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John W. Hager

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# ARTIFICIAL INSEMINATION: SOME PRACTICAL CONSIDERATIONS FOR EFFECTIVE COUNSELING

JOHN W. HAGER\*

Two clients, a husband and his wife, come to the office of a practicing attorney. With that admirable caution we would desire all clients to possess, they are seeking the attorney's advice *before* any legal problems arise. This is their story as told to him. The couple is childless. As yet they have not consulted a physician but it is their belief that the husband is sterile. They also believe that the wife has the ability to conceive and bear children. Both of them fervidly desire a child. This man and his wife have made a heartbreaking round of various welfare agencies, all of which have refused their request to become adoptive parents.<sup>1</sup> Ten days ago they read an article about "test tube babies" in a popular magazine. They have reached a tentative decision to try this "cure" for their childless state. These two married persons want the attorney's advice on any problems that may arise if the wife is inseminated artificially. More particularly, they are concerned about the possible problems if the semen is taken from a person other than the husband. What should the attorney tell them?

This is no mere academic question. The hypothetical situation posed is not one so remote from the general practice of law as to be unworthy of attention. It is a problem which an attorney may have to face much sooner than he thinks. It has been estimated that ten percent of couples of child-bearing age are childless.<sup>2</sup> The percentage of sterile marriages has been estimated as high as sixteen percent by one writer.<sup>3</sup> Of these, twenty-five to forty percent of the childlessness occurs because of the husband's incapacity.<sup>4</sup> Of course some of these childless couples do not desire children. But enough do that there are between 80,000 and 100,000 legal adoptions yearly in the United States.<sup>5</sup> However, child

\* Professor of Law, The University of Tulsa.

<sup>1</sup> The refusals might have been indirect ones if the welfare agencies had the power only to make investigations and submit recommendations to the court. The refusals might have had no valid factual basis. Welfare agencies frequently are granted power to investigate not only whether the purposed home is a suitable one for the child but also any other circumstances and conditions which may have a bearing on the adoption. *E.g.*, OKLA. STAT. ANN. tit. 10, § 60.13 (Supp. 1960).

<sup>2</sup> Pommerenke, *Artificial Insemination: Genetic and Legal Implications*, 9 *Obst. & Gynec.* 189 (1957); Weinberger, *A Partial Solution to Legitimacy Problems Arising from the Use of Artificial Insemination*, 35 *IND. L.J.* 143 (1960).

<sup>3</sup> Rice, *A.I.D.—An Heir of Controversy*, 34 *NOTRE DAME LAW.* 510, 512 (1959).

<sup>4</sup> Pommerenke, *supra* note 2, at 189; Rice, *supra* note 3, at 512.

<sup>5</sup> Pommerenke, *supra* note 2, at 189.

adoption is only a partial solution to the problem of childless couples who desire children, as there are eleven families on the waiting list for each child available for adoption.<sup>6</sup> Therefore, some of these couples turn to artificial insemination as an alternative solution. Others, disliking adoption, regard it as their only solution. The exact number who turn to artificial insemination can not be known because of the secrecy surrounding the practice and the lack of a central "clearing house" to which such information is sent. The American Medical Association has reported<sup>7</sup> that by 1941 almost 10,000 pregnancies had occurred in the United States as a result of this procedure. Estimates of the number of such pregnancies which have resulted to the present time range from 20,000 to 100,000<sup>8</sup> with 1,000 to 1,200 babies being conceived by artificial insemination each year in the United States.<sup>9</sup> Even if one were to reject these figures as conjectural only, it seems irrefutable that knowledge of this procedure will become more widespread and the practice of artificial insemination will increase proportionately. This increase will bring about a renewed interest in this emotionally loaded subject on the part of religious leaders, sociologists, geneticists, physicians, legislators, and indeed the general public. No group should be more interested than attorneys. As members of a service profession attorneys have a duty to educate themselves on this subject so that they may advise their clients intelligently and wisely.

This article seeks to supply a supposed need of the practicing attorney for more information about this matter. It provides a background on artificial insemination and raises some of the problems (social, moral and genetic, as well as legal) which the attorney in his role as counselor must consider before advising his clients. It suggests a few answers to these problems and closes with a plea for legislation adequate to protect all persons directly involved in an instance of artificial insemination or for legislation prohibiting the practice altogether.

If there in fact be a true division between "learned" articles and "practical" ones, your author would prefer that this modest effort be regarded as the latter. The writer has not attempted to treat this subject exhaustively or to consider all its many ramifications. Rather, the author has tried to write always with the assumption in mind that the reader is a practicing attorney in need of information—information which will help him answer his clients' questions and enable him to fulfill more effectively his role as counselor. In short, the writer has

<sup>6</sup> *Ibid.*

<sup>7</sup> Seymour & Koerner, *Artificial Insemination*, 116 A.M.A.J. 2747 (1941).

<sup>8</sup> *Ibid.*; Weinberger, *supra* note 2, at 143.

<sup>9</sup> Lang, *Artificial Insemination—Legitimate or Illegitimate*, McCalls, May, 1955, p. 60.

tried to supply information for the practicing attorney to use in helping his clients decide whether their test tube baby will be a "cure" or a "curse" to them.

In suggesting answers to some of the problems raised herein, the author is well aware that the time is not yet ripe for answering all questions or drawing all conclusions pertaining to the practice of artificial insemination. Nevertheless, it is hoped that this article will be of some interim benefit to the author's fellow attorneys.

### HISTORY

The miraculous power of a species to reproduce itself has fascinated man from time immemorial. More brain power, of both high and low voltage, probably has been expended in worry, speculation, and amusement about man's generative processes than has been expended on any other subject. Considering the allure of the subject matter and man's insatiable curiosity, it is not surprising that he should try to alter, if not improve, Nature's way of bringing about reproduction. What is surprising is that no such effort was made until comparatively modern times.

The ancient Cretes and Assyrians have been credited with a highly developed knowledge of the cross-pollination of plants.<sup>10</sup> But the history of artificial insemination did not begin until 1322 with the first successful breeding of mares by the Arabs.<sup>11</sup> Contrary to what one might expect, this was not done to improve the quality of their horses. Rather, the crafty Arabs artificially impregnated the superior mares of their enemies with sperm of inferior males to weaken their strains. From 1322 until about the middle of the sixteenth century numerous individuals conducted successful experiments with fish and other animals.<sup>12</sup> There is considerable disagreement about the true history of this subject as it relates to human beings. (As in so many histories, the view asserted often depends on the nationality of the particular historian.) Many authorities<sup>13</sup> agree that the first successful artificial insemination of a human being is to be credited (or debited if one prefers) to an English physician, Dr. John Hunter. Dr. Hunter performed his feat sometime in the late eighteenth century upon a married woman, using

<sup>10</sup> Pommerenke, *supra* note 2, at 189.

