Florida Law Review

Volume 8 | Issue 3 Article 6

September 1955

Artificial Insemination—Legal and Related Problems

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for hesitancy in making such a purchase, especially since the modern tendency of the Florida Court is to treat the buyer as a good faith purchaser.

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ARTIFICIAL INSEMINATION – LEGAL AND RELATED PROBLEMS

In the last quarter-century the practice of human artificial insemination has progressed from a comparatively unheard of technique to a scientifically successful method of aiding conception in formerly barren marriages. More than one tenth of the marriages in the United States are involuntarily childless,[1] and in thirty-five to forty per cent of these marriages the husband's infertility is the reason for the failure of issue.[2] In some of these cases conception may be accomplished by means of artificial insemination with the semen from a third-person donor.

Artificial insemination is not new.[3] In the last decade of the eighteenth century a woman was successfully impregnated artificially.[4] The first known artificial impregnation in America was accomplished in 1866 by Dr. Marion J. Sims, who later abandoned the practice as immoral.[5]

A 1941 study showed that about 9,500 American women had achieved at least one pregnancy by artificial insemination.[6] Present estimates place the number of "test tube" offspring at 20,000[7] to

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[1]Davis, *The Problem of Sterility Today*, 1 AMERICAN PRACTITIONER 1 (1946); Israel, *The Scope of Artificial Impregnation in the Barren Marriage*, 202 AMER. J. MED. SCIENCE 92 (1941).

[2]Letter from Dr. Alfred Koerner to Thurston A. Shell, Aug. 26, 1955.

[3]Koerner, *Medicolegal Considerations in Artificial Insemination*, 8 LA. L. REV. 484, 487 (1948).

[4]*Ibid;* Guttmacher, *The Role of Artificial Insemination in the Treatment of Sterility*, 120 J. AMER. MED. ASS'N 442 (1942).

[5]*Ibid.*

[6]Seymour and Koerner, *Artificial Insemination, Present Status in the United States as Shown by a Recent Survey*, 116 J. AMER. MED. ASS'N 2747 (1941).

[7]Comment, 30 N.Y.U.L. REV. 1016 (1955).

100,000.[8] It has been estimated that 1,000 to 1,200 babies are artificially conceived each year in the United States as compared with 4,000,000 normally conceived children.[9] Dr. Alfred Koerner, a prominent scholar and writer on the subject, made an exhaustive study in 1941. If his figures were correct[10] and if the geographical distribution of such children is the same now as it was at that time,[11] there are probably between 9,000 and 18,000 artificially conceived children in the southeastern states and 1,100 to 2,200 in Florida.

Since the present legal status of artificial insemination is uncertain, it is unlikely that more accurate figures will be available in the near future; but the potential demand for artificially inseminated babies in the United States has been estimated at 10,000 to 20,000 per year.[12] It is reported that there are probably some two million women who desire to have children but are unable to do so because of either their own infertility or their husbands' sterility or both.[13] Adoption might provide an answer, but there are not enough children available.[14] Moreover, the waiting period for adoption is long, and many people may be reluctant to adopt a baby of uncertain ancestry. Expediting present procedures and allowing foreign children to enter the country might greatly increase the supply of children available.

The artificial insemination operation is comparatively easy to perform.[15] Usually however, it must be tried for several months before conception is achieved,[16] and more than half the persons who have tried the method have been unsuccessful.[17] There are two forms

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[8]Letter from Dr. Alfred Koerner to Thurston A. Shell, Aug. 26, 1955. Dr. Koerner estimates from 50,000 to 100,000 artificial insemination offspring are alive today.

[9]Lang, *Artificial Insemination — Legitimate or Illegitimate?*, McCall's, May 1955, p. 60.

[10]See note 8 *supra*.

[11]Seymour and Koerner, *supra* note 6, at 2749.

[12]Caldwell, *Babies by Scientific Selection*, Scientific American, Mar. 1934, p. 124.

[13]Lees, *Born to Order*, Colliers, Apr. 20, 1946, p. 20.

