



## Pediatric Ethics, Issues, & Commentary

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# Some Thoughts on the Achane Case

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Terry Achane was stationed in South Carolina when his now ex-wife, Tira Bland, gave birth to their daughter and gave her up for adoption without his knowledge or consent. After a lengthy legal battle, Teleah is now with her father in South Carolina. Below, an ethicist and a nurse researcher share their thoughts about this case.

## Birth Fathers: Unequal Power and Myths in the Terry Achane Case

Rose Mary Volbrecht

### Intro

Infant adoption policy and practices raise a number of ethical issues for adoption professionals, state and federal governments, and our society in general. Although birth parents have the ultimate authority in deciding to place their children for adoption, the rights of birth fathers in the adoption process have been unclear. These rights also vary significantly from state to state. It was not until 1972 that the Supreme Court affirmed the Constitutional protection of presumed fathers' parental rights in cases where the couple is not married. In *Stanley v. Illinois, 1972*, the court ruled that equal protection under the 14th Amendment requires that in cases of birth fathers who have established substantial relationships with their children, state laws must provide equal treatment to unmarried mothers and fathers. A substantial relationship is defined as the existence of a biological link between a child and the alleged father and the father's commitment to the responsibilities of parenthood. How this substantial relationship is to be established or determined varies from state to state, as does evidence deemed sufficient to terminate fathers' rights (Finley, 2002; Menard, 1997). But what is clear since the landmark ruling in 1972 is a societal shift away from deferring to the wishes of birth mothers in adoption processes and a greater responsibility for adoption agencies and states to ensure that birth fathers are identified and notified of their parental status and rights.

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## (In)Visible Parents

Constance M. Dallas

Although the story was covered on national television programs, such as *Good Morning America* (aired February 19, 2013), it received only regional coverage in newspapers, such as the *Salt Lake City Tribune* ([sltrib.com](http://sltrib.com)), and on the interested parties' blogs and Facebook pages. There are only a few facts upon which everyone agrees. The marriage between Tira Bland and Terry Achane, both African American, was already on shaky ground when Terry left the seven-month pregnant Tira to report as a drill instructor at Fort Jackson in South Carolina. There is little agreement about subsequent facts surrounding the birth of Leah on March 1, 2011, at Mountain View Hospital in Payson, Utah, and her subsequent adoption by Jared and Kristi Frei.

### Viewpoints

The three viewpoints to consider are those of the biological father, Achane; those of the adoptive parents, Jared and Kristi Frei; and those of the adoption agency, The Adoption Center of Choice. Achane reports disproving Tira's suggestion to give the baby up for adoption. Tira would remain in Texas with her family until the birth; afterwards she would join Achane in South Carolina where Achane has family. He sent money to Tira before she disappeared in February 2011. He was unable to find out what happened to her or to the pregnancy.

Prior to its removal, the blog maintained by the Freis, already parents of four children, learned in 2008 that advanced endometriosis was the cause of Kristen's multiple miscarriages and infertility and would prematurely limit their family size. They adopted an African-American boy, James, in May 2009. Leah seemed the perfect answer to their

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## The Case

Much of the emphasis since the Stanley case has been on the difficulties of identifying and locating birth fathers who are unaware of the pregnancy and the birth of their child. There are understandably significant ethical and practical issues in these cases in which paternity has not been established and particularly when the relationship between a birth mother and father may have been short lived. It is quite another thing when a couple is married, the father is aware of the pregnancy, but for a variety of reasons may not be present when the child is born, and the birth mother chooses to put the child up for adoption without any participation by the birth father in the adoption process. This was precisely the case for Terry Achane, a U.S. Army drill instructor, whose infant girl was placed for adoption with Jared and Kristi Frei without Achane's knowledge.

