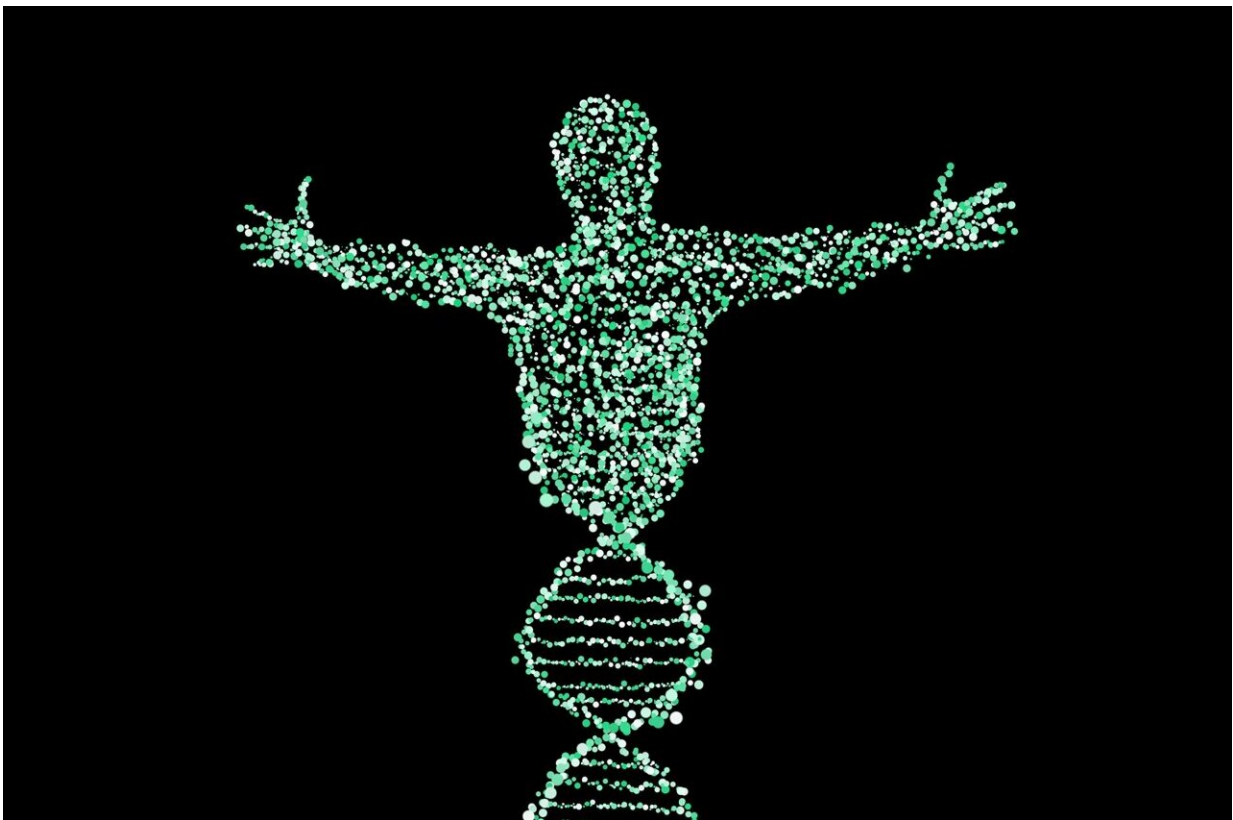


Genetic paparazzi are right around the corner, and courts aren't ready to confront the legal quagmire of DNA theft

June 3 2022, by Liza Vertinsky and Yaniv Heled



Credit: Pixabay/CC0 Public Domain

Every so often stories of [genetic theft](#), or extreme precautions taken to avoid it, make headline news. So it was with a [picture](#) of French

President Emmanuel Macron and Russian President Vladimir Putin sitting at [opposite ends of a very long table](#) after Macron declined to take a Russian PCR COVID-19 test. Many [speculated](#) that Macron refused due to security concerns that the Russians would take and use his DNA for nefarious purposes. German Chancellor Olaf Scholz [similarly refused](#) to take a Russian PCR COVID-19 test.

While these concerns may seem relatively new, pop star celebrity Madonna has been raising alarm bells about the potential for nonconsensual, surreptitious collection and testing of DNA for over a decade. She has [hired cleaning crews](#) to sterilize her dressing rooms after concerts and requires her own new toilet seats at each stop of her tours.

