State Created Danger

A Brief Overview

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City of Boston Law Department

DeShaney v. Winnebago County Dept. of Social Services

- DeShaney v. Winnebago County Dept. Social Services 489 U.S. 189 (1989)
- Child suffers permanent brain damage from fathers repeated beatings;
- Social workers failed to remove the child from father's custody (despite multiple warnings and knowing about the abuse)

DeShaney v. Winnebago – Procedural History

- US District Court for Eastern District of Wisconsin granted summary judgment to defedants;
- US 7th Circuit Court of Appeals affirmed;
- United States Supreme Court affirmed lower court decision in a 6 to 3 decision (Justices Brennan, Marshall and Blackmun (dissented)
- In an opinion authored by Chief Justice Renhquist, the Court held that the State did not have a constitutional duty to protect the child from his father even after receiving allegations of abuse.

State Created Danger

"It is well established that, although the state's failure to protect an individual against private violence does not generally violate the guarantee of due process, it can where the state action "affirmatively places the plaintiff in a position of danger," that is, where state action creates or exposes an individual to a danger which he or she would not have otherwise face."

DeShaney v. Winnebag County Dep't of Social Services

State Created Danger

- Generally, state actors do not have an affirmative duty to protect persons from violence inflicted by a private actor, except:
  - Special Relationships
  - Danger Creation
- Deliberate indifference is still factor, which again Circuits don't always agree on (gross negligence vs. shocks the conscience)
- Not all Circuits have formally recognized state created danger exception and they don't all agree on what the exception looks like. Technically, the Supreme Court has not recognized the doctrine.

Special Relationships

- Generally, a “special relationship” involves a custodial relationship between the state and the victim. For example:
  - Police/Prisoner
  - EMT/Patient
  - School/Student
  - Employer/Employee

Danger Creation

- State actor left the person in a worse off position than they otherwise would have been in had the state actor not intervened.
  - Examples
    - Police officer finds a person in need of medical attention, cancels EMT's and locks person inside their home – Munger v. City of Glasgow, 227 F. 3d 1082 (9th Cir. 2000)
- This is a nuance to the state created danger exception, that is not recognized by all Circuits.

Some Circuit Perspectives

- Recognizes State Created Danger Exception:
  - 9th Circuit
    - Recognizes both exceptions
  - 3rd Circuit
  - 7th Circuit
- Still has not formally recognized the State Created Danger Exception:
  - 1st Circuit

General Practice Tips

- Pay attention to the facts of your case early on, whether state created danger theory is explicitly or implicitly pled. These are very fact specific scenarios.
- Ask your client the right questions:
  - Did they follow standard protocol/procedure?
  - If not, why not?
  - Were there any unusual circumstances that led to not following protocol/procedures?
- Tough to get out at 12(b)(6) stage, but consider summary judgment
  - Don’t forget Qualified Immunity Defense