Thirty-one-year-old Achane was stationed in South Carolina on March 1, 2011, when his wife, Tira Bland, gave birth in Utah to their daughter. Bland immediately put the baby up for adoption. Achane knew that Bland was pregnant, having taken her to prenatal doctor appointments in Texas before he was deployed to South Carolina. The couple had been experiencing marital difficulties prior to his deployment. Bland cut off all contact with Achane following his deployment and made arrangements for the adoption in secret, according to Achane's lawyer, Mark Wiser. Bland told the adoption agency and the Freis that Achane had abandoned her and their child. It was several weeks after the baby's birth that Achane learned his child had been adopted and was in Utah (Goldman, 2012).

According to his lawyer, when Achane contacted the adoption agency, the agency denied information and ignored Achane when he told them he had not consented to the adoption. Bland apparently gave the agency Achane's old address in Texas where he lived prior to being stationed in South Carolina. She also stated that he would not consent to the adoption. The agency made one attempt to contact Achane in Texas, but it appears they made no other efforts to obtain his consent.

Achane went to court to fight for the right to raise his daughter. On December 4, 2012, Utah Judge Darold McDade ruled in Achane's favor. The Freis were ordered to return their adopted daughter, now 21 months old, to her biological father within 60 days. Judge McDade stated in his ruling that he was "astonished and deeply troubled" by the actions of the agency, the Adoption Center of Choice, and referred to its treatment of Achane as "utterly indefensible."

During the trial, the Freis claimed that they tracked down Achane "several months" after the adoption, but were shocked when he refused to consent to the adoption. Judge McDade, however, ruled that the Freis knew Achane had not been consulted about the adoption, but decided to proceed with the process anyway. The Freis returned Leah to her father on January 25, 2013. Initially, they were determined to appeal the judge's ruling, but they abandoned their appeal on February 11, 2013, stating they thought this was in the best interests of the child.

attempt to find a sibling similar in age and ethnicity to James. The Freis, who are Caucasian, became acquainted with Tira in Utah when she selected them as potential adoptive parents from the Adoption Center website. Tira told them that she had chosen to give her baby up for adoption because her husband, Achane, had abandoned her and left her without financial resources. They were shocked several months after Leah's birth when they tracked down Achane to serve him with a petition to release his parental rights to Leah, when he objected to the adoption.

The former website of The Adoption Center of Choice, which is located just outside of Salt Lake City in Utah, reported 1325 successful adoptions in 15 years. It is silent, however, on three topics. It does not mention the Achane/Frei case, it does not mention a sponsor, and it does not mention fathers. It does offer expectant mothers transportation from their home state; counseling; paid pre- and post-natal medical services; a two-bedroom, fully furnished apartment with washer, dryer, and cable television services; paid cell phone; transportation for all medical appointments; weekly shopping trips; and unspecified outings. Potential adoptive parents are directed to a Frequently Asked Questions site that informs them that the average wait for an adoptive baby is two years and that the average cost of adoption in the United States is \$30,000 to \$50,000. No specific amount is listed for The Adoption Center itself.

## Legal Issues

On January 25, 2013, the judge decided in favor of Achane after 22 months of lawsuits and huge legal expenses for both Achane and the Freis. The judge determined that the adoptive parents were required to return Leah immediately to her biological father when the father requested her return because Leah was conceived *during marriage*. The judge also determined that the Freis were aware that Achane had not consented to the adoption and were willing to take the risk. Achane took Leah to his family in South Carolina after being awarded custody.

Both families have disappeared from the news, so it is not possible to know if Achane kept his promise to the Freis to offer them reasonable phone calls and in-person visits to facilitate Leah's transition. It is not known if his offer was accepted. Both families obviously loved Leah and wanted what they felt was best for her. It will be many years before Leah will be capable of deciding for herself if the right decision was made for her. Hopefully, she will understand that the conflict arose from parental love.

## Nursing Implications

This case brings up some interesting issues about male parents that may be of special interest to nurses. Fathers are rarely as visible to nurses as are mothers. During childbearing years, women often receive routine and illness-related reproductive services, and consequently, have multiple and ongoing contact with health professionals. They learn health care routines and the medicalized culture. They learn what we value and how we want them to behave in our presence. Fathers often do not.