[14]New York Times, Apr. 5, 1952, p. 18, col. 1. Approximately 1,000,000 couples yearly make application in the United States to adopt children, but only 75,000 children are legally available during the same period.

[15]Note, 33 MINN. L. REV. 146 (1949), quoting British Medical Journal, Jan. 13, 1945, p. 40: "Artificial Insemination is such a simple process that a woman can, with a little instruction, learn to artificially impregnate herself."

[16]Seymour and Koerner, *supra* note 6, at 2748.

[17]Letter from Dr. Alfred Koerner to Thurston A. Shell, Aug. 26, 1955. *Contra*, Haman, *Results in Artificial Insemination*, 10 Obstetrical and Gynecological Survey 306 (1955). The author reports over 80% success with AID attempts.

of artificial insemination in current use. The homologous type employs the husband's semen, and the heterologous uses the semen of a donor other than the husband. The first form, usually referred to as AIH, arouses little legal controversy, since the husband is the actual biological father and the only aid to conception consists of mechanical enhancement of the fertilization process. This method is employed when the husband is fertile but sexual intercourse is not feasible, or when the semen cannot be deposited in proper proximity to the ovum because of malformation of either spouse's reproductive system. The heterologous form, known as AID, is used only when the husband is sterile or when the Rh factor will enhance the possibility of an erythroblastic baby. This method presents serious problems, since the wife gives birth to a child not biologically her husband's.

Religious and Psychological Problems

The position taken by the various religious groups toward artificial insemination is, of course, of great importance in shaping public opinion and hence the law. The Roman Catholic Church and the Church of England have condemned the procedure as immoral and contrary to the laws of nature. Though opposition from the orthodox Jewish faith is anticipated, it is considered likely that the reform group and the various Protestant churches will concur with the state law as it develops.[18]

A nineteenth-century Catholic authority on sexual problems, after an exhaustive study of the New Testament and canon law, concluded that artificial insemination was in accordance with biblical teaching and commended the practice.[19] A few years later, however, an encyclical condemned the practice as immoral and prohibited it.[20] The Church of England, through a committee appointed by the Archbishop of Canterbury, has announced that, although AIH is not improper, AID is an unlawful intrusion and breach of the marriage.[21]

A prominent American Catholic writer has assailed heterologous artificial insemination on the ground that "since the child so conceived and born springs from parents not married to each other, the

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[18]Comment, 58 YALE L.J. 457 (1949).

[19]Time, Aug. 9, 1948, p. 49.

[20]Koerner, *Medicolegal Considerations in Artificial Insemination*, 8 LA. L. REV. 484, 489 (1948).

[21]Time, Aug. 9, 1948, p. 49.

procedure is a violation of the social purpose of matrimony."[22] The position of those who favor artificial insemination is expressed by a proponent of the technique as follows: "An AID child is born into a family ready and eager to receive him; why anyone should object because half of his heredity is necessarily received from a carefully selected stranger has yet to be adequately explained."[23]

The possible psychological problems surrounding both the childless family and the suggested remedy of artificial insemination must be considered. In a society of which the home and family are the foundation, a woman's inability to have a child and a man's apparent infertility are often causes for disappointment and emotional disturbance. Marriages of several years' duration are usually happier if there are children, and the arrival of a child often strengthens an otherwise weak marriage. The possible rejection of the child by the husband and the danger of the transfer of affection by the wife to the one who fathered her child must be considered, although secrecy as to the donor's identity should overcome the latter possibility. The general practice today is to refuse aid to any couple that does not realize the problems involved and the difficulties that may be encountered.[24]

All writers on the subject of artificial insemination stress the necessity for keeping the identity of the donor and the method of conception absolutely secret. Great psychological harm could come to a youngster just discovering that he is "different."

