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DeShaney v. Winnebago County Department of Social Services

What is the role of the law and government? Though this might seem like a straightforward question, upon further inspection it is discovered that this question gets to the foundation of law and society. If the law is made solely to deter and punish certain behaviors, what can be said about individual protections in society? The United States Constitution, the charter of the nation, is famous for its bold declaration of citizen rights. The Fourteenth Amendment is adamant in its protection of citizen rights from state abuse. Yet the question remains: does the Fourteenth Amendment imply that law and the government should protect its people to the fullest extent, including from private harms? The DeShaney v Winnebago County Department of Social Services highlights the tension between state and private action, and the role of the law in instant justice and the future.

The facts of the case are as paraphrased from Westlaw and Cornell Law:

In 1980, Randy and Melody DeShaney were divorced. Custody of their baby Joshua, born the previous year, was granted to Randy DeShaney. In 1982, the Winnebago County Department of Social Services received a tip that Joshua DeShaney was being abused. After an initial interview, though, they dropped the case. A year later, Joshua was admitted to the hospital for bruises and injuries. The Department of Social Services was notified, and Randy DeShaney's custody was suspended for three days. Winnebago County convened a team that judged that there was not enough evidence to charge DeShaney with child abuse, and so Joshua was returned into his father's custody. The case was dropped. One month later, Joshua was admitted to the hospital again. Joshua's case worker determined there was still no basis for action. The following

six months consisted of visits from the caseworker in which it was evident and noted that Joshua was still attaining injuries. Though it was evident that the child was being abused, no action was taken. In March of 1984, DeShaney beat Joshua, then 4 years old, into a coma. He survived, but he had attained so much brain damage that he would be mentally retarded and institutionalized for the rest of his life. Randy DeShaney was then tried and convicted of child abuse.

While Randy DeShaney faced a criminal trial, Melody DeShaney filed a civil suit against Winnebago County and its Department of Social Services. Civil suits and criminal suits are very different, and even criminal suits are not what they are made out to be on television. Both types of cases start in the trial court (more about the types of courts and court systems to come) but the rules and the standards are different. While Randy DeShaney was the defendant, he was being charged by a prosecutor. In criminal cases, juries must be shown evidence beyond a reasonable doubt, say 99%, for a conviction (George and Sherry, pgs. 116-118). Furthermore, in the Randy DeShaney criminal case, as with all criminal cases, incarceration was the main debate (with fines and community service and such as other possibilities). In civil cases like DeShaney v Winnebago County Department of Social Services, the plaintiffs (in this case Melody and Joshua) are suing for damages from the defendant, which can take on the form of compensatory, punitive, or statutory remedies (George and Sherry, pg. 89). Therefore, unlike criminal cases where the main claim is someone is breaking the law, in civil cases, the main argument is that the defendant harmed the plaintiff in some way. This is why the burden of proof differs between civil and criminal cases; the stakes can be much higher in criminal cases, considering someone could potentially be incarcerated for breaking the law, so the jury must be almost absolutely convinced of the conviction. Still, civil cases are just as serious, even when the burden of proof is less, as the decisions of the court are still impactful.

Melody started this civil lawsuit on the basis that her son's constitutional right to liberty under the Fourteenth Amendment had been threatened. Section One of the amendment reads, "...nor shall any state deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protections of the laws." This suit was brought forth under 42 U.S. Code § 1983, which calls for civil action in the case of deprivation of rights. Joshua's mother Melody DeShaney filed a civil suit against Winnebago County and its Department of Social Services, going to the United States District Court for the Eastern District of Wisconsin.

In the American court system there are two co-existing systems that both reflect each other, and at times overlap. District courts, like the one Melody DeShaney filed her suit in, are the trial courts of the federal system. Most of the time, though, cases begin and end in the state system. This is because states have original jurisdiction, and therefore cases will go to the federal system in cases of federal offenses, questions of Constitutionality, diversity of citizenship, and so on (Humbach, pg. 37). Cases can certainly jump from a state trial court to federal appellate or later on the Supreme Court, but it is never the other way around. In Melody DeShaney's case, she began in a federal District court because of the question of possible deprivation of federal rights.

At the District Court for the Eastern District of Wisconsin, which is normally a trial court, a summary judgement was granted to the DeShaney case. This means that there was no trial or jury, simply a review of facts, and a decision. Summary judgements are granted when there is really no dispute about the facts of the case, only about how the law should be applied (Humbach, pg. 37). Since it is the judge who applies the law, a jury is not necessary.

