Pennsylvania House Representatives
Committee on HB1140 with amendments
State Capitol
Harrisburg, PA

March 11, 2010

Dear Honorable Representatives:

The State of Pennsylvania tells us that they are doing what's best for our children, that they have the child's best interest in mind when making decisions regarding children and families. By allowing children to be deceived and lied to regarding who their biological father is the State is putting children at risk physically, emotionally, and relationally. Finding out the truth at the time of birth, before the alleged or presumed father's name goes on the birth certificate is in the best interest of the child. DNA testing should be mandatory for every child born in PA to make sure the child is connected to the actual biological father. Discovering the truth at the time of birth would prevent paternity fraud from happening and prevent children from being damaged because of it.

Not knowing who the father is at the time of birth will put the child at risk medically. Doctors and other health care workers use family medical history and family genetics (DNA) in making treatment decisions. Basing these decisions on a presumption or the word of the mother instead of basing them on the truth of paternity causes many of these decisions to be incorrect and can have costly consequences, even deadly consequences. The enclosed article "When your Child Isn't Yours" by Sasha Brown-Worsham, tells the story of a boy who died when a doctor administered an antibiotic to the boy after the father told him he has no medical history of allergic reaction to the antibiotic (see paragraph 5 and 6 of the story). After getting the shot of antibiotics the boy went into shock and died. Why? Because the Mother lied about whom the real father was. The biological father had a severe allergic reaction to the antibiotic. This death of an innocent child could have been prevented if mandatory DNA testing at birth would have been required. The medical reasons alone should compel you to make DNA testing at birth mandatory for all children born in PA. After all, the truth at the time of birth is in the best interest of the child.

It is nothing short of child abuse when a mother withholds the truth regarding who is or may be the biological father. The definition of child abuse from the PA child protective services law includes: "Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning". By withholding the truth about the medical history of the child they are denying adequate medical care which endangers the life and well being of the child.

Not knowing who the father is at the time of birth will put the child at risk emotionally. Knowing the truth at the time of birth about who the father is protects children from the emotional trauma of discovering they are living a lie. Letting a father/child relationship develop based on a lie or a presumption will be devastating to a child when they find out the truth years later. Read the quotes from the children in the New York Times Magazine article. L wished the truth would have been known at the time of birth so she would not have to go through this. These children are damaged because their Mother and/or biological Father deceived and lied to them. Again, prevention is the best medicine, finding out the truth at the time a birth prevents a child living a false reality only to find the truth out later.

Not knowing who the father is at the time of birth will put the child at risk relationally. Genetic connections matter, your heritage matters, it is part of who you are. To deny that to a child is

bad enough but to replace it with a lie for years can have devastating results. Have you seen the show Find my Family? These people are trying to find what they consider to be their family, even though they may have never met them. Why? Because there is a genetic connection and it matters to them, deeply. Once again, this can all be prevented with mandatory DNA testing at the time of birth so a child does not have to live a lie about who they are and what their heritage is.

Paternity Fraud cannot occur without dishonesty, deception, perjury, misrepresentation or a mistake of facts by the child's mother. The mother is the only party with 100% knowledge that she has or had more than one intimate partner during the window of conception then deliberately conceals this vital information from the alleged or presumed father.

In the state of Pennsylvania all types of fraud are a punishable crime - except paternity fraud. Not only is the State not punishing paternity fraud, but it is enabling and rewarding this crime. In fact, the state of Pennsylvania is the enforcer behind the fraud. With laws in place that require a false presumption to trump the known truth, the state legally forces a man to pay money to the lying mother who deceived him into believing he was the child's father. The state is extorting money from men who are victims of paternity fraud and giving that money to the perpetrator of the fraud. The state is requiring their judges to blind themselves from the truth. Judge David Wecht said so on Andy Sheehan's KDKA interview with him, "All may know the truth that science says, but the courts are required to blind themselves from the truth." How is it just that evidence cannot be submitted that clearly shows the truth how is it just that a presumption overrules the truth, and how is it just that the victim is punished instead of the perpetrator of the crime?

I encourage you to read Judge Wecht's opinion of the court on my case that was before him. Starting at the end of page 16 through page 24, Wecht criticizes the current paternity law that can result in unjust rulings and asks for the law to change so he can rule on the truth instead of a presumption.

Currently, the marriage license holds the husband accountable for every child the wife produces while they are married, whether he produced them or not. Under equal application of the law, should not the wife be accountable for every child the husband produces, whether she produced them or not? PA does not hold the wife accountable for children the husband produces outside of the marriage, but does hold the husband accountable for children the wife produces outside of the marriage. This is a violation of the Fourteenth Amendment to the US Constitution - equal protection under the law.

In the past, injustices could happen because the State was simply unable to be sure about the identity of the child's father. That excuse no longer exists, and there is no excuse for continued injustice.

The Association of American Blood Banks found that in the year 2001 men who were tested to establish paternity were not the father in 29% of the cases proven by DNA testing. Of the paternities established by DNA testing in the state of Pennsylvania for the year 2007, 52.7% of the men were excluded from being the father. In 2008 that number increased to 54.57% of men who were excluded from being the father. Many children are currently at risk because DNA testing was not used at birth to determine the truth regarding paternity. This does not have to be so for our future children. DNA testing at birth eliminates this risk.

Shouldn't people be held responsible and accountable for their actions? The man who caused the pregnancy should be held responsible and accountable for his children. The woman who withholds the truth should be accountable for her actions. Pennsylvania currently allows men

who impregnate a married woman to not be held responsible for their children and to impose that responsibility on the innocent husband. The woman who withholds the truth and deceives her husband and her child is not held accountable for her deception by the State of Pennsylvania. This fraud can be thwarted and discovered at the time of birth with mandatory DNA testing.

Initially, there are 3 victims of paternity fraud, the child, the deceived man, and the biological father. The presumption of paternity or the misstatement (lying) by the mother prevents the biological father from even knowing he has a child. Doesn't he have a right to know he is a father and to parent/raise/support his own child? DNA testing at birth would allow the truth to be known at this critical time.

The truth of paternity should never have time limits. I see you have a limit of 5 years after the birth of the child for the man to contest paternity on the original HB1140. So, you are saying as long as she can hide her secret for 5 years the state will reward her adultery. Waiting 5 years does not solve the problem. The presumption of paternity should be eliminated completely and the truth should be used to establish paternity. There is no need for time limits when you do DNA testing at the time of birth.

Thank you,

Mike Lautar

When Your Child Isn't Yours

I supported who I thought was my daughter for 11 years....I was a very involved parent.

Fathers' Rights: Courts Usually Rule Fathers Must Pay Child Support

A man who paid child support for 11 years is owed more than $14,000 after he discovered the child he was told was his, wasn't really. A Georgia judge ruled in the case earlier this year, saying that the child's birth mother and biological father have to repay the money he's been paying since 1997. "We have seen it happen before," Sandra Jarrett of the state's Child Support Recovery Unit told The Augusta, Ga., Chronicle.

But that wasn't the case for Dr. Enrique Terrazas, who for 12 years thought he had two daughters. He loved them both, bought them Christmas and birthday gifts and raised them as his own — until he found out that wasn't true. While his older daughter was his biological child, his younger child, just 10, was not. She was the product of an affair that his wife had just before filing for divorce when his youngest was a baby.

"I did suspect during our marriage that she was getting too friendly with one of her friends, but she told me nothing was happening and I thought she was being honest with me," Terrazas says. In other words, he trusted her. It was precisely that trust that has Terrazas in his current situation: paying $3,000 a month to a child he knows not to be is, but with whom he no longer has regular visitation.

The case has left Terrazas "devastated." And when he made the decision to tell his daughter that she was not his biological child, she was also distraught. "She needed to know," Terrazas explains.

As a medical doctor, he is well aware that the implications of genetics are far-reaching, he says telling the story of a 6-year-old boy who was on a fishing trip with the man he thought to be his father. When the boy snagged himself on a rusty fishing hook, the father brought his son to the hospital where he told the doctors that there was no history of antibiotic allergies in his family history. The boy went into anaphylactic shock and died.

Later, his ex-wife admitted that he was not the father and the real father had a severe antibiotic allergy. Luckily, nothing so tragic had happened to Terrazas, but still thought the truth needed to be told. "I had been giving her pediatrician the wrong family history *all this time," he says.*

Soon after he told the truth, Terrazas ceased contact with his non-biological daughter — a decision he regrets to this day. "I had this need to get some justice out of the situation," he says. "But basically, there was none. Now I just want to direct my energy to repairing the relationship with the girls and to improving the system."

As painful as Terrazas' situation is, he is far from alone. Recent cases like the Anna Nicole Smith, Larry Birkhead, Howard Stern situation have highlighted the issue of paternity fraud—naming the wrong man as father to *a child--and brought it into the media* spotlight. But the problem is not a new one. An estimated one million men in the United States alone have been in similar situations, according to Carnell Smith, who runs a DNA-testing company and is founder of Atlanta-based US Citizens Against Paternity Fraud (http://paternityfraud.com/).

Smith's own mission started when he found out the daughter he had been raising — and supporting — as his own, was not. "I supported who I thought was my daughter for 11 years. I went to her school functions. I was a very involved parent," Smith says. "My father told me that if I helped bring a child into this world, I was to help take care of them. I believed that."

But what if he did not help bring that child into the world? What if the biological father was far away, unaware that his daughter was being supported by another man? These were the questions Smith asked himself when he found out the truth via paternity test, something Smith was inspired to do after his ex requested — and was granted — a child support increase quadrupling his original amount from $375 per month to $1,100. "After I did the first test, I contacted my attorney," Smith says. "There was no way she couldn't have known the truth."

According to Smith, once pressed, his ex was able to name the biological father of her daughter within seconds. At first, Smith assumed his obligation of support would end. But he was wrong. "Had I been excused of murder or rape by DNA, the facts would have exonerated me," he says. "But in paternity, I still had to pay."

And pay he did. Even when he stopped visitation. Even when he took it to court. By this time, Smith and his new wife had a newborn daughter and the stress was causing his wife to "not eat or sleep," says Smith. "At that point, all I wanted to do was protect my family. It brought out this warrior spirit."

At the time, Smith, who advocates for paternity tests for all children at birth, was unable to end his support obligation because he had long since passed the statute of limitations to contest paternity, which varies by state. "If we did paternity tests at birth, we would know all the facts right away," says Smith, who explains that out of 45 accredited paternity testing sites nationwide, 310,000 paternity tests are done a year.

Each year 100,000 of those come back negative, Smith says. The American Association of Blood Banks supports that claim with a figure of 27 percent, but they also point out that figure is not directly related to paternity fraud cases and, in many cases, might indicate one child with several potential fathers who came in for testing. Still, the number is high. And there is a time limit to finding the truth once a father is named whether he has been tested or not, says Smith who claims he had no reason to suspect that his ex was anything but truthful.

Smith points out that a mother may file for child support up until a child is 18 or older and they are eligible for all of the back support for the years the father was not supporting the child, a fact that Smith says is an unfair double standard. He was furious that his ex could lie, name him and get away with it while he pays the price for trusting her. "She took advantage of my desire to do the right thing," he says.

Arthur Caplan, a professor of bioethics at the University of Pennsylvania would disagree with the men crying foul. "Out in the big bad world of sex, there is some conniving," Caplan says. "People do this all the time. They lie, they cheat, and they connive. But once you are in that role, the role of parent, you are sunk."

But, in this case, being "sunk" may not be the worst thing, Caplan says, arguing that acting as a father for years and thinking of oneself as the father makes one the father. "It brings us into the question of what is the role of the parent? Is it a social role or a biological one?"

The answer, in Caplan's opinion is clear: "I think the ethical thing to do is shut up and be the dad," he says. Caplan also points out that court is not interested in a he said, she said dialogue. They are interested in the child being supported. "From society's point of view, do we want to pick up the tab for these children?" Caplan asks. "It is not in the kid's — or society's — best interest to leave children fatherless."
Caplan's best estimate is that roughly four to five percent of men, "even as high as 10 percent in some parts of the world," are raising children that are not theirs, he says, citing numerous genetic studies. For him, the simple fact is that a father is the one raising the child, not necessarily the one whose DNA matches. But for Terrazas, that DNA was very important. And the loss and the pain that followed such deceptions hurts more people than just the alleged father and children. It also hurts their new families.

For Smith, activism helped. He was able to rewrite legislation in the Georgia courts so that finally — after several years — he was able to stop paying support, but not before losing more than $160,000 in support and legal fees. And perhaps worst of all, Smith has lost his former daughter completely. "I have not seen her since April 16, 2000," Smith says. "But my family and I love her and we are always open to her," he says.

Terrazas' relationships with both of the girls have been affected by the truth. His biological daughter feels caught in the middle, he says. And he is still paying 30 percent of his salary to the both girls, a fact that has greatly affected his new family. "He did go to court and try to get his support lowered," says Mia Terrazas, Dr. Terrazas' wife and the one who first pointed out that she suspected his younger daughter was not his.

But in California, an order of support is a formula, one that takes into account the earnings — and potential earnings — of each former spouse. They do not take into account biological children living with either parent, says Mia. And the couple would not be able to have biological children of their own because the child support payments would make them impossible to afford, she says.

"We need to have reform in family courts," says Mia who went through her own very amicable divorce. "We never went through the courts once our divorce was final." But seeing what her husband has gone through has made Mia fierce. "I have been doing a lot of work to get the laws changed. To lie to your child about who fathered them is wrong. And it should be illegal."

Sasha Brown-Worsham is a freelance writer in Boston, Mass. who has written for the Boston Globe, Christian Science Monitor, Technology Review, Babble.com and many other publications.

A	B	C	D	E	F
Federal fiscal year	Paternities established/acknowledged	Paternities Est by DNA Testing	DNA Confirmed	DNA Excluded	% Excluded
Sep-06	53,247	4,037	3,454	583	14.44%
Sep-07	57,323	4,061	1,921	2,140	52.70%
Sep-08	57,561	4,077	1,852	2,225	54.57%
Total	168,131	12,175	7,227	4,948	40.64%

Notes:
Columns A, B, C, D, E are numbers given by the State of PA under the right to know law.
Column F shows the percentage of those DNA tested who were not the father

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
P.O. BOX 2675
HARRISBURG, PENNSYLVANIA 17105-2675

RIGHT TO KNOW LAW OFFICE

(717) 787-3423
FAX (717) 772-2460

May 11, 2009

Mr. and Mrs. Mike Lautar
2044 Majestic Drive
Canonsburg, Pennsylvania 15317

RE: Right To Know Law Request No. 09-RTKL-135

Dear Mr. and Mrs. Lautar:

This letter acknowledges receipt by the Department of Public Welfare (DPW) of your written request for records under the Pennsylvania Right To Know Law (RTKL). Your request was received by this office on May 4, 2009.

You requested data on genetic/paternity testing. Enclosed is the information you requested.

The Department charges a copying fee under the RTKL. If the charge is less than $10.00 the fee is waived. No payment is due for this request.

Respectfully,

Kathi Bryan
Right To Know Law Official

Enclosure

FEDERAL FISCAL YEAR	PATERNITIES ESTABLISHED / ACKNOWLEDGED	PATERNITIES ESTABLISHED BY DNA TESTING	DNA CONFIRMED	DNA EXCLUDED
September 2008	57,561	4,077	1,852	2225
September 2007	57,323	4,061	1,921	2140
September 2006	53,247	4,037	3,454	583

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
AGENCY OPEN RECORDS OFFICE
HARRISBURG, PA 17120

05-12-09

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MR AND MR MIKE LAUTAR
2044 MAJESTIC DR
CANONSBURG PA 15317

C-GYS5i 15317

From Carnell Smith, Pfv

A just paternity fraud bill:

1. Does not have best interest of the child as a deciding factor for releasing a paternity fraud victim.
2. Does not have a time limit for releasing victims of fraud, mistake of fact or duress.
3. Releases victims of paternity fraud victim regardless of marital status.
4. Provides a statutory mechanism for mandatory and discretionary relief that frees males falsely accused of paternity.
5. Acknowledges a man's right to not be exploited by the court, the child's mother nor state agency by forcing him to support another man's child without his formal adoption of the child.
6. Acknowledges the fact that pregnancy by a man other than her husband can be proof of her adultery when naturally inseminated.
7. Provides a statutory means to obtain a legal DNA paternity test for the male affected. Ie, Test the boyfriend and the husband simultaneously
8. Provides a statutory correction of the child's birth certificate to remove the paternity fraud victim's name when he is released.
9. Provides a statutory release of all arrears, current and future payments of child support when paternity fraud victim is released.
10. PROVIDES IMMEDIATE REVERSAL OF SUPPORT ORDERS once test results prove negative. This reversal is to include the expunging of misleading and falsely produced documentation such as birth certificates naming the wrong person and support orders. Also, all funds should be reimbursed by whichever entity collected said funds, retro to the day of collection, plus 5% interest.
11. Provides a requirement that the courts file Criminal charges of fraud and extortion If test results prove the Man had been duped due to the fraudulent statements of the mother, the option of filing criminal charges against the perpetrator should be handled immediately upon attendance of the mother to the civil proceedings. This should include the charge of perjury during the initial proceedings where lies were first told to have the duped man listed on the birth certificate as the Father when the Mother knew he may not be and did not speak up.
12. Best interest of the child should mandate the child's mother to accurately name the male that caused her pregnancy **under oath.**
13. Mandatory paternity test to accurately list the biological father before placing man's name on the birth certificate
14. Provides a statutory requirement that the child's mother or legal guardian immediately file a child support action against the biological father when paternity fraud victim is released.

AMENDMENTS TO HOUSE BILL NO. 1140

Sponsor:

Printer's No. 1352

Amend Bill, page 1, by inserting between lines 3 and 4

The General Assembly hereby finds and declares as follows:

(1) A person should not be forced to support another person's child.

(2) Proof of adultery by a woman is established if the woman, through natural insemination, bears a child fathered by a man other than her husband.

(3) A parent should be required to accurately name the other parent of a child.

(4) Persons incorrectly determined to be the parent of a child should be released from support obligations immediately notwithstanding when the determination is corrected or the marital status of the person.

Amend Bill, page 1, lines 6 through 18; page 2, lines 1 through 30; page 3, lines 1 through 28, by striking out all of said lines on said pages and inserting

Section 1. Section 5104 heading, (a), (b), (c) and (d) of Title 23 of the Pennsylvania Consolidated Statutes are amended and the section is amended by adding a subsection to read:

§ 5104. [Blood tests] Tests to determine paternity.

(a) [Short title of section.--This section shall be known and may be cited as the Uniform Act on Blood Tests to Determine Paternity.] Testing.--A test to determine paternity shall be conducted in accordance with this section. The test shall be conducted upon blood, deoxyribonucleic acid (DNA) or both. Notwithstanding any other provision of law, the best interest of the child shall not be a factor in determining paternity.

(b) Scope of section.--

(1) Civil matters.--This section shall apply to all civil matters.

(2) Criminal proceedings.--This section shall apply to all criminal proceedings subject to the following limitations and provisions:

(i) An order for the tests shall be made only upon application of a party or on the initiative of the court.

(ii) The compensation of the experts shall be paid

by the party requesting the [blood test] tests or by the county, as the court shall direct.

(iii) The court may direct a verdict of acquittal upon the conclusions of all the experts under subsection (f). Otherwise, the case shall be submitted for determination upon all the evidence.

(iv) The refusal of a defendant to submit to the tests may not be used in evidence against the defendant.

(c) Authority for test.--In any matter subject to this section in which paternity, parentage or identity of a child is a relevant fact, the court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood or DNA is involved, may or, upon motion of any party to the action [made at a time so as not to delay the proceedings unduly], shall order the mother, child and alleged father to submit to blood tests and DNA tests. If any party refuses to submit to the tests, the court may resolve the question of paternity, parentage or identity of a child against the party or enforce its order if the rights of others and the interests of justice so require.