<sup>11</sup> Rutherford & Banks, *Semiadoption Technics and Results*, 5 Fertil. and Steril. 271 (1954).

<sup>12</sup> The first recorded instance of artificial insemination with a dog was performed by the Italian physiologist, Lazzaro Spallanzani (1729-1799). Holloway, *Artificial Insemination: An Examination of the Legal Aspects*, 43 A.B.A.J. 1089 (1957).

<sup>13</sup> GLOVER, ARTIFICIAL INSEMINATION AMONG HUMAN BEINGS 4-5 (1948); Rice, *supra* note 3, at 511; Tallin, *Artificial Insemination*, 34 CAN. B. REV. 1, 10 (1956); Weinberger, *supra* note 2, at 143.

her husband's semen. The modern work in this field did not begin until a relatively short seventy years ago.<sup>14</sup>

Today, cross-pollination is standard procedure, artificial fertilization in fish raising is a common practice, pheasants and turkeys have been crossed by means of artificial insemination,<sup>15</sup> and some dairy herds are now serviced 100 percent artificially with semen of genetically superior bulls.<sup>16</sup> It would be unrealistic to expect scientists to ignore the unexplored possibilities of artificial insemination in human beings after their rapid advances in this field with fish, fowl, and mammals.

The author is unable to resist a quick glance into the crystal ball at this point. Of course it is too early to predict what the future may bring, but some speculation may be in order. A clue, perhaps an unintentional one, to the thinking of some scientists on the future of artificial insemination is given in these sentences by Alfred Koerner, a distinguished physician and attorney, and a recognized authority and spokesman in this field: "Who knows but that in this way we might even be able to prevent another Hitler or some similar aberration of the genes. Is this not one of the easiest and most direct ways of improving offspring and promoting a life of less personal heartbreak and of greater happiness for the entire human race?"<sup>17</sup> In 1943 there appeared a report of the successful use of sperm which had been transported by airplane. With today's jet planes and tomorrow's travel by rocket, sperm may be transported from coast to coast or even from country to country. This thought raises interesting, if somewhat awesome, possibilities. Undoubtedly science will find a way to preserve semen for a much longer period than is now possible—about two years.<sup>18</sup> This would open the way for a man to father children long after his death. Perhaps this might become that "biological immortality" which some philosophers believe to be the only immortality in store for man. Indeed, the logical development of this practice would seem to result eventually in using artificial insemination, not to gratify a woman's

<sup>14</sup> In 1890 Dr. Robert L. Dickinson established the practice of artificial insemination using a donor's semen and secured for it the acceptance it now has from the medical profession. Weinberger, *supra* note 2, at 145. Not until the present century was there any great use made of this procedure. Folsome, *The Status of Artificial Insemination: A Critical Review*, 45 Am. J. Obst. & Gynec. 915 (1943). In 1866, Dr. J. Marion Sims, of South Carolina, successfully impregnated a woman using her husband's semen. He later repudiated his work as immoral. HARRIS & BROWN, *WOMAN'S SURGEON: THE LIFE STORY OF J. MARION SIMS* (1950); Rice, *supra* note 3, at 511; Tallin, *supra* note 13, at 10; Weinberger, *supra* note 1, at 143. In 1918, Dr. Marie Stopes claimed that she had popularized the notion. Tallin, *supra* note 13, at 10.

<sup>15</sup> Asmundson & Lorenz, *Pheasant-Turkey Hybrids*, 121 Science 307 (1955).

<sup>16</sup> Bulletin, New York Breeder's Cooperative, Ithaca (1955).

<sup>17</sup> Koerner, *Medicolegal Considerations in Artificial Insemination*, 8 LA. L. REV. 484, 485 (1948).

<sup>18</sup> Tallin, *supra* note 13, at 2.

desire for a child, but only as a means of improving the human race. Artificial insemination would be practiced only on superior females and the sperm used would come only from equally superior males. Only one step removed lie the conditions described in Huxley's *Brave New World*, where babies are sown and grow in a laboratory.

#### METHOD

A detailed and highly technical discussion of the methods and techniques of artificial insemination would be out of place in a journal that has its greatest circulation among lawyers. Even if such a discussion were appropriate, the author lacks the knowledge and ability necessary for the task. That job must be relegated to members of the various healing arts. However, attorneys should know enough of the methods used to enable them to discuss the practice intelligently with their clients, as well as with other interested persons.

A couple contemplating artificial insemination of the wife should be advised by the attorney that, while the actual insertion of the sperm is a very simple procedure, the time and money involved before this simple act is performed may be great. Of course, both the time and money necessary will vary from one geographical area to another and even from doctor to doctor within a given area. However, any reputable physician will not consider artificial insemination until he has assured himself that the wife is capable (at least organically) of conceiving and bearing a child. This determination may be expensive as it will not be made until the physician, at the very least, has taken a complete history from the patient and has given her a physical examination to determine that she ovulates habitually, has normal anatomic structures, possesses normal thyroid function, and has tubal patency. He will run routine laboratory studies to rule out anemia, foci of infection, diabetes, syphilis, hyperthyroidism, and any other systemic diseases suspected as being present. The attorney should advise his clients that the wife's obstetrician, for reasons to be pointed out later, probably will neither conduct these tests nor do the actual insemination. In addition to the physical examination and these various laboratory tests, a psychiatric examination of the woman (and perhaps her husband also) may be indicated if her reasons for desiring a child, her honesty and sincerity of purpose, or her own definitions of her problem have shown any psychiatric overtones.<sup>19</sup>

<sup>19</sup> Haman insists that one of the prerequisites for insemination be a "cooling off" period, an interval during which the couple can review the picture dispassionately and during which the physician will see both husband and wife and familiarize himself with the mental and psychological make-up of the couple. Haman, *Results in Artificial Insemination*, 72 J. Urol. 557 (1954). One writer states that infertility is usually a psychosomatic problem and is rarely due solely to psychogenic causes.

When the physician is satisfied that the wife is capable of conceiving and bearing a child, he will test the fertility of the husband. There are a number of techniques to accomplish this. These are not discussed herein as they are of interest to doctors but perhaps not to attorneys. Whatever test is used, the possible causes of any revealed infertility are quite numerous. These include<sup>20</sup> defective or inadequate sperm, hypospadias, male impotence, sperm agglutination, mumps with orchitis, extragenital tuberculosis, syphilis, X-ray exposure, or perhaps nothing more serious than dietary deficiencies, worry or overwork. A cure for some of these causes may require prolonged treatment of the husband.

