

NU HOU KANAWAI

"Justice Horizons"

A NEWSLETTER OF ISSUES, TRENDS AND RESEARCH FINDINGS



LAW AND TECHNOLOGY:

Artificial Procreation

"The Stork Market: The Law of the New Reproduction Technologies"

Lori B. Andrews

American Bar Association Journal

August 1984

Summary and Comments:

Techniques on artificial reproduction are currently posing new legal questions in the court. Except for six states—Hawaii, Mississippi, New Hampshire, South Carolina, Vermont and West Virginia—the remaining 44 states have one or more statutes addressing the following restrictions: (1) restricting fetal research; (2) governing artificial insemination; (3) prohibiting payment in connection with adoption; (4) prohibiting the donation or selling of a live fetus/embryo for experimentation; and (5) prohibiting the selling of a fetus/embryo. The new legal questions, revolving around frozen embryos, frozen sperm and artificial self-insemination, can be understood in a three-fold way concerning rights and inheritance; ethics and legality; and totally artificial procreation.

First, what is the legal status of the embryos and the sperm:

(a) When the 'parents' are divorced, do both parents have legal rights to these isolated phenomena?

(b) When one parent dies, does the remaining parent have the legal rights? If so, what is the legal standing of the child as an heir? (For example, the case of the French widow Croinne Parpalaix. She went to court and won the possession of

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Biological and Legal Parentage

"Father's Identity: The Right to Know"

Lloyd Shearer

Parade

July 29, 1984

Summary:

Sweden is seen as one of the most progressive nations in the world when it comes to social legislation (providing citizens with security from birth to the grave and rigorous protection of their civil rights). Recently, Sweden's Riksdag (parliament) began consideration of a controversial bill that would permit the disclosure of the identities of men who donate their sperm to the country's artificial insemination clinics. If the bill becomes law, Swedish children conceived by artificial insemination will at age 18 have the legal right to consult hospital records and obtain (if available) the names and addresses of their biological fathers or other "pertinent" information leading to them. According to the author, at this writing few countries, if any, permit such access. (In the U.S. an estimated 200,000 people have been conceived by artificial insemination and 8,000 women annually use this method to become pregnant—they do not know the name of the sperm donor.)

The procedure of secrecy prevents "all manner of complications and future headaches." The question is raised as to the likelihood of anyone donating their sperm for \$25 (the amount paid by South-

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Body Parts

"Research Issue: Who Owns Patients' Cells?"

Newsweek

September 24, 1984

Summary:

Who should profit from tissues removed in surgery is a novel issue being pursued in the California courts. Eight years ago John Moore was admitted to the UCLA Medical Center for treatment of leukemia. His spleen was removed and blood samples were taken during follow-up visits. Unknown to Moore, his spleen and blood cells were used for research.

Tissue-culture cells developed from Moore's spleen were of sufficient commercial promise for UCLA to apply for a patent. In his suit against The UCLA Medical Center, Moore contends he has been cheated out of his right to share in the profits from his own tissues.

Like all surgical patients, Moore signed a consent form giving the UCLA pathology department the right to dispose of the organs removed. However, at question is the institution's right to his blood, some of which was contained in the spleen itself. Moore claims that his blood is "unique" and because it is technically his, that he should be compensated.

According to attorney Kenneth Klein, "nobody ever considered before that an organ could be a valuable asset. . . . This will open up a whole new ball game".

ARTIFICIAL PROCREATION

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her late husband's frozen sperm but the French law will not recognize the child as an heir if the child is born more than nine months after the father dies.)

(c) When both parents die, to whom do frozen embryos belong? Can they be put up for adoption, and are there any family rights? Can frozen embryos and frozen sperm be adopted the same way as orphans?