(d) Selection of experts.--The tests shall be made by experts qualified as examiners of blood types or DNA identification, who shall be appointed by the court. The experts shall be called by the court as witnesses to testify to their findings and shall be subject to cross-examination by the parties. Any party or person at whose suggestion the tests have been ordered may demand that other experts qualified as examiners of blood types or DNA identification perform independent tests under order of court, the results of which may be offered in evidence. The number and qualifications of experts shall be determined by the court.

* * *

(h) Incorrect determination.--The following shall apply if a person has been incorrectly determined to be the parent of a child:

(1) Any support order against the person shall be immediately reversed and any payments owed or in arrears shall be nullified. All payments made by the person shall be refunded by the agency that collected the funds plus 5% interest.

(2) The person's name shall be removed from the child's birth certificate by the Department of Health.

(3) The child's parent or legal guardian shall file a support proceeding against the biological parent.

(4) Criminal charges shall be filed against any parent that made false statements in order to secure child support.

Section 2. This act shall take effect in 60 days.

PRINTER'S NO. 1352

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1140 Session of 2009

INTRODUCED BY SOLOBAY, HORNAMAN, KORTZ, KOTIK, LEVDANSKY, MAHONEY, MILLARD, MOUL, MURT, READSHAW, K. SMITH, WHEATLEY, WHITE AND YOUNGBLOOD, MARCH 27, 2009

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 27, 2009

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for determination of paternity.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5104 heading, (a), (b), (c), (d) and (g) of Title 23 of the Pennsylvania Consolidated Statutes are amended to read:

§ 5104. [Blood tests] Tests to determine paternity.

(a) [Short title of section.--This section shall be known and may be cited as the Uniform Act on Blood Tests to Determine Paternity.] Testing.--A test to determine paternity shall be conducted in accordance with this section. The test shall be conducted upon blood, deoxyribonucleic acid (DNA) or both.

(b) Scope of section.--

(1) Civil matters.--This section shall apply to all civil matters.

(2) Criminal proceedings.--This section shall apply to

all criminal proceedings subject to the following limitations and provisions:

(i) An order for the tests shall be made only upon application of a party or on the initiative of the court.

(ii) The compensation of the experts shall be paid by the party requesting the [blood test] tests or by the county, as the court shall direct.

(iii) The court may direct a verdict of acquittal upon the conclusions of all the experts under subsection (f). Otherwise, the case shall be submitted for determination upon all the evidence.

(iv) The refusal of a defendant to submit to the tests may not be used in evidence against the defendant.

(c) Authority for test.--In any matter subject to this section in which paternity, parentage or identity of a child is a relevant fact, the court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood or DNA is involved, may or, upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child and alleged father to submit to blood tests, DNA tests or both. If any party refuses to submit to the tests, the court may resolve the question of paternity, parentage or identity of a child against the party or enforce its order if the rights of others and the interests of justice so require.

(d) Selection of experts.--The tests shall be made by experts qualified as examiners of blood types or DNA identification, who shall be appointed by the court. The experts shall be called by the court as witnesses to testify to their findings and shall be subject to cross-examination by the parties. Any party or person at whose suggestion the tests have

been ordered may demand that other experts qualified as examiners of blood types or DNA identification perform independent tests under order of court, the results of which may be offered in evidence. The number and qualifications of experts shall be determined by the court.

* * *

(g) Effect on presumption of [legitimacy] paternity.--The presumption of [legitimacy] paternity of a child born during wedlock as heretofore recognized in this Commonwealth is reaffirmed and made subject to the following provisions:

(1) Upon petition for testing in an action in which paternity of the child is an issue filed no later than five years after the child's birth, the court shall permit testing to rebut the presumption of paternity, provided that the overall interests of justice, including the best interests of the child, would not be unreasonably harmed and:

(i) the parties subject to the presumption are divorced or irreconcilably separated and one or both assert reasonable grounds to believe that application of the presumption is likely to result in an incorrect paternity determination; or

(ii) the parties subject to the presumption mutually agree to submit to and be bound by the testing.

(2) The presumption of paternity is overcome if the court finds that the conclusions of all the experts as disclosed by the evidence based upon the tests show that the husband is not the father of the child.

Section 2. This act shall take effect in 60 days.

ANNUAL REPORT SUMMARY FOR TESTING IN 2003
Prepared by the Parentage Testing Standards Program Unit
October 2004

PREFACE

This year marks the 20th anniversary of the AABB parentage laboratory accreditation program. At a joint conference of the AMA/ABA in 1977, the need for accreditation was recognized. AABB assumed the role of accreditation organization of parentage laboratories as the same testing technology used in the blood bank was also used in parentage testing. Over the past twenty years, paternity tests have moved towards different technologies. With AABB's expanded mission into the area of cellular therapies, the testing used to evaluate the success of some cellular therapies is the same as that used in parentage testing, renewing the alliance of technologies. This year's annual report for 2003 continues the past precedent of providing basic summary statistics for testing that took place in the previous year.

AABB sent surveys to 60 organizations that indicated they performed parentage testing and 44 (73%) laboratories returned the surveys. Although these surveys were mostly from accredited laboratories in the United States, several of the laboratories were from Canada and Europe. Many of the laboratories reported testing a broad range of cases, including relationship tests for routine parentage testing, immigration, prenatal evaluations, and post-mortem evaluations.

In this report, AABB provides some commentary regarding misconceptions relating to the significance of the survey results. Some of the commentary from last year is included in this year's report, as the commentary remains relevant to issues raised this year.

The Parentage Testing Standards Program Unit would also like to remind readers that shortly after publication of each edition of *Standards for Parentage Testing Laboratories,* the AABB publishes a guidance document that discusses the *Standards* in some detail. The *Guidance for Standards for Parentage Testing Laboratories* provides suggestions on how to comply with the standards and contains explanations of the standards; various calculations used, and addresses other issues in parentage testing.

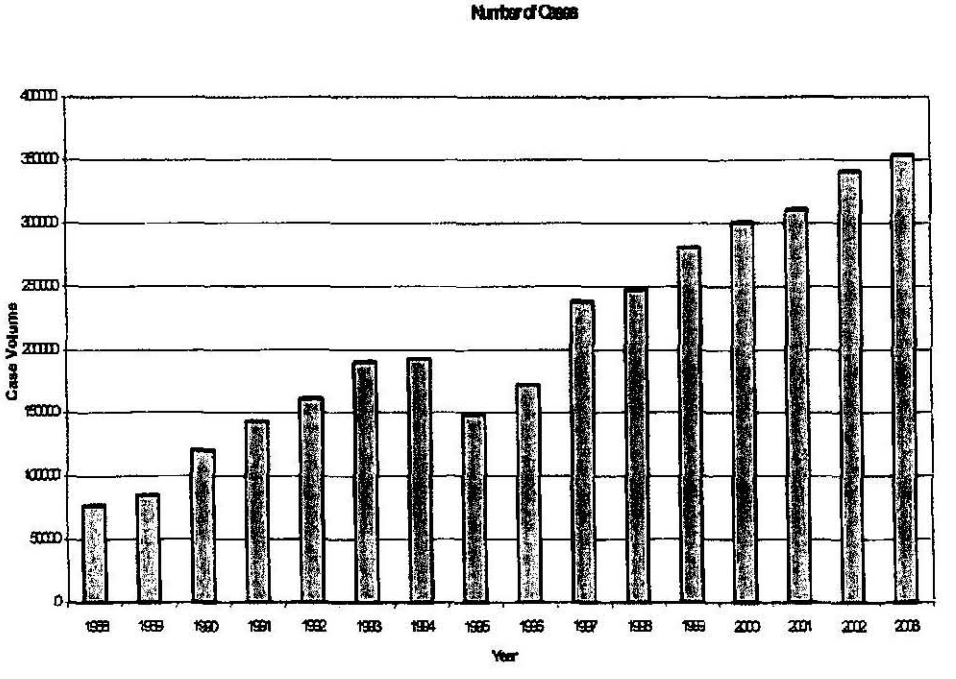
ANNUAL VOLUME OF TESTING

The volume reported for cases tested in 2003 was 354,011, a 3.9% increase over the 2002 reported volume and an approximately 700% increase since 1984. Based on these case numbers, approximately 991,000 persons were tested in 2003. A summary of the totals of all years since 1988 is shown in Table 1 and Figure 1.

Table 1. The Number of Parentage Cases Reported for 1988-2003.

Year	No. of Cases	Year	No. of Cases
1988	77000	1996	172316
1989	85231	1997	237981
1990	120436	1998	247317
1991	143459	1999	280510
1992	161000	2000	300626
1993	189904	2001	310490
1994	193000	2002	340798
1995	149100	2003	354011

Figure 1. Graph of the Case Volume for 1988-2003.



The totals include data from parentage laboratories worldwide. A total of 44 laboratories responded to the survey, six more than last year.

LABORATORIES BY SIZE

Table 2 indicates the size of the various responding laboratories by volume of cases reported. Note that this breakdown is by each laboratory, but a single entity may own several laboratories. The size distribution remains about the same as the distribution seen in the last several years.

Table 2. Laboratories by the Volume of Cases Reported.

Case Volumes	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
1-500	40	26	25	20	19	19	13	17	14	18
501-1,000	6	4	8	7	6	5	6	6	2	3
1,001-5,000	7	9	6	10	11	9	11	11	13	11
5,001-10,000	6	4	3	5	0	3	3	5	1	3
10,001-50,000	1	2	3	5	5	7	8	6	7	7
50,001 – 100,000	2	1	1	1	2	1	1	1	0	0
>100,000	0	0	0	0	0	0	0	0	1	1
Total Laboratories	62	46	46	48	43	44	42	46	38	43*

*one of the 44 participants did not respond to this request

EXCLUSION RATE

For the laboratories tracking exclusions, there were 353,387 cases completed and 99,174 (28.06%) were reported as exclusions. One of the 44 responding laboratories did not track the number of exclusions. The average exclusion rate for the laboratories reporting exclusions is 27.40% with a standard deviation of 6.01. The median exclusion rate is 27.98% with a range of 11.94% to 41.18% (two laboratories reported completing three cases, with two exclusion cases (66.67%) but because of the small sample size, they were not included in these statistics). The explanation for the range of exclusion rates is complex but appears to be related to the laboratory's client base. Anecdotal explanations for the various exclusion rates include differences with the type of case (private verses public contracts) and the geographic source of the case (rural versus metropolitan areas).

MISCONCEPTIONS IN PARENTAGE TESTING

It is important to understand the significance of the exclusion rate, especially since the statistic has been misinterpreted in the past. For example, several organizations have used the exclusion rate to suggest improperly that 30% of men are misled into believing they are biological fathers of children. This suggestion is incorrect. The exclusion rate includes a number of factors. One is that the men are alleged to be fathers. This is important as a woman may allege several men as possible fathers

because she was sexually active with these individuals. These are not men who were misled into believing they were fathers and then later discovered they are not. The testing merely sorts out which man is the biological father so presumably that man can assume his parental role. Another factor is that sometimes men are accused and tested because a man who is not excluded is alleging that the mother had multiple sexual partners as part of his defense. Sometimes a man is required to be tested because of a legal presumption, that is, when the mother properly names the correct father but because she is (was) married to someone else, there is a legal presumption that the husband is the father. The husband is then tested to rebut the legal presumption, not because he was misled into believing he is the biological father of the child.

COMBINED PATERNITY INDEX

The laboratories surveyed were asked to indicate what combined paternity index (CPI) they considered acceptable for cases with a standard trio (mother, child, father), mother (or father) not tested cases, and reconstruction cases (cases where the disputed parent is missing and other relatives are used to evaluate parentage). Some laboratories reported using different CPIs for different classes of clients (private verses public contracts, or for different technologies). For these laboratories the higher CPI was used for this report.

The results for the laboratories that responded are shown in Table 3. The most common minimum CPI for a standard trio is 100 with 26 out of 44 (59%) laboratories using this value, with a range of 100 to 10,000. For mother not tested cases the most common minimum CPI is 100 with 30 of 44 (68%) laboratories using this value, with a range of 100 to 10,000. A couple of laboratories indicated that for these cases they used "whatever was obtained." One laboratory qualified this by saying that the CPI was whatever was obtained after evaluating 18 loci. For the family study or reconstruction cases, the majority of laboratories (66%) indicated that they report, "Whatever was obtained."

A common issue is the significance of the paternity index and the reliability of the AABB standard requiring a CPI of 100 to 1. First and foremost, this level was chosen because it provides reasonable evidence of paternity in a standard case where a trio is tested. Generally, when a laboratory tests a case, if the disputed person is not excluded and does not reach the laboratory's minimum value, additional testing is performed. This additional testing may result in non-exclusion, exclusion, or inconclusive findings.

ANNUAL REPORT SUMMARY FOR TESTING IN 2002
Prepared by the Parentage Testing Program Unit
November 2003

PREFACE

This year's annual report continues the past precedent of providing basic summary statistics for testing that took place in the previous year, in this case, 2002. The emphasis of the survey questions this year, however. was on apparent mutations and null alleles. Laboratories were asked how they incorporated mutations into the final report and how they handled situations in which there were two or three inconsistencies. As in the past mutations observed for 2002 are provided in table form.

In this report AABB provides some commentary on commonly asked questions. The Parentage Testing Standards Program Unit would also like to remind readers that shortly after publication of each edition of *Standards for Parentage Testing Laboratories,* the AABB publishes a guidance document that discusses the *Standards* in some detail. The *Guidance for Standards for Parentage Testing Laboratories* provides suggestions on how to comply with the standards and contains explanations of the various calculations used, and addresses other issues in parentage testing.

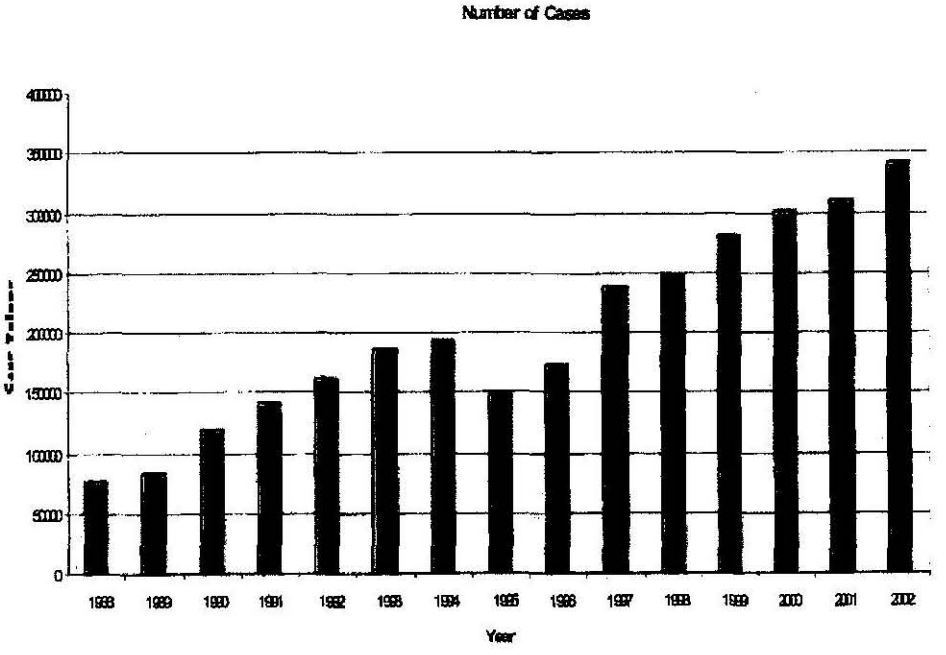
ANNUAL VOLUME OF TESTING

The volume reported for cases tested in 2002 was 340,798, an increase of about 10% over the previous year's volume. A summary of the totals of all years since 1988 is shown in Table 1 and Figure 1.

Table 1. The Number of Parentage Cases Reported for 1988-2002.

Year	No. of Cases	Year	No. of Cases
1988	77000	1996	172316
1989	83000	1997	237981
1990	120000	1998	247317
1991	142000	1999	280510
1992	161000	2000	300626
1993	187000	2001	310490
1994	193000	2002	340798
1995	149100		

Figure 1. Graph of the Case Volume for 1988-2002.



The totals include data from AABB-accredited laboratories in the United States and worldwide as well as data from one non-AABB-accredited laboratory outside the United States. A total of 38 laboratories responded to the survey.

LABORATORIES BY SIZE

Table 2 indicates the size of the various responding laboratories by volume of cases reported. Note that this breakdown is by each laboratory, but a single corporation may own several laboratories.

Table 2. Laboratories by the Volume of Cases Reported.

Case Volumes	1994	1995	1996	1997	1998	1999	2000	2001	2002
1-500	40	26	25	20	19	19	13	17	14
501-1,000	6	4	8	7	6	5	6	6	2
1,001-5,000	7	9	6	10	11	9	11	11	13
5,001-10,000	6	4	3	5	0	3	3	5	1
10,001-50,000	1	2	3	5	5	7	8	6	7
50,001 – 100,000	2	1	1	1	2	1	1	1	0
>100,000	0	0	0	0	0	0	0	0	1
Total Laboratories	62	46	46	48	43	44	42	46	38

EXCLUSION RATE

Of 340,798 cases reported, 97,681 (28.70%) were reported as exclusions. The average exclusion rate for the laboratories is 27.12% with a standard deviation of 7.80. The median exclusion rate is 28.12% with a range of 3.70% to 48.10%. The explanation for the range of exclusion rates is complex but appears to be related to the laboratory's client base. Anecdotal explanations for the various exclusion rates include differences with the type of case (private vs public contracts), and the source of the case (rural versus metropolitan areas). Neither the testing method nor the minimum acceptable combined paternity index level used by the laboratory accounts for the range of exclusion rates.

COMBINED PATERNITY INDEX

The laboratories were asked to indicate what combined paternity index (CPI) they considered acceptable for cases with a standard trio (mother, child, father), mother not tested (MNT) cases, and reconstruction cases (cases where the disputed parent is missing and other relatives are used to evaluate parentage). Some laboratories reported using different CPIs for different classes of clients (private vs public contracts). For these laboratories the higher CPI was used for this report.

The results for the laboratories that responded are shown in Table 3. The most common minimum CPI for a standard trio is 100 with 20 out of 35 (57%) laboratories using this value, with a range of 100 to 10,000. For mother not tested cases the most common minimum CPI for standard trio is 100 with 23 of 34 (68%) laboratories using this value, with a range of 100 to 10,000. A number of laboratories indicated that for these cases they used "whatever was obtained." It is interesting to note that one of the two laboratories using a CPI of 10,000 for trio cases dropped their minimum to 10 for MNT cases. For the family study or reconstruction cases, the majority of laboratories indicated that they report "whatever was obtained."

A common issue is the significance of the paternity index and the reliability of the AABB standard requiring a CPI of 100 to 1. First and foremost, this level was chosen because it provides reasonable evidence of paternity in a standard case where a trio is tested. Generally, when a laboratory tests a case, if the disputed person is not excluded and does not reach the laboratory's minimum value, additional testing is performed to evaluate this person. This additional testing may result in non-exclusion, exclusion, or inconclusive reports.

American Association of
Blood Banks

ANNUAL REPORT SUMMARY FOR TESTING IN 2001

Prepared by the Parentage Testing Program Unit
October 2002

PREFACE

This year's annual report continues the past precedent of providing basic summary statistics for testing that took place in the previous year, 2001. The emphasis of the survey questions this year, however, was on apparent mutations and null alleles. This included asking how laboratories were incorporating mutations into the final report and how laboratories were handling situations were there were two or three inconsistencies. As in the past mutations observed for 2001 are provided in table form.

