

*An Editorial*

**JUDICIAL DISCRETION IS HEADED TOWARD EXTINCTION**

By Jim Hansen

In 1991, you paid \$10 in court costs for the Driver Safety Course (DSC) option. I remember lowering some fines to ten dollars (court costs) for less egregious offenses. Today, DSC costs \$91 (with the jumbled mess of security, technology, and transaction fees, it varies from court to court). These court costs fund many noble and sometimes necessary projects. But at what cost to our Courts?

In my opinion, judicial discretion is headed closer to extinction every time the legislature meets and tacks on a new cost. A good example is the new \$30 “State Traffic Fine” (it started as a fee) against those who violate the “Rules of the Road”. This money goes to the general revenue fund for highway projects. I think it is wrong for the Legislature to continually fund non-judicial projects through our Courts. The reason is because it is systematically diminishing our judicial discretion, and we are doing nothing to stop it.

We used to set fines from \$1 to \$200 for most traffic offenses. Now, House Bill 2 pronounces the minimum fine is \$31 with no loopholes or exceptions. The violator faces paying \$81 from the start, and an arguably unconstitutional \$25 time payment fee in many circumstances. For a seatbelt offense, even with the minimum fine of \$25, the total is \$131, and judicial discretion still has not kicked in!!!

At the same time, many Judges have fallen into the “revenue generating” mentality. They do not want the discretion. Their goal is to shoehorn every penny they can out of a defendant because they want to impress Commissioners, compete with other Judges, or attain some sick form of self worth.

Isn't fairness supposedly the basic tenet of the Texas Court System? The punishment is supposed to fit the crime first, and serve as a deterrent second. Without judicial latitude (discretion), how can we really accomplish either goal effectively? With the new \$30 fine, a person charged with public intoxication can theoretically pay less than someone with an expired inspection sticker.

Our association needs to work with the Municipal Court Judges Association and the JPCA to pass a resolution against *any* new court costs or fines in the upcoming session. If we do not, look for another increase. After all, Legislators are not hearing complaints about higher court costs; the Judges and court clerks across Texas are the recipients of those complaints.

The Texas Justice Court Judges Association needs to take the lead in this matter. We need to work with our friends in the Municipal Judge's Association and JPCA. All three of these organizations draft a Resolution and get active.

Whether we are limited by high court costs and minimum fines, or restricted from offering DSC or deferred options to commercial driver's license holders, we need to realize that Judges hold the responsibility for administering the laws, not legislators.

I would like to see the legislature:

- 1) Abolish the \$30 fine and pay for it through conventional means rather than traffic cases
- 2) Return discretion to Judges regarding CDL licenses
- 3) Abolish the TPF

I realize it is not realistic to accomplish each of these things, but we need to start thinking about ideas like these for the next session. We also must become more cognizant about how future legislation affects judicial discretion. The "minor traffic violation" is extinct. Judicial discretion is not far behind.