Second, there are questions about ethics and the legality of life:

Is a frozen embryo considered to be human life? Should laboratory experiments on human embryos be conducted? According to Dr. Patrick Steptoe, one of the first British doctors who has successfully delivered the first test-tube baby in 1978, such experimentation is an opportunity to study the intricacy of human reproduction and to find out more about the origins of cancer and mongolism. Steptoe also urged that scientific experiments be conducted for at least a 30-day period prior to the development of the brain. The critics of such experiments, such as *Life*, a British association, accuses doctors like Steptoe of operating an "embryo industry" and in one incident they have managed to persuade the police to inquire into the "death" of an embryo in a laboratory at Cambridge University.

Third, the question of totally artificial procreation should be addressed:

When a child can be conceived in the laboratory, "impregnated" in an artificial womb and eventually "born", either in an institution or at home, what legal guidelines will be developed on "creating" human life?

See also: "Warnock Fuels Debate Over 14-day rule", *New Scientist*, July 1984; "More Single Women Discover At-Home Artificial Insemination", *The Honolulu Advertiser*, April 9, 1984; "Experiments With Embryos Under Attack", *The Honolulu Advertiser*, April 19, 1984; "Frozen Embryos: Baby Zoe Has Broken the Ice", *The Honolulu Advertiser*, April 18, 1984; "'Orphaned' Embryos Pose a Legal Puzzle", *The Honolulu Star-Bulletin*, June 18, 1984; "French Widow Wins", *The Honolulu Advertiser*, August 2, 1984.

LAW AND TECHNOLOGY:

Biology

"Sperm Law"
New Scientist
August 9, 1984

Summary:

Who owns a dead man's sperm? A judge in France declared that a dead man's wife had the right to sperm which had been deposited by the man in a center for sperm study and conservation.

A wife had requested artificial insemination shortly after her husband's death, but the center had refused in part because of a law prohibiting the inheritance of cadavers as well as another law which disinherits a child born more than 300 days after the alleged father's death. There was also a question as to whether sperm deposits are like organ donations. The French judge ruled that sperm deposits belong to "the donor, or to her for whom it is intended." France has no laws governing artificial insemination.

See also: "Life's Coming of Age in Utero", *New Scientist*, August, 1984.

PARENTAGE

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ern California Cryobank) and being willing to take the chance of being confronted 20 years later by one to three children—claiming biological parentage and wanting "love, a loan or something." Going beyond the legal right to access of parentage information, the question is raised as to what rights, or even possibly, what duties or obligations those offspring may have in relation to their biological parents.

Under disclosure, physicians predict that the number of men willing to donate their sperm will drop "precipitously", and the number of women willing to accept it will do the same. Considering the number of people limited to artificial insemination for procreation, will disclosure laws, in effect, remove that opportunity?

Taking the controversy a step further, "the techniques of conception have reached the stage where it is theoretically possible for a single child to have as many as three mothers and two fathers: one

Applications of Science

"Insects Used in Battling Crime"
Science Digest
June 1984

Summary and Comments:

A University of Illinois entomologist has assisted in convicting 10 murderers and one rapist. Bernard Greenberg uses the life cycles and habits of carrion flies and other insects for clues. Flies have a strong sense of smell, attracted from a mile away by the odor of decay. The females lay their eggs in the corpse. The stages of development (larva, pupa, to adult) are affected by temperature—cool temperatures delay growth and warm weather speeds the process. By carefully checking weather records and calculating backwards, Greenberg pinpoints the approximate time the crime took place. Also, species of insects vary by locality, aiding in verifying where a crime took place.

Greenberg is also using his specialized knowledge to investigate another kind of crime. He has discovered that when hospital staff neglect terminal patients on life-support systems, maggots accumulate in the slowly decaying bodies, feeding on the blood.

This entomological approach to solving crime has been referred to as unorthodox and ingenious. Creative applications of our tools of hard and soft technology to previously unconsidered areas are also innovative, providing new information, new perceptions and sometimes answers.