If, after conducting tests on both the wife and the husband, the physician feels that artificial insemination is indicated, he has a choice of three types of artificial insemination or, more accurately, three sources from which to draw the fluid to be used. He may draw the seminal fluid from the husband; he may take the fluid to be used from a donor; or he may use a seminal fluid which is a mixture of the sperm of the husband and of a donor. If a sperm count of the husband's semen is in a range high enough to indicate fertility potential but failure to conceive has resulted from some physical or psychological inability on his part to effect intercourse or if failure to conceive has resulted from some structural defect or neurotic condition of the wife, the semen to be used will be taken from the husband. Technically, this is referred to as artificial insemination homologous.<sup>21</sup> More popularly, it is known as artificial insemination husband. This procedure will be referred to hereafter in this article by the abbreviation A.I.H.

If none of the conditions preventing conception referred to in the previous paragraph are present and the husband's sperm count is in a range indicating a low fertility potential, his sperm may be mixed with that of another man known to be fertile and the resulting fluid will be used. Although facetiously (but perhaps more accurately) referred to as confused artificial insemination, this procedure is known as combination artificial insemination<sup>22</sup> and will be referred to hereafter in this article by the abbreviation C.A.I.

Where conditions are such that neither A.I.H. nor C.A.I. can be

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Baldwin, *Recent Trends in Infertility Analysis and Treatment*, 48 J. Maine M.A. 273, 288 (1957). Rutherford and Banks state that they have not made a practice of routine psychiatric evaluation but they make a long and careful evaluation of the couple and refer the couple to a psychiatrist only where psychiatric problems are indicated. Rutherford & Banks, *supra* note 11, at 273.

<sup>20</sup> Baldwin, *supra* note 19, at 274; Copeland, *Sterility and Artificial Insemination*, 39 West Virginia M.J. 415, 416 (1943).

<sup>21</sup> Malson, *An Analysis of Legal Problems Resulting from Practice of Artificial Insemination in Oklahoma*, 49 J. Oklahoma M.A. 396 (1956).

<sup>22</sup> Northey, *Artificial Insemination—A Legal View*, 57 New Zealand M. J. 531 (1958).

utilized, the semen to be used must be taken from another male. Technically, this is called artificial insemination heterologous.<sup>23</sup> More popularly, it is known as artificial insemination donor. This technique will be referred to hereafter in this article by the abbreviation A.I.D.

There is near-unanimous agreement among doctors and writers<sup>24</sup> that the donor must be anonymous to everyone except the doctor who does the insemination. Likewise the donor must not know the identity of the woman who is to be inseminated with his fluid. However, there seems to be no general consensus on what physical and mental characteristics the donor should possess. Even without a specific request from the husband and wife, the careful physician probably will select a donor who is not a relative or friend of either husband or wife, who is above average mentally and physically, who has no known hereditary diseases, who racially and physically resembles the husband<sup>25</sup> as closely as possible, and whose Rh factor is compatible with that of the wife. Other physicians,<sup>26</sup> perhaps on request of the husband and wife, may require also that the donor's age, religion, and sociologic environment match closely those of the barren couple. A donor who meets all these requirements may be nonexistent or, at best, difficult to locate. The attorney's clients should be advised that while their fancies and wishes concerning specific traits of the donor undoubtedly will be given every consideration by the physician, in the end it will probably be necessary for them to give the doctor permission to use his own best judgment in selecting the donor.<sup>27</sup>

There are at least five methods<sup>28</sup> by which the seminal fluid to be used in artificial insemination is secured, whether it is taken from the husband or a donor. These methods are not discussed herein for a very simple reason. As far as the writer has been able to discover from

<sup>23</sup> *Ibid.*

<sup>24</sup> *E.g.*, REGAN & MORITZ, *HANDBOOK OF LEGAL MEDICINE* 17 (1956); Northey, *supra* note 22, at 532.

<sup>25</sup> Barandes, Levine, Feinstein, & Kane, *Artificial Insemination With Modified Seminal Fluid*, 3 Ann. West. Med. & Surg. 191, 194 (1949).

<sup>26</sup> Folsome, *supra* note 14, at 915. Rutherford and Banks require that the donor be a college graduate with at least two living and healthy children. Rutherford & Banks, *supra* note 11, at 277.

<sup>27</sup> A suggested form for use in artificial insemination cases contains this provision: "We and each of us understand that said Dr. ——— does not warrant or guarantee the qualifications of said donor, and that in determining whether the said donor meets the aforesaid qualifications the said Dr. ——— shall be required to make only such investigation of and concerning such donor as shall in the sole discretion of said Dr. ——— seem reasonably necessary." REGAN, *DOCTOR AND PATIENT AND THE LAW* 336 (3d ed. 1956).

<sup>28</sup> Testicular puncture, masturbation, prostatic massage, from genital organs of a woman with whom the donor has just had intercourse, and condomistic intercourse. Tallin, *supra* note 13, at 7.



inquiry made of physicians and from reading,<sup>20</sup> masturbation by the donor into a sterile glass vessel is the only method used by most physicians. Undoubtedly this is because of the simplicity of that method as compared to the other possible means of collection, such as puncturing a testicle and withdrawing the fluid or massaging the prostrate and other glands to secure an involuntary discharge.

The method by which the semen is introduced into the woman's body, whether intra-vaginally, intra-cervically, or intra-uterine, is perhaps of no interest to attorneys. On that assumption, the writer has omitted any discussion of the advantages and disadvantages of each of these procedures. However, the attorney's clients should be advised that regardless of the technique used, there can be no guarantee that pregnancy will result at all<sup>21</sup> and certainly there may have to be a number of inseminations before conception takes place.<sup>22</sup> This will be an additional expense that the clients should expect. Again, exact figures are not available but it would appear that donors are paid from \$5.00 to \$10.00 for each specimen.<sup>23</sup>

#### MORAL CONSIDERATIONS

One duty of the practicing attorney in his role as counselor should be a discussion with his clients regarding the moral aspects of their decision to have the wife submit to artificial insemination. The author does not suggest that the attorney should discuss the broad moral considerations with them. The writer does suggest that the attorney should explore their beliefs, convictions and principles as they relate to the moral aspects raised hereafter so that he may fill his role as counselor more effectively.

