

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

In re: House Judiciary Committee Public Hearing
House Bills 570 and 776, Surrogate Parenting

Verbatim record of hearing held
at the Allegheny County Courthouse,
Gold Room, Pittsburgh, Pennsylvania,
on Thursday,

September 3, 1987
10:00 a.m.

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HON. H. WILLIAM DEWEESE, Chairman

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ALSO PRESENT:

Michael P. Edmiston, Esquire
Chief Counsel for Committee

John Connelly, Esquire
Special Counsel for Committee

Hon. Ivan Itkin
Representative

Mary Wolly, Esquire
Chief Counsel for Republicans

Hon. Elaine Farmer
Representative

INDEX TO SPEAKERSSPEAKER:

1		
2		
3	William Pierce	
4	National Adoption Center	
5	Washington, D.C.	4 - 14
6	Jan Sutton	
7	Surrogate Mother	
8	San Diego, California	15 - 20
9	William Handel	
10	Director, Center for	
11	Surrogate Parenting	
12	Beverly Hills, California	21 - 29
13	Lynne Z. Gold-Bikin, Esquire	
14	ABA Liaison, National Legal	
15	Resource Center for Child	
16	Advocacy and Protection	54 - 70
17	Honorable Joseph Markosek	
18	Prime Sponsor House Bill 570	70 - 85
19	Noel P. Keane, Esquire	
20	Dearborn, Michigan	85 - 109
21	Gena Corea	
22	National Coalition Against	
23	Surrogacy in the United States	109 - 131
24	Robert M. Wettstein, M.D	
25	Assistant Professor of	
26	Psychiatry, University of	
27	Pittsburgh	131 - 143
28	Delia Stroud	
29	Chairman, Pennsylvania	
30	Committee for Adoption	149 - 171
31	Cynthia Mentzer	
32	RESOLVE, Incorporated	
33	Pittsburgh Area Chapter	171 - 182
34	Howard Fetterhoff	
35	Executive Director of	
36	Pennsylvania Catholic	
37	Conference	183 - 197

INDEX TO SPEAKERS (CONTINUED)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SPEAKER:

Charlene Amato
Social Worker
Montefiore Hospital
Pittsburgh, Pennsylvania 197 - 204

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SF-740

1 (The hearing commenced at 10:17 a.m.)

2 CHAIRMAN DEWEESE: Ladies and gentlemen, welcome
3 to the House Judiciary Committee hearing today. Our public
4 hearing is on surrogacy. We are considering legislation
5 proposed by Mr. Markosek from Allegheny County and Mr. Reber
6 of Montgomery County. We are here to take testimony and to
7 ask some questions. This is obviously a very multi-fueled
8 and multiplexed subject. It is being debated in probably
9 every State Legislature in America.

10 As of a couple of weeks ago, there were at least
11 20 General Assemblies of the 50 in which legislation was
12 percolating. I am told by counsel that that has increased
13 by several.

14 We have what I consider to be an excellent group
15 of men and women who will be testifying this morning and
16 this afternoon. It will be incumbent upon all of us in the
17 Committee and on the staff and as participants to move with
18 some expedition. I would ask that all of you speak for
19 approximately ten minutes or less and then we will have
20 questions for roughly ten minutes.

21 Again, due to the fact that we have a significant
22 number of people here, all of whom have gone out of their
23 way to visit with us, I do want to keep this process moving.
24 I apologize for being late. Representative Reber did not
25 get out of Philadelphia for almost an hour after his scheduled

1 flight and I think that was emblematic of several other
2 people including some of our staff people and some of our
3 other members. I apologize for being dilatory but at this
4 time, we will commence with William Pierce of the National
5 Association -- excuse me. National Adoption Center,
6 Washington, D.C.

7 Right before we do that, sir, I would like all
8 of our members here to introduce themselves, and if we could
9 start with Mike Dawida.

10 REPRESENTATIVE DAWIDA: Mike Dawida, Allegheny
11 County.

12 REPRESENTATIVE REBER: Bob Reber, Montgomery County.

13 REPRESENTATIVE BLAUM: Representative Kevin Blaum
14 from the city of Wilkes-Barre.

15 REPRESENTATIVE MCVERRY: Terry McVerry, Allegheny
16 County.

17 REPRESENTATIVE ITKIN: Ivan Itkin, Pittsburgh.

18 CHAIRMAN DEWEESE: Chief Counsel is Mike Edmiston
19 and Special Counsel is John Connelly. With that as a
20 preliminary remark, Bill Pierce, thank you very much for
21 being with us.

22 MR. PIERCE: Thank you, Chairman DeWeese and
23 other members of the Judiciary Committee.

24 The National Committee for Adoption appreciates
25 being invited here today. Since you have a full day ahead

1 of you, with many witnesses, I will try and condense a great
2 deal of information that would take hours to talk with you
3 about into my oral summary and provide you through the
4 attachments of this testimony with additional information.

5 I'll even skip the usual long-winded recitation
6 of the accomplishments of our organization and merely mention
7 that we represent some 130 agencies and 2,000 individual
8 members in 45 States including 7 agency locations in Pennsyl-
9 vania, 3 of which are in the Pittsburgh area.

10 Given today's witnesses on both sides of the
11 surrogacy issue, there are some predictions I would like to
12 make, some comments on one key reason why surrogacy is
13 supposedly needed, some specific comments on House Bill 776
14 and some final recommendations.

15 Let me begin by assuring you that although I will
16 be making some harsh comments about some lawyers and others
17 who are engaged in the surrogacy business, by no means am I
18 lumping all lawyers together. The fact is that some of those
19 working hardest to stop this inhumane industry are lawyers
20 who know, like other professionals and most other people
21 with just plain common sense, they know that this surrogacy
22 business should never have gotten started and should be
23 outlawed before it harms any more children, women, men,
24 families, or social institutions.

25 I predict you will hear the following sorts of

1 claims today. First, you will hear as the Finding Section
2 of 776 says that quote, due to the increased incidence of
3 female infertility, many couples are turning to surrogate
4 mothers to help them create families.

5 Female and male infertility is increasing. But,
6 the second part of the statement is where we differ.
7 Surrogacy is no treatment for infertility anymore than
8 adoption is. Secondly, there are a number of legal and
9 appropriate alternatives for infertile couples to explore
10 including adoption. Third, even if there were no children
11 to adopt, something I will comment on at length in a moment,
12 we say that this would not justify Pennsylvania legalizing
13 an inherently inhumane practice like surrogacy.

14 Desperation to achieve a good end such as
15 parenting does not translate into social or legal endorsement
16 for whatever means to that end may be required, whether those
17 means include the supposedly high-tech intervention of
18 surrogacy or the decidedly low-tech alternative of stealing
19 someone else's child from a supermarket basket.