LEGAL CONSEQUENCES

The legal background of the problem is extremely complicated. For many centuries the basic law of English-speaking lands has been the common law of England. Any situation not covered by legislation or constitutions has been placed in the framework of the common law and adapted to its concepts. The validity of lie detectors, narcoanalysis, and chemical tests for intoxication, by way of comparison, although developed in the twentieth century, may be measured in terms of the age-old concepts of self-incrimination and due process. But AID defies classification.[25] The authoritative *Journal of the*

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[22]The New York Times, Mar. 12, 1947, p. 20, col. 2.

[23]Note, 28 IND. L.J. 620, 638 (1953).

[24]The Miami Herald, July 17, 1955, §E, p. 14, col. 3.

[25]For discussion of another medical advancement confounding legal minds, see Vestal, Taber, and Shoemaker, *Medico-Legal Aspects of Tissue Homotransplantation,*

American Medical Association put the basic problem thus: "Medicine has made a scientific procedure available to society, but until the people individually and collectively determine and express public policy, in the form of legislation or otherwise, the uncertainties associated with the procedure will remain."[26]

If no legislation is enacted, the legal solutions will of necessity have to be worked out by resort to the common law.

Adultery

The problem of adultery is an example of the difficulties that may be engendered by artificial insemination. The usual concept of adultery requires that sexual intercourse take place; it is difficult, under this concept, to envision any court's holding artificial insemination to be adultery. At one time, however, the great wrong of adultery was the introduction of a false strain into the blood line of the husband.[27] This idea led to the definition that adultery was the surrender of the reproductive system to one not the spouse of the guilty party. Using this definition, artificial insemination could be branded adultery. Of course it did not occur to those formulating the law that conception could occur without sexual intercourse. Conception is not necessary to constitute adultery. The act is no less adulterous when committed by a woman beyond the age of childbearing or by one who avoids conception. The right to exclusive sexual incidents of the marital partner has been extended to the wife by enlarging the concept of adultery to include the infidelity of the husband. Obviously, this extension was not made to prevent corruption of his blood line, so probably the gravamen of the crime of adultery is the sex act.

In Florida adultery must be discussed from two aspects, as a crime and as a ground for divorce. A single act of intercourse is not punishable as the crime of adultery in this state. The offense requires living together openly as if the legal relation of husband and wife exists.[28]

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18 U. DET. L.J. 171 (1955). See Science News Letter, April 26, 1941, p. 262, which, discussing the possibility of preserving semen under refrigeration, speaks of immortal fatherhood, whereby chilling life to a standstill may enable today's great to have sons generations hence. See also Younger, *Life Begins in a Test Tube*, Colliers, Mar. 10, 1945, p. 27, which mentions the possibility that in the future ova may be transplanted from one female to another.

[26]157 J. AMER. MED. ASS'N 1616 (1955).

[27]Comment, 58 YALE L.J. 457 (1949).

[28]FLA. STAT. §798.01 (1953); Lockhart v. State, 79 Fla. 824, 828, 85 So. 153, 154

Thus it would seem that in Florida artificial insemination could not constitute the crime of adultery. By statute, adultery is a ground for divorce in Florida,[29] but case law makes condonation a defense and destroys the condoned act as a ground for divorce.[30] Hence artificial insemination of a wife with the semen of a man not her husband might be a ground for divorce. Consent by the husband, however, would constitute condonation of the act and would destroy the ground.

If a court is forced to rule on the question of whether artificial insemination is adultery, the decision will depend at least in part on whether the court has a stronger moral feeling against this unusual method of conception or against the evil of a barren marriage. This abstract test can only lead to divergent results and add to the present uncertainty.

One commentator[31] has suggested that the use of AID should not be held to be an adulterous act because it does not result in the wife's bearing unwanted children, does not deprive the husband of exclusive right to the wife's consortium, and does not involve intimacy of the wife with another man. It does not lead to breaches of the peace. It does not weaken the marriage and the family institution but strengthens it by bringing ardently desired children into the home. The only similarity of AID to adultery is that both may result in the birth of a child biologically not that of the husband.

Realistically, existing definitions of adultery, formulated long before artificial insemination became a problem, should be legislatively redefined in the light of changed circumstances. Although the cases are few, and the highest court of no American state has ruled on the matter, the attitudes of those courts that have considered artificial insemination are interesting.

