration of excessiveness and when looking at a fine is proportionality, gross disproportionality frankly. And you can't consider that until you look at well, what did you do and what were you fined?

And so I think local governments need to be a little bit more precise and surgical in the way that they fine people. And it might require them to afford a little bit more process. But that's kind of, what's expected of government is to not violate people's rights because doing it better would be more time consuming and so that's, that's really what we're humbly asking. And we'll continue to sue until they do those things.

Melanie Hildreth: Thank you Ari and Diana for joining me. Thank you to everyone for listening. If you enjoyed this discussion and would like to hear more like it, you can find more episodes of Deep Dive wherever you get your podcasts or on YouTube, and don't forget to subscribe. .