20 I need to talk about statistics in order to
21 address the bogus claim that since there are no babies to
22 adopt, surrogacy should be legalized. The statistics come
23 from the Adoption Factbook, one of our publications, and are
24 for 1982, the last year for which there are any national
25 adoption estimates.

1 In Pennsylvania, in 1982, less than 1,000 healthy
2 infants were adopted; 955 in all. That same year, the State
3 had 161,909 live births and 64,060 abortions. That totals
4 225,999 pregnancies, not counting the miscarriages and still-
5 births. Or, looking at it in terms of so-called unwanted
6 pregnancies, a phrase we object to because we know that
7 every child is wanted by someone, there was about one
8 adoption for ever 64 abortions.

9 Checking comparable statistics from other States,
10 and I have a table attached to our testimony, Pennsylvania
11 did not do too badly in terms of adoptions. Some States do
12 better, some do worse.

13 Among the States that do worse are three States
14 that have an interesting factor in common. Although we
15 recognize there's no way one can prove that this factor is
16 the sole reason for their relatively poor performance. The
17 jurisdiction are D.C., Maryland and Virginia -- Maryland and
18 Michigan. While Pennsylvania's adoption rate in 1982 was
19 3.06 percent of births to unmarried women, the other States'
20 rates respectively were D.C., 1.84; Maryland, 2.04; Michigan,
21 1.68.

22 The critical factor all three jurisdictions have
23 in common is that they have laws which restrict the fees
24 which adoptive parents can pay when they adopt a child.
25 How might this restrict adoptions? In several ways, as my

1 colleague, Jeff Rosenberg, pointed out in an item, quote, a
 2 law that would eliminate adoption, end quote, which appeared
 3 in the Pittsburgh Post Gazette on August 22, in that he and
 4 I discussed in a Family Law Reporter monograph, which is
 5 part of our attachments.

6 I won't repeat those points now out of considera-
 7 tion for our time, important as they are for domestic U.S.
 8 adoptions. I do need to mention that even adoptions from
 9 other countries may be hurt, and with them Pennsylvania
 10 residents by that law. In 1984, 434 children were brought
 11 in from other countries where counseling, room and board and
 12 transportation for biological or birth mothers is provided
 13 by the agency in the sending country and reimbursed by U.S.
 14 adoptive parents' fees and donations. That is the case for
 15 Korean adoptions which represent more than half of inter-
 16 national adoptions by U.S. citizens, and probably at least
 17 half of foreign adoptions by Pennsylvania residents.

18 While the Pennsylvania Supreme Court's ruling
 19 ostensibly affects only domestic adoption practice, it seems
 20 clear that if Pennsylvania law says it is not a good idea
 21 to pay for room, board, counseling, and transportation costs
 22 related to adoptions for a pregnant woman from Waynesburg,
 23 PA, who is placing her child for adoption, it is probably
 24 consistent to say that similar costs must be disallowed for
 25 a pregnant woman from Wanju, South Korea.

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 SF-740

1 What I am saying relates to a broad concern about
2 Pennsylvania's adoption law and related practices. What I
3 am saying is that difficult as it has been in recent years
4 for an infertile Pennsylvania couple to adopt, and we do not
5 dispute that fact, the Supreme Court ruling and even the
6 amended version of House Bill 836 reported out of this
7 Committee, which goes part of the way to fix the situation,
8 will make adoption an even rarer event in Pennsylvania.

9 No one, especially our agencies and individual
10 members, wants adoption practices tolerated which in any
11 lead to commercialization of adoption, baby-selling or any
12 of a number of similarly offensive actions which are all too
13 common in black market adoptions or surrogacy. That is why
14 we hope, under your leadership, Chairman DeWeese, that
15 House Bill 836 will be further amended so that it does not
16 inappropriately restrict adoption in Pennsylvania or endanger
17 adoptions from Korea and other countries.

18 The current crisis would not exist if Pennsyl-
19 vania's adoption laws facilitated adoption instead of
20 hindering them. There are a number of other barriers in
21 addition to the Supreme Court's ruling which are built into
22 the system and which need to be eliminated, and which
23 Pennsylvania adoption experts have been calling for changes
24 in for many decades. There are laws which should be passed
25 to encourage services for pregnant women, such as a Pennsyl-

1 vania equivalent of California's Pregnancy Freedom of Choice
2 Act, which funds maternity home services for any California
3 woman under age 21.

4 I leave it to you and your colleagues to
5 examine those other factors which are implicit in the
6 statistics. Why, for instance, did so many pregnant women
7 in crisis, even before the ruling by Judge Ross and the
8 Supreme Court, reject adoption and instead choose abortion?
9 Is one reason the lack of counseling which accurately and
10 fairly describes adoption to pregnant girls and women?
11 That's what a recent Federal research study indicates and
12 part of what we think needs to be done in Pennsylvania.

13 All of this part of my testimony may be summarized,
14 Mr. DeWeese, in one sentence. Unless Pennsylvania makes a
15 number of improvements in its adoption laws, the current
16 imbalance between babies available for adoption and couples
17 wanting to adopt will get worse.

18 In respect to House Bill 776 then, we categorically
19 reject the thesis that infertile couples need to turn to
20 surrogacy to be able to be parents. Pennsylvania, like many
21 other States, has thousands of women who become pregnant each
22 year, for whom pregnancy is not a joy. Nearly all of them
23 have abortions or decide to try to raise their babies on
24 Welfare rather than choose adoption.

25 Before the legislature legalizes surrogacy as a

PENGAD/INDY MUNCIE IN 47302 SF-740

1 solution to infertility, reasonable efforts should be made
2 to promote the adoption choice for the babies who are con-
3 ceived in a regular, old-fashioned way. Otherwise, it seems
4 as foolish as it would be to create a factory to make arti-
5 ficial coal when Pennsylvania has rather ample supplies.

6 Since there is no need in our view to legalize
7 surrogacy as a means of providing babies for infertile
8 couples, that removes one of the reasons given by the Bill's
9 sponsors for its existence. There are other reasons that
10 Bill should be defeated and some Bill prohibiting surrogacy
11 should be enacted.

12 You are also going to hear today from promoters
13 of surrogacy that is just like artificial insemination for
14 the couple where male infertility is the problem. Common
15 sense tells us that's baloney. Artificial insemination
16 doesn't involve bonding, a physically intrusive and poten-
17 tially dangerous medical involvement, nor does it endanger
18 the nonmarital party and his family. Surrogacy endangers
19 not only the psychological well-being of the child who is
20 commissioned but the woman who carries the baby, her other
21 children, if any, and her spouse, if any.

22 As to a constitutionally protected right to bear
23 or beget a child through surrogacy, please note that even
24 those who support Roe versus Wade and legalized abortion,
25 such as renowned lawyer and bioethicist George Annas, find

1 such a reading of constitutionality in error.