See also: "Fly Detective", Sherry Baker, *Omni*, February, 1984.

mother to provide the ovum for fertilization; a second, the womb for pregnancy; and a third, the wherewithal to support the child. Of the two fathers, one would contribute the sperm and the other would help rear the child." The author notes, even if disclosure were allowed, a child brought into the world under those circumstances would have a difficult time tracking down his biological and legal parentage.

LAW AND TECHNOLOGY:

Applications of Science and Technology

"Future Trends in Forensic Science"

R.F. Coleman

Medicine, Science and the Law
January 1984

Summary and Comments:

In his Presidential Address to the British Academy of Forensic Science, Dr. R.F. Coleman states that he is a firm believer in planning for the future, and he hopes "that by encouraging discussion for the future of forensic science, it may be possible to help build up a consensus view which could lead to resources being made available and actions taken to meet an agreed goal". He notes the "pitifully small" expenditures on the research and development of forensic science, and he therefore asserts that forensic scientists will have little influence on **development** of science and technology as a whole. He sees the role of the forensic scientist of the past to continue in the future, that is to adopt and adapt the developments in science and technology occurring in other fields. He considers four basic areas of rapid development:

- 1) **Analytic chemistry**—for the identification and characterization of material, looking forward to the same reliability as fingerprinting today.
- 2) **Molecular biology and biochemistry**—for developments leading to biological methods of analysis superceding physical techniques in specific applications, for example, the detection and determination of various molecules such as poisons.
- 3) **Micro-electronics**—for making possible the development of portable instruments designed for specific purposes, allowing almost total "on-site" analysis, thereby increasing the range of samples which will be collected and examined.
- 4) **Information technology**—for continuing providing significant opportunities for improved performance and increased efficiency. Current technology allows for laboratory instruments linked to a communicating data network, making possible: (a) direct preparation of

Subliminal Communication

"Subliminal Seduction"

Diane Kiesel

American Bar Association Journal
July 1984

Summary and Comments:

Subliminal messages have been a subject in the law profession since the 1950's. The major concerns deal with its effectiveness and the ethical responsibilities of the legal profession and the Federal Regulatory agencies which control this area

reports and witness statements with all relevant information in a form suitable for presentation in court, (b) data bases to be up dated or accessed to provide information on the significance of data on a particular sample and allowing comparison with historical information, (c) quality control checks and assessment of productivity, and (d) elimination of routine clerical duties by expanded use of office automation (word processing, electronic mail, cheap storage, etc.).

Turning to research and development, Coleman looks at two important questions—Which is more cost effective, further development of forensic science or an extra policeman on the beat?—and, if it is cost effective, will resources be made available and from which source? Considering the immense scale of crime, he sees the transfer of scientific and technological developments to forensic science leading to substantive improvement in the detection and prevention of crime. This transfer requires quality people to assess effective applications to forensic science.

Coleman calls attention to the need to demonstrate the benefits to the public and private sectors from an investment in research and technology, and also calls for modifications to the present system of funding and management—stressing the need for a more effective partnership to be established between the public and private sectors.

of communication, the FTC and the FCC.

Subliminal communication are low level audio messages or split-second video messages that are shown to an audience. The effectiveness of the communication relies on the audience absorbing the message into the subconscious mind directly and then acting on the message. The effectiveness of subliminal communication is still under discussion by psychologists and electronics experts. A statement by the FCC says, "We believe that the use of subliminal perception is inconsistent with the obligations of a licensee, and therefore we take this occasion to make clear that broadcasts employing such techniques are contrary to the public interest. . . ."

The support and opposition to subliminal communication are both vocal and persuasive. The supporters are generally the technological developers, marketers, and store owners. The opposition is primarily comprised of legislators, law and management professors, and federal regulatory officials. The opposition believes that it is an inherently unethical and deceptive practice and an invasion of privacy. The support recognizes that technologies can be used in both good and bad ways, but are convinced that their approach, which includes subliminal self-help tapes (on eating less, quitting smoking, and positive self images) and store messages against shoplifting, is acting for the public's own good.