At first, Madonna was ridiculed for having [DNA paranoia](#). But as more advanced, faster and cheaper genetic technologies have reached the consumer realm, these concerns seem not only reasonable, but justified.

[We are law professors](#) who study how emerging technologies like [genetic sequencing](#) are regulated. We [believe that](#) growing [public interest](#) in genetics has increased the likelihood that [genetic paparazzi](#) with DNA collection kits may soon become as ubiquitous as ones with cameras.

While courts have for the most part [managed to evade](#) dealing with the complexities of surreptitious DNA collection and testing of public figures, they won't be able to avoid dealing with it for much longer. And when they do, they are going to run squarely into the [limitations of existing legal frameworks](#) when it comes to genetics.

Genetic information troves

You [leave your DNA behind you](#) everywhere you go. The strands of hair, fingernails, dead skin and saliva you shed as you move through your day are all collectible trails of DNA.

Genetic analysis can reveal not only personal information, such as existing health conditions or risk for developing certain diseases, but also core aspects of a person's identity, such as their ancestry and the potential traits of their future children. In addition, as genetic technologies continue to evolve, fears about using surreptitiously collected genetic material for [reproductive purposes](#) via [in vitro gametogenesis](#) become more than just paranoia.

Ultimately, taking an individual's genetic material and information without their consent is an intrusion into a legal domain that is still considered [deeply personal](#). Despite this, there are [few laws](#) protecting the interests of individuals regarding their genetic material and information.

Existing legal frameworks

When disputes involving genetic theft from public figures inevitably reach the courtroom, judges will need to confront fundamental questions about how genetics relates to personhood and identity, property, health and disease, intellectual property and [reproductive rights](#). Such questions have already been raised in cases involving the [use of genetics in law enforcement](#), the [patentability of DNA](#) and ownership of [discarded genetic materials](#).

The untold story of how the Golden State Killer was identified including revelations that the profile was covertly uploaded to the [@FamilyTreeDNA](#) and [@MyHeritage](#) DNA databases <https://t.co/5SrMGU1Qnj>

— Debbie Kennett (@DebbieKennett) [December 8, 2020](#)

In each of these cases, courts focused on [only one dimension](#) of genetics, such as privacy rights or the value of genetic information for biomedical

research. But this limited approach disregards [other aspects](#), such as the privacy of family members with shared genetics, or property and identity interests someone may have in genetic material discarded as part of a medical procedure.

In the case of genetic paparazzi, courts will presumably try to fit complex questions about genetics into the legal framework of [privacy rights](#) because this is how they have approached other intrusions into the lives of public figures in the past.

Modern [U.S. privacy law](#) is a complex web of state and federal regulations governing how information can be acquired, accessed, stored and used. The right to privacy is limited by First Amendment protections on the freedom of speech and press, as well as Fourth Amendment prohibitions on unreasonable searches and seizure. [Public figures](#) face further restrictions on their [privacy rights](#) because they are objects of legitimate public interest. On the other hand, they also have publicity rights that control the commercial value of their unique personally identifying traits.

People whose genetic material has been taken without their consent may also raise a [claim of conversion](#) that their property has been interfered with and lost. Courts in Florida are currently considering a conversion claim in a [private dispute](#) where the former CEO of Marvel Entertainment and his wife accused a millionaire businessman of stealing their DNA to prove that they were slandering him through a hate-mail campaign. This approach replaces the narrow legal framework of privacy with an even narrower framework of property, reducing genetics to an object that someone possesses.

What the future may hold

Under existing laws and the current state of genetic technology, most

people don't need to worry about surreptitious collection and use of genetic material in the way that public figures might. But genetic paparazzi cases will likely play an important role in determining what rights everyone else will or will not have.

The U.S. Supreme Court is very unlikely to recognize new rights, or even affirm previously recognized rights, that are [not explicitly mentioned in the Constitution](#). Therefore, at least at the federal level, individual protections for [genetic material](#) and information are not likely to adapt to changing times.

This means that cases involving genetics are likely to fall within the purview of state legislatures and courts. But none of the states have [adequately grappled](#) with the complexities of genetic legal claims. Even in states with laws specifically designed to protect genetic privacy, regulations cover only a [narrow range](#) of genetic interests. Some laws, for example, may prohibit disclosure of genetic information, but not collection.

For better or for worse, how the courts rule in genetic paparazzi cases will shape how society thinks about genetic privacy and about individual rights regarding genetics more broadly.

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