2 Nor should the argument that surrogacy will go
3 underground if not legalized be bought. Otherwise,
4 Pennsylvania would legalize prostitution and the sale of
5 marijuana, cocaine and heroin. Those are activities that
6 some desperate people want to be involved in and that some
7 procurers are willing to deal in. The fact that the surro-
8 gacy procurers are trying to use the Courts as in the Baby M
9 case to accomplish what they have failed to accomplish in
10 legislature, should be recognized for what it is.

11 A paper attached to this statement reports on the
12 status of surrogacy bills in various States. A glance will
13 tell you that the trend is in the direction of banning
14 surrogacy. The only State to act so far, Louisiana, has
15 banned money for baby making and the Governor has signed it
16 in the law.

17 Studies of the subject in my view may be just
18 another waste of the taxpayers' money and your time. There
19 have been plenty of studies internationally and in the
20 States. It's time to ban this business and House Bill 570
21 is a good vehicle to start with.

22 If time allowed, I'd like to talk about the main
23 victims of surrogacy, the children and the women who are
24 hired to carry babies. But, let me quickly conclude by
25 listing some of the specific problems with H.B. 776.

1 Number one, the definition of infertile woman is
2 so broad as to be all inclusive of nearly any woman who
3 wants to use it.

4 Number two, it would allow any female who has
5 attained age 18, even if single and never before pregnant,
6 to become pregnant for hire.

7 Number three, it would legalize embryo transplants
8 which may or may not involve any genetic or biological
9 contribution from either of the intended parents.

10 Number four, it would set up a situation where
11 the intended parents must take the child, but there's nothing
12 to keep them from relinquishing an imperfect child to the
13 State with the State's taxpayers having to care for it for
14 life.

15 Number five, there is no limit as to the amount
16 of fee which may be used to entice a woman into a surrogacy
17 arrangement.

18 Number six, a clear signal is sent by the proposal
19 that the woman need not have her own lawyer to advise her
20 of her rights, in that a waiver of counsel section is part
21 of the Bill.

22 Number seven, there is no screening mandated for
23 the woman who is to become pregnant or for the intended
24 parents. Instead, any licensed individual who is practicing
25 psychiatry or psychology is to counsel the parties on the

1 consequences of surrogacy. Experience with such individuals
2 in other States indicates that in those rare cases when a
3 person is deemed to be unsuited psychologically to be a so-
4 called surrogate, arrangements still are carried out. The
5 Baby M case in New Jersey is a case in point.

6 If Pennsylvania wishes to legalize surrogacy,
7 this is not the Bill to pass. Something much more carefully
8 worded would be needed. We hope that Pennsylvania does not
9 legalize surrogacy. It's not needed. It's wrong. And, it
10 would make Pennsylvania a baby-selling hub. We'd rather
11 see Pennsylvania clean up its adoption laws, pass new legis-
12 lation encouraging women who are pregnant to use good mater-
13 nity homes and thus enabling them to get accurate counseling
14 about the adoption option. If this alternative is pursued,
15 there will be many more children placed for adoption among
16 other benefits.

17 Thank you for inviting me to testify. I would
18 be glad to try and answer any questions that you or members
19 of your Committee may have, Mr. DeWeese. Thank you.

20 CHAIRMAN DEWEESE: Thank you, Mr. Pierce. I
21 would like to welcome to the hearing Joe Lashinger, State
22 Representative from Montgomery County and Mike Bortner from
23 York County. Mike is in back of me.

24 We have used up a considerable amount of the 20
25 minutes. But, if we have one or two questions from the

1 members before we go on, we would be glad to entertain them.
2 Do we have any questions from members of the Committee
3 relative to the testimony just taken?

4 Thank you very much, sir.

5 MR. PIERCE: Thank you, Mr. DeWeese.

6 CHAIRMAN DEWEESE: I would also like to recognize
7 Mary Wolly, Chief Counsel for the Republicans. Nice to have
8 you here, Ms. Wolly.

9 The next witness, Ms. Jan Sutton, from San Diego,
10 California. Good morning.

11 MS. SUTTON: Good morning. Hello, my name is
12 Jan Sutton, and I am a spokesperson for the National
13 Association of Surrogate Mothers which is a non-profit
14 organization. The National Association for Surrogate
15 Mothers is an organization open to all women who have served
16 as surrogate mothers or surrogate gestational mothers. I am
17 a mother of two teen-age children, and I am a registered
18 nurse. I have been a surrogate mother for two different
19 infertile couples.

20 The National Association of Surrogate Mothers
21 was formed in response to the Baby M case because we felt
22 that surrogate parenting was being falsely painted as negative
23 and harmful on the basis of one woman's experience. Mary
24 Beth Whitehead is an aberration of a surrogate mother. She
25 and a handful of others can not be allowed to govern public

1 opinion on an issue that is so important. I am here today
2 to present a more accurate picture of the typical surrogate
3 mother who is happy, satisfied, and more fulfilled for having
4 had the experience of helping create a family for an infertile
5 couple.

6 I am going to address from a surrogate mother's
7 point of view, the psychological issues involved in being
8 a surrogate that are of concern to proponents and opponents
9 of surrogate parenting, how we feel about the bonding and
10 separation issues raised, the money issue, the inappropriate
11 comparison between surrogate mothers and birth mothers who
12 give up babies for adoption, and our position that surrogate
13 parenting is pro-feminist.

14 Regarding the psychological issues that have been
15 raised, the only two definitive studies that have been done,
16 Dr. Hilary Hanafin's and Dr. Philip Parker's, indicate that
17 women who become surrogate mothers are typically responsible,
18 psychologically stable, resilient, insightful and have
19 functioned well in the world. They are generally empathetic,
20 sensitive and outgoing.

21 The definitive follow-up study by Dr. Hanafin,
22 1987, showed that surrogate mothers most typically leave the
23 experience with feelings of satisfaction and self-confidence.
24 Being a surrogate was perceived as positive by women who were
25 one to three years post-partum. None of the participating

1 surrogates regretted their decision or reported any emotional
2 distress.

3 The bonding, attachment and separation issues
4 raised in connection with a surrogate mother and the child
5 suggest that when a woman gets pregnant and gives birth, she
6 absolutely bonds with the child. Opponents of surrogate
7 parenting have used this argument since the beginning of the
8 surrogate controversy without having studied women who have
9 gone through the surrogate parenting experience with a
10 positive outcome. I am telling you, and I speak for all
11 the women in NASM, that these issues are significantly
12 different in a surrogate parenting situation.

13 The surrogate mother does have feelings for the
14 infant before and after the birth. There is a fondness,
15 concern and curiosity about how he or she will grow up.
16 However, this attachment is different than the attachment
17 we feel for our own children. It is more like the attach-
18 ment we have for a niece, nephew or a best friend's child.
19 We think of the child as the couple's child from the very
20 beginning, and truly believe that the child was conceived
21 and brought into the world only because we, as surrogates,
22 and the parents together wanted the prospective parents
23 to have a child.