In an Illinois case, *Ohlson v. Ohlson*,[32] it was held that some evidence of artificial conception of a child was not sufficient to overcome the strong presumption of legitimacy. This precluded the necessity for a finding on the legality of the process. In *Hoch v. Hoch*[33]

(1920) (dictum); Brevaldo v. State, 21 Fla. 789, 794 (1886) (dictum); Grice v. State, 75 Fla. 751, 755, 78 So. 984, 986 (1918) (dictum).

[29]FLA. STAT. §65.04 (1953).

[30]McMillan v. McMillan, 120 Fla. 209, 162 So. 524 (1935); *accord*, Kollar v. Kollar, 155 Fla. 705, 21 So.2d 356 (1945).

[31]Note, 35 CORNELL L.Q. 183 n.56 (1949).

[32]Unreported, Super. Ct. of Cook County, Ill. (Nov. 1954); see 187 J. AMER. MED. ASS'N 1639 (1955).

[33]Unreported; see discussion in 30 N.Y.U.L. REV. 1016, 1017 (1955); Time, Feb.

an Illinois court declared in dicta that AID could never support an adultery judgment and it could not therefore support an action for divorce.

Strnad v. Strnad,[34] a 1948 New York case, was a custody proceeding, the wife having been artificially inseminated with her husband's consent. It was held that the child was at least semi-adopted and that the father acquired the same rights and obligations as those acquired by an adopting father, if not the same rights as those to which a natural parent would be entitled. The court expressly refused to decide property rights or the legality of the operation. Later Mrs. Strnad moved to Oklahoma with her child and refused her former husband visitation rights. An Oklahoma court upheld her contention and ruled that the child was the child of the mother only and that her husband had no right whatever in it.[35]

A French court in 1883 punished a physician for performing artificial insemination and pronounced the procedure unworthy of a physician.[36] Dr. Koerner says that the decision was seemingly based on the physician's unfavorable personality rather than any feeling about artificial insemination.[37]

In *Russell v. Russell* Lord Dunedin said, "fecundation *ab extra*, I doubt not, is adultery."[38] Thus it is entirely conceivable that non-access or impotency of the husband could be used as evidence of the child's illegitimacy and the wife's adultery. This was not an artificial insemination case, but the language has been widely cited in articles on the subject.

In *R.E.L. v. E.L.*[39] a British court held that artificial insemination of a wife with the husband's semen would not suffice to consummate the marriage. An annulment was granted the wife on the ground of impotency of her husband and the child bastardized even though it was the biological son of the husband conceived during lawful

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26, 1945, p. 58, col. 2.

[34]190 Misc. 786, 78 N.Y.S.2d 390 (Sup. Ct. 1948). See also LoGatto, *Artificial Insemination: 1—Legal Aspects,* 1 THE CATHOLIC LAWYER 172 (1955); 30 N.Y.U.L. REV. 1016, 1017 (1955).

[35]Unreported; see 1950 WIS. LAW REV. 136, citing The Milwaukee Journal. Aug. 6, 1949, p. 2, col. 3.

[36]See LoGatto, *supra* note 34.

[37]*Medicolegal Considerations in Artificial Insemination,* 8 LA. L. REV. 484, 492 (1948).

[38][1924] A.C. 687, 721, 13 Brit. Rul. Cas. 246, 279.

[39][1949] P. 211, Note, CORNELL L.Q. 183 (1949).

wedlock. This case was not concerned with the legitimacy of artificial insemination.

A New York lower court magistrate has said, "The presumption of the law is that a child born in wedlock is legitimate. But in a test tube case where the 'father' knows that he is not the father, I can't see how the child can be anything but illegitimate."[40]

In *Orford v. Orford*[41] a Canadian court declared by dicta that AID was adulterous. In this case the wife maintained that her pregnancy resulted from AID but admitted that her husband had not consented. There was some suspiction, however, as to the "artificial" nature of the insemination. The court said that the essence of the crime of adultery consisted of the voluntary surrender of the reproductive system rather than sexual intercourse and, if it were necessary in order to declare AID adulterous, the court would hold the performance of the insemination itself to be sexual intercourse.

