



## Episode 794: The State vs. Parents

Guest: David Delugas

**WOODS:** Start off by telling me about the National Association of Parents. Give me the two-minute overview you'd give — I was going to say if you're on TV. If you're on TV they'd give you 15 seconds. I'm giving you the luxury of two minutes.

**DELUGAS:** Terrific. A few years ago I noticed that there was not an organization anywhere in the USA that actually serves parents. There are a lot of places that want to sell parents items or services and give advice, but nobody really serves them. So as a lawyer I looked at the constitutional rights of parents and realized that needs protection in this country today more than ever.

**WOODS:** So you — I'm looking at your website, which is ParentsUSA.org. You actually were referred to me by a member of my private Facebook group of people who support the show, who said to me, You've got to get this guy on, because he's doing a lot of interesting and important legal work on behalf of parents against, let's say, overactive governments, particularly at the local level.

So for example, in looking at the cases that you've done, one that stood out to me, because I think anyone can relate to it, is the case of somebody going out to get some takeout food, and you leave a couple of kids at home, neither of whom is completely inept or an infant, and you get back there, and suddenly you're in trouble. So can you tell us about that particular one?

**DELUGAS:** Gladly. Sue Terrillion was a vacationing mom who took her two kids to the beach, had a rental unit, and she stepped out to pick up food to go from a nearby restaurant. Her nine-year-old took the dog out for a walk. The dog was not on the leash. The child was totally capable of caring for himself, and a stranger saw the dog off the leash and the child and interceded, found out that the mom wasn't nearby, called the police. The police responded, and after learning the mother wasn't home, waited for her to return and charged her with two counts of child endangerment under Delaware law.

Her name, her face, her mug shot were plastered throughout digital media, including *USA Today*, and the case was won based on a Delaware statute that would require that her children were likely — that's an important word — likely to suffer injury because of circumstances in which she left the kids. And that clearly was not the case, unless the city of Rehoboth Beach, Delaware wants to take the position that

if any child, which would mean under the age of 18, is without a parent nearby, that child is likely to suffer injury, which is absurd.

So we volunteered to represent her for free, which is what we do when we rely upon the support of other parents, either joining as a member for \$19 a year or making a 501(c)3 donation at our website, as you mentioned, at [ParentsUSA.org](http://ParentsUSA.org). So we represented her, and very quickly the state of Delaware dismissed those charges against her.

But she should never have been charged. Her children should never have been interrogated by police officers in this circumstance where her kids weren't in danger. They were just out and about as other kids in Rehoboth Beach are. They're riding bikes, either rental bikes from the boardwalk there or just out playing. In fact, a nearby elementary school, kindergarten to fifth grade, does not provide bus service that live within one mile of the school, which means either they walk, ride a bike, or are driven by their parents. And indeed, they have a bicycle rack outside, suggesting some of the kids, again up to fifth grade, ride their bikes. So one of the positions I took and discussed with the solicitor representing the — it's actually the attorney general representing the state of Delaware was if other kids in the area can be alone, then why is it that this parent cannot? And again, they dismissed the charges.

**WOODS:** All right, but I think any of us can imagine being in that situation, and these days there's this extreme, vastly disproportionate paranoia, disproportionate to the actual threat involved, when it comes to children being alone or playing outside alone, the way all kids always did throughout all of human history, I think because of this view that at any moment there's this great likelihood, or at least a reasonable likelihood, that your kids will get snatched up and never be seen again. But there's really no evidence for this. The numbers for that are — They have a greater chance almost of Saturn spinning out of its orbit and landing on their heads than any of these things happening, but there's this crazy, crazy paranoia. And half the time, it's other parents who will tell on you or report on you or stuff like that. I've heard horror stories like this. So it seems to me like it's getting worse.

**DELUGAS:** Indeed, Tom, you're actually on target there. Your listeners are as well. It is why we exist. We exist to push back and try to prevent continuing increase in the monitoring and criminalization of ordinary life. Indeed, whether Saturn spins out of its orbit or a meteor strikes, the statistics certainly are that nothing is going to happen to your child most likely. So the protocol that we suggest, because it's going to be difficult to stop the busybody, the parent or the neighbor who is thinking they're being a good Samaritan, from reporting something, such as a child in a car at a gas station while the parent goes inside to pay for the gas and come back with a bottle of Gatorade — no plug for Gatorade intended. But even in those circumstances, calls to police occur.

And here's what I suggest and want through litigation to try to create in America. The protocol is, first question: is the child hurt? Does the child appear to be hurt? If the answer is no, second question is: does the child appear to be in distress? You know, a crying child, a child sitting cross-legged on the ground with their head in their hands, something that indicates something's not right. And if neither of those exist, then the next question is: does the child appear to be in imminent danger of being hurt from an

identifiable risk of harm? They're walking into an active construction site. They're alone, and they're very young and feeble-appearing in a backyard with a swimming pool. Some circumstances that suggest intervention by first responder or by a friend or family or neighbor would be appropriate.