It might be natural for the attorney to assume that his clients, having

<sup>20</sup> Glatthaar, *Indications and Technic of Artificial Insemination*, 87 Schweiz. Med. Wchnschr. 791, 793 (1957).

<sup>21</sup> One writer reported that in eleven cases, he had five normal pregnancies, one miscarriage, and five failures. The number of inseminations varied between two and eight. Copeland, *Sterility and Artificial Insemination*, 39 West Virginia M. J. 415, 417 (1943). Baldwin reports that A.I.D. has resulted in 85 percent pregnancies within six months of treatment in the best hands. He does not state, however, the average number of inseminations to achieve this result. Baldwin, *supra* note 19, at 290. Another physician claims that results obtained by resorting to artificial inseminations have been little more than mediocre. Folsome, *supra* note 14, at 915. Out of 177 women inseminated by A.I.D., 134 pregnancies (75.7 percent) resulted as reported in Haman, *Results in Artificial Insemination*, 72 J. Urol. 557, 558 (1954). This same writer reports that pregnancy followed a single insemination in 24 cases; that 23 patients received 10 or more inseminations; and that one patient was given 34 inseminations. The number of miscarriages in this series of artificial inseminations was 24 of the 134 pregnancies. The writer considers this 17.9 percent as about the same as reported for normal conceptions.

<sup>22</sup> *Ibid.*

<sup>23</sup> Greenhill & Wright, *Artificial Insemination: Its Medicolegal Implications, A Symposium*, 1 Am. Pract. 227, 230 (1947).

reached a tentative decision to have the wife inseminated artificially, have given serious thought to the moral aspects and have no compunctions about their decision. The author believes such an assumption may prove to be unwarranted in many instances. Many, many persons have only the vaguest notion of the theology and teaching of the religious group to which they belong. It may well be that the clients do not know, and have not considered, whether their particular faith disapproves of artificial insemination.<sup>33</sup> Even if one's clients have investigated the point and satisfied themselves thereon, on the assumption that they have come to see the attorney before consulting a physician, they are probably ignorant of the methods used. They may have scruples about some aspect of those techniques although approving of artificial insemination *per se*.

If either the husband or wife is a member of the Roman Catholic Church, the attorney should decline to advise the couple further and should refer them to a priest of that church. His action would not necessarily imply his agreement with the teachings of that religious group that artificial insemination is wrongful. It would be merely a recognition by him that, with all the other problems raised by artificial insemination, for the clients to face the additional problem of a troubled conscience might lead to future difficulties which can be forestalled now.

The clients, while putting their stamp of approval generally on the practice of artificial insemination, may disapprove specifically the securing of semen by means of masturbation. A husband may well be revolted at the idea that he may be asked to indulge in what regards as a "childish" practice. His feeling and that of his wife may be even stronger. They may consider masturbation as sinful. A couple which believes such act to be morally wrong may not be convinced by an argument that there is a difference between the act done merely to satisfy a man's sexual appetite and the same act done to secure sperm to be used for artificial insemination. Logically, they are perhaps correct. Regardless of any use to which the fluid may be put afterwards, the securing of it by this means can only result from a stimulation of the sexual appetite

<sup>33</sup> The Roman Catholic Church has vigorously condemned A.I.D. as an unnatural and illicit act outside of the marital obligation. It has condemned A.I.H. also when illicit means, such as masturbation, are used to obtain the husband's semen. Where mechanical means, as the use of a cervical spoon, are employed to transfer the husband's sperm from the vagina to the uterus, the procedure is permissible. It is also allowed where the husband's semen is collected without ejaculation or in a perforated condom used in sexual intercourse. The Anglican Church and the German Evangelical Church have strongly condemned A.I.D. The Swedish Church has also condemned A.I.D., and in 1958 the Moslem Indonesian Council advised the Health Industry of Indonesia that A.I.D. must be forbidden. There is no official Jewish or Protestant position but leading spokesmen for both groups have said that it is a matter resting solely with each person's conscience. Weinberger, *supra* note 2, at 145.

of the male. If this act be an abuse of man's sexual drive, it would appear to be so in either event. If the clients regard masturbation as morally wrong, they may regard their being the direct occasion for a donor's committing the act as equally immoral on their part. Of course, the physician chosen to do the insemination may not use this method of collecting the semen to be used. The chances are, however, that he will.

This possible moral problem should be pointed out by the attorney.

If fraud and deceit are considered dishonest and immoral by the couple seeking advice, they may wish to go no farther with their tentative decision to try artificial insemination, for in all likelihood they must be deceitful if they engage in this practice.

As pointed out earlier, the physician who does the actual insemination probably will not be the obstetrician chosen by the wife. This is to protect the obstetrician, for he must sign the birth certificate and list thereon the parents of the child. Most writers<sup>34</sup> agree that the husband should be held out as the father and that the way in which conception was brought about should be concealed from the obstetrician. Commendable as it may be to try to protect the obstetrician, the fact remains that the husband, the wife, and the physician would be practicing a deceit upon him.

A child conceived in this manner is also deceived into thinking that the husband of his mother is his father. To reveal the truth to the child when he is able to understand may create more problems than it solves. Doctors who treat the child later in his life, the Armed Services into which the child may go, insurance companies, and prospective employers, all have an interest in the child's medical history, including that of his parents. To create a situation where such records must be falsified, although innocently on the child's part, is to do him a serious disservice and may deprive him of certain monetary benefits. To be a test tube baby may be a curse for the child even if it is a cure for the husband and wife. Friends and relatives of the parents are likewise deceived into thinking the husband is the father of the child conceived by artificial insemination.

<sup>34</sup>*E.g.*, SHARTEL & PLANT, *THE LAW OF MEDICAL PRACTICE* 52 (1959). A review of this book states: "Thus, the authors counsel the doctor to permit a colleague to make a certificate which the doctor who has administered the insemination knows is false, and the employment of the subterfuge of sending his patient to another doctor or requiring her to call in another doctor for this purpose, not only shows lack of respect for the letter and spirit of the law but indicates even contempt for his colleague. This shifty maneuver is not compatible with the practice of an honorable profession. Furthermore, it strains credulity to the utmost to conceive that the average obstetrician will not learn the name of the last attending physician." Scallen, *Book Reviews*, 44 *MINN. L. REV.* 1045, 1048 (1960). Any question of deceit could be eliminated by having the physician list the name of the donor as the father or perhaps list the father as unknown where C.A.I. is used, but it is more probable that the couple would not wish to have this potential embarrassment to themselves and the child hanging over their heads.