Mothers often take responsibility for the health care of the family and arrange appointments for children, keep track of their immunizations and physical examinations, and provide illness care. Fathers often do not. Mothers frequently interact with school staff, make play dates, and

## Ethical Issues

We will consider three ethical issues related to this case. First, there are issues of the exploitation of unequal power. What is most remarkable about this case is how easy it was for Jared and Kristi Frei to adopt a child born to parents who were estranged, but nonetheless married. How could the legal and ethical rights of the known legal father be so easily ignored or set aside in the adoption process? It seems that the adoption agency made little effort to locate Terry Achane to inform him of the birth of his child and to consult him about an adoption. Furthermore, the Freis aggressively pursued this adoption in spite of their knowledge that Achane had not been consulted. The Freis apparently declared that “the baby was ordained by God to be in their care” (Johnson, 2012, p. 1). The baby’s biological parents are African American, while the adoptive parents are Caucasian. The Freis already had a family of four biological children and one adopted African-American child. Did racial bias allow them to so readily accept Tira Bland’s story of abandonment because it fits the racial stereotype of African-American fathers? Terry Achane had, in fact, made arrangements with the military to return home for the birth of his child, and he continued with his financial responsibilities to his family after his deployment to South Carolina (Johnson, 2012). Did the Freis’ financial advantage over Terry Achane and their religious beliefs make them so confident in their ability to prevail that they simply dismissed any risk that the adoption would be contested? It was certainly not incidental that Tira was flown to Utah to give birth and to finalize the adoption process; the state of Utah is known for its lax regulation of adoption agencies, particularly with regard to responsibilities for locating, notifying, and obtaining consent from birth fathers (Johnson, 2012). Finally, was the adoption agency in this case more interested in the successful completion of this financial transaction than with protecting the interests of a man of lesser economic means?

The Standards of Excellence from the Child Welfare League of America (CWLA) (2000) clearly states that “[t]he agency providing adoption services should provide services to birth fathers equivalent to those it provides for birth mothers. Birth fathers have the right to parent their children, with or without the birth mother” (Standard 2.2). Further, regardless of state requirements, adoption professionals should be guided by professional standards of practice that should include an obligation not to discriminate against the adoption client or to condone discrimination based upon race, economic status, religion, marital status, sexual orientation, or any other basis or condition (Babb, 1998). Adoption agencies and adoption professionals must resist the possible unequal pressures from adopting parents who may have greater power due to both economic status and race.

A second issue to consider in this case is the myths and assumptions that have frequently existed regarding birth fathers. Too often stakeholders in the adoption process, including adoption professionals, see birth fathers as “a nuisance to be avoided and seek to minimize or eliminate the participation of the birth father in the adoption decision and process” (Finley, 2002, cited in Watson & Cobb, 2012, p. 6). The Lifetime Adoption Center website (Caldwell, n.d.), a national website for adoption informa-

track their children’s friendships. Fathers often do not.

How then should we measure parenting? The Freis claim that Achane abandoned Tira and never contacted or asked about Leah after her birth. Achane claims that Tira disappeared and that he was unable to find out about the pregnancy outcome. It is a matter of public record that The Adoption Center refused to provide any information to Achane after he learned of Tira’s stay there. Achane was not visible for most of Leah’s life; yet, he loves his daughter, and he is her biological father. Would there have been more doubts and more caution if a father had contacted an adoption agency wanting to give an infant up for adoption claiming that her mother had disappeared and did not care about her child?

Professional nursing education often lacks content about the significance of fathers, as well as models to demonstrate how to include fathers in health care (Tiedje & Darling-Fisher, 2003). Nurses and other health care professionals can support or inhibit transition to fatherhood by providing or withholding acknowledgment of this new role and promote better preventive health care for the children of these fathers (Jordan, 1990; Kelly, 1995). Those who ignore or alienate fathers could discourage them from seeking health information, from attending well-child visits (Ahmann, 2006; Moore & Kotelchuck, 2004), and risk antagonizing fathers who strongly influence breastfeeding decisions (Harner & McCarter-Spaulling, 2004).