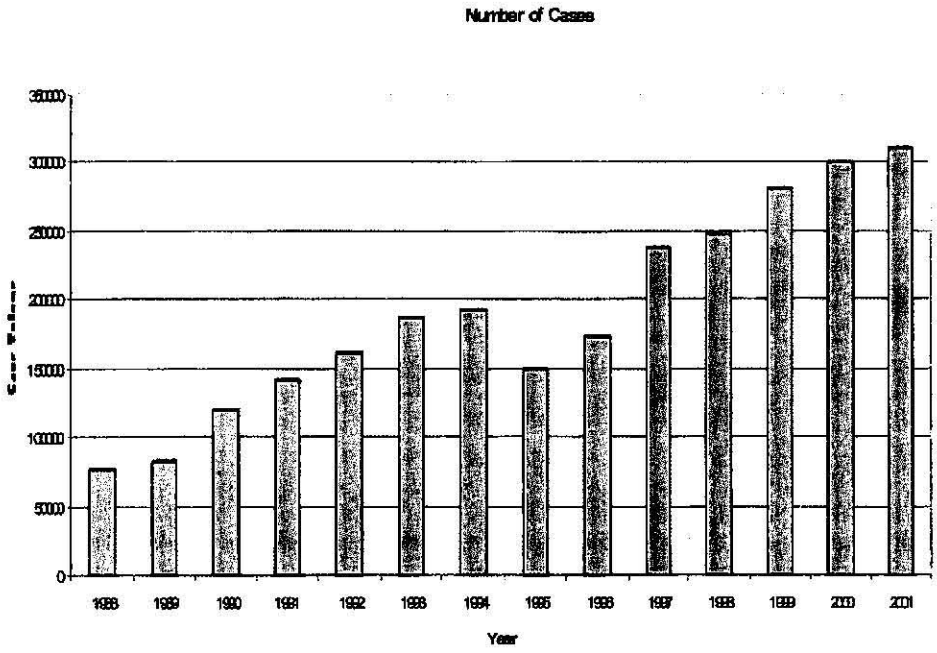
ANNUAL VOLUME OF TESTING

2001 saw another increase in the number of relatedness cases reported. The volume reported was 310,490, an increase of about 3% over last year's volume. A summary of the totals of all years since 1988 is shown in Table 1.

Table 1. The number of parentage cases reported for various years.

Year	No. of Cases
1988	77000
1989	83000
1990	120000
1991	142000
1992	161000
1993	187000
1994	193000
1995	149100
1996	172316
1997	237981
1998	247317
1999	280510
2000	300626
2001	310490

Figure 1. Graph of the case volume for various years.



The data includes totals for the first AABB accredited European laboratory as well as data from one other European laboratory. A total of 46 laboratories responded to the survey. Approximately 79 requests for information were made, with 46 (58%) laboratories responding. Some of the laboratories had closed.

Table 2. Laboratories by the volume of cases reported.

Case Volumes	1994	1995	1996	1997	1998	1999	2000	2001
1-500	40	26	25	20	19	19	13	17
501-1000	6	4	8	7	6	5	6	6
1001-5000	7	9	6	10	11	9	11	11
5001-10000	6	4	3	5	0	3	3	5
10001-50000	1	2	3	5	5	7	8	6
>50001	2	1	1	1	2	1	1	1
Total Laboratories	62	46	46	48	43	44	42	46

Of the cases reported 90,227 were reported as exclusions or a rate of 29.06% exclusions. The average exclusion rate for the laboratories is 28.10% with a standard deviation of 7.17. The median exclusion rate is 29.25% and the mode is 27.87% with a range of 11.03 – 40.86%.

COMBINED PATERNITY INDEX

This year the laboratories were asked to indicate what combined paternity index (CPI) they considered acceptable for cases with a standard trio (mother, child, father), mother not tested, and for reconstruction cases. Some laboratories reported using different CPIs for different classes of clients (private versus public contracts). For these laboratories the higher CPI was used for this report. The results are shown in Table 3. The most common minimum PI for standard trios is 100 with 30 laboratories out of 46 (65.22%) using this value, with a range of 100 to 10,000. With MNT cases the lowest accepted CPI dropped to 50 and for reconstruction cases the lowest CPI reported was 10, with a number of laboratories indicating that for these cases they used "whatever was obtained".

Table 3. The number of laboratories using various combined paternity indices for standard trios, mother not tested (MNT) and reconstruction cases (Note that not all laboratories indicated a CPI for each type of case).

	Type of Case		
CPI	Trio	MNT	Reconstruction
10	0	0	2
50	0	1	1
60	0	1	0
100	30	30	18
101	0	1	0
150	2	2	2
200	1	2	1
300	1	0	0
500	2	1	0
1000	3	2	1
1001	1	0	0
2500	1	1	1
10000	2	1	0

TECHNOLOGY USE

The type of technology used continues to show the trend towards the increased use of PCR technology with a decrease in the use of RFLP methods. PCR STR technology was used in 83.34% of reported cases while RFLP analysis was used in 16.00% of reported cases. All other technologies were used in about 0.66% of reported cases. Table 4 provides a breakdown

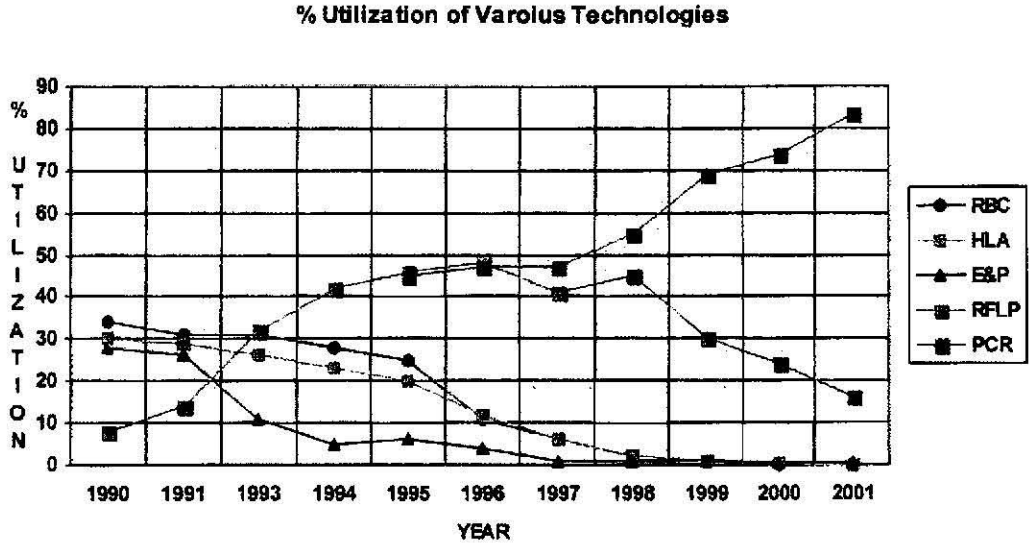
of the technology used to resolve the reported paternity cases. Note that in some cases more than one technology was used so the sum of the number of cases is greater than the numbers given in the volume section above. The question was also asked if the laboratory is using HLA molecular methods what is the source of the frequencies. A number of laboratories that reported not using HLA molecular methods indicated that if they did use these methods they would not use serological tables, while all the laboratories actually using HLA molecular methods reported using serological tables for calculating Class I molecular results. No laboratories reported using SNP technology and a few laboratories are using Y Chromosome analysis in their testing programs.

Table 4. The technology used and number of relationship cases reported in 2001 (in some cases more than one technology was used).

Technology	Number of Cases	Utilization (%)
Red Cell Antigens	5	0.002
HLA Serology	2	0.001
HLA Class I Molecular	83	0.026
HLA Class II Molecular	326	0.104
Red Cell Enzymes/Serum Proteins	924	0.294
Allotyping	735	0.233
RFLP	50360	15.998
STR	262344	83.338
SNP	0	0
Y Chromosome	28	0.009
Total of All Technologies	314797	

*Note that some cases used more than one technology therefore this total is higher than the total number of cases reported.

Figure 2 shows the utilization of various technologies since 1990. As indicated above the most commonly used technologies in 1990 (red cell antigens, HLA and red enzymes and serum proteins) now account for less than 1% of all casework. The change in DNA technologies from RFLP to PCR technology is obvious, however prior to 1995 the use of PCR was not tracked in the Annual Reports. Note that in some cases multiple technologies were used in the same case.



SAMPLE SOURCE

There were a total of 741,271 samples used for the casework in 2001. Of these, buccal swabs account for 649,375 (87.60%). The other samples used included 89,503 (12.07%) whole blood samples, 2,238 (0.30%) blood spot cards, and 155 (0.02%) other samples which include various tissues, bone, amniotic fluid, hair and undefined samples.

PROBABILITY OF EXCLUSION

Another new question on this Annual Report was a request for the probability of exclusion for each locus used. A number of laboratories did not respond to this request. The exact reason for not reporting this is not known however a number of laboratories indicate that the PE was "not tracked". This is disturbing as the PE for STR can be calculated from the frequency data or from the heterozygosity of the population data used to obtain the frequencies. This subject will be further addressed in future additions of the guidance document for the parentage testing standards. The original intent was to break this data apart by the source of the frequency tables used in the laboratory, however because some loci were used by only one laboratory and in other cases it was unclear what was the source of the frequency table all the data was pooled. The source of the frequency tables included ABI, Promega, in house, Orchid (LifeCodes), Reliagene and others.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

STEPHANIE ARLENE LAUTAR,

Plaintiff,

v.

MICHAEL DAVID LAUTAR,

Defendant,

No. FD 03-3523-003

Superior Court Docket # 816 WDA 2008

OPINION OF THE COURT

DAVID N. WECHT, JUDGE
Court of Common Pleas

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

STEPHANIE ARLENE LAUTAR, Plaintiff, v. MICHAEL DAVID LAUTAR, Defendant.	No. FD 03-3523-003 Superior Court Docket # 816 WDA 2008

OPINION OF THE COURT

WECHT, J. June 23, 2008

This appeal, which concerns the law of paternity, arises from this Court's Order of April 8, 2008. That Order dismissed Defendant Michael David Lautar ["Father"]'s Exceptions to the Recommendations of Hearing Officer Pamela Abdalla, Esquire and granted Plaintiff Stephanie Arlene Lautar ["Mother"]'s Cross-Exceptions. In accordance with Pa. R.A.P. 1925, this Opinion sets forth the Court's reasons for the April 8 Order.

Background and Procedural History

Mother and Father married on September 24, 1994. (T. at 15, 16.) One child, Alexis [d.o.b. 5/2/98], was born during the marriage. (T. at 15.)

In 2000, Father learned that Mother had an affair during the marriage, and questioned whether he was the biological father of Alexis. (T. at 7.) In February 2003,

the parties engaged in private genetic testing. (T. at 7, 8.) While the result is known, it was not admitted during any court proceeding. On March 18, 2003, Mother and Father separated. (T. at 15, 16.)

On June 10, 2003, Father and Mother entered into a consent support order for Alexis. (T. at 17.) On September 10, 2003, a modified support order issued by consent. (T. at 17.) On June 3, 2005, a divorce decree issued. Father exercises partial custody of Alexis pursuant to a July 29, 2005 consent custody order. (T. at 24.)

On July 25, 2007, after learning that Mother had married Robert Wiedner ["Wiedner"], the man with whom she had engaged in the extramarital affair, Father presented a Petition for Termination of Support. Father asserted a belief that Wiedner was the biological father. On September 18, 2007, Father also filed a request for a support modification. That request was consolidated for hearing with Father's termination request. On October 4, 2007, Father filed a "Motion for Joinder of Party to Custody Action." Although the pleading references the parties' custody action, it sought in fact to join Wiedner as a party in the support action. (T. at 3.) The joinder motion was consolidated for hearing with the Petition for Termination of Support and the modification request. On October 19, 2007, the consolidated hearing on Father's petitions proceeded. On November 21, 2007, Hearing Officer Abdalla issued her recommendations.

The hearing officer recommended that the Petition for Termination of Support be denied, that the child support obligation be recalculated pursuant to the request for modification, and that the Motion for Joinder be granted. On December 11, 2007, Father filed Exceptions to the hearing officer's Recommendations. Mother filed Cross-

Exceptions. On March 28, 2008, this Court heard argument on the Exceptions and Cross-Exceptions. On April 8, 2008, this Court issued its Order dismissing the Exceptions and granting the Cross-Exceptions.

On May 7, 2008, Father filed his Notice of Appeal. On May 9, 2008, this Court issued an Order directing Father to file a concise statement of matters complained of in the appeal pursuant to Pa.R.A.P. 1925(b). Father timely complied, filing his 1925(b) statement on May 29, 2008.

Issues Raised on Appeal

In his 1925(b) Statement, Father claims the following errors:

1. The trial court erred when it incorrectly estopped the defendant from denying paternity, where the child lives in an intact family unit with her mother and her biological father, where the defendant is not the biological father of the child, and where mother's misrepresentations and fraudulent conduct induced defendant into supporting the child for over three years.

2. The trial court also erred in refusing to join the biological father as a party, thereby holding the biological father accountable for his duty to support the child, where the biological father lives in an intact family unit with his child, and where the biological father clearly demonstrated parental involvement well beyond merely being the biological father. This is in direct conflict with the Superior Court opinion of Jacob v. Schultz-Jacob, 923 A.2d 473 (Pa. Super. 2007), where the Court held a sperm donor financially obligated to support children in whose lives he is involved. The trial court is also in direct conflict with the Superior Court opinion of L.S.K. v. H.A.N., 813 A.2d 872 (Pa. Super. 2002), where the court held that biological parents who have exercised the rights appurtenant to that status can be no less bound.

Discussion and Analysis

The Superior Court reviews paternity decisions in a support action under an abuse of discretion standard. Rodgers v. Woodin, 672 A.2d 814, 816 (Pa. Super. 1996). The trial court's ruling will stand absent a misapplication of law or a "manifestly unreasonable exercise of judgment." Id.

Pennsylvania trial courts have long been governed by what our Supreme Court labeled the "two great fictions of the law of paternity": the presumption of paternity and the doctrine of paternity by estoppel. Brinkley v. King, 701 A.2d 176, 180 (Pa. 1997). In recent years, some appellate judges have begun to chip (though not to hammer) away at these bedrock principles of paternity law. A review of Pennsylvania's current decisional law is appropriate before turning to the specific facts of the instant case.

The presumption of paternity holds that a child born or conceived during a marriage is presumed to be the child of that marriage unless there is clear and convincing evidence that the husband did not have access to the wife or that he was physically incapable of procreation. Brinkley, 701 A.2d at 179. The Brinkley court identified the preservation of marriage as the policy underlying this presumption of paternity. Id. at 181. Our Supreme Court instructed that the presumption should apply only in those cases where it would advance the policy of preserving marriage. Id. Hence, the applicability of the presumption of paternity often turns on the issue of whether the marriage is "intact." Vargo v. Schwartz, 940 A.2d 459, 466-67 (Pa. Super. 2007).

If the presumption of paternity does not apply or has been rebutted, the trial court must consider the doctrine of paternity by estoppel. Vargo, 940 A.2d at 464. Estoppel "is

a legal determination based on the conduct of the mother and/or the putative father with regard to the child, e.g., holding out the child to the community as a product of their marriage and/or supporting the child." Id. (*citing* Fish v. Behers, 741 A.2d 721, 723 (Pa. 1999)). Our appellate courts have identified the public policy underlying the estoppel doctrine as the goal that children should rest secure in the knowledge of who their parents are and should not be traumatized by learning that someone they believe to be their father is not. Id. (*citing* Fish, 741 A.2d at 724).

However, evidence of fraud is relevant, and can preclude application of the estoppel doctrine. J.C. v. J.S., 826 A.2d 1, 4 (Pa. Super. 2003). Moreover, the trial court must inquire whether the man against whom estoppel is asserted continued to act as a father once the biological father was revealed. Id. at 4-5.

Judicial application of these rules of decision has often relied upon subtle and complicated distinctions of fact, with doctrinal tensions becoming more evident. The following appellate cases are illustrative.

In the Warfield case, Ms. Warfield, while married to Mr. Thompson, became involved with, moved in with, and had a son with Mr. Warfield. Warfield v. Warfield, 815 A.2d 1073, 1074 (Pa. Super. 2003). Later, Mr. and Ms. Warfield married and had a daughter. Id. Mr. and Ms. Warfield later separated, and, in conjunction with a support action, undertook genetic testing that revealed Mr. Warfield was the father of the daughter, but not the son. Id. Despite that information, Mr. Warfield signed an Acknowledgement of Paternity for both children. Id. Approximately a year later, Mr. Warfield sought to disclaim paternity of the son. Id. at 1074-75. After argument and briefing, the trial court rejected the argument that Mr. Thompson should be determined

to be the son's father. Id. at 1075.

The Superior Court affirmed. The Superior Court reasoned that Ms. Warfield was estranged from Mr. Thompson at the time of the son's birth, and that the marriage was not intact. Id. at 1076. The court concluded that an estoppel had arisen because Mr. Warfield lived with Ms. Warfield from the time of the son's birth until separation nearly eight years later. Id. at 1077. Additionally, the son bore Mr. Warfield's surname, and Mr. Warfield appeared as father on his birth certificate. Id. Finally, notwithstanding that Mr. Warfield had the results of the genetic testing, he still signed an Acknowledgement of Paternity and complied with a support order. Id.

A different result occurred in Gebler v. Gatti, 895 A.2d 1 (Pa. Super. 2006). In that case involving unmarried parents, Gatti (alleged father) and Gebler (mother) enjoyed a lengthy relationship, during which a child was born. Id. at 2. Gatti attended the birth, was named the father on the birth certificate, and entered into a stipulated support order when the relationship ended. Id. Later, Gatti obtained a private paternity test, which determined that he was not the biological father. Id. The trial court held Gatti estopped from denying paternity, reasoning that he had held himself out as the father for eighteen months and that there was no evidence of fraud or misrepresentation. Id. at 3. The Superior Court disagreed. That court concluded that there was fraud or misrepresentation because Gebler knew of the possibility that Gatti was not the father, but failed to provide him with that information. Id. at 4-5. Because there was no relationship between Gatti and the child, because Gatti stopped acting as a father once the truth was revealed, and because the child had an alternate source of support from the biological father, the doctrine of estoppel did not apply. Id. at 5.

In a case involving joinder, the Superior Court affirmed the trial court's conclusion that the biological father, Gresh, was not an indispensable party, because the ex-husband, Moyer, was the legal father by estoppel. Moyer v. Gresh, 904 A.2d 958, 962-63 (Pa. Super. 2006). Moyer and the mother were married when the son was born. Id. at 960. Moyer was actively involved in the son's life both before and after learning the truth about the child's paternity. Id. Gresh, however, was uninvolved with the son during the child's first nine years, having only sporadic contact. Id. Mother later married Gresh, and the son has lived primarily with them, subject to Moyer's partial custody. Id. at 960-61. Moyer filed a complaint for primary custody, and Gresh and Mother filed a motion to dismiss based on lack of standing. Id. at 961. Gresh and Mother argued that Moyer could not be *in loco parentis* because the biological father, Gresh, had assumed parental rights and responsibilities. Id. The trial court denied the motion, and also dismissed Gresh as a party. Id.

The Superior Court affirmed. The court noted that Moyer had not learned the truth about the son's paternity until the genetic testing was completed, and that Moyer supported the son both before and after learning the truth about paternity. Id. at 962. Because Gresh was uninvolved in the son's life for the first nine years, he essentially relinquished his parental rights and was estopped from contesting paternity. Id. Lacking a paternity claim, Gresh could not be an indispensable party. Id. at 963. The Superior Court further concluded that the result was in the son's best interests, as the son and Moyer have a close relationship and the son considers Moyer to be his father. Id.

In a recent case applying the presumption of paternity, the court refused to permit a third party to compel genetic testing, because the marriage remained intact.