24 You may have a hard time comprehending this
25 concept, but despite all the unsupported statements you have

1 heard about the bonding process, I am telling you as a
2 surrogate mother that when the process is carefully executed
3 and only appropriate surrogate mothers are allowed to
4 participate, this is really how we feel.

5 Thirdly, the child born of this process is not
6 bought, rejected, abandoned, or sold, but is planned,
7 desired, loved, given and nurtured by the adults involved.

8 Practically speaking, surrogates generally
9 receive \$10,000 over at least a two-year period. Being a
10 surrogate is not a quick or efficient way to earn money.
11 Generally, over 200 hours are spent in appointments, meetings,
12 travel and time with the medical world. Additionally,
13 there are nine months of time and energy spent being pregnant,
14 and six weeks of time and energy recuperating.

15 Furthermore, we are not typically reimbursed for
16 the time missed from work. In any event, this money could
17 not even begin to reimburse us much less the payment for
18 a human life. Although the money is helpful in compensating
19 for the time and energy, it is also for the commitment on
20 the part of the prospective parents of financial and emotional
21 support, and to assist the birth mother through the months
22 before and after delivery. It is part of the mutuality of
23 caring which exists with a birth mother and the parents who
24 will receive the greatest gift of all, their child.

25 The comparisons, assumptions and conclusions drawn

1 between surrogate mother and birth mothers who independently
2 give up the children for adoption are inappropriate and
3 unjust. It is unfitting to draw purported definitive con-
4 clusions about one population based upon observations of
5 another population.

6 Typically, a birth mother who gives up her baby
7 for adoption has unintentionally become pregnant as part of
8 a personal relationship of her own and is unmarried. The
9 biological father may take no responsibility for the mother
10 or child and/or the woman is not financially stable enough
11 to care for a child. As a result of such economic duress,
12 the woman's otherwise rational desire to keep her child is
13 overcome, and she is externally motivated to give up a child
14 she otherwise would have kept.

15 Surrogate mothers on the other hand spend time
16 reflecting, thinking, and deciding whether they will become
17 pregnant for the sole purpose of creating a child for the
18 prospective parents before she ever gets pregnant. The time
19 before conception is the time we spend thinking about whether
20 we could or wanted to do this. Moreover, we had months of
21 psychological, medical and legal screening before we made
22 this decision.

23 The protections granted to birth mothers in
24 traditional adoptions are to assure that the woman has a
25 chance to make an informed, unpressured decision. A surrogate

1 already makes her decision in advance of conception time
2 when she can become fully informed in an emotionally,
3 unpressured environment. This is the norm.

4 Finally, in response to the feminists who have
5 spoken out against surrogate parenting, we in the NASM are
6 appalled. We view ourselves as progressive and wonder why
7 these women think they have the right to tell us what we can
8 do with our own bodies. We are disappointed in the assump-
9 tion that we can not make voluntary and intelligent choices
10 about pregnancy. We thought feminism was about breaking
11 down the barriers between the sexes, not about creating
12 another presumption that only the woman who produces a
13 child can have its presumed interests at heart. Fathers
14 and adoptive mothers have rights too.

15 We must be free to be the arbiters of our own
16 best interests and part of freedom is the obligation to
17 act responsibly when things turn out badly.

18 It is your responsibility to listen to the
19 voices of those who are trying to protect. We are telling
20 you we want certain protections, but you must also afford
21 us the dignity of participating in an alternative form of
22 reproduction, if it is properly regulated, if we see fit
23 to do so.

24 CHAIRMAN DEWEESE: Thank you very much. Ms.
25 Sutton, would you be willing to remain seated and participate

1 as a listener while Bill Handel speaks and then we can ask
2 you questions at the same time?

3 MS. SUTTON: That's fine.

4 CHAIRMAN DEWEESE: Bill Handel, the Director for
5 Surrogate Parenting from Beverly Hills, California. Welcome
6 to our hearing, and you have approximately ten minutes.
7 Then, we'll ask some questions hopefully to you and Ms.
8 Sutton.

9 MR. HANDEL: Good morning, members of the
10 Committee. My name is William Handel and I am the Director
11 of the Center for Surrogate Parenting in Los Angeles,
12 California and an attorney licensed to practice in the State
13 of California.

14 As an attorney, I would like to address certain
15 legal issues involving the constitutional right to procreate
16 and the right to contract in relationship to surrogate
17 parenting. I would also like to discuss the importance of
18 upholding the intent of the parties as opposed to allowing
19 a surrogate to change her mind after conception. I will
20 also discuss the risks of exploitation.

21 As a practitioner, I will address some of the more
22 practical aspects of this process. These issues will include
23 alleged physical and psychological risks to the surrogate
24 and child, and safeguards instituted in our program that have
25 allowed 62 healthy babies to be placed into homes of happy

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1 and fulfilled parents. I might also add, our Center has
2 never had a surrogate who regretted her decision.

3 To begin with, the right to procreate which
4 encompasses the right to conceive, bear and rear children,
5 is one of society's most highly cherished and constitution-
6 ally protected rights. It is understandable that couples
7 who can not reproduce in the normal fashion or for whom such
8 reproduction would be potentially hazardous, would want a
9 child as a result of an alternative manner which most closely
10 approximates normal reproduction.

11 Surrogate parenting is one of the many new methods
12 of reproduction, which is being employed by couples who are
13 otherwise unable to produce offspring. It is an alternative
14 that should be protected as vehemently as normal reproduction.
15 After all, the First Amendment right of procreation does not
16 protect the act of procreation, but rather the fundamental
17 nature and importance of having a child.

18 The experience of having a child is of such
19 central importance to individuals and to society that the
20 State must tread cautiously before denying people the
21 opportunity to exercise this most fundamental of all rights.

22 In addition to the rights to procreate, the
23 parties also have the right to contract. Involved in this
24 contract, like all other contracts, is an offer, acceptance,
25 and consideration. The consideration being the mutual

1 promises of each of the parties that they will uphold their
2 end of an agreement that have each entered into with great
3 care, consideration, time, thought and trust.

4 These agreements, when administered properly, are
5 not entered into lightly. Instead, in a model program, each
6 party is subjected to lengthy psychological, legal and
7 medical screening. The parties are all well informed of all
8 aspects of this undertaking and only then, is the contract
9 entered into.

10 The couples and surrogates who contract do so
11 to create a family for the biological father and his wife.
12 Legislation should be adopted that automatically awards
13 custody according to the intent of the parties. The law
14 would thus make the contracting couple the legal parents of
15 the child upon birth and would not require any additional
16 activity of the surrogate to terminate her parental rights.
17 Such a law was recommended by the Ontario Law Reform Commission
18 and an Arkansas statute presently has that effect when an
19 unmarried surrogate participates.