The most recent case,[42] decided January 18, 1955, was a divorce case. The wife was granted a divorce and she petitioned for a declaratory judgment as to whether AID constituted adultery, whether it was contrary to public policy, and whether a child so conceived was legitimate. Judge Gorman of the Superior Court of Cook County, Illinois, in an unreported opinion, ruled that heterologous artificial insemination, with or without the consent of the husband, is contrary to public policy and good morals and constitutes adultery on the part of the wife. He stated that the father has no right or interest in the child, since it is born out of lawful wedlock and is hence the child of the mother only. According to Judge Gorman, homologous artificial inseminations, however, are not contrary to public policy and present no difficulties from the legal point of view.

Inheritance

Another perplexing problem in AID cases concerns the right of the child to inherit from his foster father, his biological father, and from kin of the foster father. There is also some possibility of the biological father's claiming support from the child or blackmailing

[40]Coronet, Oct. 1941, p. 12.

[41]158 D.L.R. 251 (1921). For further analysis of this case see LoGatto, *supra* note 34, at 175; Note 30 N.Y.U.L. REV. 1016, 1017 (1955).

[42]Doornbos v. Doornbos, No. 54 S 14981, Super. Ct. Cook County, Ill., Dec. 13, 1954; see also LoGatto, *supra* note 34, at 179; Note, 30 N.Y.U.L. REV. 1016 (1955).

the foster parents, but these problems will be avoided if secrecy is made a cornerstone of a legalized artificial insemination plan. Actually, with the secrecy now clothing the process, many AID children will inherit from their apparent grandparents with no one but the parents being aware of the mode of birth. If it is decided that AID children are legitimate, it will be logical to allow them to inherit in the same manner as a natural child. Legislation is the only satisfactory answer to this problem. Section 731.30 of Florida Statutes 1953 states,

> "An adopted child, whether adopted under the laws of Florida or any other state or country, shall be an heir at law, and for the purpose of inheritance, be regarded as a lineal descendant of his adopting parents, and the adopting parents shall inherit from the adopted child. . . . The adopted child shall inherit the estate of his blood parents, but his blood parents shall not inherit from the adopted child."

In re Hewett's Estate[43] held that this section does not allow an adopted child to inherit from his adopting parents' ancestors or other blood relatives. By analogy, if an AID child were treated by the courts as an adopted child, his biological father would have no chance of inheriting from him. The statute could be construed so as to allow the child to inherit from the donor, however, although such a holding is unlikely. The child would clearly inherit from his mother and foster father and they could inherit from him, but the possibility of his inheriting from the parents or other kin of his foster father is doubtful.

Domestic Relations

By taking the AID child into his home and rearing him as his own, the husband places himself in loco parentis to the child.[44] By standard definition, a person standing in loco parentis[45] to a child is one who stands in the position of a parent and is charged with a parent's rights, duties, and responsibilities. One commentator[46] has suggested that the duty of support attaches historically to the biological parents, because it was their voluntary act that brought the child to life. Adopting this rationale, it follows that if the husband consents

[43]153 Fla. 137, 13 So.2d 904 (1943).
[44]*Cf.* Britt v. Allred, 199 Miss. 786, 25 So.2d 711 (1946).
[45]BLACK, LAW DICTIONARY 896 (4th ed. 1951).
[46]Note, 28 IND. L.J. 620, 631 (1953).

to AID he should be responsible for supporting the resulting child and become obligated to the same degree and possibly have the same rights as a natural father.

Some writers have maintained that it is the duty of the husband or of the mother to adopt the child immediately and publicly upon birth rather than permit it to suffer the stigma of illegitimacy,[47] but the adverse results of publicity would greatly outweigh the advantages of such a procedure. Legislation could provide a means by which the husband could adopt the child before birth by some secret method. In fact, a formal proceeding of adoption might not be necessary in all cases. One writer notes that the cardinal necessity for adoption is an intent on the part of the adopting parties and that strict adherence to legislative mandate might not be necessary to constitute legal adoption.[48] At the least this might afford a means by which a sympathetic court could declare the foster father to be the child's legal parent.