Whether artificial insemination, with or without resulting pregnancy, constitutes adultery from the moral viewpoint is not necessarily the same problem as whether such practice constitutes adultery in a legal sense (a problem to be discussed hereafter in this article). As has been stated:<sup>35</sup> "It is relevant here to point out that laws against adultery in their enforcement hardly reach cases in which the adulterous act remains mainly within the realm of personal immorality and does not concern other persons." The claim that A.I.D. is immoral rests upon the view that marriage is an absolute generative, as well as sexual, monopoly.<sup>36</sup> As is true of so many other problems regarding artificial insemination, there are divergent views on whether this practice is adultery in a moral sense.<sup>37</sup> At least the possibility of its being a moral problem to the clients should be pointed out to them.

The foregoing are but a few of the moral considerations with which the clients should be acquainted before they seek out a physician to perform the actual insemination. The author hopes that enough such considerations have been mentioned to illustrate that the problems before and after conception are complicated although the act of insemination is simplicity itself.

#### GENETIC AND SOCIAL IMPLICATIONS

It is far beyond the writer's ability and the announced purpose of this article to include herein a treatise on genetics and eugenics. However, certain concepts basic to these subjects should be called to the attention of the attorney's clients, as these concepts may cause them to change their minds about having a child by artificial insemination. Such caution is fully justified. Doctors are well aware that "the genetic implications of careless selection of semen donors are so well known as to cause apprehension."<sup>38</sup>

<sup>35</sup> Ramsey, *Freedom and Responsibility in Medical and Sex Ethics: A Protestant View*, 31 N.Y.U.L. REV. 1189, 1198 (1956).

<sup>36</sup> FLETCHER, *MORALS AND MEDICINE* 139 (1954).

<sup>37</sup> "The exclusiveness of the marriage bond, which excludes sexual intercourse with a third person as adulterous, also excludes the semen of a donor. Adultery is adultery whether or not the husband consents to his wife's having sexual relations with another man. It is not regarded as less adulterous by nature of the fact that the semen has been artificially introduced." Hassett, *Freedom and Order Before God: A Catholic View*, 31 N.Y.U.L. REV. 1170, 1179 (1956). "In this connection Jewish law is exceedingly liberal. A woman is not guilty of adultery when she is impregnated artificially with the sperm of a donor and the child is legitimate, whether or not the mother is married." Rackman, *Morality in Medico-Legal Problems: A Jewish View*, 31 N.Y.U.L. REV. 1205, 1208 (1956). "Adultery is the act of sexual intercourse between such partners, the production or non-production of offspring being immaterial to the definition, and since such intercourse is impossible without physical contact, I cannot see how A.I.D. can be construed as adultery." Frohman, *Vexing Problems in Forensic Medicine: A Physician's View*, 31 N.Y.U.L. REV. 1215, 1218 (1956).

<sup>38</sup> Pommerenke, *Artificial Insemination: Genetic and Legal Implications*, 9 Obst. & Gynec. 189, 191 (1957).

Earlier it was assumed that the physician selecting the donor would be careful enough to ascertain the lack of hereditary diseases in the donor. Beyond this care, unless he is a geneticist, the average physician can not go. Doctors themselves recognize this limitation. There seems to be general agreement among physicians that the couple contemplating artificial insemination should understand there can be no guarantee the patient will become pregnant, that she will carry to term, or that there will be no malformation of the child. Of course, any malformation that should result may not necessarily be attributable to the donor. The wife herself may have passed on a dormant trait, or the donor may have added a recessive gene to hers.

Although there is much which is not known about genetic heritage, genetics now contains enough systematized information to qualify as a science.<sup>39</sup> As a science, it recognizes that to determine the true hereditary nature of specific diseases or characteristics an investigator may have to trace many family trees. Therefore, the clients either must hope for the best (a far from wise gamble) or incur the additional expense of hiring a geneticist to inquire into the donor's background more fully than the average physician can do.<sup>40</sup>

There is another consideration of far more importance perhaps than the chance of a couple's having a deformed or mentally retarded child. That is the distinct possibility that two children, having a common donor father or other close blood relationship, might someday marry each other in ignorance of their kinship by blood. Depending on the particular state and the degree of consanguinity involved, such marriage might be incestuous and therefore void. Laws forbidding consanguineous marriages have a sound genetic basis. It is common knowledge (revealed in both scientific journals<sup>41</sup> and folklore) that the presence of a characteristic in both parental strains increases the incidence of that characteristic in their offspring.

The possibility of such an incestuous marriage may become a probability if the practice of artificial insemination increases as predicted.<sup>42</sup>

<sup>39</sup> *Ibid.*

<sup>40</sup> For the couple, or their geneticist, to learn the identity of the donor would violate the usual requirement, mentioned earlier in this article, that the donor must be anonymous to everyone except the doctor who does the insemination.

<sup>41</sup> Pommerenke, *supra* note 38, at 192.

<sup>42</sup> This prediction has not escaped criticism. One writer states: "[A]rtificial insemination in the United States is not a widespread or growing practice; on the contrary, it is being used less and less as time goes on." Weisman, *Symposium on Artificial Insemination: The Medical Viewpoint*, 7 SYRACUSE L. REV. 96, 97 (1956). Another doctor writes: "Extensive experiments lead to but one conclusion. That the need for heterologous artificial insemination is diminishing in direct proportion to our increasing knowledge about the male sex cells and the ovulatory mechanism in the female." Folsome, *The Status of Artificial Insemination: A Critical Review*, 45 Am. J. Obst. & Gynec. 915, 925 (1943). But query: What were these "extensive experiments" and who conducted them?

Today, there are probably relatively few men in a given community willing to act as donors.<sup>43</sup> With no central records being kept, no identification on the donor's part of the woman inseminated, and no assurance that a donor will be a source of semen for only one physician, the attorney's clients can do no more than hope that their child will never meet and marry his half-sister.

In suggesting that the attorney discuss with his clients certain sociological and psychological implications and possibilities inherent in their tentative decision, the author does not propose that the attorney attempt to become an amateur psychologist (than which there is nothing more annoying, if not downright dangerous). The author does not mean to imply that the attorney should seek necessarily to discover if these possibilities are present in his clients' minds. He does propose that the attorney should consider making mention of the possibilities raised hereafter and let his clients decide whether they may become realities as to them.

If the couple is seeking to have a child by means of artificial insemination with the hope that a child in the home will save their marriage, this hope will not, in all probability, be realized. Few marriages are saved by the birth of a child if by "saved" is meant more than merely holding the family together for the sake of the child. A child in the home cures none of the diseases which have undermined the marriage. The most a child's presence can do, if the couple is intelligent, is to force them to face and resolve their own difficulties. But an intelligent couple should be able to do this without using a child as a crutch.