20 With respect to other forms of alternative repro-
21 duction such as AID, artificial insemination by donor, and
22 in-vitro fertilization, the intent of the parties has already
23 been allowed to govern who the parents are without being
24 subjected to adoption requirements. By not allowing the
25 parties intent to prevail, a surrogate changing her mind would

1 thrust the infant into legal uncertainty requiring a lengthy
2 Court battle to determine who will be given the opportunity
3 to rear the child. This possibility must and can be avoided
4 with proper legislative regulation which would minimize the
5 possibility of allowing women who are uncertain from becoming
6 surrogates in the first place.

7 Implicit in the right to engage in surrogate
8 parenting is the possibility of exploitation. It is con-
9 sistent and almost redundantly argued that women who act
10 as surrogate mothers do so out of some sort of monetary
11 desperation and that the legalization of the practice will
12 cause even greater exploitation of such desperate women.

13 The fact is, however, as cited in Dr. Hilary
14 Hanafin's and Dr. Philip Parker's separate studies, the
15 most widely recognized and reputable studies to date, the
16 average woman who becomes a surrogate mother is 28 years
17 old, Caucasian, Christian, married with two children of
18 her own, has at least a high school diploma, is self-
19 supporting or within a self-supporting family having an
20 average income of over \$25,000 per year.

21 While we are quick to acknowledge the very real
22 possibility of exploitation in this area, the risk is no
23 greater than it is any other worthwhile endeavor. With
24 proper regulation, these risks are significantly minimized.
25 Without regulation by State legislatures, the possibility

1 and severity of these risks is staggering. From a practical
2 standpoint, there are concerns about the surrogate and child's
3 well-being.

4 The surrogate is exposed to risks unique to any
5 of the parties involved in a surrogate arrangement. She
6 faces the inherent risks of insemination and pregnancy.
7 These dangers, however, are similarly associated with preg-
8 nancy in any other context that are readily accepted by
9 society. There is no reason, therefore, to single out
10 pregnancy in a particular situation such as surrogate
11 parenting where a woman willingly enters into the arrange-
12 ment and label it an unacceptable risk.

13 An additional concern for the birth mother is
14 the potential psychological trauma of having to separate
15 from the child and relinquish custody to the prospective
16 parents. Dr. Hanafin's study has shown that properly
17 screened and informed women who engage in surrogate parenting
18 with a support system, simply do not suffer separation
19 anxiety.

20 Furthermore, there is no study showing the
21 contrary. In addition, and this is required in our program,
22 every surrogate has a history of childbirth and is aware of
23 the risks and feelings involved as a result of childbirth.
24 The lengthy and comprehensive screening process involved
25 can do a great deal to disqualify women who are not sure what

1 their feelings will be.

2 With regard to the child, surrogate parenting
3 is clearly worth the potential risks. These children are
4 the most wanted, nurtured and cared for children in the
5 world.

6 Psychological risks to the child may exist and
7 are a concern to everyone involved. The main concern is
8 that children born of this procedure may be harmed by the
9 thought that they were given away or sold by their biological
10 mothers. Opponents of surrogate parenting tend to cite
11 unsubstantiated studies that such results do in fact occur.

12 However, while not dismissing the possibility of
13 some psychological risk, it must be pointed out that the
14 exact same types of risks are present in today's society
15 already via independent adoption, artificial insemination
16 by donor, divorce, and blended families.

17 Certainly, the alleged possibility of psychological
18 risk should not preclude these children from being born.
19 Furthermore, the children are being conceived and placed in
20 homes of people that so desperately want them, that they
21 will likely be more psychologically stable than many other
22 children born in traditional circumstances.

23 Lastly, I would like to state that surrogate
24 parenting works. It is here to stay. While most professions
25 are reluctant to be regulated, we encourage it. To that end,

1 I would like to set forth some of the requirements of our
2 program that could translate into possible guidelines for
3 legislation. They are as follows.

4 Extensive psychological screening by a licensed
5 psychotherapist before acceptance to determine that the
6 surrogate and her husband are capable emotionally and
7 intellectually of making an informed decision and of relin-
8 quishing the child, and that the biological father and his
9 wife are psychologically prepared and comfortable with the
10 surrogate parenting process.

11 Two, extensive medical screening before acceptance
12 including a thorough background medical check and thorough
13 social disease testing for all participants.

14 Three, complete and independent legal counseling
15 and disclosure to all parties.

16 Four, requirement that the surrogate mother have
17 a history of childbirth.

18 Five, full disclosure to all parties by licensed
19 professionals of medical and psychological risks involved.

20 Six, mandatory group counseling for the surrogate
21 mother from the time she enters the agreement until a speci-
22 fied time after the birth of the child, not to be less than
23 six weeks post-partum.

24 Seven, psychological counseling to be available
25 to the biological father, his wife, and the surrogate and

1 her family throughout the procedure.

2 Eight, establishment of the biological father's
3 financial ability to provide adequately for the child before
4 insemination begins, establishment of the potential surrogate
5 mother's financial stability to prevent exploitation.

6 Nine, requirement that all money be placed in
7 an escrow or trust account prior to the first insemination.

8 Ten, all examinations and inseminations to be
9 done under the care of licensed physicians.

10 Eleven, requirement that there be a medical
11 necessity in the form of a physician's determination that
12 the wife of the biological father is infertile or should not
13 carry a pregnancy due to medical reasons.

14 Twelve, requirement that the surrogate's husband
15 consent to the artificial insemination of the surrogate and
16 agrees to relinquish his rights, if any, to the child upon
17 its birth.

18 Thirteen, requirement that the biological father
19 and his wife assume full parental rights, responsibilities
20 and custody of the child notwithstanding any congenital
21 abnormalities or medical problems.

22 Fourteen, requirement that the contract is
23 irrevocable upon conception.

24 Fifteen, requirement that there be a determination
25 that any child born to a surrogate mother pursuant to the

1 contract shall be deemed the legitimate, natural child of
2 the biological father and his wife, vitiating the need for
3 any adoption.

4 Sixteen, should the biological father or his wife
5 die before the birth, the terms of the contract are not to
6 be altered, and the survivor should remain the legal parent
7 and guardian. The contract shall contain a provision naming
8 a guardian for the child should both the biological father
9 and his wife die prior to the birth.

10 Seventeen, the remedy for breach of contract by
11 the surrogate should she refuse to surrender the child shall
12 be by specific performance and all other remedies available
13 at law and equity.

14 In conclusion, I urge you to think long and hard
15 before effectively forcing surrogate parenting underground
16 by refusing to legislate and instead recognize that tradi-
17 tional notions of family and motherhood are indeed changing.
18 The legislature is the only body of law that can deal with
19 this issue. I urge you to act accordingly.

