

## COLUMN ONE

# Dad: More Than Mere Biology

■ Courts are redefining 'fatherhood.' Dad is the guy who provides love and care, not necessarily the one who contributes sperm. Children's custody hangs in the balance.

By DIANNE KLEIN  
TIMES STAFF WRITER

Jeff Jones is talking about doing the "Ozzie and Harriet thing." Years ago, when he was living fast and loose in Newport Beach, he never thought he had it in him. He liked his yacht, the parties, the trips. His wife did too.

"But when we decided to get pregnant, I became very active at home," Jones said. He is 49 years old and looking back about 10 years. It is the start of a long story.

He sold the boat and wrote off the party life as a waste. He worked hard to establish a business. He found God.

But "Ozzie and Harriet" did not work out. Jones had a son, now 9, and a girl, 7, but not by him. Jones knew that, a testicular biopsy had confirmed that he was sterile and could never father a child. The shock came after he and his wife ended their marriage of 14 years.

The artificial insemination scenario that Jones thought was responsible for the birth of his children hadn't taken place. The insemination, in fact, went on in a motel room in San Jose. No medical personnel were involved.

The "donor" was an old flame from high school whom Jones' ex-wife was planning to marry. The couple were moving to Northern California and taking the kids. They wanted Jones out of their family's life.

The couple said they would sue if Jones did not agree to relinquish his claim to the children. As a traditional family in the biological sense, they figured they had an easy case.

But they lost, big.

An Orange County judge declared in April that Jones is the legal father of the two children he had raised as his own. Their biological father was granted no legal rights. Custody of the children was divided between Jones and his ex-wife.

And as Jones and scores of other men throughout the country are showing, what the U.S. Supreme Court calls "grasping the opportunity" of fatherhood is becoming a legal trend. It is small, to be sure, but it seems to be catching on—even in the face of what had commonly been thought of as insurmountable odds.

Just as motherhood is being defined in new ways—one can donate an ovum or loan one's womb or raise a test-tube baby—so, too, is fatherhood taking on new meanings that are being recognized by the courts. Vice President Dan Quayle's "Murphy Brown" remarks to the contrary, fatherhood is no longer a simple biological fact.

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# DAD: Courts Redefine Fatherhood

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He who acts like a father, in many cases, is.

Jones figures that it has cost him \$150,000 to defend himself and keep the children he loves. He has taken a second mortgage on his house.

He thought many times of giving up, of trying to blot the experience from his mind. The strain of the legal fight was opening cracks in his new marriage. So why did he go on?

"It was those kids," he said with no hesitation in his voice. "I know what it's like to have your dad not be part of your life and there is a certain amount of selfish interest too. I love these children. I want to continue to be with them. To give up, it seemed to me, would be like I was just deserting them."

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In a legal sense, desertion is most often the case in paternity law. Private attorneys and public prosecutors can sue for child support if the father runs out. The wheels of justice do a slow grind. The father, if he is found, is ordered to pay support. Visitation is hit or miss.

By contrast, non-biological fathers may pursue their paternal rights with zeal. They shudder at the legal fees, then liquidate assets and borrow what they can. This is not a poor man's game.

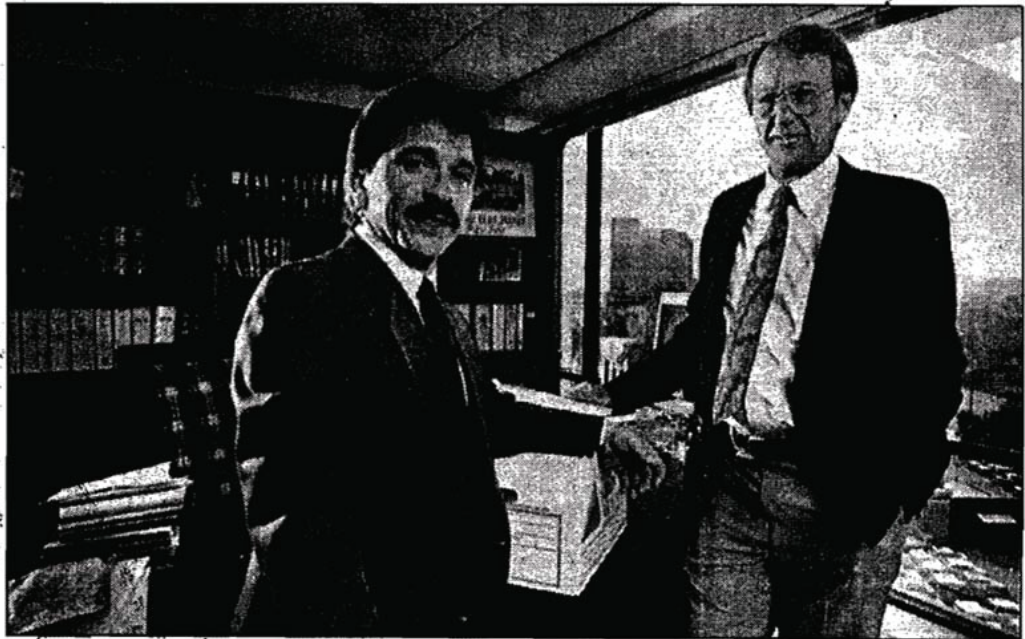
These men know they are ignoring the locker room advice to just "put it behind you and start again." They rhapsodize about the priceless joys of parenthood in ways that, traditionally, only mothers have explained in court.