A wife, desiring children and unable to have them because of her husband's sterility, who has become pregnant by artificial insemination, may face an emotional involvement with the physician<sup>44</sup> or unknown donor at the expense of her husband. When this idea was suggested by the author to one woman, she remarked: "That's silly! I would give it no more thought than I would a shot in the arm." Perhaps most women would feel the same way.<sup>45</sup> But the husband at least, knowing his own wife as he does, should be told of this possibility so that he may correctly assess it as it may affect him.

<sup>43</sup> For example, the fact that thirty-five women were impregnated successfully from the sperm of a single donor is reported in Haman, *supra* note 30, at 557.

<sup>44</sup> Recognizing this possibility, two doctors make a point of having the inseminations done by either the doctors or nurses, whoever is available at the moment. These doctors state: "The procedure is thus reduced to a simple, nonemotional office treatment, without transference of the patient's reproductive allegiance to her physician at the expense of her husband." Rutherford & Banks, *Semioadoption Technics and Results*, 5 Fertil. & Steril. 271, 274 (1954).

<sup>45</sup> However, another acquaintance of the author has recognized the very definite possibility of a transference of the emotions to the donor. As this person pointed out, the donor theoretically could be almost anyone so that a woman might well imagine herself as bearing the child of some famous personage.

Some husbands, because of a deep subconscious reaction or other psychological disorder, may be unable to accept a child conceived by A.I.D. and may withhold from it the love and affection which it needs—love and affection which would be given a child fathered by the husband, one adopted by the couple, or even one conceived by C.A.I. Some husbands may blame the wife later for any bad traits, characteristics, or tendencies exhibited by this child. This is a possibility to be mentioned by the attorney. It should be mentioned diplomatically that such attitude of the husband, if it exists, is unintelligent in overlooking the fact that the traits may have come from the donor and the fact that many bad hereditary traits can be overcome by a good environment.

One possibility, perhaps a remote one, is the chance that the donor upon learning the identity of the couple may try blackmailing them.

The sociological and psychological implications mentioned above do not exhaust the possibilities by any means. They are merely illustrations of some of the matters an attorney may want to discuss with his clients. Only the attorney having a couple before him can decide which, if any, of these implications should be discussed. The attorney's own past experiences and the information gained in an interview with these persons may suggest other possibilities to be explored.

#### LEGAL PROBLEMS

The clients may not expect advice from the attorney on the moral, social, psychological, and genetic implications surrounding their tentative decision to have the wife artificially inseminated. However, they certainly will expect from him sound advice on the possible legal problems which may arise to plague them.

At the present time an attorney can say very little with any degree of assurance. About all he can do is point out some of the legal difficulties the couple may encounter and give them his best educated guess on the probable outcome should one or more of these difficulties present itself later on. With a situation not known to common law and not covered by specific statutory provisions,<sup>46</sup> whose aspects have yet to be explored satisfactorily by any court of appellate jurisdiction in the United States, the attorney would be foolish indeed to rush in with confident predictions. In this instance, as in so many others, to confess one's ignorance is a mark of intelligence; to profess one's intelligence is a mark of ignorance.

<sup>46</sup> Bills have been introduced in Ohio, Illinois, Virginia, Indiana, New York, Wisconsin, and Minnesota, but none has been enacted. Section 112 of the New York City Sanitary Code, providing for a comprehensive medical examination of donors, is the only legislative recognition of artificial insemination in human beings.

This article is written on the assumption that the attorney has before him a couple who are seeking his advice. Therefore, only those legal problems which may affect them or the child born as a result of artificial insemination will be discussed. No attempt is made to point out the possible rights, duties, and liabilities of the donor, the donor's wife, or the physician doing the actual insemination.

The practice of A.I.H. presents few, if any, legal problems. Certainly it does not give rise to any serious ones. C.A.I. is preferred by many doctors in the belief that this procedure will eliminate entirely any troublesome legal issues which are present when A.I.D. is the method of artificial insemination used. This belief is a mistaken one. Mingling the husband's sperm with that of another male adds one more unknown factor to complicate proof of the identity of the biologic father. Two doctors<sup>47</sup> have admitted candidly that such procedure cannot be defended either scientifically or emotionally. It cannot be defended scientifically because only the husband's fluid should be used if a sperm count indicates fertility potential. If a sperm count does not indicate such potential, there is no valid scientific reason to mix the husband's sperm with that of a donor. The practice can not be defended emotionally. The primary reason for C.A.I. would seem to be the implanting in the husband's mind the belief that he just might be the father. The doctor knows that in C.A.I. the probabilities of this being true are very remote. Neither can it be defended from a legal standpoint. C.A.I. is far from the panacea some doctors claim it to be. Whether C.A.I. or A.I.D. is the method employed, the same legal problems will be present although perhaps different in degree.

Mention has been made already of the fact that in all probability the husband, the wife, and the physician are all parties to a falsification of certain public records. At the very least, they may have caused a false statement to be entered on the birth certificate listing the husband as the father of the child. This action, when done with full knowledge of the misrepresentation, may involve certain criminal sanctions for falsifying public records and perhaps for conspiracy to commit a criminal act. The attorney who searches the statutes of his state carefully should be able to decide with a reasonable degree of certainty whether the couple might be criminally liable in these two respects. If they are, they should be warned that the veil of secrecy drawn over this practice is poor protection indeed. Veils of secrecy frequently are pierced by prosecutors on their way to governors' mansions.

The attorney who is familiar with the Internal Revenue Code should be able to decide whether the husband could claim a child born by

<sup>47</sup> Rutherford & Banks, *supra* note 44, at 274.



A.I.D. or even C.A.I. as a dependent when he makes out his federal income tax returns. At the present time the Code<sup>48</sup> seems to permit this, but there is no assurance that the child will continue to be worth that \$600.00 on a tax return. This question may be of minor importance to the couple. Nevertheless, it is better for the attorney to mention it to his clients even at the risk of being considered overly-cautious.

Aside from the two legal problems pointed out above, there are three others which should be given serious consideration by the attorney before advising his clients. These three, which appear to be the major problems, are: (1) Does either C.A.I. or A.I.D. constitute adultery? (2) Is a child born of either method legitimate? (3) What are the rights of inheritance among the various parties directly involved?