20 CHAIRMAN DEWEESE: Thank you very much.

21 Questions? Joe Lashinger from Montgomery County.

22 REPRESENTATIVE LASHINGER: Thank you, Mr.

23 Chairman. For Ms. Sutton and Mr. Handel, there seems to be
24 a predominant theme throughout both of your testimony that
25 you want the contract -- you don't want to give the natural

1 mother the right to revoke. 776, I believe, it has a 20-
2 day cooling off period. Are you aware of that?

3 MR. HANDEL: Yes.

4 REPRESENTATIVE LASHINGER: Is there a reason,
5 other than contract theories, is there any other reason other
6 than hanging your hat on the contract theory that you don't
7 want a cooling off period?

8 MS. SUTTON: I knew before I went into the
9 contract that I was giving up rights and that should be the
10 theme. You are well informed beforehand. There should be
11 no reason to want to revoke that after the birth of the child.

12 MR. HANDEL: I would like to answer that. You
13 look at the intent of this relationship is to provide the
14 biological father's child so he and his wife can have this
15 child and raise it and take it home as their own child. That
16 is the sole purpose of the surrogate entering into the
17 agreement. She does not enter into the agreement with the
18 thought she may take the child back. She commits to these
19 people and sits in a meeting and says, this is your baby that
20 I am helping you to create. I think to allow her to revoke
21 is the same as allowing a sperm donor to say, I am the
22 biological father of this child. I revoke my consent to
23 the child going someplace else. Granted, there are differences
24 but the intent is identical. And the biological parent is
25 involved.

1 **REPRESENTATIVE LASHINGER:** I agree with your
2 overall theme, but I believe it might -- some of the members
3 on the Committee at the time might have been in the same
4 room four or five years ago when we debated the Adoption
5 Act, when similar testimony was provided. We discussed
6 cooling off periods under the Pennsylvania Adoption Act. I
7 don't see anything that dissimilar in this.

8 **MS. SUTTON:** It's very dissimilar. With a
9 pregnancy that from -- or an adoption, child put up for
10 adoption, the mother has to decide after the child is
11 conceived if she wants to keep the child or give it up. The
12 baby -- there is two babies that I carried. The decision
13 to give to the biological father was made even before that
14 child was conceived. It is a whole different ballgame.

15 **MR. HANDEL:** In case of the adoption, you don't
16 have a biological father who has rights. You simply have
17 a woman who is pregnant. She and the father of the child
18 are legal parents who are relinquishing all of their rights
19 to the child. There is no other denomination. Adoption is
20 not a right. Adoption is a privilege the State allows and
21 governs. While creating one's own child is a fundamental
22 right and viewed dissimilar.

23 **REPRESENTATIVE LASHINGER:** Let's ask one other
24 question on confidentiality. In 776, there is an allowance
25 for confidentiality sealing the petition. How would you like

1 that handled especially in terms of the child born of this
2 relationship?

3 MR. HANDEL: I agree. I think that confidentiality
4 should be involved. It certainly is in our contract in our
5 program.

6 REPRESENTATIVE LASHINGER: Currently in Pennsyl-
7 vania, this is another controversy ancillary to this, but
8 we have a new requirement that the adoptee doesn't have open
9 access, ready access that they once had in the Commonwealth
10 to find out who the natural parents were. Should this be
11 again different than our adopting setting in Pennsylvania,
12 and because this is such a unique relationship, should the
13 children born of this relationship have greater access to
14 who the parents are?

15 MR. HANDEL: That may almost be a moot question.
16 All of the parents that I have dealt with, and I have dealt
17 with hundreds of couples, fully intend on telling their
18 children anyway. So, we don't think about it. We don't
19 lie to kids with something as fundamental. They get away
20 being real angry when they find out mom really isn't mom.
21 My personal view is anybody over the age 18 has a right to
22 find out who their biological parents are, notwithstanding
23 whether they were told lies or not. I think up until age
24 18, it's up to their parents to inform the child. I think
25 he or she has the right.

1 REPRESENTATIVE LASHINGER: No further questions.
2 Thank you, Mr. Chairman.

3 CHAIRMAN DEWEESE: Bob Reber, Montgomery County.

4 REPRESENTATIVE REBER: Thank you, Mr. Chairman.

5 So what were the dates when you had your two
6 surrogates?

7 MS. SUTTON: The first born in October of '83.
8 The second one in December of '84.

9 REPRESENTATIVE REBER: Were these deliveries made
10 under jurisdiction of California?

11 MS. SUTTON: Yes, they were.

12 REPRESENTATIVE REBER: Mr. Handel, under California
13 law, if you would very, very briefly summarize, is there any
14 regulation of this concept as we're considering it here in
15 Pennsylvania?

16 MR. HANDEL: Absolutely none.

17 REPRESENTATIVE REBER: There is none?

18 MR. HANDEL: That's correct.

19 REPRESENTATIVE REBER: Ms. Sutton, you mentioned
20 that you underwent months of legal screening, medical screen-
21 ing, psychological screening prior to making the decision.
22 Was this required by the parties involved or the program you
23 were operating under?

24 MS. SUTTON: Yes, it was required.

25 REPRESENTATIVE REBER: Mr. Handel, in your comments,

1 you set forth 17 guidelines for legislation. By my score-
2 board and calculations, as I was listening to you, 12 of the
3 17 are contained as positive statements in House Bill 776.
4 There's another four that are not contained, but I certainly
5 think that is frankly the reason for these kinds of hearings
6 is to get input, concepts, ideas that make the legislation
7 more meaningful and pragmatic. There appear to be four of
8 those type. The final one that is not touched upon nor
9 consistent with is the section that Representative Lashinger
10 co-sponsored this legislation and myself is questioning you
11 on. That relates to number 14, where you say the require-
12 ment of the contract is irrevocable upon conception. I asked
13 you a few seconds ago concerning California statutory law
14 relating to the surrogacy arrangement procedure contract and
15 Court approval, the nonexistence thereof. I would turn to
16 the adoption language as its promulgated in California. I'm
17 not familiar with that, so I will have to assume what you
18 are telling me is correct. What is, if any, the right of
19 the natural parents to a child in an adoption proceeding to
20 revoke their consent to an adoption?

21 MR. HANDEL: The right of the -- in California,
22 a natural parent has six months in which to revoke consent.
23 Let me correct when we go back to say there is no legislation.
24 There is no control as legislative controls, but it is also
25 a State where the Department of Social Services, the Court

1 system, the entire judiciary system as well as the Attorney
2 General are firmly behind surrogate parenting. There is
3 absolutely nothing but total cooperation from all the State
4 bodies dealing with surrogacy in California. I don't want
5 you to think we're out there in limbo. We are legally, but
6 certainly not practically.