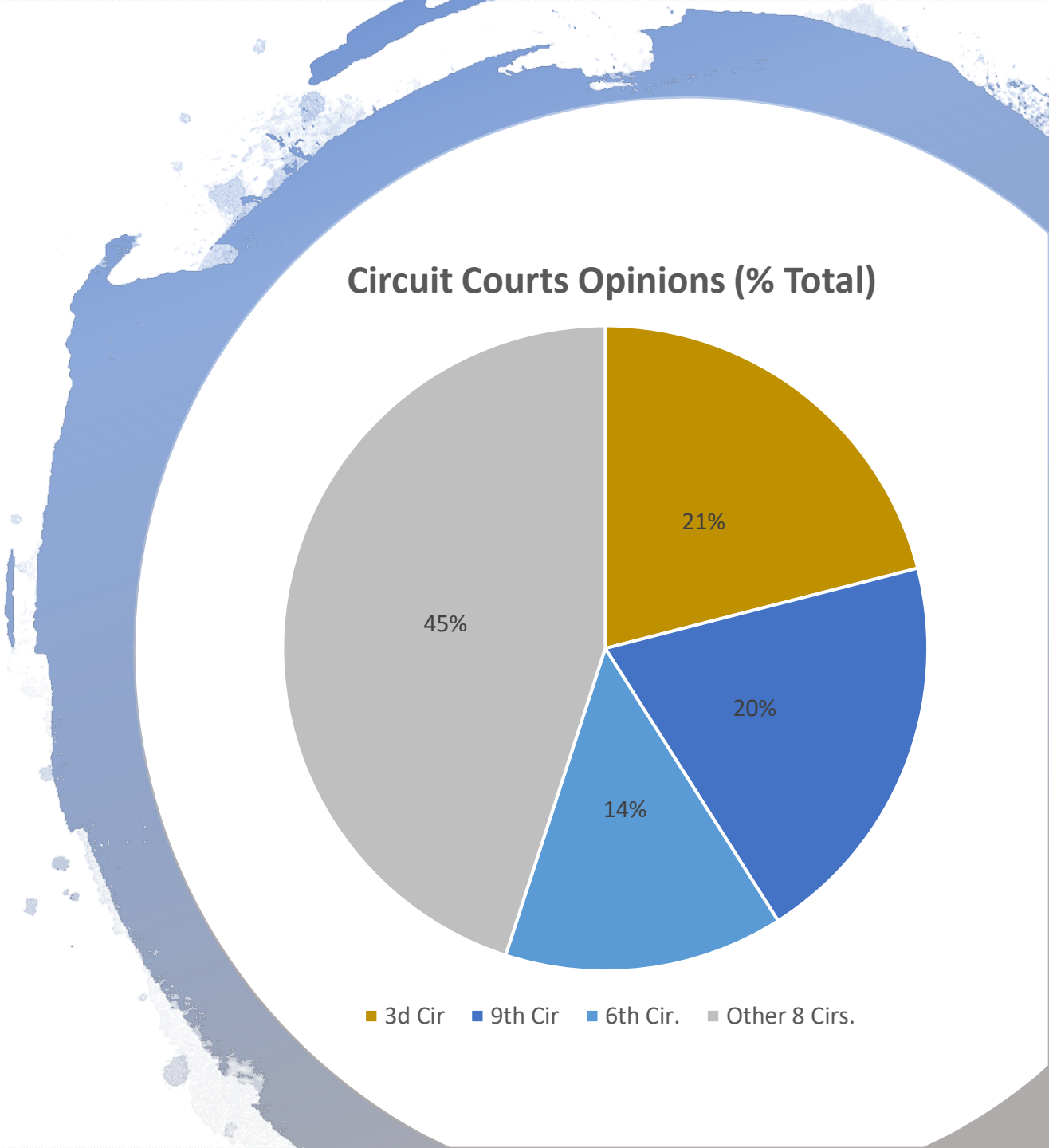
Recent Case Law

Meghan E. Claiborne, Deputy City Solicitor

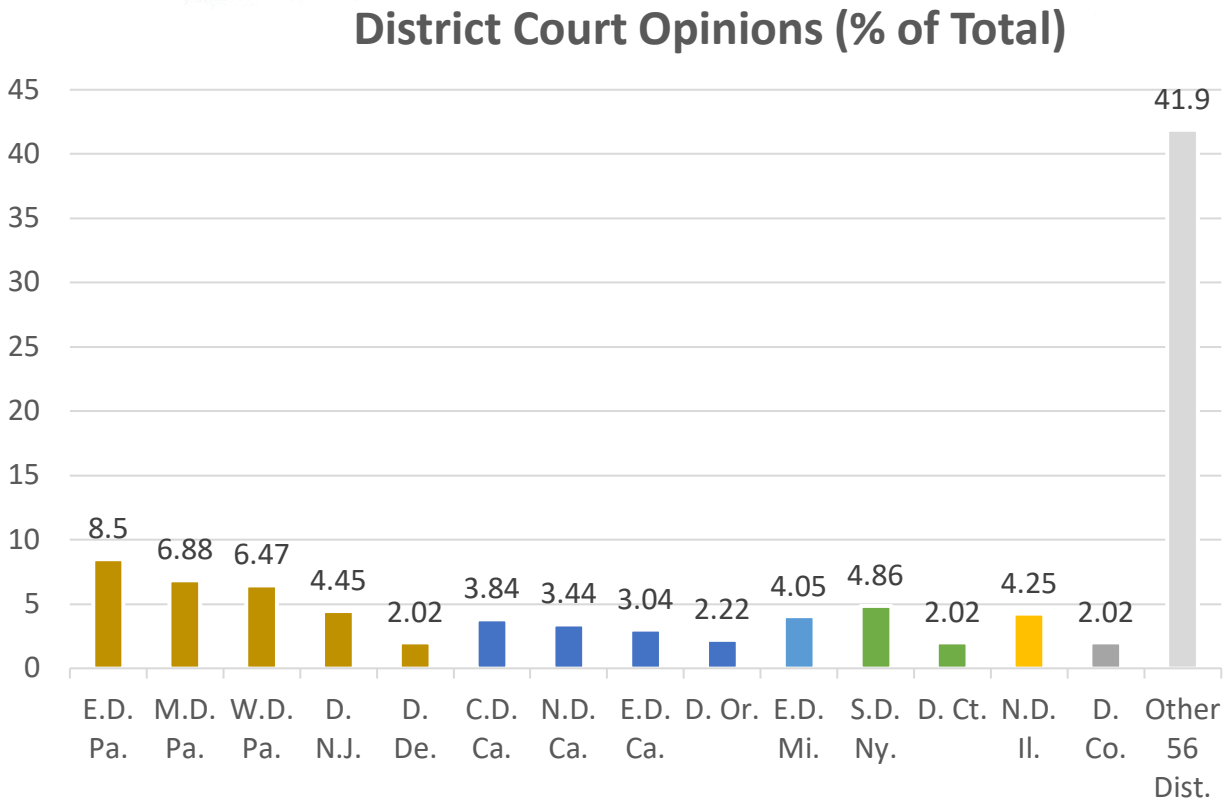
City of Philadelphia Law Department

State Created Danger Opinions 2017 to Present

- 10 of 11 Circuit Courts issued opinions
  - None from First Circuit
- Total of 81 Circuit Court opinions
- 55% of opinions came out of Third Circuit (21%),Ninth Cir. (20%) and Sixth Cir. (14%)



District Court Statistics 2017 through Present



- 94 District Courts
- 70 Districts issued opinions
- Total of 491 District Court opinions
- 58.1% from just 14 Districts
- 22% (108 opinions) came from Eastern, Middle and Western Districts of Pennsylvania alone

Police Cases

- ***Nichols v. Fernandez*, 686 F. App'x 532 (9th Cir. 2017)**
  - Police officer did not place confidential informant in known or obvious danger by writing and filing report concerning CI's participation in investigation, and thus, officer did not violate informants' due process rights under state-created danger doctrine by exposing them to danger
- ***Martinez v. City of Clovis*, 943 F.3d 1260 (9th Cir. 2019)**
  - State Created danger may apply when officer makes comment to abuser that he/she may continue
- ***Sauers v. Borough of Nesquehoning*, 905 F.3d 711 (3d Cir. 2018)**
  - Officer's conduct in pursuing non-fleeing summary traffic offender at speeds of over 100 miles-per-hour shocked the conscience, as required to establish substantive due process violation, but
  - Officer had qualified immunity from substantive due process claim brought under state-created danger theory.

Police Cases (Cont.)

- ***Weiland v. Loomis*, 938 F.3d 917 (7th Cir. 2019) (Easterbrook)**