This court held that the plaintiffs, Melody and her son Joshua DeShaney, could not claim damages under 42 U.S. Code § 1983, because the state had not deprived Joshua of his rights in any form. It decided that Winnebago County and its DSS were not at fault for the institutionalization of Joshua, as state/local government actors are not required to provide protection from private violence under the Due Clause of the Fourteenth Amendment (DeShaney v. Winnebago County Dept. of Social Services (1989) 489 U.S. 189 [109 S.Ct. 998, 103 L.Ed.2d 249]). Melody DeShaney appealed the decision, to go on to a higher court.

Though there are two distinct court systems that work together in the U.S., both systems reflect each other in their tiers. Both systems start with their trial courts, known federally as the District Courts. In the state system, trial courts go by a number of names. For example California trial courts are called Superior Courts, while in Texas trial courts are called County, Justice, and Municipal Courts. The next tier includes the appellate courts. An appellate court differs from a trial court because of the standards of review. In a trial court, there is usually (though not in DeShaney case, because of the summary judgement) a jury, along with an establishment of facts. In an appellate court, there is no jury, and the facts have already been established, so witnesses do not appear before the judges. Essentially, an appellate court reviews the lower court's decision, and decides if the process and application of the law is correct. The judge(s) then decide whether to affirm or reverse the lower court's ruling, essentially confirming or denying the initial decision. These appellate courts, which can be known in the state systems as District Courts of Appeals (though there are exceptions) and known federally as U.S. Courts of Appeals, are the immediate appellate courts after the trial courts. The court of last resort is the supreme court. It's important to note that there are supreme courts in both the states' and the federal system. However, the highest court will always be the United States Supreme Court, and cases

that have made it to either the state supreme court or the federal appellate court may apply for review (George and Sherry, pgs. 86-93).

This is exactly what Melody DeShaney did after the federal Court of Appeals for the Seventh Circuit affirmed the lower court's decision in 1987. This court said, ".. [it is] well established in this circuit, that the state's failure to protect people from private violence ... is not a deprivation of constitutionally protected property or liberty," (DeShaney by First v. Winnebago County Dept. of Social Services (7th Cir. 1987) 812 F.2d 298, 301, aff'd sub nom. DeShaney v. Winnebago County Dept. of Social Services (1989) 489 U.S. 189 [109 S.Ct. 998, 103 L.Ed.2d 249]) citing several previous cases. The court's decision was based on the principle that the Constitution is made of "negative liberties" instead of positive, which is to say that the document prohibits the abuse of public rights, but nothing more. They also found that "deprivation implies causation", and though the State might have been aware at one point, they were in no part the cause of Joshua's abuse. Therefore in short, the state was not responsible for private violence, and as the lower court had ruled, Winnebago County was not responsible for the deprivation of rights of Joshua DeShaney.

The following year, in 1988, a writ of certiorari was granted to the case. This is essentially a grant to have a higher case review the lower court's ruling. This was significant, as more than 10,000 petitions are filed to have the United States Supreme Court review a case, but less than 100 are granted (George and Sherry, pg. 92). So the following year, in 1989, the DeShaney v Winnebago County Department of Social Services case went all the way to the United States Supreme Court.

At the Supreme Court, there was a review of the facts of the case once more. The issue remained whether or not Winnebago County and its Department of Social Services were

responsible and therefore liable for stripping Joshua of his rights under the Fourteenth Amendment and the Due Process Clause. His mother argued that the defendants knowingly failed to intervene, putting Joshua back into the custody of his father when they knew of the abuse, in which they denied Joshua liberty without due process of law. (*DeShaney v. Winnebago County Dept. of Social Services* (1989) 489 U.S. 189 [109 S.Ct. 998, 103 L.Ed.2d 249]) The Court affirmed the decisions of the Court of Appeals for the Seventh Circuit and the District Court. Rehnquist delivered the Court's Majority Opinion after the 6-3 decision, saying,

“The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security; while it forbids the State itself to deprive individuals of life, liberty, and property without due process of law, its language cannot fairly be read to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means.” (*DeShaney v. Winnebago County Dept. of Social Services* (1989) 489 U.S. 189, 189 [109 S.Ct. 998, 1000, 103 L.Ed.2d 249]).

In other words, it was the Court's determination that the State could not do harm onto its citizens, but it was not responsible for private harm. Therefore, Melody DeShaney lost the case, Winnebago County was not charged, and there could be no further appeals.