Whether artificial insemination constitutes adultery by the wife is a question that may be raised in at least two instances: (1) a criminal charge filed against the wife, and (2) a petition for divorce filed by the husband alleging adultery of the wife as a ground for such divorce. Neither of these two instances requires that conception must have resulted from the insemination. Obviously, the second situation will arise only if the husband has a change of heart, while a criminal charge could be filed regardless of the couple's wishes.<sup>49</sup>

To the author's knowledge no court of final jurisdiction has had occasion as yet to rule *directly* on whether A.I.D. or C.A.I. constitutes adultery. However, in *Orford v. Orford*,<sup>50</sup> Justice Orde of the Ontario Supreme Court stated that A.I.D. was adultery when done without the husband's consent. In a dictum, the Justice said:

[T]he essence of the offense of adultery consists, not in the moral turpitude of the act of sexual intercourse, but in the voluntary surrender to another person of the reproductive powers or faculties of the guilty person; and any submission of these powers to the service or enjoyment of any person other than the husband or the wife comes within the definition of "adultery." . . . Sexual intercourse is adulterous because in the case of the woman it involves the possibility of introducing into the family of the husband a false strain of blood. Any act on the part of the wife which does that would, therefore, be adulterous.<sup>51</sup>

In the *Orford* case the wife brought a suit for support. The husband defended on the ground of the wife's adultery. She claimed that the child she delivered during a separation from her husband had been conceived by A.I.D. The husband contended that this was adultery

<sup>48</sup> INT. REV. CODE OF 1954, §§ 151(e) (3), 152(a) (9).

<sup>49</sup> In some states this statement would be untrue. See, e.g., OKLA. STAT. tit. 21, § 871 (1951), limiting prosecution for adultery to complaints made by the injured spouse unless the persons are living together in open and notorious adultery.

<sup>50</sup> 49 Ont. L.R. 15, 58 D.L.R. 251 (1921).

<sup>51</sup> *Id.* at —; 58 D.L.R. at 258.

nonetheless. The court found that the wife had had sexual intercourse with the co-respondent in the ordinary way and that there had been no artificial insemination.

An American case, *Hoch v. Hoch*,<sup>52</sup> was a suit for divorce on the ground of adultery brought by the husband against the wife. The wife contended that she had submitted to A.I.D. and had not committed ordinary adultery. The court found that the wife had committed ordinary adultery and granted the husband a divorce. The court, contrary to the *Orford* decision, went on to say that A.I.D. would not be such evidence of adultery as to constitute a ground for a divorce.

The only other case in the United States discussing the question of A.I.D. as adultery is *Doornbos v. Doornbos*.<sup>53</sup> In that case, Judge Gorman of the Superior Court of Cook County, Illinois, declared that A.I.H. is wholly unobjectionable in law but that A.I.D. is adultery on the part of the wife. The court gave the husband a divorce despite the fact that he had consented to his wife's action.

Despite these cases, it seems to the writer quite unlikely that an authoritative court of final jurisdiction faced with the *specific* issue of whether artificial insemination is adultery will hold the submission by the wife to either A.I.D. or C.A.I., with the consent of the husband, to be the crime of adultery. In order to so hold, a court would have to twist the usual definitions of that crime into unrecognizable shapes and violate long standing principles of statutory construction and interpretation. Whatever the precise language of a particular statute defining adultery as a crime might be, it probably will include "voluntary sexual intercourse"<sup>54</sup> as one of the essential elements of the offense. Sexual intercourse has been stated to be the actual contact of the sexual organs of a man and woman and an actual penetration into the body of the latter.<sup>55</sup> It is also stated to be the same as "copulation" and the word "copulation" has primarily an unvarying significance, to wit, the act of gratifying sexual desire by the union of the sexual organs of two biological entities.<sup>56</sup> Admittedly, the foregoing definitions do not make *impossible* the bringing of artificial insemination within their terminology. However, it is doubtful that a court will do so. Criminal statutes are strictly construed. A strict construction of the words "sexual intercourse" would imply a bodily contact or embrace of the

<sup>52</sup> Unreported, Cir. Ct., Cook County, Ill. (1948); see Chicago Sun, Feb. 10, 1945, p. 13, col. 3; Time, Feb. 26, 1945, p. 58.

<sup>53</sup> 23 U.S.L. WEEK 2308 (1954).

<sup>54</sup> See, e.g., OKLA. STAT. tit. 21, § 871 (1951): "Adultery is the unlawful voluntary sexual intercourse of a married person with one of the opposite sex. . . ."

<sup>55</sup> Williams v. State, 92 Fla. 125, 109 So. 305 (1926); State v. Frazier, 54 Kan. 719, 39 Pac. 819 (1895).

<sup>56</sup> People v. Angier, 44 Cal. App. 2d 417, 112 P.2d 659 (1941).

sexes in the act of generation, something which is obviously lacking between the donor and the wife. Also, the nature of adultery, in the writer's opinion, is not so much the voluntary surrender by the woman of her reproductive powers to one other than her husband as it is an act forbidden because of considerations of moral turpitude.

Even if a court were to regard artificial insemination as adultery on the part of the wife, it is highly improbable that an indictment would lie in a state whose statute provides that the aggrieved spouse must be the complainant unless the parties are living in open and notorious adultery. Obviously, the donor and the wife would not be living in a state of open, notorious adultery, and the husband can scarcely complain of that to which he has given his consent. Of course, the courts have held<sup>57</sup> almost universally that condonation of a crime is no defense thereto. If the act is adultery, the consent of the husband makes it no less a crime. However, a husband who had consented to A.I.D. could scarcely be an aggrieved spouse under the type of statute referred to above.

What a court will do with this problem of A.I.D. as adultery, if and when it is presented as a direct issue, would of necessity be conjectural. However, reason would indicate that the practice of artificial insemination does not constitute the crime of adultery under present statutes.

The same court which holds artificial insemination not to be the *crime* of adultery might hold nevertheless that such practice is adultery for the purpose of a *divorce action*. This inconsistency can be explained, if not defended from a logical standpoint. In a divorce action, as opposed to a criminal one, there is no requirement that statutes should be strictly construed. Adultery is made a crime because of considerations of moral turpitude. Adultery is made a ground for divorce because of the possibility that a bastard child may be made an heir of the husband,<sup>58</sup> coupled with the fact that a surrender of the wife's reproductive powers may make the marriage intolerable to the husband.<sup>59</sup> Further, the real basis of many divorce actions is mere incompatibility. A judge adhering to the seemingly prevalent philosophy that divorces should be easy to obtain might grant a divorce because of incompatibility even though the legal ground alleged is adultery growing out of an instance of artificial insemination.