Nursing behaviors that families have identified as supportive for fathers are those that acknowledge and promote his paternal role, such as providing relevant information, providing emotional support, and for low-income families, providing or identifying sources for material resources (Dallas, 2009). Nurses can send mothers home with health literature and other written information for fathers who are unable or unwilling to attend prenatal, well-child, or illness appointments. Health care professionals have the potential to act as important resources for fathers, to facilitate their transition to fatherhood, and to positively influence these fathers’ views of the health care system for both them and for their families.

Nurses can become important resources for fathers as fathers become more visible parents for their children. We can begin by simply acknowledging their efforts and their love for their children. ■

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tion, is unabashed in its negative descriptions of birth fathers. The website characterizes birth fathers as mere “sperm donors” who “just want to have a good time,” but who then block adoption. The website further claims that most of these men are “unemployed, substance abusers, who have no intention of supporting the child” (Caldwell, n.d.). This type of language is unethical and should not be allowed.

Research by Freundlich (2001) found that the consensus in much adoption literature, conferences, and advocacy efforts is “that birth fathers are uninvolved and unconcerned about planning their children” (p. 88). Several myths have contributed to perceptions of birth fathers. In *Out of the Shadows: Birth Fathers’ Stories*, Mason (1995) notes that a popular belief about birth fathers is that they are not as connected to their children as are birth mothers. Mason’s (1995) research, however, revealed that the issue for many birth fathers was not an absence of connection but uncertainty regarding their role. Many believed they had fewer rights to the child than the mother. Another major myth is that birth fathers in general are “unaccountable, irresponsible, and absent during and after the pregnancy” (Mason, 1995, as cited in Watson & Cobb, 2012, p. 7). This is often untrue, and it is the job of an ethicist to support intact families and fathers’ rights to their children.

Multiple factors determine the level of birth fathers’ involvement in planning for their children. In a study of birth fathers identified through post-adoption support and advocacy groups, pressures from families, a poor relationship with the birth mother, financial issues, and the attitudes of adoption agencies were significant factors associated with a lack of birth father involvement (Clapton, 2007; Freundlich, 2001, as cited in Watson & Cobb, 2012, p. 7). Mason also found that adoption agencies directly discouraged birth fathers’ involvement with planning for their children. This was Terry Achane’s experience with the Adoption Agency of Choice in American Fork, Utah, which provided him with misinformation and stonewalled his attempts to participate in the adoption process. It is clear that Achane and Bland had a strained marital relationship. However, this provided no grounds for the adoption agency to assume (if it did) that Terry Achane was an irresponsible, disconnected father. In fact, there was evidence to the contrary that he was a financially responsible father who had been involved in the pregnancy and planned to be present at the birth.

But one wonders whether these general beliefs about birth fathers contributed to a culture within this adoption agency – and perhaps others – that promoted such cavalier attitudes by this agency that they proceeded with an adoption with full knowledge that the birth father had not been consulted about the adoption and that he was, in fact, attempting to participate.

Before concluding, a third ethical issue of note is that birth mothers sometimes have good reasons to want to exclude the birth fathers from participation in adoption planning. Some mothers have been abused by the fathers of their children. Some children may be the result of rape. Some fathers may be substance abusers or irresponsible partners. These women legitimately fear for the well-being

of their children if these partners become part of the child planning and/or adoption process. These women may fear that providing information to birth father registries will allow abusive partners to track them down. Unfortunately, the ability of the legal system or law enforcement agencies to protect battered women from their abusers is limited (Logan & Walker, 2011). These legitimate and serious concerns must be handled with great care. Such cases will likely require some intervention to meet the legal requirements of notification of birth fathers while also protecting the safety and interests of the mothers and their children. Although these concerns should not be underemphasized, neither should they allow adoption agencies and adopting parents to make uniform assumptions about absent birth fathers.

Justice requires that birth families, including birth fathers, and adoptive families be treated as moral equals regardless of disparities in relative power. Justice also requires that the safety and the best interests of birth mothers and their children be integrated with aggressive protection of birth father rights. This will require the strong commitment of adoption agency professionals to their professional ethical standards of practice as well as vigorous state regulation of these agencies. ■

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