E.W. v. T.S. & C.S., 916 A.2d 1197, 1203 (Pa. Super. 2007). The mother became involved with E.W. while still married. Id. at 1199. The mother told E.W. that he was the father of the child, but also told the husband that he was the father. Id. at 1199-1200. E.W. argued that the marriage was not intact, but the trial court did not find this argument credible. The Superior Court affirmed. Id. at 1202.

Applying the doctrine of collateral estoppel in Barr v. Bartolo, 927 A.2d 635 (Pa. Super. 2007), the Superior Court held that, absent fraud, the mother could not deny that the husband was the father when the husband previously was found to be the legal father. Id. at 643. The mother and the husband entered into a consent support order for the child after their separation. The husband paid in accordance with the order until the case was closed. Id. at 636. Later, the mother filed a second support complaint, the husband denied paternity, and the trial court ordered genetic testing which excluded the husband as the biological father. Id. at 637. The second support complaint against the husband was then dismissed. Id. The mother also brought a support complaint against Bartolo, as the biological father. Id. Bartolo objected, claiming that the husband was the legal father due to the earlier unappealed (and consented-to) support order. Id. at 639.

The Superior Court agreed. There was no evidence of fraud, as the mother informed the husband of her affair and the husband still allowed his name on the birth certificate and agreed to pay child support. Id. at 643. Further, the Superior Court found the doctrine of paternity by estoppel applicable as well. Id. at 645. The husband had maintained a relationship with the child, both before and after learning the truth about paternity. Id. at 644-45. In contrast, Bartolo had only met the child a handful of times and had no relationship with the child at all. Id. at 645.

In another recent case, the Superior Court found paternity by estoppel even though another man had been involved in the early years of the child's life. Conroy v. Rosenwald, 940 A.2d 409, 419-20 (Pa. Super. 2007). Conroy, the mother, was involved with both Rosenwald and another man, Guinan, at the time of conception. Id. at 411. Believing Rosenwald to be sterile, Conroy assumed Guinan was the biological father. Guinan acted as father for two years, and his name appeared on the birth certificate. Id. at 412. Guinan and Conroy split, and Conroy filed for support. Id. Guinan, however, denied paternity, asserting that he had undertaken genetic testing, although there is nothing in the court record to verify the statement. Id. at 412-13. Conroy then filed for support from Rosenwald. Id. at 413. Rosenwald was compelled to take a genetic test.[1] Id. Because Guinan no longer was involved with the child, the court did not have to consider disruption to the child's life or family relationships. Id. at 420. The child was not receiving any kind of assistance from a father figure and had not had a relationship with a father figure since the age of two. Id. The court also found that there was no fraud because Conroy had not "actively and intentionally misled" Guinan. Id. at 419. Instead, Guinan had acted as father for a period of time due to the mutual mistake of fact as to Rosenwald's sterility. Id. The Superior Court adopted the trial court's conclusion finding no fraud by either Rosenwald or Conroy. Id. Accordingly, the Superior Court affirmed the trial court's ruling requiring Rosenwald to pay child support. Id. at 420.

In the Vargo case, neither the presumption of paternity nor the estoppel doctrine

[1] The results of the genetic testing are not specifically revealed in the Superior Court's opinion. However, the test must have shown Rosenwald to be the father, because he alleged that the results and his post-test conduct prejudiced the outcome in the trial court. Conroy, 940 A.2d at 415.

applied. Vargo v. Schwartz, 940 A.2d 450, 466 (Pa. Super. 2007). Recognizing that the determination of whether a marriage is intact is fact-specific and difficult, the Superior Court (in one of Justice McCaffery's last opinions before ascending to the Supreme Court) affirmed this court's finding that the Vargo marriage was no longer intact, given the spouses' repeated separations and their contemplation of divorce. Id. at 467 n.6.[2] Accordingly, the presumption of paternity did not apply. Id. The Superior Court also determined that the estoppel doctrine did not apply, principally because there was evidence of fraud. Id. at 469. Vargo believed he was the father until the mother informed him otherwise. Id. At that time, Vargo informed people that he was not the father, although he continued to provide health insurance for the children. Id. Because the mother testified that she planned to inform the children that Schwartz was the biological father, estoppel would not advance the public policy goal of ensuring that children are secure in the knowledge of their father's identity. Id. The Superior Court found no abuse of discretion in this trial court's decision to put more weight on Vargo's "public disavowal of his biological paternity than on his more private interaction with the two young girls." Id. at 470.

In a case where the presumed father had limited contact with the child, but regularly paid support, the Superior Court found evidence of fraud and a misapplication of the estoppel doctrine. Glover v. Severino, 946 A.2d 710, 711 (Pa. Super. 2008). The trial court had found no fraud because Glover, the mother, sincerely believed Severino was the biological father. Id. at 713. However, the Superior Court found fraud in Glover's refusal to acknowledge the possibility of another father even when confronted

[2] This Court's opinion in Vargo, affirmed on appeal, can be found at 81 Pa. D&C 4th 1 (C.P. (continued...)

with the results of two genetic tests, both of which excluded Severino as the father. Id. at 715. The Superior Court analogized the case to Gebler, affirming that a mother's silence on the issue of other possible fathers (which the Court viewed as "fraud by omission"), regardless of a strong belief about who the father is, can function as fraud for the purpose of overcoming the estoppel doctrine. Id. at 714. The Superior Court also concluded that the estoppel doctrine was incorrectly applied. The trial court had relied on Severino's regular payment of support for the first eleven years of the child's life, his sporadic visits to the child, his acknowledgment of paternity, and his gift purchases for the child as evidence that the estoppel doctrine should apply. Id. at 716.

The Superior Court focused instead on the lack of a parent-child bond, the fact that Severino had never lived with the child, and the fact that the child recognized Glover's ex-husband as his father. Id. at 717. Because there was no parent-child relationship to protect, the estoppel doctrine did not apply. Id. Judge Klein (the author of Gebler v. Gatti) dissented, disagreeing with the finding of fraud. Judge Klein noted that Severino had signed the acknowledgement of paternity despite knowing that Glover had other sexual partners at the time of conception. Id. at 718-19.

In the Wieland case, the mother was married to Wieland at the time of conception, but was separated from him and living with Dillon. Wieland v. Wieland, 2008 WL 1991527, at *1 (Pa. Super. 2008). Dillon was present at the birth, was named on the birth certificate, and shared a surname with the child. Dillon, the mother, and the child lived together for over four years after the child was born. Id. After the mother and Dillon separated, the mother filed for support from Wieland, her ex-husband. Id. Wieland filed

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(...continued)
Allegheny 2007).

preliminary objections, which were dismissed by the trial court and not appealed, and Dillon sought to intervene, which petition also was denied and formed the subject of the appeal. Id. In his appeal, Dillon asserted that the estoppel doctrine should prevent the mother from having Wieland named as the father. Id. at *6. Dillon argued that the policy of keeping children secure in the knowledge of their parents would not be advanced by naming Wieland as the father. Id. Because the child already knew the results of the genetic testing that showed Wieland was the biological father, the Superior Court concluded that the interests of the child were best served by requiring the biological father to support the child. Id. at *7. Significantly, the court also acknowledged the public policy reasons supporting genetic testing, including the right to establish a kinship relationship, and the fact that "a child's biological history may be essential to his or her future health, and the child's cultural history may be important to his or her personal well being". Id. (*citing* Conroy v. Rosenwald, 940 A.2d 409, 416-17 (Pa Super. 2007)).

From the foregoing review of recent cases, it seems possible to discern trends, if not organizing principles, in Pennsylvania's current decisional law on paternity. The presumption of paternity is still valid, but rarely applies because the underlying marriage is seldom intact. However, when the marriage is intact, the presumption still will block a third party from asserting paternity or compelling testing. *See* E.W., 916 A.2d at 1202-03. The paternity by estoppel doctrine also remains viable. *See* Conroy, *supra*. However, the fraud exception has expanded to include cases in which the mother was silent as to the possibility of another father (*See* Gebler, 895 A.2d at 4-5), and to cases where the presumptive father knew mother had sexual relations with others at the time of conception. *See* Glover, 946 A.2d at 713, 715. When fraud applies, the court must

examine how the father against whom estoppel is claimed acts after learning the truth about paternity. *See* Vargo, 940 A.2d at 464.

In the instant case, as it surely must, this trial Court faithfully applied the law as set forth by our appellate courts. Mother and Father were divorced at the time Father presented his Petition. The marriage was no longer intact. The presumption of paternity does not apply. Fish, 741 A.2d at 722.

The next question is whether the estoppel doctrine prevents Father from denying paternity. The conduct of the parties is important to determining whether estoppel applies. Vargo, 940 A.2d at 464. Here, there is undisputed evidence that Father acted as a father to Alexis and held himself out as a father. It also is clear that Father continued to act as a father even after the genetic testing. Father entered into a consent support order. Father exercised, and continues to exercise, partial custody. (T. at 12, 25-26.)

However, Father claims that there was fraud, because Mother induced him to continue to act as Alexis' father. Father claims Mother told him that Wiedner would not accept his responsibility as the biological father.[3] (T. at 10-12.) Father further claims that he relied upon this statement by Mother, which induced him to continue to act as Alexis' father. Id. Mother disputed Father's claims. (T. at 62, 71, 78.) The hearing officer specifically found that Father's testimony on fraud was not credible and that Mother's testimony was. (Rec. at 4, 6.) Because the hearing officer had the opportunity to hear

[3] It should be noted that there is no evidence of record that Wiedner is the biological father. While private genetic testing was performed, the results were not admitted at the hearing, and are not of record before this Court. Father attempted to introduce testimony regarding the testing, but it was objected to and the objection was sustained. (T. at 8, 31-34.) Mother did testify that it was her belief that Wiedner was the biological father. (T. at 72.)

the testimony and observe the witnesses firsthand, the appellate case law affords her deference on issues of credibility. Moran v. Moran, 839 A.2d 1091, 1095 (Pa. Super. 2003). If Father is not credible on this issue, then there can be no finding of fraud, and the estoppel doctrine applies. As such, Father is estopped from denying paternity.

The remaining issue is the joinder of Wiedner to the litigation. The Moyer case is instructive. As noted hereinabove, Moyer concerned a biological father and mother who were married and constituted an intact family. Moyer, 904 A.2d at 961. The trial court dismissed the biological father from the case after finding that the ex-husband was the legal father under the estoppel doctrine. Id. at 962. The ex-husband supported the child throughout its life, both before and after learning that he was not the biological father. Id. Given those findings, the Superior Court determined that it was reasonable to conclude that the ex-husband was the legal father by reason of estoppel. Id. Without the paternity claim, the biological father's interests were "adequately represented" by the mother. Id. at 962-63.

The facts in this case are similar. Wiedner and Mother currently live together as an intact family. (T. at 75.) However, Father has maintained his involvement in Alexis' life. Father exercises custody rights and attends school and extracurricular activities. Alexis knows him as her father. (T. at 25-26, 27, 45, 61-62.) Father has not informed Alexis that he is not her biological father, although he has discussed with a counselor the issue of how to inform her. (T. at 29-30.) The estoppel doctrine applies. As such, Wiedner has no paternity claim, and is not an indispensable party who should be joined.

Father cites two cases in support of his argument. Father contends the Jacob case supports the proposition that, because Wiedner is involved in Alexis' life, Wiedner

should be obligated for support. The facts of the Jacob case are somewhat unique. Schultz-Jacob and her former same-sex partner, Jacob, who had cohabitated for some nine years and entered into a civil union in Vermont, contested custody of four children: two children conceived and carried by Jacob via a sperm donation from Schultz-Jacob's long-time friend, Frampton, and two children that Jacob had adopted. Jacob v. Schultz-Jacob, 923 A.2d 473, 476 (Pa. Super. 2007). Following separation, Schultz-Jacob filed a custody action naming both Jacob and Frampton, the sperm donor of the two biological children. Id. Jacob then filed a complaint for child support from Schultz-Jacob. Schultz-Jacob petitioned to join Frampton as third party. Id. The Superior Court noted that Schultz-Jacob was not seeking to avoid a support obligation, but was instead seeking to prevent Frampton from avoiding one. Id. at 480. Additionally, Frampton already was providing support to the children. Id. at 481. Frampton provided financial assistance, exercised partial custody, provided clothes and toys for the children, and encouraged the children to call him "Papa." Id. Based on these facts, the Superior Court decided that Frampton should be joined in the support proceeding. Id. at 482.

The instant case is distinguishable from Jacob. First, the Superior Court in Jacob found it important that Schultz-Jacob was not trying to avoid her support obligation by joining Frampton. Here, however, Father is trying to avoid his support obligation, as evidenced by his Petition to Terminate Support. Additionally, in Jacob, Frampton already was providing direct support to the children in the form of cash assistance to the mothers beyond the money he spent during the time the children were in his custody. Here, Wiedner is not providing direct support to Alexis. While Alexis now enjoys the benefits of Wiedner's household financial support because she and Mother live with

him, Wiedner has never paid support to Mother. (T. at 79.) Third, and most important, Jacob involved a unique factual situation where, while there were three potential sources of support, there was only one identifiable father. Paternity law was in no way implicated. Here, paternity law is squarely implicated. The Moyer case instructs clearly that, where there is paternity by estoppel, and where the biological father is married to the mother, the biological father is not an indispensable party.

Father also cites the L.S.K. case for a similar proposition. Father claims that, because Wiedner has acted as a biological parent, he is obligated to pay support. Like Jacob, L.S.K. involved the support obligation for children who were born during a relationship between the mother and her same-sex partner. L.S.K. v. H.A.N., 813 A.2d 872, 874 (Pa. Super. 2002). Applying equitable estoppel, the Superior Court determined that the former partner had held herself out as the parent of the children and was actively involved as their parent. Id. at 877-78. As such, the partner could not then deny that she was a parent for support purposes. Id. L.S.K. would appear to support this Court's conclusion that Father is obligated to support Alexis. Father has held himself out as Alexis' father and has been actively involved in her life. Hence, he should not be able to deny that he is a parent for support purposes.

Given the current state of the law, the paternity by estoppel doctrine compels this Court to determine that Father is the legal father of Alexis. He is, therefore, obligated to provide support. Additionally, since Father is the legal father, there can be no paternity claim against Wiedner, and Wiedner should not be joined to the litigation.

The current state of paternity law has been criticized. It does not always provide a fair and equitable result. As Judge (now Justice) McCaffrey stated for the Superior

Court in December 2007:

> [We] add our voice to earlier calls for modification of Pennsylvania law to permit DNA testing as an alternate avenue for rebutting the presumption of paternity. ... [I]n our view, Pennsylvania law is outdated on the issue of DNA evidence in paternity disputes, and should be modified to acknowledge the scientific reality that, in virtually all cases, it is now possible to establish to nearly absolute certainty whether a putative father is indeed the biological father of a child. Pennsylvania law at present requires courts to ignore this reality, unless the court first concludes that the presumption of paternity does not apply or has been rebutted via the traditional proofs.... Such a legal analysis [of whether a marriage is intact] not only invites inconsistency, but is also illogical and blind to modern social and scientific realities. In a case such as the one sub judice, it defies reason and logic to preclude the admission of DNA evidence to rebut the presumption of paternity. ... The trial judge, the Honorable David N. Wecht, has urged the appellate courts of this Commonwealth to revisit the doctrines of presumption of paternity and paternity by estoppel in light of the availability of accurate and precise DNA testing, and we strongly concur in his sentiments.

Vargo, 940 A.2d at 467 n. 6.

This Court humbly and respectfully joins the Vargo panel's criticism. Indeed, the instant case illustrates some of the unjust results that can arise from the current state of paternity law.[4] Here, Father will continue to pay support for Alexis, even though he is not the biological father. Wiedner, who may very well be the biological father, is able to

[4] It is important to recognize that, in some circumstances, the current law may force judges to impose real and potential injustices that can in turn extend into other areas of the law. Consider, for example, the following hypothetical scenario. Husband and Wife live together, and for a time raise the child to whom Wife gives birth during the marriage. Then, Wife leaves, Husband and Wife divorce, and Wife cohabitates and then marries Biological Father, whom child ultimately comes to consider, know, and live with as dad. Absent a Gebler v. Gatti/Vargo v. Schwartz species of fraud, Husband presumably will continue paying court-ordered support to Wife (and hence, indirectly, to her new husband) for child up to at least age eighteen, even though (in this hypothetical scenario) the child no longer enjoys any contact with Husband. Now, suppose that Husband dies intestate. Unless Husband has remarried (and assuming child is Husband's only "issue"), child inherits 100 percent. 20 Pa. C.S.A. § 2103. Indeed, if child is a minor, Wife and Biological Father will control child's inheritance, and hence, Husband's estate, until child reaches the age of majority.

avoid any direct support obligation because this Court is unable to order paternity testing, which is barred by the estoppel doctrine. The estoppel arose based on the hearing officer's credibility determination that no fraud was committed (*i.e.*, that Father was not induced to continue to hold himself out as the father by any deliberate misrepresentations by Mother).

Instead of engaging in a convoluted analysis turning upon various legal "fictions," this Court, had the law been different, could have ordered genetic testing and then handled child support accordingly.[5] There could be further injustice if the child refuses to continue a relationship with the legal father upon learning the truth about paternity. It is not inconceivable that a child in this situation may wish to sever a relationship with the legal father, particularly if the child feels betrayed by the revelation, wants to know the biological father, or wants to embrace the biological father's ancestry or culture. Then, the legal father would be in the unenviable position of paying support for a non-biological child with whom he has no contact.

When paternity could not be resolved definitively, the presumption of paternity and the estoppel doctrine served useful purposes. They prevented a marriage from being attacked by claims from a third party, and allowed a child to be secure in the

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[5] Custody arrangements should not be predicated solely upon paternity determinations. It may very well be that it is in a child's best interests to maintain a relationship with the father the child has known, even if that father is not the biological father. While standing may be an issue in these circumstances, the *in loco parentis* principle should permit adequate redress in appropriate cases. This Court acknowledges that some appellate broadening of *in loco parentis* standing may be necessary to accommodate testing realities. Current law provides that a third party cannot assume *in loco parentis* status when a natural parent opposes it. J.F. v. D.B., 897 A.2d 1261, 1274 (Pa. Super. 2006). It is possible that a biological father could claim he did not consent to a non-biological father assuming *in loco parentis* status. The *in loco parentis* doctrine is a common law principle with sufficient elasticity to ensure solid footing should the Supreme Court choose to review and expand the doctrine to accommodate fully the rights of the non-biological father.

knowledge about who his or her parents are. Today, however, they no longer serve these policy goals. As this Court previously has opined, these doctrines "increasingly seem quaint vestiges of a bygone era." Vargo v. Schwartz, 81 Pa. D&C 4th 1, 13, n. 7 (C.P. Allegheny 2007), *aff'd* at 940 A.2d 466 (Pa. Super. 2007). They derive from a paternalistic, antediluvian world. Time, and technology, have passed them by.

One question that looms – but is rarely remarked upon directly – in the recent cases is the issue of whose interests are being served. Our law commands fidelity to the best interests of the child. In fact if not in doctrine, however, our courts weigh the child's interests and the often disparate interests of the adults involved. These paradigms sometimes conflict. When and where they do, the jurisprudence becomes problematic. The introduction of the fraud exception to the estoppel doctrine may tip the balance toward the putative father in cases where fraud appears. If the courts were focused solely upon the child's interest, the fraud exception would not operate. Because a presumed father can avoid support if he can prove fraud, the child will not have the financial support of that parent, but can also lose an emotional relationship. Conversely, the fraud exception prevents an injustice from being perpetrated on a presumed father, particularly when he may only act as a father to the child because of the misrepresentations of the mother. In these circumstances, our courts now ask why a mother should benefit financially from this fraud and why a father should be made to bear a financial detriment because of it. Plainly, this approach considers the adults' interests, not the child's.[6] If the courts looked solely at the child's interest and the policy

[6] The manifest irony of this interest analysis is that the entire area of controversy arises in the courts and in people's lives because, at the time of conception, adults put their interests over those of the future child.

behind the doctrine – ensuring a child is secure in the knowledge of who the parents are – the fraud exception as we have come to know it would not exist.

