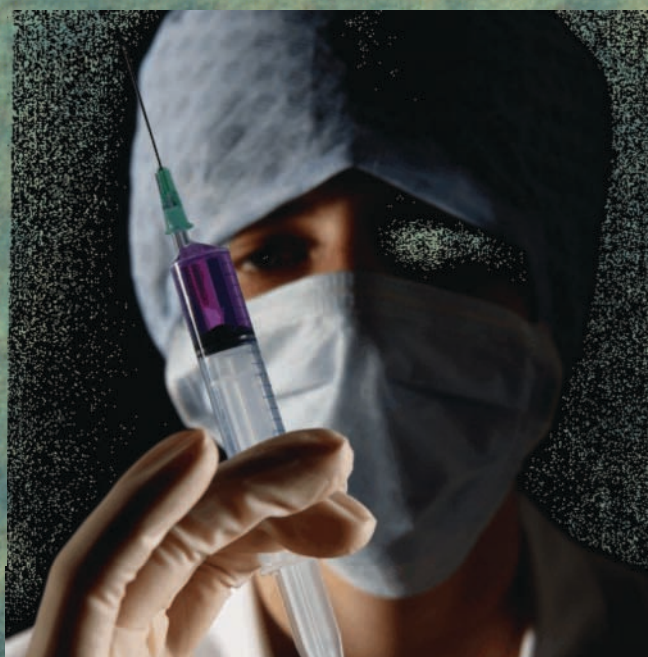


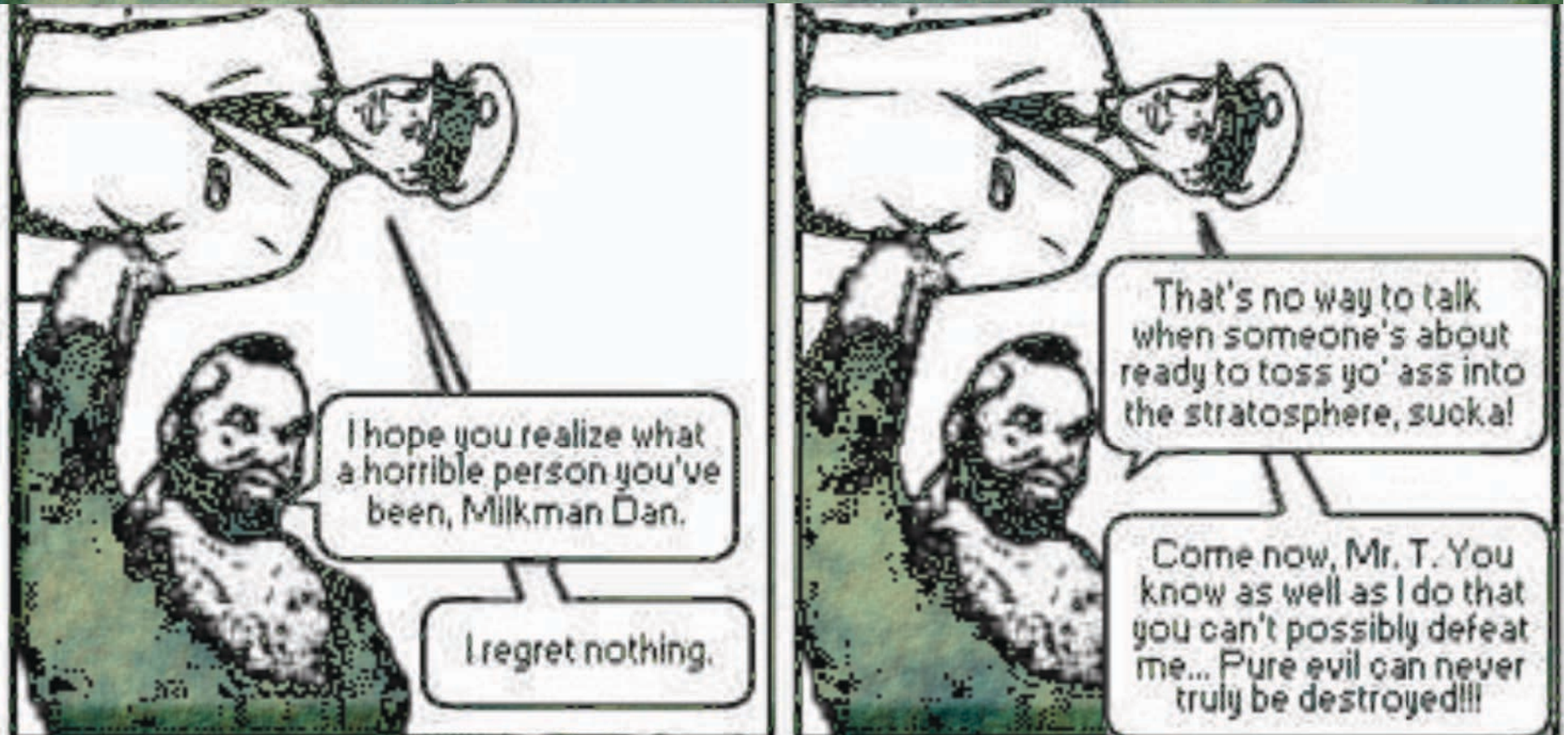
# *Who's Your Daddy?*

*DNA and Relitigating Paternity Judgments*





*What to do when you find  
out you are not AThe  
Daddy@  
The old way of dealing with it:*