  - Rejected District Court's interpretation that *DeShaney* is equivalent to constitutional rule prohibiting any act, by public official, that increases private danger
  - Regardless, no clearly established constitutional obligation to keep prisoner under control
- ***Irish v. Maine*, 849 F.3d 521 (1st Cir. 2017)**
  - "At least eight sister circuits have recognized the existence of the state-created danger theory. While this circuit has discussed the possible existence of the state-created danger theory, we have never found it applicable to any specific set of facts."
  - Couldn't grant QI at that early stage
  - Ultimately granted at MSJ
    - *Irish v. Fowler,* No. 1:15-CV-00503-JAW, 2020 WL 535961, at *1 (D. Me. Feb. 3, 2020)

Schools

- ***Davis v. Washington State Dep't of Soc. & Health Servs.*, 773 F. App'x 367 (9th Cir. 2019)**
  - Affirmed denial of MSJ on QI because issue of material fact whether school had adopted and implemented polices that required staff to report suspected abuse only to designated staff or administrators, and encouraged staff to delay or avoid reporting suspected abuse, and that these practices affirmatively placed decedent in danger
- ***Jones v. Pi Kappa Alpha Int'l Fraternity, Inc.*, 765 F. App'x 802 (3d Cir. 2019)**
  - Officers entitled to QI as to claim arising out of alleged sexual assault at fraternity party on college campus
- ***Mann v. Palmerton Area Sch. Dist.*, 872 F.3d 165, 168 (3d Cir. 2017), *as amended* (Sept. 22, 2017)**
  - Coach entitled to QI as to claim brought by parents of student who suffered traumatic brain injury during high school football practice