The fraud exception has widened. It now may sometimes appear as the exception poised to swallow the rule. Certainly, the idea that a mother who actively perpetrates a fraud, deceiving one man into believing he is the father while knowing another is, seems clearly appropriate as an exception. The Superior Court has expanded the exception to include situations where the mother omitted to tell the purported father that another man could be the father. *See, e.g.*, Gatti, , 895 A.2d at 4-5; Vargo, 940 A.2d at 469. It now is not required that mother know that another man is the father, but rather that she know of the possibility that someone else is the father, coupled with failure to disclose that knowledge. In the Glover case, the exception expanded even farther. There, Severino knew that Glover was involved with other men at the time of conception. Arguably, the finding of fraud was premised more upon Glover's continued stubborn insistence that Severino is the father in the face of the genetic testing results, than upon a material omission or misrepresentation.

Fraud has become the game-changer in paternity law. The expansion of the fraud exception may reflect increasing judicial frustration with the old doctrines. A query begins to surface: Is the fraud exception serving as a silent proxy for an expanding (but as yet impermissible) desire to peer behind the curtain and see what the DNA tests tell us? The chains of the old doctrines are rattling, and the expanding fraud exception is part of the cacophony.

The recent rise of private genetic testing undermines the policy behind the paternity by estoppel doctrine and the presumption of paternity. In many, if not most, of

the recent cases, the parties involved undertook private genetic testing that was completed *before* the parties came into court for a trial on paternity.[7] In such a case, everyone knows the truth of paternity. Often, the child knows, or will be told, the truth. When the truth already is known, the presumption of paternity cannot prevent the marriage from attack. It already has been attacked. At that point, whether the marriage remains intact or not has nothing to do with the paternity of the child. Under the estoppel doctrine, if the parties all know the truth of paternity, the child is not protected from the trauma of learning that someone he or she thought was his or her father is not. The policy is not served. Further, even if parents do not intend to tell the child the truth, the court records are public and are now widely available on the Internet. A child can have access to the data and learn the truth, regardless of the parents' (or the court's) intent.

The courts have had to close their eyes to the truth. The private tests are often inadmissible because of the presumption or the estoppel doctrine. The truth is known to all participants. Yet the courts must engage in an analysis that forces them to ignore this truth. While judges are bound to follow the law, it can be difficult for litigants to be confident that the judge will ignore that large purple elephant in the room.

And there is yet another problem with the existing paternity jurisprudence. In some cases, it nullifies the statutory law. At 23 Pa.C.S.A. § 5104 ("Blood Tests To Determine Paternity"), our General Assembly has mandated (in pertinent part) as follows:

...

(c) **Authority for test.** — In any matter subject to this section in which

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[7] *See, e.g.*, Gatti, 895 A.2d at 2; Moyer, 904 A.2d at 960, n.3; Vargo, 940 A.2d at 461; Glover, 946 A.2d at 712-13; Wieland, 2008 WL 1991527 at *1.

> paternity, parentage or identity of a child is a relevant fact, the court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved, may or, upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child and alleged father to submit to blood tests. If any party refuses to submit to the tests, the court may resolve the question of paternity, parentage or identity of a child against the party or enforce its order if the rights of others and the interests of justice so require.
>
> ...
>
> (f) **Effect of test results.** — If the court finds that the conclusions of all the experts as disclosed by the evidence based upon the tests are that the alleged father is not the father of the child, the question of paternity, parentage or identity of a child shall be resolved accordingly. If the experts disagree in their findings or conclusions, the question shall be submitted upon all the evidence.
>
> (g) **Effect on presumption of legitimacy.** — The presumption of legitimacy of a child born during wedlock is overcome if the court finds that the conclusions of all the experts as disclosed by the evidence based upon the tests show that the husband is not the father of the child.

Notwithstanding this language, in the evolution of cases since Brinkley, our courts have come to view the presumption of paternity as well-nigh irrebutable. As Justice Newman, joined by now-Chief Justice Castille, noted in dissent in Strauser v. Stahr, 556 Pa. 83, 726 A.2d 1052 (1999):

> Next, we must address whether the presumption may be rebutted. [*citing* Brinkley]. The Majority posits that in this case, where the marriage is intact, "public policy" requires that the presumption be irrebutable. I disagree. It is generally not for this Court to make such assertions of "public policy" unless such policy is clear. *See, e.g.*, Muschany v. United States, 324 U.S. 49, 66, 65 S.Ct. 442, 89 L.Ed. 744 (1945) ("public policy is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest"); Mamlin v. Genoe, 340 Pa. 320, 324, 17 A2d 407, 409 (1941) ("in our judicial system the power of courts to formulate pronouncements of public policy is sharply restricted; otherwise they would become judicial legislatures rather than instrumentalities for the interpretation of the law.").

> Here, the Majority's conclusion that "public policy" requires an irrebutable presumption in favor of Mr. Stahr is erroneous because it is in direct conflict with the plain language of the Uniform Act on Blood Tests to Determine Paternity (the Act). 23 Pa.C.S.A. § 5104(c). Instead, the legislature has codified the "public policy" of this Commonwealth and clearly and expressly provided that a court may compel interested parties to submit to blood testing, and that such blood testing can rebut the presumption of paternity. 23 Pa.C.S.A. § 5104(c) and (g). Moreover, as I stated in Brinkley:
>
> > We would be both naïve and remiss to perpetuate the strength of this presumption and ignore the results of reliable scientific tests;
> >
> > ....
> > Pennsylvania is fast becoming one of only a minority of states that does not accept the results of blood tests that disprove the husband's paternity to rebut the presumption. Approximately two-thirds of the states currently have statutes permitting blood tests to be considered in the determination of paternity. HOMER H. CLARK, JR., 1 THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 340 (2d ed.1987). We should join the majority of states and accept these reliable scientific tests to rebut the presumption that a child born to a married woman is her husband's child.
> > Brinkley v. King, 549 Pa. at 264, 701 A.2d at 188.
>
> 556 Pa. 95-96, 726 A.2d at 1057-58 (Newman, J., dissenting) (footnote omitted)

This Court respectfully suggests that the appellate courts revisit this area of law. It appears that some post-Brinkley decisions are at war both with the statutory mandate and with the interests of justice. Genetic testing should be ordered promptly in all paternity disputes. Child support could then be determined based on (or at least informed by) the finding of paternity. Custody should remain a separate and distinct matter from support: if a child has a relationship with a person who is excluded as a biological father, the relationship, if in the child's best interests, can remain intact. To be sure, there are some situations where a non-biological parent, such as a step-parent,

may provide support, or, as in Jacob, a third party may be obligated for support. But these are particular cases for which particular judicial solutions have been, and will be, crafted. While paternity based solely on genetic testing would not be a panacea, it would allow courts to act (and for litigants to see courts act) on the basis of fact and truth, rather than increasingly time-worn legal "fictions."

BY THE COURT:

_____ J.
David N. Wecht
Common Pleas Judge
Fifth Judicial District of Pennsylvania

HB1140 states"The court shall permit testing to rebut the presumption of paternity, provided that the overall interests of justice, including the best interests of The child would not be unreasonably harmed"

The logic behind these arguments is fallacious. First, "the best interest of a child" concept stems from the domestic decisions attempting to determine custody in NON FRAUD SITUATIONS.

Second, advocates for a statute of limitations fall into the best interest fallacy and support a rule which violates the constitution. There should be no limitation to award compensation to the wronged party for fraud. Would the state limit a person who discovers that they are a slave to bring and action because the overseer depends upon the labor? Certainly not, it is unlawful and it's a violation of due process.

Why should a deceitful Mother, benefit from her coercive (with the courts blessing) action because she depends on the money? Why should the state of Pennsylvania receive Federal matching funds on the bounty of duped men?

The US constitution demands Equal Protection for all Citizens of the United States. Since there is no time limit placed on the Mother as to when she can seek child support or arrears, there is no reason men should not have that same right to prove they are not the Father.

Why do none of the states require a full and truthful disclosure of all potential Fathers from the Mother?

In the state of Maryland under Langston v. Riffe, 359 md 396,754 A.2d 289 (md2000)*"This provision gives an adjudicated Father the right to reopen and challenge the paternity declaration against him when post declaration genetic test results show he is not the child's biological Father. The court further held that the adjudicated Father may request a blood or genetic test in order to confirm or deny paternity. A determination of the best interests of the child is inappropriate and irrelevant to deciding whether to order genetic testing or disestablish paternity."*

Basically the Mother and Child Support enforcement want the man's money with no regard if the accused man is truly the Biological Father or not. The man pays or goes to jail. If the man chooses not to sign the agreement his money is still currently taken from him but he now must abandon the child emotionally and physically. Since it's the Mother who caused this bond between Man and child, it would be in the best interest for the courts to separate the money from the child. The relationship should be allowed to continue after the money stops, that is in the best interest of the child.

It is also in the child's best interest to know who the biological Father is for medical reasons. As a medical doctor Dr. Enrique Terrazas states he is well aware that the implications of genetics are far-reaching, he says telling the story of a 6-year-old boy who was on a fishing trip with the man he thought to be his father. When the boy snagged himself on a rusty fishing hook, the father brought his son to the hospital where he told the doctors that there was no history of antibiotic allergies in his family history. *The boy went into anaphylactic shock and died.* Later, his ex-wife admitted that he was not the father and the real father had a severe antibiotic allergy. How many more Doctors have been given the wrong family history for children? How many more children need to die before we require DNA testing at birth?

HB1140 is the bill that can and must stop Paternity Fraud in Pennsylvania.

Thank you for your support.

Sincerely,

Mike Lautar

January 20, 2009

Honorable State Representative

Pennsylvania House of Representatives

Dear Honorable Representative:

I like to ask for your support of SB1525, the paternity fraud bill, in the last legislative session. A unanimous vote of would send a clear message that truth and honesty are what's right and fraud is wrong.

My name is Lori Lautar and I am a victim of paternity fraud. I may not be the usual face of a victim that you have seen or heard about. But none the less, I am a victim. I'm not unique. I represent a huge population of unspoken victims.

You see, my husband was lied to years ago. That one lie has created layers and layers of more lies. Each layer leaves a path of destruction and robs innocent victims, like us, of their rights. The only winner in this scenario is the one who created the lie. How can that be right?

I can't say that if I wasn't experiencing this terrible injustice, that I could fully appreciate, the magnitude of what paternity fraud does. In life, we tend to throw out phrases like, I know how you feel or I feel your pain. The reality is, unless you've gone through this experience, it is very difficult to understand its full scope of pain. That is why you have an awesome task before you. As a representative of the people, I know you constantly strive to understand and feel your constituent's pain. This is a far reaching problem, with many victims. You have a wonderful opportunity to truly help right a wrong and feel your constituent's pain. I ask you to attack this challenge with diligence.

For those of you who are parents, take a moment to think about the joy you felt when you welcomed your child into this world. The feeling is indescribable. And that's just the beginning. That loves grows many fold through the years.

Now, try to think about how you would feel if you found out that child was not yours. You were tricked. You were used. You had no part in bringing that child into this world. You are simply a pay check.

I've watched my husband feel this pain. I've watched it tear his heart out. Never again, can my husband look at this child the same way. Never again, will his relationship be the same with this child. And never again, will our family have a normal life.

Paternity fraud has many victims. Most people see only the duped father and the child as the victims. And yes, they are. I don't want to diminish that. The father has been cheated on and lied to and the innocent child has been denied the right to know who he really is, as well as lied to.

But let me assure you, there are many other layers of victims. They are the people you pass on the street and never guess what they are dealing with privately.

In my case, I'm the second wife. We are unable to financially have our own children due to the burden of having to pay for another man's child. I am a victim by watching how this heinous injustice has affected the quality of life my husband and I have, not to mention all the emotional pain. My husband and I work to support someone else's child. Yet another layer to that one lie many years ago.

Presently, judges have the power to decide whether duped fathers should be freed from the obligation of supporting someone else's child. But only a few of the multitude of victims can afford to try and seek relief in the court system. Some court cases have provided relief. Many have not. In addition, all of the cases result in thousands of dollars of legal fees and tremendous tension in families that are already victims. Creating yet another layer of destruction and financial burden.

There is hope. And you are the hope. I pray that you will follow the lead of Ohio, Maryland and Alaska and once again pass SB1525. Your continued support is vital. SB1525 is a start for honesty. It stands for relief. It stands for light for the multitude of victims of paternity fraud, both spoken and unspoken.

Lori Lautar

Letter to PA House of Representatives

Hello,

Have you read the November 22nd New York Times Magazine feature story?

Please go to the New York Times Magazine website to read the story.

I am Mike L in the story and I am a resident of the state of Pennsylvania. I pay child support to a biologically intact family. Yes, I pay support for a child that lives with her biological parents who are married and all live in the same household. How could this happen, you ask? Adultery, lying, deception, and fraud by the mother and the biological father and Pennsylvania Laws that rewards them for their bad behavior and punishes the innocent man and child. You see, I was once married to the mother, Stephanie in the story, and according to PA law I am bound to support any child that she give birth to while we are married EVEN IF I did not produce that child.

The solution to this is so easy and simple, DNA testing at the time of birth for ALL children born in PA before the man's name goes on the birth certificate, before a father/child bond is formed. This is in the best interest of the child, men, women, families, justice, fairness, equality, accountability, and responsibility. The TRUTH is in the best interest. DNA testing is easily available, accurate, inexpensive, and painless. An ounce of prevention is worth a pound of cure. No child, no man, would ever again have to live the nightmare that L and I are living if you would make DNA testing at the time of birth law. I urge you to add this mandatory DNA testing to HB1140 with amendments.

Just this week, Andy Sheehan of KDKA news reported on my story. Judge David Wecht is interviewed and says he was very frustrated with the way the law required him to rule. I quote, "All may know the truth that the science says, but the courts are required to blind themselves from the truth," said Judge Wecht.

You can read the story and view the video at the KDKA website under KDKA Features, Investigators.

While the NY Times Magazine did a good job of exposing this issue, it did not give my entire story and did twist and leave out some facts.

If you would like to talk to me about the NY Times Magazine story, the KDKA story, about DNA testing at the time of birth, HB1140, best interest of the child, men's rights or anything else relating to this issue, please contact me. I am willing to talk to you via email or telephone or in person. My contact info is as follows:

Home phone 724-746-1382
Work phone 724-743-1367
Cell phone 412-913-0603
email mlautar@verizon.net

Thank you,

Mike Lautar
Micah 6:8

Dr. Terrazas explains how important DNA family History is to the welfare of a child.

The question before the Delaware Supreme Court certainly has polarized opinions, which disagree on the fundamental question of how should scientifically and medically established testing of biological parentage (DNA testing) affect decisions of child support. While disagreements in this area can run deep, the importance of family history with regards to delivery of health care is undisputed and uncontested. In fact, medical students and physicians have used Harrison's textbook of medicine for decades as the definitive reference textbook of modern medicine. In its latest online version, Harrison's (1) elaborates thusly on the question of family history (bold, italic emphasis mine) by stating or inferring in Chapter 236 that:

"When two or more first-degree relatives are affected with asthma, cardiovascular disease, type 2 diabetes, breast cancer, colon cancer, or melanoma, the relative risk for immediate family members of inheriting a genetic predisposition to similar disorders increases two- to fivefold over those that do not have such a family history. This information underscores the importance of family history for the prevention and management of these prevalent disorders. Therefore, ***the key to assessing the inherited risk for common adult-onset diseases rests in the collection and interpretation of a detailed personal and family medical history in conjunction with a directed physical examination***. For example, a family history consisting of multiple individuals affected with early-onset coronary artery disease, glucose intolerance, and hypertension should suggest increased risk to the metabolic syndrome, which essentially consists of all these disorders combined together. Therefore, individual patients with this family history should be frequently monitored for the development of hypertension, diabetes, and hyperlipidemia. They should also be counseled about the importance of avoiding additional risk factors such as obesity and cigarette smoking, which would precipitate the onset of these disorders and complicate their management."

Harrison's states specifically "***Family history should be recorded in the form of a pedigree. At a minimum, pedigrees should convey health-related data on all first-degree relatives and selected second-degree relatives, including grandparents.*** When pedigrees appear to suggest an inherited disease, they should be extended to include additional family members. The determination of risk for an asymptomatic individual will vary depending on the size of the pedigree, the number of unaffected relatives, and the types of diagnoses, as well as the ages of disease onset within the family." In the context of a common disorder such as breast cancer, which can be caused either by a genetic predisposition, environmental factors or a combination of the two, Harrison further recognizes that when "a woman has two or more first-degree relatives with breast cancer, she is at a great risk for a genetic type of breast and ovarian cancer. Additional genetic and environmental factors that should be documented in the pedigree are those that could advance the onset of the disease such as the use of hormone replacement therapy and the presence of other types of cancer in the family such as for example colon cancer and/or endometrial cancer."

Overall, the acquisition of adequate information about family history is a standard of care that cannot be neglected and is beneficial for subsequent generations. In fact an accurate family history is part of the initial medical examination for new patients, and is a critical assessment during an emergency visit. As Harrison's illustrates so clearly, lack of family

condition allows the risk in other family members to be estimated, so that proper management, prevention, and counseling can be offered to the patient *and* the family"

Thus, there may be serious implications for a patient's health if accurate family history and appropriate diagnostic testing are not carried out appropriately.

Considering all that has been stated so far from established relevant medical textbooks and literature, and from personal experience, there is no question that a proper family history for Nathaniel is of utmost importance for his future medical care. A detailed family history is in Nathaniel's best health interests and a failure to provide him with such information would be a disservice to his condition and inappropriate health care. Nathaniel's needs must, however, be balanced against his biological father's desire for privacy. Thankfully, current federal regulation - the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (7) - is aimed at protecting the privacy of health information. More recently in December 2008, President Bush signed into law the Genetic Information Nondiscrimination Act (known as GINA) that will protect Americans against discrimination based on their genetic information when it comes to health insurance and employment.

In line with these federal guidelines, the medical profession safeguards information disclosed for the purposes of medical treatment. Therefore, any genetic and personal family history information provided by Nathaniel's biological father will not only help in providing the best healthcare for Nathaniel, but will also be secure as set forth by HIPAA and GINA. Thus, a detailed family history is critically important for the evaluation and care of Nathaniel's autism.

UpToDate (8), an internet-based peer reviewed medical information resource, used by physicians worldwide and by many of my colleagues at the University of California, San Francisco (UCSF) specifies that for the clinical management of autism, the prevalence of the following conditions be determined during the course of obtaining a family history. The recommendation states that:

"A three-generation family history should be reviewed thoroughly since autism spectrum disorders have a strong genetic component [4,12]. The following disorders should be asked about specifically [6,7]:

- Autism and other pervasive developmental disorders
- Language delay
- Mental retardation
- Fragile X syndrome, Rett disorder, Angelman syndrome, Prader-Willi syndrome, Smith-Lemli-Opitz syndrome
- Tuberous sclerosis
- Learning and attentional disorders
- Anxiety
- Obsessive-compulsive disorders
- Extreme shyness, social phobia, or mutism
- Mood disorders

Local Paternity Case Raising Many Questions

Reporting
Andy Sheehan

A local paternity case and others like it throughout the country are raising a firestorm of questions and concerns.

State legislatures and judges are grappling with questions that go to the heart of what defines being a father.


1 of 1

Pennsylvania says Mike is the father of his child - even though he can prove he's not the biological father.

When his daughter was 2-years-old, Mike found out his wife was having an affair. But his wife told him she would end it, and assured him that their child was his.