But if the answer to all those three questions is no, at best — at most perhaps is another way to put it — a police officer might drive by and just look and say, Yeah, child looks okay to me. Maybe roll the window down: "Hey, kid, how's it going?" "Doing fine, officer." But there should be no reason to put the officer in the backseat of the car, as happened to the Meitiv kids in Maryland about a year and a half ago, and you may have heard of that. Their children were walking home from the park and ended up in the backseat of a police car being driven home. And the parents were not charged with a crime but went through six months of CPS investigation, only to have findings of unsubstantiated child neglect, and on appeal with our assistance, that was changed to no neglect.

And again, a parent going through Child Protective Services investigation or being charged with a crime when their child's not hurt, their child wasn't in a predicament — It's just such an intrusion. And by the way, more so, it's also a tremendous waste of government resources that could better be directed toward the child who is being abused, who is hurt, who is endangered. Those children sometimes go without the assistance of Child Protective Services because Child Protective Services is bothering with cases like this one. That's part of the absurdity.

**WOODS:** I think — Well, we could talk separately about Child Protective Services. I actually did an episode of that, so maybe I'll just link to that episode with somebody who used to work with Child Protective Services. I'll link to that episode on the page for today — and by the way, that's [TomWoods.com/794](http://TomWoods.com/794). We'll also be linking of course to [ParentsUSA.org](http://ParentsUSA.org).

I was interested in the item on your site, by the way, about whether an absence from school is declared to be excused or unexcused. In a private school, at least the ones we've had experience with, they tend to just leave this to the parents' judgment. I mean, the parents are paying customers; the parents are presumed to know what's best for their kids. If they need to be out of town for five days, well, it's an inconvenience for the teachers and we hope to avoid that, but basically we're going to try to work with you. Whereas in a public school, there is this view that they've got to be excused absences, and they have different criteria for determining whether they're excused or not. And apparently parents are running into problems with this too.

**DELUGAS:** It's an incredible problem, and when I say problem, I mean it is an overreach by government. And let me give you the short version, if I may try, at least. Under our Constitution, the government has to recognize certain fundamental rights that we have in our society. And the U.S. Supreme Court has declared the right of a parent to make decisions for their own child to be what we consider a fundamental right. It's on par with the right of freedom of religion, freedom of expression, Second Amendment right to bear arms — the right of parents to decide for their own children.

And yet, those rights can be intruded and infringed upon when the government has what's called a "compelling governmental interest." Now, it's debatable whether

the government has a compelling interest in ensuring that every citizen and every child is educated, but let's just say for a moment that it is a compelling governmental interest to ensure that its children are educated. The problem is that the laws that we're talking about are not compulsory education laws; they're compulsory attendance laws.

In other words, as in the case — I'm going to court tomorrow morning for a mother whose child missed many days of school, and the school deemed those unexcused, even though the mother wrote a note and said, "Please excuse my child." And here's where that becomes a problem. This child, as in other cases where we've represented students, is an honor student. As and Bs. So the question is: is the child being harmed by reason of the absences that the parent is permitting, and therefore the government has an interest in protecting the child from harm? And I submit, our position is perhaps it might be better if the child goes to school more frequently and doesn't miss as many days, but it should be the parent's decision whether to take the child out of school or allow an absence.

And one example I give, because I think it's understandable for all of us who are parents — and you have daughters; you can imagine a scenario — I hope it doesn't come up, but if it does — where one of your children wakes up in the morning and says, "Mom, Dad, I just don't want to go to school today." Maybe she was being bullied; maybe she had a breakup with a boyfriend. Just doesn't want to go. Should you have to write the note that says, "Please excuse my child. She had a breakup; she's feeling a little blue or depressed today." Should you have to take your child to the psychologist to get a note from the doctor? No. You should just tell the school, "My kid's not going to be in school today. Excuse her." You can use "please" to be polite, but the school should not have the right to question your judgment. Now, if your child is failing, and their failing can be attributed to their failure to be in class, perhaps again — now, it's arguable — you're helping and enabling your child to be harmed from an educational point of view by not going to school, and therefore you could be charged with a crime.

But that's the problem. It isn't a compulsory education law; it's a compulsory attendance law, and our position is that the constitutional right of parents means the government cannot compel us to send our children to a school and charge us with a crime if we don't, but they can perhaps charge us with a crime if our child fails to go to school and as a result of that they are being harmed, as in their education is lacking.