"It was the most incredible moment of my life to witness the birth of my son," said Los Angeles investment broker Larry McLinden, 43, who was awarded primary custody of 4-year-old Larry McLinden Jr. in January even though he has no biological link to the child and was not married to the mother.

"It was a bond so strong that even when I found out that I was not the biological father it didn't change the love for my child," he said.

In a strikingly similar situation, Paul Comino, 26, a regional manager for an Orange County lending institution, is suing his former girlfriend for paternity rights to a 3½-year-old boy he mistakenly believed shared his genes. The trial is to be heard this summer in Santa Ana.

"I fed him. I changed his diapers. I took him to school in the mornings," Comino said. "I'm taking a week's vacation and he's here with me right now."



GERRARD BURKHART / Los Angeles Times

Attorney Glen Schwartz, left, and Jeff Jones in the legal—though he is not the biological—father Schwartz's Encino office. Jones has been declared of two children he has brought up as his own.

Attorneys and judges who have come to specialize in such cases say there is no way to accurately gauge their number, but all say they are becoming more and more visible to the public.

The McLinden case, now on appeal, may set a legal precedent in California when the appellate decision is handed down. Appeals courts in Michigan and Wisconsin have already recognized such "psychological fathers."

Although details vary widely—unwed partners, extramarital affairs, secret conceptions via donated sperm, men unwittingly raising someone else's child—the thread seems to be a legal system trying to restore family order after the players have created a mess.

"The courts are beginning to break down that husband-wife relationship as the central defining issue of family," said Columbia Law School professor Martha Fineman, author of several publications about family law.

"What they are doing is moving beyond biology, beyond the genetic tie to consider the possibility of parental determinations based on nurturing. In many ways, that would be a welcome development, if that were consistently applied."

Should women feel threatened by such developments? Legal experts say that to some extent they should. The so-called maternal instinct is no longer the exclusive purview of women in the eyes of the law. In essence, courts are saying that mother does not always know best.

"There was the general presumption that minor children should be with their mothers, without really looking at who the people involved really were," said Judge Dana Senit Henry, who decided the McLinden case.

"That is changing. I think there is a new psychological and societal awareness that men do have an important role. . . . And I don't think people have always put overstated. [Until recently], a lot of these people haven't had any redress."

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Jones remembers that he picked out a red and white Brooks Bros. shirt and red tie to welcome his son into the world.

He had dreamed of this red-letter day, May 4, 1983. His wife had checked into the hospital the night before for a planned Cesarean birth. Jones was with her in the operating room when the child was born.

"I remember crying the whole time," he said. "I was so moved by it, and so was [my wife]. I remember standing there, holding him, and his eyes were open and I couldn't believe how beautiful this baby was. He had this clean, pure skin and he was kind of holding on to my finger. I just couldn't stop crying. I was just so happy to see this kid."

Nine years later, Jones' son is blond, tanned and fit. He has an impish grin and cool blue eyes. He has been playing with the children in Jones' neighborhood in Newport Beach and fiddling with his computer. He has a room of his own, as does his sister, and another in the home of his mother and "other" father.

In many ways, the situation of the Jones children is no different from that of thousands of others caught in the fallout from divorce. There is subtle confusion and guilt about loyalties carved up in new ways.

Los Angeles psychologist Jane Bryson, a court-appointed expert

in paternity cases, says that children have the capacity to love more than one set of parents "if the adults in these relationships will lay out the parameters—regardless of whether they have a biological link—that will determine how the catch phrase "best interest of the



child" plays out.

The Jones children say that their biological father—who had met them on several occasions as their mother's "friend" without Jones' knowledge—tries to tell them who their "real father" is. He tried, unsuccessfully, to have their last name changed to his on their school records.

"They want my name," the man said. "They know my parents are their grandparents and my sons are their brothers. It is to make the family whole. They want it as least as much as I do."

The biological father, a fire captain, said "probably the most devastating moment" in his life was when he heard the judge deny him paternal rights. He and his wife, a high school teacher, say the verdict makes no sense. They have not decided whether to appeal.