The attorney should recognize, and advise his clients, that while sexual intercourse, including penetration, has been considered in the past a necessary ingredient in adultery, there is no assurance that courts

<sup>57</sup> See, e.g., *Bruce v. State*, 223 Ark. 357, 265 S.W.2d 956 (1954).

<sup>58</sup> *Tallin, Artificial Insemination*, 34 CAN. B. REV. 1, 18-19 (1956).

<sup>59</sup> *Ibid.*

in the future will continue so to regard it. Sexual intercourse, including penetration, may have been required in the past for the simple reason that it was never believed at that time that a child could be conceived in any other way. Many things unknown to the common law have nevertheless been brought within its principles. Artificial insemination may prove to be just another example of this fact.

Our courts are loath for many reasons to declare a child illegitimate, not the least of which being the social stigma involved. Consequently, there is a strong presumption in law that a child born in lawful wedlock is legitimate.<sup>60</sup> In accord with the presumption, legitimacy is often defined as the state of being born in lawful marriage<sup>61</sup> and illegitimacy is the status of a child born of parents not legally married at the time of birth.<sup>62</sup> A party seeking to have a child born as a result of the artificial insemination of its mother declared illegitimate would have to present clear, convincing proof to overcome the presumption of legitimacy. Just what proof will be necessary may require the court to adopt new rules of evidence or to alter its thinking on some of the existing rules. Should our courts of appellate jurisdiction eventually rule that a child conceived by A.I.D., or even C.A.I., is illegitimate, one consequence will be to bring into operation any bastardy statutes on the books of the various states.

At least two cases in the United States discuss the issue of legitimacy of a child born by A.I.D. The cases reach opposite conclusions. In *Strnad v. Strnad*,<sup>63</sup> the Supreme Court in New York County stated by way of dictum that a child born by A.I.D. is as legitimate as a child born out of wedlock who by law is made legitimate upon the marriage of the interested parties. However, in *Doornbos v. Doornbos*,<sup>64</sup> the court declared that a child conceived by A.I.D. is illegitimate, the child of the mother alone, and that the husband can have no interest in the child.

If a child born as a result of artificial insemination is declared to be illegitimate, his rights of inheritance from his mother, his biologic father, and the husband of his mother, as well as their rights to inherit from him or the child's right to inherit from other persons, will be no different than the corresponding rights of any other illegitimate child. The statutes of descent and distribution would be applied to such a child despite the fact that his illegitimacy may have come about in other than the normal way.

<sup>60</sup> MADDEN, HANDBOOK OF THE LAW OF PERSONS AND DOMESTIC RELATIONS 338, 339 (1931).

<sup>61</sup> 1 BLACKSTONE, COMMENTARIES 446 (Christian ed. 1818).

<sup>62</sup> *Id.* at 454.

<sup>63</sup> 190 Misc. 786, 78 N.Y.S.2d 390 (Sup. Ct. 1948).

<sup>64</sup> 23 U.S.L. WEEK 2308 (1954).

The attorney should investigate the possibility of the husband's formally adopting the child conceived by A.I.D. in order to advise his clients on whether this would be a solution to the problem of the child's perhaps later being declared illegitimate and the problem of inheritance by and from the child. In many states such formal adoption would be a solution to both these problems without any great sacrifice of the secrecy surrounding the practice of artificial insemination. For example, The Uniform Adoption Act of Oklahoma<sup>65</sup> provides that an adoption may be decreed when there has been filed a written consent to the adoption executed by the mother alone if the child is illegitimate.<sup>66</sup> It is further provided:

(1) After the final decree of adoption is entered, the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents. From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents in accordance with the statutes of descent and distribution, and the adoptive parents shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.

(2) After a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and have no rights over such adopted child or to his property by descent and distribution.<sup>67</sup>

The act protects the confidential character of hearings and records by providing:

(1) Unless this court shall otherwise order, all hearings held in proceedings under this Act shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No persons shall have access to such records except on order of the judge of the court in which the decree of adoption was entered, for good cause shown.

(3) All files and records pertaining to said adoption proceedings shall be confidential and withheld from inspection except upon order of the court for good cause shown.<sup>68</sup>

Even if a child born by artificial insemination is considered legitimate, it does not follow necessarily that his rights of inheritance will

<sup>65</sup> OKLA. STAT. tit. 10, §§ 60.1-60.23 (Supp. 1960).

<sup>66</sup> OKLA. STAT. tit. 10, § 60.5 (Supp. 1960).

<sup>67</sup> OKLA. STAT. tit. 10, § 60.16 (Supp. 1960).

<sup>68</sup> OKLA. STAT. tit. 10, § 60.17 (Supp. 1960).

be the same as if the one he considers to be his biologic father actually were such. If the particular descent and distribution statute involved uses words such as "lineal descendants," "heirs of his blood," or "lawful issue of his body," it is clear that the child can not meet these requirements. Contrary to the wishes of the husband and wife, collateral heirs related in some degree of consanguinity to the husband may defeat the claims of the child born by A.I.D., or perhaps even by C.A.I.

### CONCLUSION

From all the available evidence it would appear that the practice of artificial insemination is increasing.<sup>69</sup> This multiplies the chances that a practicing attorney may be called upon for advice by a couple contemplating artificial insemination of the wife. As a counselor the attorney should advise his clients of the methods and techniques which may be used to carry out the insemination. He should warn them of the moral, genetic, and social implications, as well as the legal problems, involved in their contemplated action. In view of all the difficulties surrounding the practice and the uncertain status of the law governing the rights, duties, and liabilities of all persons directly concerned, the attorney would do well to dissuade his clients from their idea. At least they should be advised that they are treading on what may prove to be dangerous ground, as it is impossible to state definitely whether the law will approve their conduct. Artificial insemination today seems more of a "curse" than a "cure."

The author is not one of those persons who believes every social problem can be solved by the cure suggested in the statement: "There ought to be a law." However, in this instance, legislation governing the practice of artificial insemination is needed badly, if not prospective, then at least retroactive to protect those persons who have been directly concerned with an instance of artificial insemination. Such need will become more acute as the practice increases. The writer is not so all-wise as to suggest that any particular legislature should or should not approve of artificial insemination. He does recommend most strongly that the various legislatures prohibit the practice entirely, or pass legislation adequate to protect all the parties involved in an instance of artificial insemination. The legislature of Oklahoma has passed statutes designating Oklahoma State University the official state agency to sponsor, establish, develop and execute a program of artificial insemination for the benefit of the livestock industry of the state. It would appear that, however noble this project may be, *homo sapiens* should be entitled to equal time and consideration!

<sup>69</sup> *Supra* note 42.