However, two years later, he found out that the affair was still going on and he demanded a paternity test.

"Got the results back and it was zero percent chance that I could be the biological father," said Mike.

Mike filed for divorce and after it was granted - his ex-wife remarried. But in the meantime, she sued Mike for child support even though DNA proved that he was not the biological father.

He went to court expecting an open and shut case. He was not the biological father; in fact, the child was now living with her biological father.

And yet, to his surprise, Judge David Wecht ruled that Mike had to pay child support - that under state law Mike was in fact the father of the child.

Wecht says what may appear to be an obvious case is less so under state paternity law, which says that when a child is born into an intact marriage the husband in that marriage is presumed to be the father.

The law pre-dates DNA testing and Wecht could not consider that evidence.

"All may know the truth that the science says, but the courts are required to blind themselves from the truth," said Judge Wecht.

State law also says there can be only one father, and deciding that Mike is that man - Wecht is requiring him to pay child support, which Mike says runs about $7,500 a year.

Todd Elliot, the attorney for Mike's ex-wife, says Wecht made the correct decision.

"The person you claim is not the biological father, actually is the father in every sense of the word," aid Elliot.

The child is now 11-years-old and has a room in Mike's house. Under custody agreements, Mike has regular visitation and other rights.

"He has a voice deciding where the child goes for health care, what school she goes to, what religion she's involved with, so he is a father to this child," added Elliot.

And it's those rights that make the case even more complicated.

Mike remains emotionally attached and wants to remain a key force in the child's life. He's even willing to support her financially. He just doesn't believe that the state should compel him to do so.

Judge Wecht believes that state law should be changed - that judges should be able to consider DNA evidence in deciding paternity cases.

Mike wants all babies in the state to be tested to resolve the questions of paternity at the time of birth.

But with hundreds of thousands of paternity tests being conducted every year, states across the union are trying to craft laws to deal with the results.

State Rep. Wants To Change Child Support Law

Mike, from Washington County, got married and he and his wife had a baby girl.


1 of 1

Years later, he found out that his wife had been cheating on him for the entire length of their marriage.

Mike filed for divorce and demanded a paternity test on the child.

"Got the results back and it was zero percent chance that I am the biological father," he said.

His wife moved in with her lover and took the daughter with them. Then she sued Mike for child support and in a ruling that shocked Mike, the courts ordered him to pay, declaring Mike to be the lawful father.

"So they're basically rewarding the adulterous liars for being adulterous and lying and deceiving," he told KDKA-TV.

Judge David Wecht, who ruled in the case, says his hands were tied by state law – an old law that states when a child is born into an intact marriage, the husband in that marriage is presumed to be the father.

The law was written before paternity tests and Wecht says he couldn't even consider the scientific evidence.

"All may know the truth that science says but the courts are required to blind themselves from the truth," Wecht said.

But State Rep. Tim Solobay, D-Washington County, wants to change that.

He has introduced a bill that would shift the burden.

"An individual is being responsible financially for a child that is not theirs and they feel that the responsibility should be carried on by the true biological father," Solobay said.

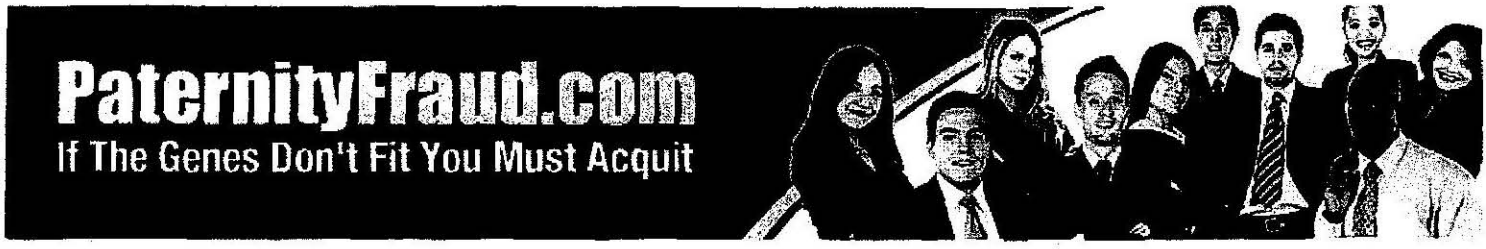
On the surface that law change seems simple and fair, but the matter gets tricky. Even in this case, Mike has an emotional bond with his daughter that he doesn't want to see broken.

How do you protect that relationship and protect the child who has long believed Mike to be her real father?

Supreme Court Justice Max Baer says the legislature shouldn't rush into new legislation.

"And I'm not opposed to changing Pennsylvania law, my only point is it doesn't solve a whole lot," Baar said. "They're all hard cases."

Solobay has scheduled hearings on this matter next month. He hopes some kind of legislation can be crafted to protect both the husbands and the children.



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"Let's Talk About Paternity Fraud"

Guest Editorial by Tony Zizza

for USA TODAY Newspaper, "The Forum"

April 2001

It was the late novelist-philosopher Ayn Rand who said in so many words, that in a truly free society, there can be no unchosen obligations. This acute observation is indeed timeless. Taking responsibility for one's own chosen actions is one thing, and the right thing to do. Taking responsibility for actions that are not chosen or your own is quite another. I believe the words I'm looking for are the following: involuntary servitude.

America, it's time to talk about paternity fraud.

We seem to waste a lot of valuable opportunities to learn from one another by talking about things that are pointless. I'm not just talking about silly small talk and senseless gossip. We seem to have a love for the obvious, comfortable, and non-controversial.

But what in the world do you tell a man who has paid financial and emotional child support for years upon learning he's---not the daddy? Not by a DNA long shot. The word "sorry" won't cut it, neither will "look at the support you gave as a gift." Try again.

We need to do much more for all of America's paternity fraud victims. So what's being done?

Ohio, Texas, Colorado and several other states have paternity fraud legislation in the books/works. These states recognize the simple truth that if a woman knowingly tells the wrong man he's the father, fraud has been committed and a family will eventually fall to ruin.

How does a child benefit when he learns the dad he knows is not "biologically" his own? Doesn't the child deserve the truth? Why isn't paternity fraud taken more seriously?

The numbers are almost surreal. Go to any DNA lab and you will

learn that 30 percent of the fathers tested, thought to answer the question: "whose your daddy?", are in fact, not daddy. We get back to a common excuse for the mothers who have lied to both men and children.

Well, won't the children suffer more when they learn the truth?

I, and thousands of paternity fraud victims state the truth is always what matters, and it is not truthfulness in action when men across this country pay weekly child support for some other man's children he's not paying child support for.

Perhaps the mothers who chose to engage in paternity fraud knew the real daddy made less money. What a country. What are we going to do?

In Georgia, the issue of paternity fraud has taken center stage thanks to the tireless work of a paternity fraud victim by the name of Carnell Smith.

Smith spearheads an organization which is called Citizens Against Paternity Fraud. The website can be accessed by going to www.PaternityFraud.com .

Georgia's House of Representatives recently passed paternity fraud legislation (HB369) lobbied for by Smith and others by a vote of 163-0. Sounds like the state that can change it's own flag can do something about horrific fraud, right?

Wrong. When the bill was presented to Sen. Charles Tanksley, Chairman of the Senate Judiciary Committee, he stalled and did not call for a vote. This, despite HB369 flying through the House of Representatives at 163-0. Instead, Sen. Tanksley called for a vote on HB130 which allowed DNA testing---on the deceased.

So, in Georgia, we the living are not allowed to be free of paternity fraud via DNA testing. Undaunted, Carnell Smith and his supporters are keeping up the fight because paternity fraud has unbelievable consequences for America's families.

America's families have plenty of challenges to deal with every day of the week. We don't really think that it's an unfair expectation to know that the man you call dad every day is really yours for keeps, do we?

Paternity fraud is a crime, and crime shouldn't pay.

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PATERNITYFRAUD.COM is the leading paternity fraud resource on the Internet. We provide up to date information on the various types of paternity fraud. Our primary mission is to help users find the most dependable, least expensive and effective means to address paternity fraud on the market.

This website is dedicated to helping Children and Men discover who's the biological father, assisting deceived, scammed and hustled paternity fraud victims to regain their constitutionally protected freedom and their lawful assets.

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Glenn Sacks Fathers & Families™

Paternity Fraud Victim: State 'Rewarding Adulterous Liars'

February 25th, 2010 by **Robert Franklin, Esq.**

Mike, from Washington County, got married and he and his wife had a baby girl. Years later, he found out that his wife had been cheating on him for the entire length of their marriage.Mike filed for divorce and demanded a paternity test on the child."Got the results back and it was zero percent chance that I am the biological father," he said.

It's pretty much a standard, off-the-shelf case of paternity fraud, so what came next should be no surprise. Sure enough, the mother who'd defrauded Mike sued him for child support and won. Read about it here (*KDKA*, 2/23/10). He's surprised for all the reasons men who are victims of paternity fraud are always surprised - he thought actual paternity had something to do with paternal obligations. He didn't know - although he certainly knows now - that state laws routinely reward lying and misrepresentation by mothers when child support is at stake. As Mike himself said,

"So they're basically rewarding the adulterous liars for being adulterous and lying and deceiving," he told KDKA-TV.

That's about the size of it. Interestingly, this time it's not even about money. Often enough, the state just wants to be sure there's a man to pay child support. It doesn't matter that he's not the father; he's a source money for child support, so pretty much any relation to the child or the mother will do for an order to issue against him. That's often the case in which a woman who's received TANF money identifies the wrong man as the father of her child. The state wants reimbursement and is not about to let little things like fraud get in the way of obtaining it.

Since the actual fact of paternity is of only marginal importance to the state and since getting reimbursement of TANF payments by the state is the main point of the exercise, I've been moved in the past to suggest that we just do it like jury duty. States could maintain a list of all sexually-mature males in the state, and every time there's an unmarried mother receiving welfare, the state could just choose a man at random. He'd get a notice in the mail that he owed the state X amount and, oh by the way, he has parental rights to a child somewhere. It makes about as much sense as the way we do it now.

But money's not the issue here. Mike's ex-wife moved in with her boyfriend who is the child's father. So why not get the money from him? Why not have him be responsible for the child he actually helped bring into the world?

Well, it appears that Pennsylvania law doesn't allow that to happen. It, like most other states, has a presumption that a married woman's husband is the father of any child born to her. Statistics show that that's not true in something like 7-10% of cases, and given that we now have an incontrovertible method of proving who the actual father is, you might think that states would just do genetic testing of all children and establish paternity once and for all.

But no. They prefer to allocate paternity, not on the basis of sound science but on the basis of a legal fiction established long before anyone could ascertain paternity for certain. And apparently in Pennsylvania, the presumption can't be rebutted, even by DNA.

Of course it's not enough to do DNA testing long after a child is born. Mike's case makes it clear why. He's spent years caring for and bonding with his daughter, so for him the fact of biology is inextricably linked to non-biological things. Should he give her up just because another man's sperm gave her life?

And in any case, the child Mike raised for so long has two fathers - Mike, who pays support and presumably has a visitation order, and the biological dad with whom the girl lives. So why not let Mike visit and let the other man pay? Or if Mike gets custody, his ex can pay.

The point being that doing DNA testing of all children at birth would obviate all the problems and confusion involved in the countless cases like Mike's. Genetic testing of all children at birth would establish paternity from the start and allow men to sort out their relationships with children before too much attachment had been formed. It would save money and heartache and relieve courts of a lot of unnecessary litigation that never seems to have a fair or just outcome.

Meanwhile, a Pennsylvania legislator, Tim Solobay, has introduced a bill that would make a very small dent in current law. Specifically, HB1140 would permit DNA testing to determine paternity up to the child's fifth birthday. If testing determined the child not to be the husband's, the presumption of legitimacy would be rebutted. Apparently, after the child's fifth birthday the husband is stuck regardless. So the bill, if passed, would simply require the woman to maintain the fiction that the husband is the father for five

years and then everything remains as it is now.

This bill is no substitute for what would really solve the problem - genetic testing of all children at birth.

This entry was posted on Thursday, February 25th, 2010 at 7:11 pm and is filed under Paternity Fraud, Paternity Issues. Both comments and pings are currently closed.

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Recently Posted on Glenn's Blog

The New York Times

November 22, 2009

Who Knew I Was Not the Father?

By RUTH PADAWER

I.

It was in July 2007 when Mike L. asked the Pennsylvania courts to declare that he was no longer the father of his daughter. For four years, Mike had known that the girl he had rocked to sleep and danced with across the living-room floor was not, as they say, "his." The revelation from a DNA test was devastating and prompted him to leave his wife — but he had not renounced their child. He continued to feel that in all the ways that mattered, she was still his daughter, and he faithfully paid her child support. It was only when he learned that his ex-wife was about to marry the man who she said actually was the girl's biological father that Mike flipped. Supporting another man's child suddenly became unbearable.

Two years after filing the suit that sought to end his paternal rights, Mike is still irate about the fix he's in. "I pay child support to a biologically intact family," Mike told me, his voice cracking with incredulity. "A father and mother, married, who live with their own child. And I pay support for that child. How ridiculous is that?"

Yet despite his indignation — and despite his court filings seeking to end his obligations as a father — Mike loves his daughter. Every other weekend, the 11-year-old girl, L., lives in Mike's house in a quiet suburban neighborhood in Western Pennsylvania. Her bedroom there is decorated to reflect her current passion: there's a soccer bedspread, soccer curtains and a soccer-ball night light. On her bed is an Everybody Loves Me pillow covered with transparent sleeves filled with photos of her and Mike, the man she calls "Daddy," canoeing, fishing and sledding together.

As the two of them prepared breakfast together one Saturday in June, just after L. finished fifth grade, Mike sang a little ditty about how she was his favorite daughter. A few minutes later, when he noticed L. sneaking a piece of raw biscuit dough, he poked her. She looked at him impishly until they both giggled.

"Just because our relationship started because of someone else's lie," he said later, "doesn't mean the bond that developed isn't real." Still, his love became entangled with humiliation and outrage, and each child-support payment stung so much that he felt compelled to take a stand on principle. In doing so, he also took the small but terrifying risk of losing his child.

Mike's conundrum is increasingly playing out in courts across the country, a result of political, social and technological shifts. Stricter federal rules have pressed states to chase down fathers and hold them responsible for children born outside of marriage, a category that includes 40 percent of all births. At the same time, DNA tests have become easier, cheaper and more reliable. Swiping a few cheek cells and paying a couple hundred dollars can answer the question that has plagued men since the dawn of time: Am I really the

father?

One hundred and twenty-two years ago, the playwright August Strindberg meditated on this quandary. "The Father" is the story of a cavalry captain whose wife hints that he might not be the father of the daughter he adores. Consumed with doubt, he rages at his wife: "I have worked and slaved for you, your child, your mother, your servants . . . because I thought myself the father of your child. This is the commonest kind of theft, the most brutal slavery. I have had 17 years of penal servitude and have been innocent."

Without a biological tie, the captain cries, his paternal love is without foundation. But even as he laments that his daughter may not be his, the captain seeks consolation from his childhood nursemaid. With his mind unraveling, he rests his head in her lap and speaks of the comfort of "mother" — because that was the nursemaid's role, biology notwithstanding.

Strindberg never reveals whether the captain's fears were justified, and perhaps the answer doesn't matter. As long as the captain believed he had a biological link to his child, their relationship was meaningful. It is that link, or perhaps the fear of its absence, that drives men today to DNA tests.

Over the last decade, the number of paternity tests taken every year jumped 64 percent, to more than 400,000. That figure counts only a subset of tests — those that are admissible in court and thus require an unbiased tester and a documented chain of possession from test site to lab. Other tests are conducted by men who, like Mike, buy kits from the Internet or at the corner Rite Aid, swab the inside of their cheeks and that of their putative child's and mail the samples to a lab. Of course, the men who take the tests already question their paternity, and for about 30 percent of them, their hunch is right. Yet as troubled as many of them might be by that news, they are even more stunned to discover that many judges find it irrelevant. State statutes and case law vary widely, but most judges conclude that these men must continue to raise their children — or at least pay support — no matter what their DNA says. The scientific advance that was supposed to offer clarity instead reveals just how murky society's notions of fatherhood actually are.

When Mike learned that Rob — the man who had impregnated Mike's wife — would now be the one to make his little girl breakfast and tuck her in at night, Mike wondered just what the word "father" really meant. Was he the father and Rob the stepfather or the other way around? Most galling to Mike was that he was expected to subsidize this man's cozy domestic arrangement. Mike's wages would be garnished because he was the legal father — even though, in this case, the biological father had more of the benefits of fatherhood and none of its obligations. (Neither L.'s mother, Stephanie, nor Rob agreed to be interviewed for this article. To protect the girl's privacy, the magazine is withholding the families' surnames and L.'s full first name.)

Even in paternity cases simpler than that of Mike and L., nonbiological fathers often feel like serial dupes: their wives or girlfriends cheated on them, the children they thought were theirs aren't and yet they are required to support children they did not create. Because nothing can be done about the cheating or the biological revelation, the men focus their indignation on the money. The urge to withhold every dime, lest it end up easing the mother's life, is hard to resist. Often the fight isn't really about child support; it's simply a way to channel rage about the woman's duplicity. Some observers suggest that insisting these men pay child

support will damage rather than fortify the relationship between father and child that society seeks to preserve. As Alaska's Supreme Court concluded in a decade-old paternity case, making a nonbiological father pay "might itself destroy an otherwise healthy paternal bond by driving a destructive wedge of bitterness and resentment between the father and his child."

Mike did not tell L. that he was asking a court to release him as her legal father. But when she was 9, he did sit her down in his lap and tell her that, according to her mother, Rob was her biological father. He said there was a chance, though small, that the courts or her mom would forbid him to see her. But if they did, Mike told L., he would fight back.

"For nine years, I thought my dad was my dad," L. told me when I met her in June, as she tried to articulate the confusion she felt two years ago and has felt ever since. Her favorite movie is "The Parent Trap," a story of two girls who meet at summer camp and discover they are identical twins, then successfully plot to bring their parents back together. L.'s life hasn't worked out as neatly. She remembers the way her stomach hurt and her head felt dizzy when her dad said he wasn't her real dad, and she remembers crying.

"At first, it made me scared, because if my dad wasn't related to me, then I was living with someone who wasn't a part of my family, like a stranger," she said. "I want him always to be my real dad. Because if he's not my dad, then who is he?"

II.

THERE IS A STRONG cultural imperative that a man should never abandon his offspring: that a man who impregnates a woman should be responsible for their child, and that a man who acted as a child's father should continue to nurture her. But what is the cultural standard when those roles are filled by two different men? Judges, legislators and policy makers have floundered trying to reconcile the issues — a tangle of sex, money, science, betrayal, abandonment and the competing interests of the child, the biological parents, the nonbiological father and the state itself. No matter how they decide, the collateral damage is high because fairness for one party inadvertently violates fairness for another.

The challenge is to settle on principles that help answer the riddle of who is the father in each distinct and gut-wrenching situation. In most states, paternity decisions are governed by centuries-old English common law, the presumptions of which hold sway, whether or not they're codified: a child born in a marriage is presumed the product of that union unless the husband was impotent, sterile or beyond "the four seas" when his wife conceived. The aim was to avoid "bastardy" and to preserve family stability — or at least the appearance of it.

Judges around the country have interpreted the common law in so many different ways that what happens in contested-paternity cases depends almost as much on the state as on the details of the case. Some state-court judges have let nonbiological fathers off the hook financially, but they are in the minority. In most states, judges put the interest of the child above that of the genetic stranger who unwittingly became her father — and that means requiring him to pay child support. Some judges have even rebuked nonbiological fathers for

trying to weasel out of their financial obligations. "The laws should discourage adults from treating children they have parented as expendable when their adult relationships fall apart," Florida's top court held in a 2007 paternity decision, quoting a law professor. "It is the adults who can and should absorb the pain of betrayal rather than inflict additional betrayal on the involved children."