Intra-Police Claims

- ***Kedra v. Schroeter*, 876 F.3d 424 (3d Cir. 2017)**
  - State trooper was shot and killed by his instructor during a routine firearms training
  - Reversed District Court, recognized state-created danger claim and rejected QI
- ***Estate of Carrigan v. Park Cty. Sheriff's Office*, 381 F. Supp. 3d 1316(D. Colo. 2019)**
  - Sheriff's captain ordered breach door of residence, in contravention of a pre-approved plan, during attempt to evict individual known to be unpredictable and violent from property he no longer owned; officer was shot and killed
  - Even if decision was ill-advised; decision to breach was made in the heat of the moment, a split-second decision without opportunity for extended deliberation
  - Further, "[d]anger faced by law enforcement officers, in the form of the risk of violence at hands of individuals known to be unstable and potentially violent, was inherent in their work"

Sufficiently Related/Foreseeable

- ***Cancino v. Cameron Cty., Texas*, 794 F. App'x 414, 415 (5th Cir. 2019)**
  - Pre-trial detainee escaped in parking lot, broke into home and shot and killed man
  - Dismissed- Even if state-created danger was recognized under Fifth Circuit, the "known victim" element not satisfied (plaintiffs failed to allege they were foreseeable victim of inmate's conduct)
- ***Hammon v. Kennett Twp.*, 746 F. App'x 146 (3d Cir. 2018)**
  - Driver injured when police officer had seizure while driving and hit his vehicle
  - Dismissed - Driver was not foreseeable victim
  - Also, allowing officer to resume his duties, including driving, upon returning from medical leave was not an "affirmative act"

Sufficiently Related/Foreseeable (Cont.)

- ***Van Orden v. Borough of Woodstown New Jersey*, 703 F. App'x 153 (3d Cir. 2017)**
  - Mother brought suit after son's car was swept off a highway by floodwaters
  - Summary Judgment granted - Decision to open floodgates at a dam was not a sufficiently direct cause of motorist's death to bring a substantive due process claim under state-created danger theory.
- ***Guertin v. Michigan*, No. 16-CV-12412, 2017 WL 2418007, at *32 (E.D. Mich. June 5, 2017), *aff'd in part, rev'd in part*, 912 F.3d 907 (6th Cir. 2019)**
  - Flint, Michigan: Plaintiff "have a fundamental interest in bodily integrity under the Constitution"
  - However, second prong of a state-created danger claim is satisfied when "the government could have specified whom it was putting at risk, nearly to the point of naming the possible victim or victims."
  - Here, no evidence to suggest that government knew specifically who it was putting at risk; No more danger to plaintiffs than any other individual on the street

Other Examples

- **<u>Protest</u>: *Turner v. Thomas*, 930 F.3d 640 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 905, 205 L. Ed. 2d 461 (2020)**
  - Counter-protestors brought suit after officers were instructed not to intervene in violence among protesters at rally.
  - Affirmed dismissal on QI: because not clearly established at the time of the rally that ordering officers *not* to intervene in private violence between protesters was an affirmative act within the meaning of the state-created danger doctrine
- **<u>Homeless Shelter</u>: *Brown v. City of New York*, 786 F. App'x 289 (2d Cir. 2019)**
  - Client of city department of homeless services brought action against city and department, seeking damages resulting from alleged dangerous conditions and treatment that she experienced at city homeless shelters
  - Dismissal affirmed: Plaintiff did not allege that city or department condoned or encouraged any violence against her, or that inaction constituted implicit prior assurance that violence against client would go unpunished
  - Nor did she allege sufficient deprivation of liberty/special relationship

Other Examples (Cont.)

- **<u>Climate Change</u>: *Juliana v. United States*, 217 F. Supp. 3d 1224, 1250 (Dist. Ct. Or. 2016)**
  - Plaintiffs attempted to use state-created danger doctrine to hold the federal government liable for policies that contribute to climate change; claimed a new unenumerated right to an environment capable of sustaining human life
  - District Court held plaintiffs had stated a viable "danger-creation due process claim" arising from the government's failure to regulate third-party emissions
  - Dismissed by Ninth Circuit for lack of Article III standing in *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020)
- **<u>Deportation</u>: *Singh v. Sessions*, 697 F. App'x 577, 578 (9th Cir. 2017)**
  - Alleged that state-created danger doctrine prohibits the federal government from deporting Plaintiff to Fiji, where it would be harder for him to obtain treatment for a medical condition he contracted while serving a sentence in a California prison
  - Dismissal Affirmed: Law doesn't require government protect individual from danger it did not create

COVID-19 aka Coronavirus

- *National Immigration Project of the National Lawyers Guild, et al. v. Executive Office of Immigration Review, et al.*, 2020 WL 1521883 (D.D.C.)
- Prison Cases
- No EMS State Created Danger

Thank You!

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