LEGISLATION

It is unlikely that any comprehensive system of precedent on the many problems associated with artificial insemination will develop for some years to come. The setting out of any positive statement of the law from examination of cases is impossible now and extremely improbable in the near future. In the meantime, hundreds of children continue to be born as the result of artificial insemination. Although the stigma of illegitimacy is much less severe than it was in the Middle Ages, it still must be considered. The presumption of legitimacy is one of the strongest available in law, yet it is not conclusive. It can be rebutted by a definite showing of nonaccess or impotency.[49] Under the present law, if it can be shown beyond question that a child is not the husband's, it is illegitimate. If the practice were declared illegal, most persons would refrain from using it, and AID parents would have no complaint if a child were later declared illegitimate; but this would provide no answer to the predicament of the child. There are many who want children so badly that in view of the uncertain status of the law they will accept the risk in order to have them.

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[47]112 J. AMER. MED. ASS'N 1832 (1939).

[48]Note, 46 DICK. L. REV. 271, 278 (1942).

[49]Bullock v. Knox, 96 Ala. 195, 198, 11 So. 339, 340 (1892) (dictum); Note, 33 MINN. L. REV. 145, 153 (1949).

Most litigation involving children conceived by artificial insemination will probably concern property rights and inheritance and will generally arise at the death of one of the parents, particularly the foster father. Within the next fifteen or twenty years many such parents will die; it is vital that some decision be reached before these problems arise and provoke undue litigation, family animosity, and embarrassment.

To date, six state legislatures[50] have considered bills on artificial insemination, but none has enacted them. A seventh state, Oklahoma, is investigating the matter. A proposed Virginia bill[51] declared children born as a result of artificial insemination to be legitimate for all purposes if the husband consented to the operation. A 1955 Ohio bill[52] forbade any female to submit to heterologous artificial insemination and made it a crime for any person to perform the operation. It declared any child conceived thereby to be born out of wedlock and illegitimate.

Identical bills were introduced in the New York State Legislature in 1948,[53] 1949,[54] 1950,[55] and 1951.[56] They declared a child born of a married woman by means of artificial insemination, administered with the consent of her husband, the legitimate natural child of both the husband and mother for all purposes, and provided that signed consent of the husband should be sealed in the clerk's office and opened only by court order. Consent of the husband would evidently be necessary to the legality of the operation as well as the legitimacy of the child. Similar bills were introduced in the Wisconsin[57] and Indiana[58] legislatures in 1949. Although the Legislature of the State of New York has not acted, New York City has impliedly recognized AID by including in its sanitary code a provision for the standardization of donors.[59]

Any proposed solution, whether condoning or prohibiting artificial

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[50]Indiana, Minnesota, New York, Ohio, Virginia, and Wisconsin.

[51]S. No. 199 (1948).

[52]S. No. 93 (1955).

[53]S. Int. 745, Pr. 2042, 171st Sess. (1948).

[54]S. Int. 778, Pr. 801, 172d Sess. (1949).

[55]S. Int. 579, Pr. 587, 173d Sess. (1950).

[56]S. Int. 493, Pr. 493, 174th Sess. (1951).

[57]H. No. 407, A, 69th Reg. Sess. (1949).

[58]H. No. 350, 86th Sess. (1949).