In an age of DNA, when biological relationships can be identified with certainty, it can seem absurd to hew so closely to a centuries-old idea of paternity. And yet basing paternity decisions solely on genetics places the nonbiological father's welfare above the child's. Phil Reilly, a lawyer who is also a clinical geneticist, has been wrestling with the policy implications of DNA testing for years, and even he is stumped about how society should manage the problem that men like Mike face. "We're at a point in our society where the DNA molecule is ascendant, and it's very much in the public's consciousness that this is a powerful way to identify relationships," Reilly says. "Yet at the same time, more people than ever are adopting children, showing that parents can very much love a child who is not their own. The difference here for many men is the combination of hurt and rage over the deceit, the fact that they're twice beaten. I can see both sides of this argument. As a nation, we're still in search of what the most ethical policy should be. Every solution is imperfect."

Once a man has been deemed a father, either because of marriage or because he has acknowledged paternity (by agreeing to be on the birth certificate, say, or paying child support), most state courts say he cannot then abandon that child — no matter what a DNA test subsequently reveals. In Pennsylvania and many other states, the only way a nonbiological father can rebut his legal status as father is if he can prove he was tricked into the role — a showing of fraud — and can demonstrate that upon learning the truth, he immediately stopped acting as the child's father. In 2003, a Pennsylvania appellate court bluntly applauded William Doran — who had been by all accounts a loving father to his 11-year-old son — for cutting off ties with the boy once DNA showed they were not related. The judges found that Doran had been tricked by his former wife into believing he was the father of their son, and he was allowed to abandon all paternal obligations.

Courts, of course, deal with paternity cases only when there is a legal dispute. Many men don't sue because it is expensive or because they suspect they will lose anyway. And then there are those who never even discover the biological truth. How many fall in that category is impossible to quantify. The most extensive and authoritative report, published in Current Anthropology in 2006, analyzed scores of genetic studies. The report concluded that 2 percent of men with "high paternity confidence" — married men who had every reason to believe they were their children's father — were, in fact, not biological parents. Several studies indicate that the rate appears to be far higher among unmarried fathers.

Some other number of men discover they are not biological fathers, but choose to soldier on rather than go to court, unwilling to upset their children or the relationships they have established. Tanner Pruitt, who owns a small manufacturing business in Texas, paid child support for seven years after divorcing his wife. His daughter never looked like him, but it wasn't until she was 12 that it began to bother him. He told the girl he wanted to check something in her mouth, quickly swabbed some cheek cells and sent the samples off to a lab. After the DNA test showed they weren't related, he contacted a lawyer, figuring the lab results would release him from child-support payments and justify reimbursement from the biological father. But the lawyer told

Pruitt his only option was to take the matter to court and that doing so might mean giving up his right to see the girl at all. It might also alert her to the truth. Pruitt didn't want to chance either possibility, so he stayed silent and kept paying.

"I spent thousands and thousands of dollars, and it hasn't cost that biological father a penny, and yeah, I'm angry, but it would have been more harm to her psychologically than it was worth," says Pruitt, who eventually fought for, and won, full custody. The girl, now 15 years old, recently learned from a relative that Pruitt is not her biological father. Afterward, Pruitt sat with her on a park bench, held her hand and told her the saga. "When it was all over with, she gave me a big hug and told me I'd always be her daddy," he told me. "Even though she's not my blood daughter, I was there the day she was born, and I've been there ever since, so she's my daughter, and as long as she's alive, she'll always call me Dad."

Mike's first inkling that something was amiss in his marriage was in 2000, when he was digging through a closet looking for the source of some mice. He didn't find any nests, but he did come upon a plastic grocery bag of love letters to his wife, Stephanie, from her co-worker Rob. Confronted, Stephanie confessed to a fleeting affair but assured Mike that L., then nearly 3, was his. A year later, according to Mike's undisputed court testimony, while changing the sheets, Mike found Rob's photograph tucked under Stephanie's side of the mattress. Despite Stephanie's assurances that L. was his child, Mike's doubts haunted him. The marriage deteriorated, and as L. approached her 5th birthday, Mike asked Stephanie to take a DNA test with him and their child. They told the girl that all three of them had to take a test for the doctor. Mike remembers telling her that rolling the swab inside her cheek wouldn't hurt one bit.

"The day the results came back was the most devastating day of my life," Mike said, beginning to cry as he described opening the envelope from the lab and reading there was no chance he was L.'s father. "This little girl," he whispered, his throat tight, "is not my child. I ran upstairs, locked myself in the bathroom and cried and dry-heaved for 45 minutes. I felt like my guts were being ripped out."

Mike and Stephanie separated immediately. Mike expected Rob to pay L.'s support and remembers asking Stephanie if Rob would "step up" to be L.'s father. He recalls Stephanie saying no, although Stephanie, in court documents, denies that such a conversation ever occurred. Mike would later claim that he agreed to support L. only because her rightful father would not.

After Mike moved out, the lawyers he consulted told him there was no use contesting paternity: if he denied he was the father, they said, he wouldn't get to see L. at all, and the state would probably take his money anyway. So when a clerk at the child-support office handed Mike a form confirming he was the natural father, he signed. Since then, Mike — a human-resources analyst for an equipment manufacturer — says he has paid $7,500 a year in child support, child care, camp and medical insurance.

At first, whenever Mike saw Stephanie after the divorce, he felt a stabbing bitterness, but eventually, he grudgingly accepted the situation. In 2005, he began dating Lori, a woman he had met at his church and whom he would later marry. Lori deeply resented the chunk of Mike's salary that went to another man's child, while she was reduced to clipping coupons. But she accepted L. They made scrapbooks together, baked

scones and pizza and picked berries at a local farm. Neither Mike nor Lori had any idea Rob was in L.'s life until 2006, when Stephanie called and said she was marrying him. It was then that Mike became consumed with resentment. "The courts insist on the best interest of the child," Mike fumes, "but it was in the child's best interest for Stephanie and Rob not to do this in the first place. So why is that burden all of a sudden put on me?"

A year after Mike learned about Rob and Stephanie's marriage, Lori read an article in the local newspaper about a paternity case involving Mark Hudson, a Pennsylvania doctor who discovered he wasn't related to his 11-year-old son. Like Mike, Hudson had questioned his wife about the child's origins and was assured he was the father. In Hudson's case, the state appellate court deemed this misrepresentation fraudulent and dismissed his $1,400-a-month child-support obligation. Lori showed Mike the article and urged him to file suit. For the first time, Mike felt he had a chance at being understood. There were, however, two crucial differences between the cases: Unlike Hudson, Mike had signed a paternity acknowledgment knowing it was a lie. And unlike Mike, when Hudson petitioned to end his legal fatherhood, he wholly disengaged from the child, underscoring for the court that he had stopped acting as the boy's parent.

This dictate to abruptly sever the bond with a vulnerable child — to simply cease reading bedtime stories or cheering at soccer games or wiping away tears — sounds coldhearted. But courts in Pennsylvania and many other states are suspicious of men who claim they were defrauded into serving as father but who, after discovering the truth, nonetheless continue to behave exactly as a father would. Looking through the narrow lens of legal reasoning, courts seem to conclude that these men are perpetuating the fraud and worsening the child's confusion and pain by prolonging a doomed relationship. In reality, however, the requirement to cut ties often destroys the relationship by forcing men to choose between their desire for retribution and their desire to remain the child's parent.

Hudson chose the former path, though he told me he had hoped his ex-wife would allow him time with the boy. "What do you do with that information?" Hudson says of the DNA results. "Do you just stick it in your back pocket and forget about it?" But if he wanted to maintain that relationship, he was disappointed. The boy's mother said if Hudson wasn't going to be the father for financial reasons, he couldn't see the boy either. Court records show she also told the child his father no longer wanted him. Hudson and his former wife have another child, a daughter. When he goes to pick her up and tries to talk to the boy, now nearly 17, Hudson says that the boy turns and walks away.

Mike's enduring attachment to L. became the central question of a hearing before a family-court magistrate in October 2007. Mike acknowledged that he continued to act as L.'s father, even after the DNA results, but argued he did so only because he was conned into believing L.'s genetic father would not assume responsibility. Stephanie testified, however, that she never claimed such a thing. The real issue, her attorney, Todd Elliott, told the court, was that Mike didn't really want to stop being L.'s father.

"Every time he was given a chance to deny paternity, he never did," Elliott said, according to the transcript. "He signed consent order after consent order because he wanted to be the father. The testimony here today is that he only did it because of some philanthropic belief that he wanted to step up. That's not true. . . . He

fought for every other weekend. He fought for having her overnight on a Wednesday. He fought for having her not be able to leave the jurisdiction. These aren't things that someone does because they are just philanthropic. He wants to be the dad; he just doesn't want to pay support." Elliott's accusation infuriated Mike, who believed it accurately described Rob, not him.

The hearing officer was persuaded by Elliott's argument: Mike hadn't been defrauded into admitting paternity after the DNA tests, and he had hardly abandoned L. after he learned the truth. Still, the officer ruled, Rob had also acted "essentially as a parent." During the hearing, Stephanie testified that Rob was the biological father, and that he and L. loved each other. He had taken her on vacations to Disney World, Las Vegas and the ocean, celebrated at her birthday parties, bought her gifts and attended her soccer games and school activities. As such, the hearing officer ordered, Rob should help pay her support, too.

Despite being named a defendant in Mike's lawsuit, neither Rob nor any legal representative for him ever showed up in court or contested the rulings. But Stephanie did. Her attorney argued in an appeal that parenthood shared by one mother and two fathers "would lead to a strange and unworkable situation." So, the lawyer reasoned, Rob should not be forced to help pay for L.'s care. David Wecht, the state-court judge charged with hearing the appeal, agreed with Stephanie's conclusions, albeit for different reasons. Pennsylvania law did not allow for the recognition of two fathers of the same child, he wrote in his opinion, and thus he could not order two men to pay paternal support. Wecht concluded that under the law, Mike was L.'s legal father. Fraud is the only way to rebut the key paternity doctrine, and Wecht, like the hearing officer, concluded fraud did not induce Mike to continue as L.'s dad after the DNA results; love did.

In reaching his decision, Wecht looked to a 2006 custody dispute that seemed weirdly similar to Mike's. A married man named Kevin Moyer learned he was not the genetic father of his 9-year-old son. Still, when the marriage ended, Moyer retained partial custody and paid child support. Like Mike's ex-wife, Moyer's ex-wife, Vicky, subsequently married the son's biological father, a man named Gary Gresh, who had had little contact with the boy for his first nine years of life. The child lived primarily with Vicky and Gresh, but when he was a teenager, he asked to live full time with Moyer, whom he considered his father. Moyer sought primary custody of the boy. The Greshes fought back, suing to name Gresh as the legal father instead. The appellate court, however, ruled in favor of Moyer. Gresh, the judges said, had given up his right to be a legal father by being entirely absent during the child's first decade. Moyer, on the other hand, had provided emotional and financial support throughout the boy's life.

The ruling preoccupied Wecht as he considered the facts in Mike's case. If the court recognized Moyer's paternal role despite the lack of genetic tie — and despite the available biological father — how could Wecht disregard the role Mike had played in L.'s life, just because her biological father was now in her life?

Still, the state of the law frustrated the judge. In his opinion, Wecht wrestled with how to apply a law that requires deliberately ignoring genetic facts that are of the utmost importance to the people involved. The law's exasperating consequence, he wrote, is that the man who "may very well be the biological father is able to avoid any direct support obligation" and the nonbiological father is left with "unjust results."

Although Mike sensed that Wecht understood his predicament, he felt trapped by the ruling and he appealed, hoping another judge might find him a way out. When the appellate panel turned him down, Mike brought his plea to the state's top court. Then he waited.

III.

CARNELL SMITH, an engineer-turned-lobbyist in Georgia, is the leading advocate for men like Mike. In 2001, after Smith's own paternity struggle, he formed U.S. Citizens Against Paternity Fraud, to help the men he calls "duped dads." In his most notable success, Smith persuaded Georgia lawmakers to rescind nonbiological fathers' financial obligations, no matter the child's age or how close the relationship. Smith then became the first man to disestablish paternity under that law.

Smith's movement was spurred by federal welfare reform in the mid-1990s that pressured states to track down the fathers of children born out of wedlock and make them accountable. Congress demanded that states find fathers for at least 90 percent of those kids, arguing that connecting a child to her father would improve the child's emotional well-being. Identifying a man to tap for child support in welfare cases would also reduce government spending. The law required paternity-acknowledgment forms to be distributed at every birth by an unwed mother. It did not require states to offer genetic testing before those forms were signed, but most of the forms do note that genetic testing is available. Advocates on both sides of the issue, however, say nearly all men sign the form without undergoing testing. Sometimes they believe they are the father; sometimes they don't understand what they're signing; sometimes they hesitate to question a girlfriend's fidelity right after she's given birth; and sometimes they sign knowing full well the child isn't theirs. If the putative father isn't at the birth and the unwed mother is on welfare or seeking child support, she must identify the man she thinks is the father. He is then served with legal papers. If he doesn't respond, judges usually name him the father by default.

The policy changes have been a huge success: the number of out-of-wedlock births with established paternity has more than tripled in the last 15 years, reaching 1.8 million in 2008. But as that figure swelled, so did the number of men who started having doubts. What if, they asked, the child wasn't really theirs? New, easy-to-use technology provided them with the means to an answer. As Identigene, a paternity-testing company, says in its marketing material, "Putting your mind at ease has never been more convenient, affordable or accurate."

With the scientific proof in hand, men like Carnell Smith began fighting back. A few months after Smith split up with his girlfriend in 1988, she announced she was pregnant with his child. Believing her, he signed a paternity acknowledgment for their daughter, Chandria. He obtained joint custody, paid her support and spent virtually every weekend with his little girl. When Chandria was 11, her mother sued to increase support. Smith decided to be tested, and the results excluded him as the father. In a lawsuit, Smith demanded Chandria's mother pay back the $40,000 he had laid out in what he calls "involuntary servitude" and fraud. The court ruled against Smith, concluding that he had known that his former girlfriend had other partners at the end of their relationship and should have realized he might not be the father. By not exercising his "due diligence" and getting a DNA test early on, the court put the burden on Smith for not unearthing the truth

sooner.

The law that Smith helped to pass in Georgia, like a similar one in Ohio, sets no time limit on using DNA to challenge paternity. The premise is that a man shouldn't be punished for entering a paternal relationship that he would have avoided had he known the truth. It is, Smith says, a correction to a double standard that allows mothers and caseworkers to use DNA to prove paternity but prohibits men from using that same evidence to escape its obligations. But child-welfare experts counter that a child shouldn't be punished by losing the only father she has ever known — or the financial security he offers — just because he's upset that she doesn't share his genes. In 2002 the National Conference of Commissioners on Uniform State Laws — an influential body of lawyers and judges that proposes model laws — drafted a compromise. The proposal would allow the presumed father, the biological father or the mother to challenge the paternity until a child turns 2. The proposal had two goals: to balance the rights of children with those of their presumed fathers and to encourage parentage questions to be raised early in a child's life, before deep bonds are formed. Several states, including Delaware, North Dakota, Oklahoma, Texas, Utah, Washington and Wyoming, have adopted that model or a variation of it. But men's rights groups complain that most putative fathers don't discover the child isn't theirs until after the two-year window closes — at which point, they have little or no recourse.

The last time Smith saw his one-time daughter was nine years ago, when she was 11. His outrage at Chandria's mother and the system remains close to the surface. "We're penalized for trusting our wives or girlfriends!" Smith seethed to me. He has long since lost track of Chandria. It is as if she ceased to exist once their biological connection evaporated.

Chandria, however, has not forgotten Smith. Her memories of her 11 years with him are happy ones, which makes what happened afterward so hard for her to grasp. As Chandria, who is now 20, remembers it, Smith just disappeared from her life. "I was just a kid, so I didn't really understand what happened or why," she said. "He never did explain why he didn't want anything to do with me anymore." Chandria says he wouldn't answer when she called him at home, or he would promise to call back but never did. Smith says he doesn't recall Chandria calling him.

She stopped seeing friends and holed up in the bathroom, scratching and picking at her skin until it bled. The more it hurt, she told me, the calmer she felt. Her hair started to fall out, her grades slipped and she had trouble sleeping, details her mother and her mother's lawyer at the time corroborated. Chandria received counseling at her school and privately for years.

"It kind of wrecked my self-esteem," she says. "Even now, I worry about being a burden on people. I don't want to be in the way. I don't want to be anybody's problem. It's made me apprehensive about getting attached to people, because one day they're there and the next day maybe they won't be. You can't help but be careful."

Chandria now attends college in Georgia. She has seen Carnell Smith on the local news and on the Internet and cannot reconcile the man who seems to her so insensitive with the father she knew: attentive, seemingly proud of their relationship and eager to spend time with her. "He was what a father was supposed to be," she

says, "but when things changed, he completely disconnected. That's just not fair. You've been in my life my entire life and for you to just cut that off for money, well, that's not fair to anybody."

Child-welfare advocates say that making biology the sole determinant of paternity in cases like Smith's puts the nonbiological father's interest above the child's. Besides, society has increasingly recognized that parenthood is not necessarily bound to genetics. Reproductive technology has made it possible for one person to supply an egg, another to fertilize it, a third to gestate it and a fourth and fifth to be deemed the parents. Stepparents, grandparents and same-sex co-parents are increasingly winning legally protected access to children whom they helped raise, even when no direct genetic link exists.

"Having been involved in cases like these, I think the answer to 'Is it my kid?' is irrationally important to the cuckolded husband," says Carol McCarthy, an officer of the Pennsylvania chapter of the American Academy of Matrimonial Lawyers. "My own biases are going into this because I'm adopted, so I'm real into 'your parents are the people who raise you.' I couldn't care less who my biological parents are. My parents are the ones who went through all the crap I gave them growing up."

IV.

WHY IS IT THAT we imbue genetic relationships with a potency that borders on magic? How many among us have trolled through genealogy records in search of unknown relatives or have welcomed strangers into our homes and hearts in instant intimacy simply because a genetic connection is suddenly revealed? Grandpa Harry's older brother's grandchild just found us on the Internet! A lovely man! Let's have him over for dinner! The emotional connection between newly discovered kin is trenchant because we believe the genetic link to be significant, allowing us to embrace a stranger who — if that tie were lacking — we would never otherwise blindly accept. But what happens when we believe a tie exists, as Mike did, and then discover it doesn't? If betrayal and money are taken out of the equation, would everything look different?

Denny Ogden has thought a lot about these questions. He was 54 when he got a phone call from a woman saying she was his daughter. As a college junior, Ogden had an intense summer romance; that September, the woman told him she was pregnant and planned to give up their baby for adoption. The day the baby was born, Ogden called his old flame from a pay phone on campus and listened, distraught, as she described the beautiful baby girl she knew she needed to give away. He felt confused and guilt-ridden.

In the 34 years that followed, Ogden only rarely thought about that little girl. He married, had three kids and settled into a comfortable life in Connecticut, telling his secret to no one, not even his wife. The three times that his wife gave birth, he felt swoony and in love with their creations, and as he examined each baby's tiny toes and fingers, he wondered fleetingly how that other girl, by then a teenager, had turned out.

But then the phone rang, and a woman named D'Arcy Griggs said she was calling from Seattle to say she was his daughter. Her birth mother had died of cancer, but Griggs had met the mother's family, who in turn had led her to Ogden, and no, she wasn't after his money. Shaken, Ogden called his lawyer. He also ran a background check on Griggs and her husband, a prominent surgeon, to make sure Griggs's tale held together.