# *The new way to handle it in GA*

**O.C.G.A. 19-7-54**



*May 9, 2002, Governor signs the bill*



## ***A HOT ISSUE***

☐ *According to the American Association of Blood Banks, 22.7% to 28.2% of males tested for paternity by American blood labs show that the tested party is not in fact the child's father.*

☐ *O.C.G.A Section 19-7-54 helps address this.*



# *ATTACKING PATERNITY JUDGMENTS: NATIONALLY*

☐ *Some courts hold that children are best served by the stability of a strong rule of res judicata: "if there is a class of judgments where the doctrine of res judicata should be scrupulously honored, it is a paternity judgment." Robert J. v. Leslie M. 51 Cal. App. 4th 1642 (1997).*



# *ATTACKING PATERNITY JUDGMENTS: NATIONALLY*

☐ *Liberal View: "a court's adherence to a paternity agreement entered into by an 18 year-old putative father, without counsel, without a trial, without a blood test, when a subsequent blood test offered in proof positively excludes the male as the father, might very well undermine the public's faith in our system of justice." Jacqueline M.L. v. Korey D.S., 229 Wis. 2d 253 (1999).*



# ***Pre-Statute Paternity Attacks***

**Georgia's Law of Attacks on Paternity  
Judgments**

- ☐ ***Extraordinary Motions for New Trial***
- ☐ ***How likely were they to succeed?***
  
- ☐ ***"The public policy of this state favoring the institution of marriage and the legitimacy of children born during a marriage is the strongest public policy recognized by law." Ghrist v. Fricks et al. Fricks v. Ghrist, 219 Ga. App. 415 (1995)***



## *Intention of the statute*

- ☐ *to provide the procedure for a motion to set aside a determination of paternity based on newly discovered evidence regarding paternity of a child*
- ☐ *to provide mandatory relief if genetic testing conclusively shows that the alleged father is not the biological father of the child and certain other conditions are met*
- ☐ *To provide discretionary relief in the event that those conditions are not met*



## *How to begin such a case?*

☐ *(a) In any action in which a male is required to pay child support as the father of a child, a motion to set aside a determination of paternity may be made at any time upon the grounds set forth in this Code section. Any such motion shall be filed in the superior court and shall include:*



☐ (1) *An affidavit executed by the movant that the newly discovered evidence has come to movant's knowledge since the entry of judgment; and*

☐ (2) *The results from scientifically credible parentage-determination genetic testing, as authorized under Code Section 19-7-46 and administered within 90 days prior to the filing of such motion, that finds that there is a 0 percent probability that the male ordered to pay such child support is the father of the child for whom support is required.*



# *Mandatory Relief*

☐ (b) *The court shall grant relief on a motion filed in accordance with subsection (a) of this Code section upon a finding by the court of all of the following:*

☐ (1) *The genetic test required in paragraph (2) of subsection (a) of this Code section was properly conducted;*

☐ (2) *The male ordered to pay child support has not adopted the child;*

☐ (3) *The child was not conceived by artificial insemination while the male ordered to pay child support and the child's mother were in wedlock;*

☐ (4) *The male ordered to pay child support did not act to prevent the biological father of the child from asserting his paternal rights with respect to the child;*

☐ **AND**



*(5) The male ordered to pay child support with knowledge that he is not the biological father of the child has not:*

☐ *(A) Married the mother of the child and voluntarily assumed the parental obligation and duty to pay child support;*

☐ *(B) Acknowledged his paternity of the child in a sworn statement;*

☐ *(C) Been named as the child's biological father on the child's birth certificate with his consent;*

☐ *(D) Been required to support the child because of a written voluntary promise;*



- ☐ *(E) Received written notice from the Department of Human Resources, any other state agency, or any court directing him to submit to genetic testing which he disregarded;*
- ☐ *(F) Signed a voluntary acknowledgment of paternity as provided in Code Section 19-7-46.1; or*
- ☐ *(G) Proclaimed himself to be the child's biological father.*



## *Permissive Relief:*

☐ (c) *In the event movant fails to make the requisite showing provided in subsection (b) of this Code section, the court may grant the motion or enter an order as to paternity, duty to support, custody, and visitation privileges as otherwise provided by law.*



# *FEEES!*

*(Mandatory fees!)*

*(g) If relief on a motion filed in accordance with this code section is not granted, the court SHALL assess the costs of the action AND ATTORNEY=S FEEES against the movant.*