"I see Jeff as a person who was married to my wife when she conceived my children," the biological father said. "There is an attachment there. He is desperately holding on to it. I don't see him as their father at all, other than that he lived with them a few years, the early years."

The children do not quite understand all this.

"My other dad talks to me about it sometimes," the boy said. "My dad here was the first one to see me when I was born, but the other one got the sperm."

Each child has one of these names.

"I thought he was joking," Jones

daughter said about the circumstances of her birth seven years before. "I still don't believe that he's my real dad," meaning her other father, the fire captain.

Now her stomach hurts, this freckle-faced child says. She does not want to talk about it anymore.

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Although it may sound like a new idea to grant paternal rights to a man with no biological link to a child, American law has traditionally recognized "de facto fathers" ostensibly in the interest of preserving the legitimacy of children born during a marriage.

Three years ago, the U.S. Supreme Court narrowly upheld the California law that conclusively presumes that the husband of a married woman is the father of her children. In his dissent, Justice William Brennan Jr. wrote: "The atmosphere surrounding today's decision is one of make-believe."

Legal experts, who define much of family law as fiction, look at this in different ways. Some say the arrangement protects women by legally ensuring support for her children, while others note that it gives husbands what amounts to property rights over them.

Regardless, the traditional family is a form that the state has felt its best interest to protect.

Since the Supreme Court decision, the California Legislature has

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It does not matter if the child's mother is married or not, or if she supports him in his claim.

Gloria, a Los Angeles housewife who asks that her last name not be used, explains that because of this law, a man with whom she had an extramarital affair sued her for paternity and kept "meddling" in her family's life.

Gloria says she was unsure who the baby's father was, but in any case, she wanted her former lover

But faced with the paternity suit, Gloria and her husband contacted an attorney who advised them—erroneously—that they must take blood tests to determine the child's paternity. The tests showed there was a 99.5% probability that the lover is the baby's biological father. Soon, the lover began regular visits with his son.

When the boy was 3, however, Gloria and her husband hired Encino attorney Glen Schwartz, an expert in paternity law who also represented Jones and McLinden.

Schwartz says the judge "practically had tears in his eyes" when he ruled that the biological father, who by then had developed a relationship with the child, should have no parental rights. The court ordered visitation cut off.

But Gloria says she and her husband have allowed the biological father to continue to see his child. She believes it is in the best interest of her son, now 12.

"When we won the case, I asked my son about him," Gloria said. "He said that he liked him. We thought that since my son likes him, it would be devastating to him and my child to cut the relationship off. We were very scared of this guy. So we decided that he would see him every other Sunday afternoon. He has been paying child support, but we keep sending it back."

Gloria, who admits that she does not like the arrangement, says that she calls this man her son's "friend." But she knows that her son refers to her husband and her former lover as "dad."

"What do you do in these cases?" Schwartz asked. "Do you identify with Gloria, with the husband? What about the biological father and the kid? These are fascinating cases. As blood tests become more sophisticated, we as lawyers have to become more legally sophisticated as we defend and/or promote paternity issues."

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"As I sit here today I still can't

believe that this has happened," Jones said.

He was talking about all of it—his acrimonious divorce, the jolt of finding out how his children came into the world, the fight to "prove" that he is their father in every sense but one and finally, a judge agreeing with him down the line.

"Surely it could not have been contemplated by the Legislature that parenting would stop at divorce or that there would be a realignment of the legal parental relationship solely by virtue of a divorce or remarriage to a particular individual," Judge Nancy Wil-

son states and the Family Law Act appears to indicate the opposite, that as a sophisticated society we are coming to understand and embrace non-traditional relationships or relationships outside of the long-term marital situation.

"When you make a deal," Jones said, "and this is a very important deal—and then somebody comes along and wants to undo that. . . ." His voice trails off, but his implication is clear: It is not right.

"Kids form relationships," he said. He wishes that he could have formed a close one with his father after his parents divorced when he was 8.

"The pain was immense," Jones said. "When we were moving to California, my mom said that my dad wasn't coming. All of a sudden, this person was yanked out of my life."

And McLinden, too, says his upbringing as a "fatherless" child had something to do with his fight to claim his son as his own.

"When I was almost the exact age of my son right now, my father abandoned us," he said. "It was something I missed and I knew the pain I had from not having a father."

"I've really never been able to understand how men can't be responsible for their children. It really is to benefit the children. And what you get back as a result of that is not something you can measure. A child's love is the most incredible experience there is."

Comino, who describes his own intact family as close-knit, says he brought his paternity suit because it is the responsible thing to do.

"I thought he was my kid," he said. "Up until that day in April of '91 I thought he was my son. . . . And now, I still think he is my son. He knows me as his daddy. I can't just walk away."