**WOODS:** David, how long have you been with the National Association of Parents?

**DELUGAS:** The idea was conceived in 2011, but came into formal existence and 501(c)3 status was established in 2013. So for a few years now we've been representing parents. We're getting off the ground, and with your help we'll grow faster. And we intend to be the size of and on par with the Institute for Justice in D.C., a tremendous organization, which, by the way, declined our invitation to join forces and grow within them this area that would cover parents' rights.

As I say, it wasn't my desire — I haven't said it, but I'm saying it now. It wasn't my desire to duplicate what is going on elsewhere in America in a nonprofit that is serving the rights of parents, and therefore, by the way, the rights of children. It's the parent-

child relationship that should be honored more. There shouldn't be such interference between what a parent decides and what a child does or doesn't do with that third party, as in this case the government.

**WOODS:** Had you been practicing family law in one way or another before this?

**DELUGAS:** (laughing) Well, the answer is yes. I'm sorry to chuckle, but yes. I've been practicing law now for 35 years, and as a family law attorney, I wasn't noticing until a few years ago how intrusive our society, our government, is, and then literally one day it dawned on me, why is this happening where our courts are micromanaging what happens between parents.

A case that came to light — one in which I had no involvement; I'd read about it on appeal — was where a father was awarded custody of two children, a boy and a girl; the mother was given visitation rights, and at the request of the attorney for the mother, neither parent could attend a ballgame, school events, and activities of the children during the time it was the other parent's, let's say, weekend. So if there's a Friday-night football game — and in this case there are only two kids, but let's just say there were three: one played football, one was a cheerleader, and one was in the marching band — and it was Dad's weekend, Mom was not even allowed to come to the stadium. And if it was Mom's weekend, Dad wasn't allowed.

And I believe that that's a violation of the constitutional rights of both parents, that they should be allowed to go, because imagine the child, no matter their age or their maturity, the message to them is either their parent doesn't care enough to be there, one of the parents is preventing the other one from being there, or something's wrong with my parent that they're not allowed to be there. All three messages are horrible, horrible messages to send to the kids, and there's no valid purpose in terms of service to the kid. In fact, what's going on is one parent is being territorial, and the courts are sanctioning this by allowing it.

So those are — again, that's what really brought it to light to me, is how over-involved our government is in parenting, where there is a compelling governmental interest in preventing children from being hurt, but there's not a compelling governmental interest in ensuring the children get the best of everything according to one particular judge or according to the legislature who passes way too many laws trying to regulate every aspect of our life.

**WOODS:** Is there a particularly outrageous case that you've had to deal with that is just — just the worst horror story you've encountered, let's say.

**DELUGAS:** They're all fairly similar, but the one that comes to mind the most is the Meitivs in Maryland, and this received a lot of national news. But like everything in our ADHD society, it's gone. It comes and goes, which is why we have to be vigilant and keep attacking. In that case, as I mentioned, the kids were put in the back of a police car and driven home, and CPS investigation launched. Now the parents were on the radar of CPS, and again, you can't push back, because government has power.

So a few months later, the same two children were walking home from the same park — and by the way, the parents in this case were well educated professionals, who were making the conscious decision that their children could walk this distance from a nearby park home. But this time the police picked up the kids and put them in the back of the car and didn't take them home, sat with them for two hours. Now, the kids were supposed to be home by six. When they didn't come home by 6, the parents were alarmed, because they know the kids are responsible and always come home on time. And they started calling around, and they couldn't find their kids. They went looking for them.

What was going on, according to the police report that I've read: the children were sitting in the car, they were hungry they needed to use the bathroom, and the police kept them in the car because they were in contact with CPS, who told them to wait. They were trying to get to a supervisor and find out what to do. Now eventually, hours later, the police took the kids to the center where children are put in pre-foster care placement, and from there, about 8:30, two hours later, the parents in a panic, they finally received a call that said, Your children are here. They went to pick up the kids and were told, You cannot take the kids home tonight unless you agree to this safety plan that you won't let them out of your sight. And that's what they endured for a number of months before they were finally cleared. And in that particular county, Montgomery County, Maryland, the policy was changed with respect to children being alone, and that's the kind of thing we need to change.

But that's an absurd abuse of power. It's either retaliation against the parents, harming the kids; it certainly wasn't for the protection of the kids. They were just walking home. And if I may add, because here's another quick one: In Spartanburg, South Carolina, a mother let her young child go with his cousin across the street — literally across the street. If you look at Google Maps, it's about 50 feet in a residential area — to the back side of a McDonald's. Now, the front side of the McDonald's was a busy street, but the back side was a really calm residential street.