# *Scenario #1*

## *Duped Daddy*

☐ *After 17 years of child support, ex-wife laughingly surprises Adad@ with some tough news: the kid is the postman=s progeny.*



## *Outcome:*

☐ *With probative genetic testing, duped daddy should be able to avoid the last year of child support.*

☐ *Question: what if duped daddy has no visitation, and thus cannot get the genetic test results required for any relief under the statute?*



## *Scenario #2*

### *Duped but proud daddy*

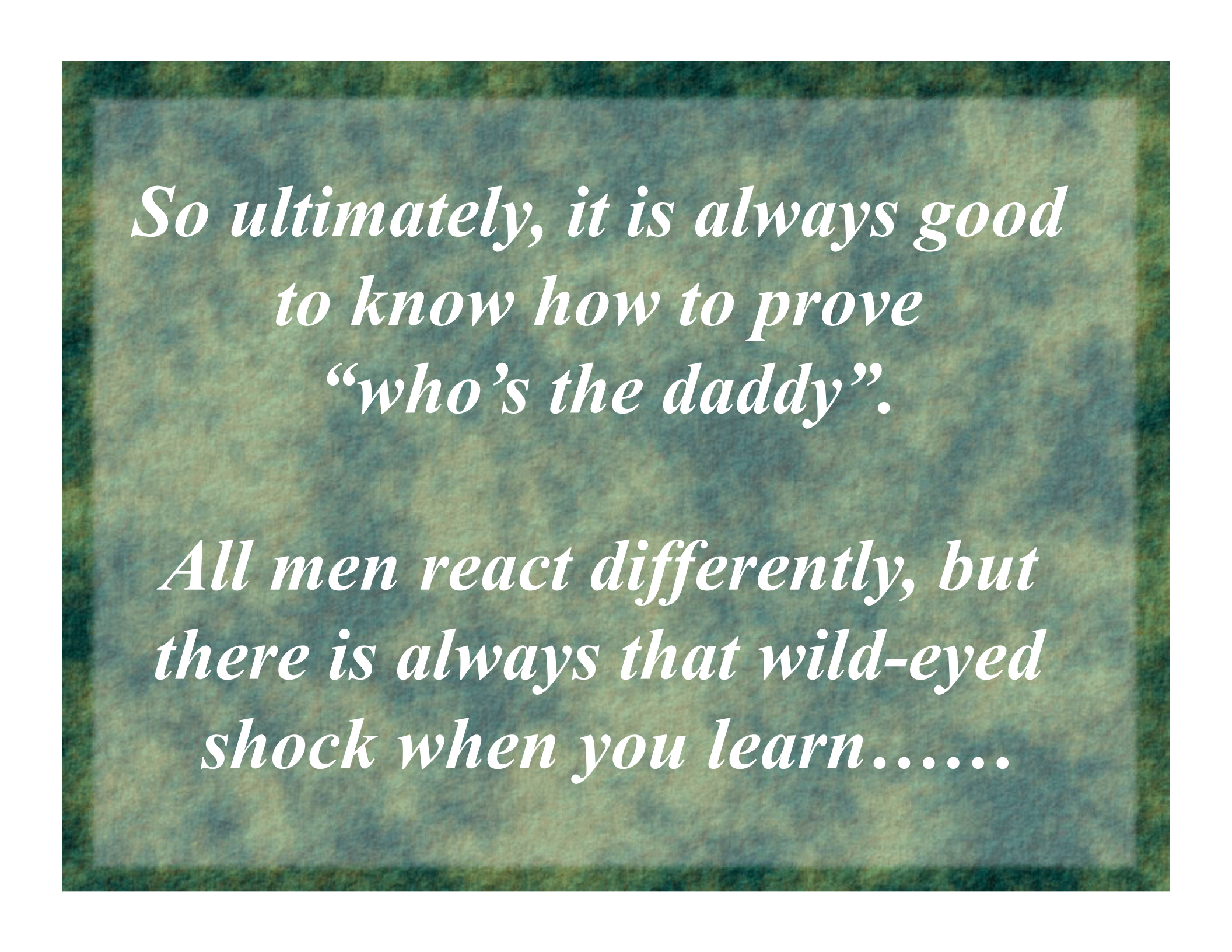
- ☐ *Dad thinks he is the Father (despite having knowledge of wife=s affair), and signs divorce and visitation agreement.*
- ☐ *Later, after she confirms his earlier suspicion by telling him the child is not his, he then wants to set aside the order?*
- ☐ *Mandatory relief unavailable, permissive relief may be available.*



## *Questions Raised*

- ☐ *What is Anewly discovered evidence@?*
- ☐ *Will it hold movants to the high standard of Extraordinary Motions of New Trial, requiring Aduel diligence@ in the original paternity determination?*
- ☐ *What if genetic testing is difficult or impossible for movant to do?*





*So ultimately, it is always good  
to know how to prove  
“who’s the daddy”.*

*All men react differently, but  
there is always that wild-eyed  
shock when you learn.....*



*You are the daddy!*