7 REPRESENTATIVE REBER: In the course of your
8 two decisions, did you have to appear before any State
9 agency or judicial body, Court or otherwise, to review or
10 question you as to your consent, knowledge of what was going
11 on, or was there no such action?

12 MS. SUTTON: I had independent legal counsel before
13 I signed the contract. That's the extent of any other
14 review.

15 MR. HANDEL: When the adoption occurs?

16 MS. SUTTON: When the adoption occurred, I signed
17 papers.

18 REPRESENTATIVE REBER: I was more concerned about
19 prior to the contract arrangement. Let me ask you this.
20 Would you have seen or would you have been intimidated if
21 you had to appear with counsel of your choice before some
22 judicial tribunal here in Pennsylvania, an Orphans' Court
23 type setting, that is the name of the Court through the --
24 within the Common Pleas with general jurisdiction for it.
25 That there is proposals to go before for the review of these

1 types of arrangements. Would you have had any problem doing
2 that if that was required similarly in California?

3 MS. SUTTON: No, I wouldn't have. I would have
4 been comfortable.

5 REPRESENTATIVE REBER: Let me ask you this. Do
6 you think your decision would have been a better-made
7 decision if it would have been required that under California
8 law, you would have had to undergo the scrutiny of the review
9 of that contract, an examination by a Judge regarding the
10 manner in which you entered into the contract, the fact that
11 you had undergone the psychological, medical screening for
12 months before the decision, and all those other things that
13 seem important? Do you think that would have been a good
14 idea?

15 MS. SUTTON: I don't think it would have made
16 any difference because the questioning and the conversations
17 with the psychologist and everyone else involved really made
18 one think. We weeded out people that were good candidates
19 to be surrogates. It is a very tough road.

20 REPRESENTATIVE REBER: Your organization, National
21 Association of Surrogate Mothers, have you ever heard any
22 war stories, if you will, where individuals that might have
23 been contemplating this procedure, this process, this arrange-
24 ment, that they would have been better served if they would
25 have gone through such a review contract process with indepen-

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1 dent legal advice, medical advice, psychological testing,
2 et cetera, and then have those arrangements reviewed again
3 by some form of impartial arbitrator, Judge, or otherwise?

4 MS. SUTTON: No. Really most of the surrogates
5 I know are out of California. They are very happy with the
6 screening process, psychological screening. The ones that
7 are from the East Coast that I am aware of, not all of them
8 have psychological counseling and felt that probably it
9 would be a very good idea to screen out. But, they themselves
10 were very happy with the program.

11 REPRESENTATIVE REBER: Mr. Handel, I think you
12 obviously heard some of the questions I have been asking.
13 Do you have any comments on the input of those questions or
14 your views on some of the questions or responses or anything
15 different that you care to add?

16 MR. HANDEL: Only that obviously the legislature
17 has two choices here. One is to decide arbitrarily that
18 infertile people are going to have no other avenue. By
19 stopping surrogate parenting, prohibiting it, you truly are
20 telling people that that is it. You are done. You don't have
21 any other choices as a family. Because they do come to us
22 as a last resort. Even our most vehement contractors will
23 say that no one does this lightly. They come virtually as
24 their last chance of having a child, years of infertility or
25 trying to obtain an adoption and it just doesn't work. I am

1 speaking on behalf of these people. Why should they not be
2 given the opportunity of having children in a controlled
3 systematic approach that has all the guarantees that society
4 would possibly gather about this organization. We're asking
5 for a lot of controls. We're asking, let's go in front of
6 a court. Have as much judicial controls as you want. Legal
7 controls, medical controls, psychological controls. Let
8 people have children. They have a right to have children
9 like everyone else does.

10 REPRESENTATIVE REBER: Thank you. Thank you,
11 Mr. Chairman.

12 CHAIRMAN DEWEESE: I have a couple questions.
13 Would you quickly summarize a similarity or
14 specific differences between your program and the one that
15 Ms. Whitehead and the Sterns were involved in?

16 MR. HANDEL: I would rather not get into that.
17 It's a different program. One of the things we talk about
18 is we reject 19 out of 20 applications. What I didn't bring
19 up was Jan Sutton was one of 20 that applied and was
20 accepted in our program. Southern California is very lucky
21 demographically speaking. We have the ability of having 20
22 women apply that we can select one out of 20. I'm not
23 familiar enough with the other programs around the country
24 to make any reasonable value there.

25 CHAIRMAN DEWEESE: My only other question dealing

1 with genetic engineering is, do you have any other way to
2 prohibit --

3 MR. HANDEL: Sure. Just simply say no to genetic
4 engineering. You have to understand, personally speaking,
5 I am Jewish and my parents are Holocaust victims. My entire
6 family on my father's side was wiped out during World War II
7 on behalf of the master race concept. I am the last person
8 in the world that is going to argue for genetic engineering.
9 I think moving genes to make bigger, taller, stronger is
10 reprehensible. All we're doing is doing what nature failed.
11 We're simply filling in the gap. If there is a uterus avail-
12 able, let us use one. If we don't have sperm available,
13 let's use sperm donors. That's where it stops and that's
14 where it goes.

15 CHAIRMAN DEWEESE: Mike Bortner, York County.

16 REPRESENTATIVE BORTNER: Thank you, Mr. Chairman.

17 I have a question, kind of a legal question, I
18 guess. I know when I was in law school, we were always told
19 to ignore California cases as not being representative of
20 anything anyplace in the United States. So, I realize we
21 may have a difference on this.

22 MR. HANDEL: They said the same thing about
23 Pennsylvania in my school.

24 REPRESENTATIVE BORTNER: I am curious about on
25 page two, your reference to the First Amendment right of

1 procreation. To be honest with you, I don't ever remember
2 studying that in the constitutional law case. I don't
3 remember reading about it in the Constitution since. I
4 would kind of be curious for you to elaborate a little bit
5 on your theory for constitutional right of procreation.

6 MR. HANDEL: Skinner versus Oklahoma. Specifically
7 the Court in 1942, the fundamental right of procreation, and
8 I am paraphrasing, is a society's most cherished right that
9 can not be infringed on. Eisenstatt versus Barry (phonetic).
10 That is off the memory. Griswold. We're talking about --

11 REPRESENTATIVE BORTNER: There are cases.

12 MR. HANDEL: The language we talk about, the
13 fundamental right and importance of having a child, having
14 a child is such a central importance that the individual
15 societies of the State quite cautiously. This is language
16 taken directly from the Supreme Court cases or paraphrased.

17 REPRESENTATIVE BORTNER: I just don't ask that
18 sort of as a rhetorical or smart sense. It seems important
19 to me because if that is a First Amendment right, then the
20 whole question of what kind of regulation is constitutionally
21 permissible raises to a whole different standard.

22 MR. HANDEL: It is my opinion if a law were passed
23 banning surrogate parenting, it would be constitutionally
24 attacked and held unconstitutional.