The current questions concerning subliminal communication center around the advertising industry which understandably would find messages which go directly into the subconscious mind extremely helpful in marketing. Future uses of subliminal communication might not be confined to only advertising but spread to other aspects of both industry and government.

The courts have yet to consider the use of subliminal communication in a civil suit so precedent has not been set. The California Assembly, in 1983, passed a bill that would require that people be notified if they were subjected to subliminal communication in a public place. But as far

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CRIMINAL JUSTICE SYSTEM:

Cable TV Vs. Backyard Pirating

"Major Programmer Firms Up Encryption Plans; Video Cipher II Could Become Standard"

DBS News
July 1984

Summary and Comments:

Home Box Office will soon utilize Video Cipher II, a scrambling system designed to thwart backyard earth station "pirates" (TVROs). The estimated 600,000 TVROs currently can tap any of the satellite programs including HBO, Cinemax, Disney and others. Video Cipher II will scramble the signals to make this "pirating" impossible (at least for now).

Satellite reception via private, backyard dish antennas is currently both technologically feasible and legal. Video Cipher II will put up a technological barrier, but it is certainly not unthinkable to suggest an "anti-Video Cipher II" technology. That is, an unscrambler which will enable TVROs to decipher (without paying) the scrambled signals. Programmers (such as HBO) will probably then employ another scrambling technology (a very expensive proposition), or may seek legislative and legal recourse to prevent satellite "pirating".

The issue is whether satellite reception, which is currently part of the "commons" (i.e., the public domain), should become part of the private, regulated domain; and whether satellite "pirates" should be considered as criminals (e.g., Cable "pirates").

SUBLIMINAL

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back as 1958, Congress introduced a bill that would ban subliminal advertising on TV. American Civil Liberties Union, spokesman Marjorie Swartz says that subliminal communication by advertisers should be dealt with as fraud against consumers by the State Attorney General. The topic of subliminal communication has not been effectively legislated and will probably appear in a civil case unless effective legislation is developed.

Public Perceptions on Crime

"The Severity of Crime"
Bureau of Justice Statistics Bulletin
January 1984

Summary and Comments:

The U.S. Department of Justice conducted a research project to determine whether people across the nation had similar views on the severity of crimes.

The survey project covered a 6-month period beginning July 1977 and used 60,000 people to evaluate the severity of some 204 separate criminal offenses. The study determined that, "In general, people tend to agree about the severity of specific crimes." The stratified random sample used represented all parts of the country, all adults over 18 and both males and females. The results consist of a rather complex severity scale which ranges from a high of 72.1 for "A person plants a bomb in a public building. The bomb explodes and 20 people are killed," to a low of 0.2 for "A person under 16 years old plays hooky from school."

The scale has another 202 items in between the extremes which deal with everything from armed robbery to white collar crime. Some of the major offenses surveyed and their numerical values show what Americans believe are the most serious crimes committed both against individuals and property. For example: the second most serious crime, "A man forcibly rapes a woman. As a result of physical injuries, she dies" carries a numerical rating of 52.8. Other crimes listed and scored are "A person runs a narcotics ring" (33.8); "A person kidnaps a victim" (21.2); "An employer orders one of his employees to commit a serious crime" (17.7); "A legislator takes a bribe of \$10,000 from a company to vote for a law favoring the company" (16.9); "A person knowingly lies under oath during a trial" (11.4); "A person steals a locked car and sells it" (10.8); "A person steals an unlocked car and sells it" (8.0); "A person illegally receives welfare checks" (7.4); "A man exposes himself in public" (4.7); "A woman engages in prostitution" (2.1); "A person is a customer in

CRIMINAL BEHAVIOR:

Crime and the Affect of Natural Disaster

"Volcanic Ash Takes Stressful Toll"

B. Bower
Science News
April 7, 1984

Summary and Comments:

It is reasonable to assume that natural disasters such as hurricanes and volcanic explosions produce traumatic reactions to persons who experience the disaster directly. But it is hard to verify those reactions scientifically without pre- as well as post-disaster measures. Fortunately, such data is now available from the community of Othello, Washington, situated 140 miles from Mount St. Helens, which has been severely affected by the explosion of the volcano in 1980.