It did. Ogden told the whole story to his shocked wife, and over the next several months, Ogden and Griggs exchanged hundreds of e-mail messages, phone calls and photos, quizzing each other on intimate medical histories and marveling at how similar their coloring was, their love of adventure (she's a skydiver; he's a private pilot) and their distaste for green peppers and Spanish class. He took to calling Griggs "honey" and slid her photo under his desk blotter at work, alongside those of his other children.

Two months after their first talk, Ogden flew to Seattle to meet her. He and Griggs spent four days, morning to night, catching up on 34 lost years, staring in the mirror side by side, comparing noses and ears and hair. "For the first time in my life, I felt like I totally fit, as if we shared the same personality," Griggs says.

Ogden was so reluctant to leave that he even stayed an extra day. As they prepared to part, one or the other of them (their memories are fuzzy on this detail) pointed out that they couldn't be sure they were related unless they had a DNA test, so they found a lab through the Yellow Pages and were tested. Both felt certain it would confirm what they already felt to be true.

When the news came back that Ogden wasn't the father, he was crushed. "It broke my heart," he said. "We talked to each other and cried, and I even called the testing lab to say, 'Are you really sure?' " As confused as Ogden had been about how to become a father to a 34-year-old stranger, he was even more confused about how to stop being a father to a 34-year-old daughter he had quickly come to love.

Griggs was devastated, too. Her biological mother was dead, and she had lost the man she thought was her father. She sobbed for days. Even seven years later, she cried as she recalled it: "I had finally found a connection, a family I belonged to, and then I thought it was gone. But he didn't go away. I think of him as my 'almost dad.' I call him before I call anyone else in my family whenever I'm upset. When I was going through my divorce, we talked three, four, five times a day for weeks.

"If we had met on the ski slopes or at an airport, we might have hit it off as friends, but the fact that we believed we truly belonged to each other is why we loved each other right away like we did," she told me. Griggs is no longer interested in finding her true biological father. For her, Ogden is enough. On each Father's Day, she sends him a card and scrawls across the top, "I wish."

Many of Ogden's friends and family don't understand why he and Griggs remained close after discovering they were biological strangers. "They don't get the whole idea that believing you're genetically connected makes something happen between people," Ogden said. "All the emotions and feelings were there because we were convinced we were linked. I had committed myself to this child, and when I found out she wasn't my child, how could I just step away?"

V.

IN LATE JUNE, Pennsylvania's highest court announced it would not consider Mike's appeal. That left Wecht's decision intact: Mike was the legal father and the sole man responsible for L.'s support. "It all could have been avoided from the beginning if she'd just told the truth," Mike said of his former wife after the decision was handed down, "if she hadn't led us to believe we were father and daughter, if she had just told

me after she got pregnant that it might not be my kid."

Three and a half years earlier, at a federally convened symposium on the increase in paternity questions, a roomful of child-welfare researchers, legal experts, academics and government administrators agreed that much pain could be avoided if paternity was accurately established in a baby's first days. Several suggested that DNA paternity tests should be routine at birth, or at least before every paternity acknowledgment is signed and every default order entered. In 2001 the Massachusetts Supreme Judicial Court urged the state to require that putative fathers submit to genetic testing before signing a paternity-acknowledgment form or child-support agreement, arguing that "to do otherwise places at risk the well-being of children."

In other words, the same care that hospitals take ensuring that the right mother is connected to the right newborn — footprints, matching ID bands, guarded nurseries, surveillance cameras — should be taken to verify that the right man is deemed father.

Mandatory DNA testing for everyone would be a radical, not to mention costly, shift in policy. Some advocates propose a somewhat more practical solution: that men who waive the DNA test at a child's birth should be informed quite clearly that refusing the test will prohibit them from challenging paternity later. Yes, the plan would reveal truths some men might not want to know. Yes, it would raise administrative costs, lower the number of paternity establishments and blow apart some families. But far fewer children would be entangled in traumatic disputes in which men they call Daddy suddenly reject them.

In the meantime, maybe the solution is to accept that lives can be messy and relationships much more complicated than the law would like. Several judges in Pennsylvania, including David Wecht, who heard Mike's case, have used their paternity rulings as a platform to urge the Legislature or top state court to grant them the discretion to consider DNA. It is evidence, they say, that should be neither exalted nor ignored, but rather weighed as one of many factors, along with the history of the relationship and the child's age, in determining who should raise a child and who should pay for his or her upkeep. In other words, maybe a nonbiological father could be granted custody rights even if the biological father is charged with paying support. A small but growing number of courts in other states have gone this route, but such arrangements are still rare. "There shouldn't be any reason why custody couldn't be treated differently than paternity and support, each looked at on its own merits," Wecht says. "But many states, including Pennsylvania, haven't begun to grapple with these issues yet. They are exceedingly complex, intellectually and legally, and perhaps most significantly, the issues are hotly disputed politically."

VI.

L. SAYS SHE wishes her parents, Mike and Stephanie, had taken a DNA test when she was a baby instead of waiting until she had a firm — but inaccurate — sense of who her biological father was. It's not that she wishes Mike hadn't turned out to be her dad; it's that, having had Mike as her dad for so long, she can't bear that he turned out not to be her father.

As Mike's case wended its way through the courts, Mike asked L. to take another DNA test, this one with

witnesses. He knew the appellate court was unlikely even to consider DNA evidence, but if it did, he wanted to make sure the veracity of his test results would not be questioned. L. wavered. Why help him prove he wasn't her dad? "I didn't really want to be reminded of that," L. said.

Eventually, she yielded, and the test confirmed she was not Mike's biological daughter. She was disappointed. She had been secretly nursing a fantasy that provided her own "Parent Trap" ending. "I got a picture in my head," L. said, "that the test people would call and say they had been wrong, that he really was my biological dad and that everything I had thought before never really happened."

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Fighting a 16th-century presumption of paternity

Sunday, February 21, 1999

By Marylynne Pitz, Post-Gazette Staff Writer

When his wife gave birth in 1987, Gerald A. Miscovich never gave the boy's brown eyes a second thought.

Mary Ann Ulvary and Gerald Miscovich at their Douglasville home. (Brad C. Bower)

After Miscovich and his wife divorced, a nurse to whom he was engaged revealed the hard genetic truth. Miscovich and his former wife both have blue eyes, so their child's eyes could not be brown. Someone else had to be the boy's biological father.

DNA tests later confirmed what Miscovich's fiancee told him.

"I felt betrayed," said the computer programmer who grew up in Westmoreland County and now lives in Douglassville, Berks County. He couldn't sleep. He couldn't eat. He lost 30 pounds.

He soon got another shock. Miscovich tried to challenge the monthly child support of $537 that a judge had ordered him to pay by introducing the DNA evidence in court.

He was turned down flat.

Under Pennsylvania law, a child born to a married couple is presumed to be that couple's child. Paternity can be challenged only if the man can show he is sterile, impotent or was nowhere near his wife when she conceived.

A married or divorced man cannot introduce DNA evidence unless one of those scenarios can be proven.

Rooted in 16th-century English common law, this presumption of paternity is designed to keep families intact and protect children from the stigma of illegitimacy.

Today, it also ensures that any man who impregnates a married woman can avoid the responsibility of supporting his child, said Miscovich and

his fiancee, Mary Ann Uivary.

A double standard exists because state law allows an unwed mother to use blood and DNA testing to pin the paternity badge on a man. Miscovich's fiancee believes divorced or married men should have that same right.

"Our justice system is based on the truth," Uivary said. "Here, we're being asked to base our lives on lies. I don't think that's right. It really is injustice."

In a tie vote in December, Miscovich's appeal was turned down by the Pennsylvania Supreme Court. Dissenting justices in a similar 1997 case made the same point as Miscovich: If science can help prove paternity, why not allow it?

Now 36, Miscovich is fighting to change the law on two fronts.

Next month, he and his attorney, Neil Hurowitz, will ask the U.S. Supreme Court to hear his case on the basis that he has been deprived of income without so much as a hearing on the issue of paternity. That, Miscovich claims, is a denial of due process guaranteed by the U.S. Constitution.

Two legislators familiar with his case and others like it plan to introduce legislation to change Pennsylvania's law.

Neither Miscovich's former wife, Elizabeth Miscovich, who has remarried, nor her attorney, Lisa A. Waldman, responded to requests for interviews.

"I cannot get on with my life," said Miscovich, who has fought what he considers an unjust law for 71/2 years.

So far, child support and legal fees total more than $100,000, he said.

Paying the price

The emotional cost has been exorbitant, too.

Uivary, 42, agonized for weeks before telling Miscovich about her suspicions that someone else fathered the boy he thought was his son. She finally did on Christmas Eve of 1991. By that time, the couple was engaged and had made detailed wedding plans.

To make sure Uivary was right, Miscovich arranged for DNA tests on his blood and the boy's. The results of the tests excluded Miscovich as the father.

How do you explain something like that to a 4-year-old? Not easily, Miscovich said.

"He had a little puzzled look on his face." Miscovich said. "He said,

'Who's going to be my daddy?' I said, 'Well, we'll have to talk to your mom about that.' "

That was the last time Miscovich saw the child, who is now 11.

The law gave him little other choice, he said.

Men who know a child is not theirs but still behave like a father cannot later deny paternity, state law says.

As hard-hearted as it may seem, Miscovich stood on principle.

"The decision to actually break the tie with the child - that was an easy decision. That was based on fact. Once I had the knowledge that I wasn't his father, I knew I couldn't be his father," Miscovich said.

He and Uivary made a special trip to Greensburg to break the news to his parents. To this day, Miscovich said, some of his friends are unaware of his legal battle.

Miscovich received an annulment from the Catholic church after showing the DNA test results to a tribunal.

"They about fell on the floor," Miscovich said. "They saw that the marriage was destroyed."

A short-lived marriage

Miscovich and Elizabeth Oplinger Miscovich were married July 26, 1986, and she became pregnant in March the next year.

The couple used birth control and had not planned to have a child immediately, according to Miscovich.

"I did question it," he said "She said, 'Well, we must have had an accident.' "

The child was born Dec. 28, 1987. In October 1989, Miscovich arrived home from work to find that his wife had left him.

"Everything in the townhouse was gone," he said. "I had to borrow a pillow and blanket from my boss."

When the couple divorced Dec. 11, 1990, the boy was 3 years old.

Miscovich said he became a weekend father and supported the boy through an agreement he reached with his ex-wife.

A year after the divorce, Miscovich learned the truth when Uivary reviewed her old biology textbooks and did research in the library on genetics. Before Uivary talked to Miscovich, she consulted a psychologist about how to broach the subject with her fiancé.

Soon after receiving the DNA test results, Miscovich stopped paying child support in March 1992.

In February 1994, Elizabeth Miscovich sued a Montgomery County man for child support. Blood test results returned in May 1994 indicated that that man was not the father, either, court records show.

A year later, in May 1995, Elizabeth Miscovich sued her ex-husband for support, insisting that he was the father. At the time, Elizabeth Miscovich was on public assistance and pursuing a post-secondary degree, according to court records.

A Berks County Common Pleas judge ordered Gerald Miscovich to pay $537 a month in child support. He was not allowed to introduce DNA evidence showing that he could not be the boy's father. His salary has been garnisheed since.

George S. Stern, president of the American Academy of Matrimonial Lawyers and a lawyer from Atlanta, said that under the circumstances, Elizabeth Miscovich had no choice but to sue her ex-husband for support.

But, Stern added, "If he isn't the father, and the evidence is as good as it gets, then that evidence should be allowed in."

H. Joseph Gitlin, a divorce lawyer from Woodstock, Ill., said a majority of states allowed the admission of DNA test results in such cases.

"Pennsylvania has always been regressive as far as family law goes," Gitlin said.

Elizabeth Miscovich remarried in August.

In the minority

A vocal minority of Pennsylvania's seven Supreme Court justices favors the admission of DNA blood tests when a married or divorced man challenges paternity of his wife's child.

Justice Russell M. Nigro wrote in a 1997 paternity case that blood tests should be used to identify a biological father or to show that a man could not be a child's father.

Such tests, Nigro wrote, "would also work to eliminate situations where a man is deceived into believing he is the father."

In that same case, Justice Sandra Schultz Newman wrote that, "Pennsylvania's approach to establishing paternity is clearly outdated."

Newman said Pennsylvania was among a minority of states that do not accept blood test results in such cases while two-thirds of the states do.

"We should join the majority of states and accept these reliable scientific

tests to rebut the presumption that a child born to a married woman is her husband's child," Newman wrote.

She said that when a child's biological parents were known, a child could more easily discover inherited medical conditions that can be successfully treated if caught early.

Such knowledge [of a child's biological parent] also allows for "placement of moral and economic responsibility," Newman wrote.

A majority of the court disagreed with Nigro and Newman and voted 4-3 to uphold the state law.

Stewart Barmen, a Pittsburgh lawyer, agrees with Newman and Nigro and notes the contradiction in the state law.

"The reason for the presumption [of paternity in state law] is you want to keep a family intact," he said. "Once you're separated and divorced, they are no longer an intact family."

The state Legislature also has a chance to change the law.

State Rep. Rod Wilt, R-Greenville, Mercer County, introduced legislation this month that would allow blood and DNA testing to be used to establish paternity in cases such as Miscovich's.

Wilt said he knew of a dozen other men who are in the same predicament.

"I think every kid needs a dad," he said. "It takes two responsible people to make a child. Under our current system of law, we're exonerating one of the responsible parties from any responsibility. The person who impregnated the woman is never called to the witness stand, never required to assume any responsibility for his actions."

Wilt believes the law encourages irresponsible behavior.

"Look at the message you're sending to that guy in the bar who is preying on married women," he said.

"He can ruin this woman's life and walk away from her and the whole situation."

Dennis Leh, R-Berks County, is co-sponsoring Wilt's bill but is aware that the new law could be abused.

"I don't think you want to open up the floodgates for divorced fathers and estranged husbands to go back and try to absolve themselves of financial responsibility," Leh said.

Yet the law also would ensure that someone such as Miscovich would find fair treatment in court, Leh said.

Gerald Miscovich said he would like to have acted as a big brother to the boy and continued a relationship with him.

The law, he said, left him no choice but to cut all ties.

Miscovich said he favored laws that are tough on dads who don't pay child support because he believes in being responsible.

"But if I'm not the dad, I'm not the dad and no law can make me a father," Miscovich said.

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PITTSBURGH TRIBUNE-REVIEW

Doubting dads prompt paternity test trend

By Bobby Kerlik
TRIBUNE-REVIEW
Monday, [illegible]

Dr. Mark Hudson always wondered why his son didn't look like him.

"My wife and I were both in (medical) residency at the time, and we used birth control religiously," said Hudson, 44, now divorced and remarried. "I actually asked her, at the time, if this was my child. She said, 'Of course.' Most people trust their spouse."

A genetic test last year confirmed his doubts.

Hudson, an anesthesiologist from Finleyville, Washington County, said a DNA test he commissioned showed another man had fathered the 12-year-old boy. Hudson was miffed when a judge recently ordered him to continue paying $2,800 a month in child support for two children, even though he fathered just one of them.

Nationwide, thousands of men are being forced to pay support for someone else's children, according to fathers' rights groups. Doubting dads can buy a $99 DNA paternity home-test kit online to show whether a child is biologically theirs.

Court decisions increasingly take DNA testing into account in determining paternity, but that is not the only factor judges consider when deciding whether to order child support payments after a couple split up.

"DNA testing has spiked in particular in the last five to six years. Exposure to DNA testing on TV is a big part of that," said Len Stone, president of American Medical Services. He said his company sells thousands of DNA kits and most are used for paternity tests.

Courts in six Western Pennsylvania counties ordered DNA tests of about 4,500 children and adults last year to establish paternity. More than half of those tests -- 2,700 -- were ordered in Allegheny County, said Patrick Quinn, administrator of the adult section of family court.

Taxpayers pick up the $210 cost of each case, which usually includes testing for mom, dad and child. If the test confirms the man as the biological father, he is billed for the cost, Quinn said. Generally, the federal government reimburses counties for 66 percent of the cost of the test when the father is not identified.

Even when DNA tests confirm suspicions, many men such as Hudson are surprised to learn they're still financially responsible for a child not biologically theirs. Paternity is about more than who provides the DNA, legal experts say

Pennsylvania's court rulings largely depend on the individual situation, said Dan Richard, director of the state Bureau of Child Support.

"The laws on the books now were developed when DNA testing did not exist," Richard said. "I realize there are those who say we should rely 100 percent on genetic testing. But you just can't take a father away. You have to balance the science vs. the children."

Child advocate groups, such as the National Center for Youth Law, based in Oakland, Calif., say paternity laws that allow fathers to walk out of children's lives are not in the best interest of the youngsters.

"In the end, this is about kids. These days, biology is not and should not be the primary factor in determining who the father is," said Curt Child, a senior attorney with the center. "Of equal importance should be the best interests of the child.

"For an individual to come back years later and say, 'I was duped. I'm not the father,' will have a significant impact on the child."

Child said a man who is unsure he is the biological father should challenge paternity when a child is born. Waiting risks having the child grow dependent on the man's emotional and financial support.

Generally, Pennsylvania courts determine paternity based on the relationship between father and child, the child's age and whether a marriage and family are intact, Richard said. Courts consider how long a man knew he was not the biological father before challenging paternity in court.

Courts have ruled that if a man acts as the child's father, he can be held financially responsible for the child, said Downtown-based family law attorney Lisa Marie Vari.

"It's really the (woman) who had the relationship, and it's not fair to fraudulently hold a man responsible for this obligation," Vari said. "You have to balance that against the emotional needs of a child."

That was part of the reasoning used by Allegheny County Judge Kathleen Mulligan, who ruled that Hudson must continue paying child support for both children conceived during his 11-year marriage, including one who private DNA testing showed was not his.

In an opinion issued Friday, Mulligan wrote, "It is recognized that damage may already have been done in this case because (Hudson's son) may well be aware of his father's position. However, the policy question remains as to whether the law should encourage parties to challenge the paternity of 12-year-old children whom they have raised all of their lives.

"While one may have little sympathy for the mother under these circumstances, (the son) should not be punished."

Hudson's ex-wife, Nicolette Chiesa, said in court papers that Hudson acted as the boy's father throughout the child's life and should not change that stance

She and Hudson were married in May 1989 and divorced in October 2000. They had a daughter during their marriage, and the two children should be treated equally, Chiesa's court documents state. Chiesa's lawyer declined comment.

Hudson is appealing to state Superior Court. He said he would like to continue a relationship with his son, but has not seen him for more than a year because of legal and custody conflicts.

"I still feel like he's my son. But I think it's wrong to enrich the person who committed the fraud," Mark Hudson said. "The child deserves the truth."

PENNSYLVANIA PATERNITY RULINGS

While DNA testing can determine whether a man is the biological father of a child, Pennsylvania courts have returned mixed rulings on whether he is responsible for support payments after he and the mother split up. When the child and presumed father have bonded and the man has acknowledged being the father, the man can be required to pay support. However, Pennsylvania Superior Court has ruled that men no longer had to make support payments in at least two cases involving DNA testing:

• In 2003, Superior Court upheld a Luzerne County judge's ruling that eliminated support payments by William Doran, who used DNA results to exclude himself as the father of a child conceived during his marriage. The child was 11 when Doran learned he was not the father, according to court documents.

• In February, Superior Court said an Erie County judge incorrectly ordered Gregory Gatti to continue paying support for a toddler who was not biologically his. The couple were never married. The child was 18 months old when Gatti learned through DNA testing that another man was the father. The Erie County judge said Gatti should pay support, noting that Gatti had acted as the father and claimed the child as a dependent on tax returns. Superior Court judges overturned that ruling, saying the mother tricked Gatti into believing he was the father.

Courts in a six Western Pennsylvania counties -- Allegheny, Westmoreland, Armstrong, Beaver, Butler and Washington -- ordered DNA tests of about 4,500 children and adults last year to establish paternity.

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