And the mom, who was a poor minority woman living on her own, the police picked up her kids, put them in the back of the police car — the cousin and the son — drove back to the mom's house, went through her house — and I've read the police report — making note of the fact that she's on food stamps and there's very little food in the refrigerator — all of which were regrettable and sad, but she had done nothing wrong. Her kids were alone at McDonald's and were going to the play area, and if McDonald's wanted to tell them they can't stay because of some policy, that's McDonald's prerogative, but in this case the police picked up the kids and then charged the mom with child neglect, because, again, in the middle of the day, they've walked across the street to the McDonald's.

So here, two young kids in the back of the police car, probably wondering what in the heck did they do wrong, and that's the first encounter they have with police. Again, we have to think long-term as well as about our rights. Is this the kind of message we need from our government?

**WOODS:** Now, as you say, you've been up and running for several years. You have ambitions to do a lot more than you're able to do now. It's a matter of limitations on resources. How many people do you have working for you? How many cases are you

taking? What can you tell us about the scope of your activity at this moment and where you'd like to be?

**DELUGAS:** Well, right now we're taking in calls and emails and help requests online every day, and we can't respond to all. In most cases — Well, we respond to all letting them know whether we're going to be able to assist or not. In many cases we provide some coaching or direction. We connect people with local counsel. In some cases we've paid for local counsel in their jurisdiction. We have as many as four or five people working part time or full time on our end.

But like the Institute for Justice, we'd like to get to where we have 50 or 100 lawyers and paralegals, and in our view, we'd like not to waste resources by overhead but instead allow lawyers to work virtually, because lawyers almost always, a majority of our work is at a computer or on the phone and rarely go to court. But when we do go to court, we can send in whoever is local so as to not have to incur the expenses. So we want to be very, very efficient in our use of resources. And what we do need is every parent to think about can they afford \$19 to support this effort.

And as we grow, we will end up using our collective power to bargain with companies for discounts on goods and services, such as hotel rooms, cars, theater tickets, whatever it may be. Pizza. But we need to grow to where we have some clout. And moreover, as we grow, we'll also establish a 501(c)4, which is necessary, because we want to lobby for legislation that is friendly to parents, that allows parents to make the decision.

I will tell you the most asked question we get is, "How old were the children?" And here's my response: is it the age of the child that really matters, or is it the physical, intellectual, emotional ability of the child to carry out the task or be in the situation, whether it's home alone, walking somewhere, playing outdoors. Because a 17-year-old perhaps with an intellectual or emotional or physical deficiency is far more at risk of being hurt than a vibrant 10-year-old who's your normal kid, or a 75-year-old with dementia.

So in a society where we constantly try to make shortcuts, because sometimes — especially in government they're all lazy, so they establish these rules. It's 12 years old. Well, what's magical about 12? Parents who have more than one child — and you have more than one child, Tom. What do you think? Without calling out any child in particular, I've been told by most parents — I have one child. He's ten. But most parents tell me who have two or more children that sometimes it's the middle child or the youngest child who exhibits the greatest ability to be responsible and trustworthy, where the older child might be the one they would be the most worried about.

So again, it's this age criteria that's being used when — as you put it, and we certainly do and the U.S. Supreme Court has said it too, let parents decide. They're the ones who are most familiar with their own child, and they're the ones that can decide the appropriate level of risk for their child. Because some parents won't want their kids playing tackle football, and that's their prerogative. And others will say, Go out and have fun. Some will say gymnastics is fine, and others will say that's too dangerous. So at what point are we going to quit allowing parents to make the right decisions for their child, even if we may disagree with them?

And that's the part about freedom that matters. We can all disagree about what is right for someone else's children, and then we can gossip about it. We can talk about it. We can shame them if we want, if we're of that caliber character. But what we don't want in a free society is to turn the police loose and CPS loose with the power of the state in a situation where children aren't hurt, they're not at risk of being hurt, but somebody just doesn't think that's right and they're imposing their view upon you, me, and others for our kids. That's where we really take, as you can probably tell by my voice — we take umbrage at that. We're offended by that, and guess what. We have the U.S. Supreme Court backing us up.

**WOODS:** Well, I'll tell you something. It seems like a very worthy thing that you're doing, and I'm basically in the process right now — I've got the website up, and I'm about to join myself. I'm going to do the five-year membership, because I like what you're doing, and a lot of times — I have a lot of people come on the show, they're doing great things, and I think a lot of people, including my myself, I listen to them and I say, Oh, isn't that nice what they're doing?, and then I go about my way. And I have to stop and say, Wait a minute, wait a minute. If I'm saying that in a free society we will voluntarily support good things, that starts with me. And it starts with your organization today, because I'm talking to you and I'm interested in what you're doing. So as of today, I will be officially a member of your association. ParentsUSA.org is the website. I'm really glad about what you're doing and that you were able to talk to us today. Thanks so much.

**DELUGAS:** Thank you, Tom. Very much appreciate your time and your interest.