[59]LoGatto, *supra* note 34, at 183: "Section 112 of the Sanitary Code provides that only a duly licensed physician 'shall collect, offer for sale, sell or give away human seminal fluids for the purpose of causing artificial insemination . . .'."

insemination, will likely meet strong opposition. An indication of the controversial nature of this matter is found in the experiences of one legislator who introduced acts on the subject. State Senator Charles A. Root of Minnesota, then a member of the House of Representatives, introduced three bills in the 1949 session. One prohibited all artificial insemination,[60] one permitted AIH only,[61] and the third would have legalized both AID and AIH under limited circumstances.[62] Senator Root conducted a thorough study of the problem and concluded that some definite pronouncement on the matter was necessary; he therefore introduced bills presenting the three alternatives. He highlights the intensity of feeling about artificial insemination as follows:[63]

> "Extensive hearings were had on all three bills. Lobbying against the bills was terrific. Most of the lobbyists made no distinction between the provisions of the three bills. Certain religious groups became quite fanatical on the subject. The personal abuse that I and members of my family took was unbelievable. Vicious, anonymous calls were received by the hundreds. No member of my family was spared. For a considerable period it was impossible for my children to run errands to the various shopping centers or otherwise venture on the streets. In all the twelve years that I have served in the Legislature, I have never seen anything that would compare with the hearings, etc. in connection with these bills. My correspondence was so heavy that I had to hire one girl who did nothing else except answer my correspondence with respect to these bills."

He also mentioned that the same treatment was afforded a University of Minnesota law student who wrote on the subject. It is apparent that only a skillful and courageous legislator should undertake the task of statutory clarification of this area.

The three bills above referred to are by far the most comprehensive yet prepared. The bill permitting AID would require (1) consent of the husband and wife, (2) certification of the donor by the Registrar of Vital Statistics, (3) performance of the operation only by a

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[60]H. File 1090 (1949).
[61]H. File 1091 (1949).
[62]H. File 1092 (1949).
[63]Letter from Sen. Chas. W. Root to Thurston A. Shell, July 28, 1955.

doctor of medicine, (4) complete medical and mental examinations of the husband, wife, and donor, and (5) certification by the examining doctor that the blood of the donor and donee is compatible and in all respects suitable and that an erythroblastic baby is unlikely to result from insemination. The doctor would also be required to certify that both husband and wife have sufficient emotional and mental stability to safeguard their welfare and that of the child and that both are otherwise in good mental condition.

The bill would require the donor to have the same general physical characteristics as the husband, have a similar blood type, and be free from communicable or inheritable diseases. The doctor would be required to file the consent of the husband and the statement of the donee with the state. The form would include the name of the donor and would be opened only on court order. This act covered and defined most of the situations that might arise, and it could serve as a model for the drafting of legislation designed to legalize the practice. The only feature that seems undesirable is that which permits the parents to discover the identity of the donor.

Others interested in the enactment of legislation have suggested that the following provisions are desirable:[64]

(1) Establishment of a standard procedure for manifestation of consent of the husband and wife, including provisions for penalties for performing the operation without consent.
(2) Selection of the donor on the basis of blood type and absence of certain types of diseases.
(3) Definition of status of child with respect to mother and foster father, their duty to support, and his right to inherit from them.
(4) Definition of status of child as to his right to inherit from kindred of his foster father.

CONCLUSION

The few inconclusive cases dealing with artificial insemination are in hopeless confusion, with hardly two consistent decisions among them. An attempt has here been made to point out that the common law is of little help; trying to adapt old law and precedent to this

[64]See Schlemer, *Artificial Insemination and the Law*, 32 MICH. ST. BAR J. No. 4, p. 50 (1953).

new and different field is analogous to conveying land by feoffment.

Even homologous artificial insemination raises legal questions that should be officially taken cognizance of in order that uncertainty may be resolved. Heterologous artificial insemination, to recapitulate, includes such grave problems as adultery, legitimacy, inheritance, support, and custody.

The solution will not be an easy one to reach. If the legislatures refuse to act, thereby laying the problem at the feet of the judiciary, scores of years may pass before the law is settled in such a manner as to cover the entire problem. Immediate and comprehensive action of the type that only the legislatures can provide is needed. Such action will require a careful objective study of many factors. Legal, social, religious, and moral considerations must be analyzed. But the problem is not insurmountable. History is replete with far more difficult legislative accomplishments. Whatever the solution may be and however its purposes may be carried out, the problem should be solved today, not tomorrow when its results will have permanently affected the lives of hundreds of thousands of persons.

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