"After the ashfall, calls to a mental health crisis line doubled, police reports of domestic violence increased by two-thirds. . . , district court cases filed went up 255 and the total number of arrests increased 17%."

At least two conclusions are immediately possible. One is that "communities exposed to a disaster need intensive mental health support for at least several months." Another is that this study is yet another in the long chain of evidence that much anti-social behavior is not the result of a rational decision to act anti-socially by an individual but the result of environmental, situational, genetic, chemical and other causes often completely beyond the individual's control.

a house of prostitution" (1.6); and finally, "A person under 16 years old runs away from home" (0.8).

These are just a few of the many criminal offenses listed, surveyed, and scored. The data shown in this study could be a useful tool in both sentencing and the reassessment of our criminal codes as through this type of survey judges and other criminal justice system professionals are kept informed with the current concerns and attitudes of the public.

LAW AND SOCIETY:

Nuclear War

"Free Will and The Bomb"

Harpers

May 1984

Summary:

Dr. Richard Dawson of Congresbury, England, recently lectured on the biological effects of nuclear war at a public meeting called by doctors. After the lecture, residents voted that their doctors should prescribe on demand an unstated but lethal dose of morphine tablets with an antiemetic. The prescriptions would be filled, and the drugs held in a safe place until nuclear war seemed likely. The residents rejected a proposal to make the community self-sufficient for at least a year following nuclear exchange, seeing no point in preparations, even if their area were not hit.

The article notes that there are obvious legal difficulties in carrying out the will of the people, and Dawson has formulated plans to strengthen his case. He plans to conduct a townwide poll, or at least a poll of his patients. He also plans to contact all relevant medical bodies (for example, the British Medical Association and the Medical Defense Union.) If Dawson receives a go ahead from them, he says he will have no hesitation in prescribing.

Dawson states he is acting primarily as a local family doctor, not as a member of the peace movement. He formulated his proposal after discovering parents' plans of killing their children so as not to leave them to cope alone in a nightmare world. He offers a kinder way for the innocent victims—"...in a postholocaust age, where we will have no civilization, no pharmaceutical industry, and not even any morality, it may be the only practical and dignified thing to do." According to a spokesman for the British Medical Association, "He has raised a genuine ethical dilemma."

Note: In Providence, R. I., Brown University students have approved (by a 60 to 40 percent margin) a referendum asking that campus infirmary be stocked with suicide pills for use in the event of nuclear war. See: **The Honolulu Advertiser**, October 13, 1984.

CORRECTIONS:

Alternative Sentencing

"The Danish Experiment"

World Press Review/August 1984

Summary:

Denmark has been experimenting with community service sentences in two communities. Justice Minister Erik Ninn-Hansen recently asked the penal code council to expand the system to all of Denmark's 84 districts. This form of punishment, beyond liberalizing the penal system, takes some of the burden off Denmark's overflowing prisons and offers a more humane treatment.

Design and implementation of the plan required a great deal of time and effort, first having to convince people that it would not take away jobs from the unemployed. Parliamentary disputes over the program and its goals resulted in agreement that the program begin with younger criminals, who had committed property crimes, and later be expanded to include other categories. So far, 30 organizations, institutions, and agencies have participated, providing a variety of 60 jobs. There have been 80 cases since the first community service sentence was made in Copenhagen in October, 1982.

Of those sentenced to community service, half are unemployed and a third found jobs while they were in the program.

The chairman of the parliament's legal committee, Hagen Hagensen, believes community service is here to stay. He advocates using prison less and searching for alternatives such as weekend and night prison sentences. Ole Esperson, a lawyer on the legal committee, along with others, find Denmark's experience good enough to warrant making the system a permanent part of Danish law, and hopes a vote to accomplish such a change will be possible as early as this fall. Esperson emphasizes that the **goal of the penal system is to reduce the number of victims of crime, which need not be achieved solely through harsh prison sentences.** Parliament recently reduced the length of sentences for most property crimes by a third.

