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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 children. 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, Chandra. He obtained joint custody, paid her support and spent virtually every weekend with his little girl. When Chandra 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 Chandra’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 Chandra’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 Chandra. It is as if she ceased to exist once their biological connection evaporated.

Chandra, 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 Chandra, 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.” Chandra 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 Chandra 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, quizzes 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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