



# Bioethics Notes



a newsletter from the Bioethics Review & Advisory Committee

Jan, 2005

" Even the most rational approach to ethics is defenseless if there isn't the will to do what is right "

Aleksandr Solzhenitsyn

## Consult Services

We would like to remind you that the Bioethics Review and Advisory Committee in Danville provides ethics consultation services. We have an alphanumeric pager (2229). Anyone can request an ethics consultation. Page directly by phone, or leave a text message using the Infoweb Phone Directory. Enter "2229" in the Directory Search and then click on the "Quick Page" button.

## Bioethics Committee

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## Case Study

Mr. and Mrs. Smith are a young couple seeking treatment for infertility. They have been through one cycle of intra-uterine insemination (IUI) without success. Mr. Smith, who is in the National Guard, has recently been called to active duty in Iraq. The couple inquires whether it would be possible for Mr. Smith to cryopreserve semen so that Mrs. Smith can continue inseminations while her husband is away. To that effect, Mr. Smith has twelve vials of semen frozen for his wife's use during his absence. Mrs. Smith continues her infertility treatments and on her next IUI cycle becomes pregnant using one of the vials of frozen semen. Unfortunately, she loses the pregnancy at 17 weeks. She starts another cycle and is preparing for an insemination in two days when she receives word that Mr. Smith has been killed in the line of duty. Mrs. Smith requests her husband's cryopreserved specimens be used to initiate a pregnancy; she is supported in this desire by Mr. Smith's parents.

Requests for the posthumous use of previously frozen semen have become more frequent in the last few years. They differ from requests for posthumous retrieval of sperm, which requires recovery from deceased individuals, usually victims of untimely deaths, such as an automobile accident. Whereas a victim of an accident seldom leaves instructions for such use or retrieval of their reproductive tissue, some patients, such as Mr. Smith, establish a reserve of frozen specimens for future use. Storage of frozen specimens is also very common in patients undergoing chemo- or radiation-therapy because these treatments can cause permanent sterility.

In America, liberty rights are strongly protected. These liberty rights are often referred to as negative rights in that they represent an individual's right not to be interfered with in their pursuit of happiness, so long as they abide by the laws of the land and their activities do not harm others. In the words of John Stuart Mill, "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (On Liberty, 1859).

Many consider procreative liberty one such protected right. It has been debated whether or not that freedom includes posthumous reproduction. Should there be any limits? For example, if reproductive cloning was perfected to be completely safe, would procreative liberty extend to this mode of conception? Many would argue that there are potential harms. These might include

## Events

Join Us at Our Annual Bioethics Conference

April 13th, 2005

Hemelright Auditorium

[Pizza, Pens & Pills: The Ethics of the Pharmaceutical Industry in Healthcare](#)

## e-mail

The Bioethics Review and Advisory Committee's address is:

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## Visit

The Bioethics Review and Advisory Committee Homepage



Please visit our new web page, which includes frequent updates on ethical topics, links to selected bioethics websites, Geisinger ethics policies (under Bioethics Committee Resources), and past issues of *Bioethics Notes*

psychological harms to the child or presumed harms to society. These harms however, remain entirely speculative.

More importantly, the case described above has important implications for the process of informed consent and the development of an advanced directive. Although Mr. Smith consented to have his specimens frozen for future use, it must be assumed his intention was to become a parent in the full sense of the word. One might argue that his intent was implied. What if, for example, word of Mr. Smith's death arrived after a successful impregnation? In this case, Mr. Smith left no explicit consent to become a father "posthumously." It can only be implied that Mr. Smith desired to be a parent, of experiencing the joy of being a father and participating in all the activities associated with being part of a family. To borrow from the language of early legislation regarding an individual's right to refuse medical treatment, use of Mr. Smith's samples after his death would require "clear and convincing" evidence of such a desire.

Although we may be uncomfortable with the notion of posthumous reproduction, couples may have very good reasons for choosing this option. Therefore, it becomes incumbent on the health care provider to discuss this possible scenario during the informed consent process. Patients can then decide for themselves whether this is something they might consider and leave specific instructions (explicit consent) as to the use of their frozen samples should they become deceased. In the case of Mr. and Mrs. Smith, there is no clear and convincing evidence for such use, and the remaining frozen samples should be discarded.

Respectfully submitted,

*Robert B. Shabanowitz*

The Bioethics Review and Advisory Committee gratefully acknowledges *The Degenstein Foundation*, whose funding helps support the educational activities of our committee. Feel free to forward *Bioethics Notes* to anyone interested. They can join by using the link below.

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