SOCIAL ISSUES:

Corporate-run Schools

"Schools Designed for Profit"

Fred Hechinger

Honolulu Star-Bulletin/April 19, 1984

Summary and Comments:

In addition to the well-documented move to take education out of the large, publicly-funded schools in favor of individualized instruction at home via personal computers, there is an equally important but frequently overlooked educational phenomenon of "schools for profit."

The well-known education analyst, Fred Hechinger, documents this development: "Several major **corporations** are considering plans to create proprietary elementary and high schools that are designed to make profits." Ernest Boyer, president of the Carnegie Foundation for the Advancement of Teaching called the idea "very dangerous" because it could undermine the concept of the public schools for the public good. "Would **corporate-run schools concentrate on training rather than education? Would they impose the business view of society on their pupils?**" Hechinger asks. "Will the public schools evaporate?"

These are serious questions. Given the popular dissatisfaction with the public schools and the rapid development of electronic education delivery systems, and now **the interest of major corporations in "franchising education"**, does the public school system have a bright future, or not?

One clear consequence of the demise of the public school system on the Judiciary **might be this:** "Community Standards" is often a basis of legislation and judicial decision-making. Such consensually-based standards are already rapidly deteriorating. One bulwark against the erosion has been the community/nation-based values imparted in our public schools. With the multiplicity of values likely to emerge from the diversity of a profit or special-interest based educational delivery system, consensual community standards are likely to vanish entirely. What will be the basis of "the law" then?

SOCIAL ISSUES:

Vision of the Real World

"A Dozen New Ideas. . ."

Connie Matthiessen and Mark Schapiro
New Age Journal
July 1984

In the next few issues of our newsletter we will be featuring a number of **new ideas** from this article:

Summary:

(1) Professor Todd Gitlin's **Media Lottery**—redistribution of all radio and television licenses by lottery to interest producers and artists who can demonstrate strong community support. Electronic communications media are licensed presumably to serve the public good. Under the current system, the right to the airwaves has become a kind of property interest, held in perpetuity, resulting in airwaves going to people who can pay a lot of money for them and do so because they expect to make even more

money from them. Redistributed media rights could strengthen citizenship two ways: 1) offering access to a wider range of people and, 2) offering people the opportunity to be producers as well as consumers of their own culture. The lottery would be held every five years, so control would pass from group to group.

The cost could be borne by a tax on TV sets—as is done in England, preferable to the two indirect ways we currently pay for what we see on TV—through tax deductions sponsors are allowed to take for the cost of their commercials and through the amounts added to the price of the product.

(2) Jeremy Rifkin's **Foresight Commissions**—calls for a presidential commission to examine the transition from the Industrial Age to the Age of Biology. Real foresight would involve citizen participation, and would look at the implications for future generations of plants, animals, and humans and changes that would result in moral and political values, social institutions, etc., going beyond health and safety issues to cultural ones since each scientific or technological decision

reverberates throughout the entire culture. Other examples might be foresight statements on each bill Congress considers and investigation by the Department of Education or the National Science Foundation into an approach to science based on empathy to the ecosystem we live in rather than control. (And perhaps, Science courts in the Judiciary?)

(3) Frances Moore Lappe's **An Economic Bill of Rights**—a "new" idea going back to Franklin Roosevelt's proposal, a shift in our thinking that would make economic rights as inalienable as political rights, and going further, including the right to be involved in decisions affecting our worklife. Only in this lifetime have we separated political rights and property ownership, we should do the same in the economic arena.

The purpose of this newsletter is to keep you abreast of the latest issues, trends and research findings that may impact the Hawaii Judiciary. For further information, please contact Anna Wilson-Yue at (808) 548-8589.



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