Because this case was not unanimous, there was a dissenting opinion, in which the Justices that disagreed with the Majority Concurring Opinion could express their reasoning. Justice Brennan delivered the dissenting opinion, in which it was said that the brief intervention the state had “triggered a fundamental duty to aid the boy” (*DeShaney v. Winnebago County Dept. of Social Services* (1989) 489 U.S. 189, 213 [109 S.Ct. 998, 1012, 103 L.Ed.2d 249]) once the danger he was in was apparent. Justice Blackmun declares that the Fourteenth Amendment

precedents could be read and interpreted either more narrowly or more broadly, depending on the case, and how the dissenting Justices would have adopted a “sympathetic reading, one which comports with dictates of fundamental justice and recognizes that compassion need not be exiled from the province of judging” (*DeShaney v. Winnebago County Dept. of Social Services* (1989) 489 U.S. 189, 213 [109 S.Ct. 998, 1012, 103 L.Ed.2d 249]). It acknowledges though, that they are not the majority, and though they believe it possible to have interpreted the amendment differently, the Court’s decision stands. The dissenting opinion goes on to deliver a line that was difficult to forget: “Poor Joshua!”

One might cite the court’s decision as a mistake- after all, the abuse was evident, and the state had (briefly) intervened at one point. Yet the ruling remains. Though it might seem that there was a lack of justice for little Joshua in the end, it is important to remember the unwavering tension between justice in the instant case and the precedence the decision sets for the future.

The United States runs on an adversarial system, which is to say that it goes by common law. In this system, cases are presented to the judge and (if it is a trial court, a jury as well) the facts and the evidence of the case are established (George and Sherry, pg. 82) The way common law works is through precedent, meaning previous cases and decisions are utilized to analyze and decide current cases. This principle of *stare decisis* is used to decide both instant and future cases. It’s important to note, “*Stare decisis* requires a court to have a very good reason for changing its position on a legal issue” (George and Sherry, pg. 115). In other words, this system makes it difficult to stray from past precedents, highlighting the importance of every Supreme Court decision. Decisions made now can greatly impact ones made in the future.

Because of the principle of *stare decisis*, it sometimes seems as though there is a lack of justice in the instance case. Yet it’s important to remember that the adversarial system and

common law is just as prospective as is it retrospective. A decision can be made in order to incentivize or deter future cases. In the same way that a case with a bank robber and a hostage might lead to a decision not to place responsibility on the bank, a court might decide not to place responsibility on a county department. In the case of the bank robber, for example, the decision is made not for the hostage to receive justice, but to deter future robberies. It could be considered then that the same principle of precedent was being set with the DeShaney decision. By not placing responsibility on the Winnebago County Department of Social Services, the Court could potentially be desuading future cases in which plaintiffs seek remedies from public workers and organizations from damage done from private harm.

On the other hand, one must consider the possible negative effects the decision has as a precedent. If no DSS worker can be held legally responsible for the future of the children in their case, as Ann Kempter was not responsible for Joshua, many caseworkers can go about being generally inactive in their cases. Many caseworkers could turn a blind eye to abuse, knowing full well that they won't be held accountable since protection from private harm does not, according to *DeShaney v Winnebago*, fall under the rights guaranteed by the Fourteenth Amendment. Furthermore, since this decision was declared by the United States Supreme Court, it is automatically binding precedents for all other courts (binding precedent can also come from the same court, from an earlier time, but Supreme Court decisions are always the highest in regards to lower courts) (George and Sherry, pg. 94). This decision would set the example for all other courts, both by the state and federal system. Thus, all cases similar to *DeShaney's* would have this precedent, one not in favor of the individual, set.

Since 1988, there have been a number of cases that disagreed with the *DeShaney v Winnebago* decision. According to Westlaw, there are over 150 cases that show negative

treatment in relation to the DeShaney v Winnebago County Department of Social Services. Most notably, in July of 2017, Gorman v Mississippi outright failed to align with DeShaney v Winnebago (Gorman v. Mississippi, 258 F. Supp. 3d 761 (N.D. Miss. 2017)). This case was different from that of DeShaney in that there were no social services or children involved. However, the courts acknowledge exceptions to the decision that states do not have an inherent duty to protect citizens from private harm, namely when “special relationships” (state custody) and “state-created danger” are recognized. This interpretation of the Fourteenth Amendment, then, acknowledges that the role of law and government is much more than just prevention of abuse from the state, but the protection of the individual as a whole.

There is great significance in both case decisions, especially when the Gorman decision provided a provision that could have greatly altered the DeShaney case. This is the way the common law system works, though, through precedent and adjustments to reflect the world. The principle of finality prevents further action in the DeShaney case. Melody DeShaney’s son passed in 2015. Poor Joshua, indeed.

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U.S. Const. Amend. XIV, Section 1