25 REPRESENTATIVE BORTNER: There is compelling State

1 interest in regulating surrogate parenting?

2 MR. HANDEL: I think there is compelling State
3 interest. I am not a constitutional law expert.

4 REPRESENTATIVE BORTNER: I don't hold myself out
5 to be either. These are just kind of questions that come to
6 my mind when we talk about First Amendment rights. Then,
7 list --

8 MR. HANDEL: I don't know if it is compelling
9 State interest. I don't know what level of State interest
10 the Court would look at regulating surrogate parenting.

11 REPRESENTATIVE BORTNER: I understand your reasons.
12 You are obviously very curious about this and think it is
13 very important. But, there are also all the restrictions
14 that you list are fairly intrusive on the parties who would
15 want to enter into this arrangement. That's why I asked
16 that question.

17 MR. HANDEL: I think we need the kind of control
18 because the possibility of exploitation is so extreme. We
19 are dealing with the State regulating people having children,
20 the relationship between parent and child, familiar relation-
21 ships, who has custody. That certainly is within the
22 purview of State rights. I can't think of anything more
23 compelling that the State has to do other than control the
24 destiny of its citizens. I would certainly put that in a
25 one, two or three in terms of State rights. Certainly, above

1 taxation, certainly above building roads.

2 REPRESENTATIVE BORTNER: One other question for
3 you, either one of you. What rights does the surrogate
4 parent, the surrogate mother, have, if any, with respect to
5 the termination of a pregnancy?

6 MR. HANDEL: Under Roe versus Wade, she has them
7 all. We certainly can't stop her from terminating pregnancy.
8 However, would she be in breach of the contract if she did?
9 Probably. Would she be liable to the couple? Probably.
10 At least for intentional or negligent infliction of emotional
11 distress. While she had the absolute right to do with her
12 body as she wishes, I don't know if she has the absolute
13 right to destroy a pregnancy that she has allowed to be
14 placed in her body by the process of artificial insemination
15 or implantation.

16 REPRESENTATIVE BORTNER: When you talk in terms
17 of specific enforcement of the contract, you are talking
18 about after the baby has been born, not in terms of requiring
19 the completion of a pregnancy that perhaps would be medically
20 unadvisable?

21 MR. HANDEL: No. Under a contract, medical
22 unadvisable pregnancies are terminated. That's primary.
23 Every contract I am aware of has that clause in there. No-
24 body is going to argue that a pregnancy is more important
25 than the health of the surrogate. No doctor would allow that

1 under doctor-patient relationships and certainly, we don't
2 argue that. It would be a very interesting legal question
3 especially when you are dealing with in-vitro implantation.

4 We just had a case in California where the
5 surrogate was not genetically connected to the child whatso-
6 ever. The embryo was implanted in her body. Does she have
7 a right to abort that child? In Roe versus Wade, certainly.
8 Does she have the right to destory someone else's child,
9 completely someone else's child in her body? I have
10 absolutely no idea.

11 REPRESENTATIVE BORTNER: Nobody knows.

12 MR. HANDEL: That's right.

13 REPRESENTATIVE BORTNER: You had a comment?

14 MS. SUTTON: Along that line, the couple and I
15 before we signed contracts had a discussion about what
16 circumstances abortion would be done. We did agree. It
17 was medical reasons to terminate the pregnancy. Some reason
18 detrimental to me, and also there was a defective child.
19 That is discussed prior to contract and was included in both
20 of my contracts under what circumstances. So it was a joint
21 decision before even the contract was made.

22 REPRESENTATIVE BORTNER: Thank you and thank you,
23 Mr. Chairman.

24 CHAIRMAN DEWEESE: You are welcome, Mike.

25 Terry McVerry from Allegheny County.

1 REPRESENTATIVE MCVERRY: Thank you, Mr. Chairman.
2 In your activity as Director of the Center for
3 Surrogate Parenting, do you provide or engage in contractual
4 relationship with the surrogate mother and those persons
5 seeking a child?

6 MR. HANDEL: I represent to the couple in arranging
7 the surrogate. Also part of my job is to work with the
8 staff psychologist in screening out, finding suitable surro-
9 gates, screening out the suitable ones, and arranging the
10 matching process which is done by our psychologist, admini-
11 strating the entire endeavor, making sure the surrogate has
12 representation, making sure all the funds are in trust
13 accounts, and then representing the couple in the contract
14 between the surrogate and the couple. The contractual
15 arrangement is between the two parties, the surrogate and
16 the couple.

17 REPRESENTATIVE MCVERRY: Do you provide the
18 contract?

19 MR. HANDEL: Yes.

20 REPRESENTATIVE MCVERRY: Did you bring a facsimile
21 or could you provide us with samples of the contract that
22 you use?

23 MR. HANDEL: I would be more than happy to send
24 them to the Committee.

25 REPRESENTATIVE MCVERRY: Would you give me your

1 view as to how you can reconcile the 13th Amendment to the
2 United States Constitution which unequivocally prohibits
3 the sale and purchase of human beings with your alleged
4 constitutional right of procreation?

5 MR. HANDEL: Sure. This is not payment for a
6 child whatsoever. The surrogate is paid for her services.
7 The surrogates in our program are paid for their services
8 whether the child is born, whether the child is stillborn,
9 whether the child is abnormal. She is paid for the time that
10 she has engaged in the process of surrogate parenting. The
11 parents are responsible for the child. She is a professional
12 just the way I am paid for my time, the doctor's paid for
13 his or her time, the psychologist is paid, the surrogate is
14 paid. No way do I see this as purchasing a child.

15 I don't think that a natural father can legally
16 buy his own child, and moreover, even in States that District
17 Attorneys throughout the country that are vehemently opposed
18 to surrogate parenting in various States, there has never
19 been an attempt to hold surrogate parenting as baby-selling
20 anywhere.

21 REPRESENTATIVE MCVERRY: How is your fee schedule
22 determined?

23 MR. HANDEL: I determine it.

24 REPRESENTATIVE MCVERRY: How?

25 MR. HANDEL: I charge what I charge, and couples

1 either pay for it or go somewhere else. You are asking how
 2 much I charge? The entire cost of our process is approxi-
 3 mately \$28,000. That's broken down to \$10,000 for the
 4 surrogate, \$11,000 for professional fees which includes
 5 legal, psychological, administrative, and costs of finding
 6 the surrogate which runs almost \$2,000 in advertising costs.
 7 The balance of the costs are medical costs, life insurance
 8 medical insurance that we purchase on behalf of all the
 9 parties as well as miscellaneous costs, maternity clothing
 10 allowance, travel, insemination fees, screening fees, flowers,
 11 gas money to the surrogate.

12 REPRESENTATIVE MCVERRY: You have given an impres-
 13 sive list of 17 items that you think should be involved in
 14 the regulation of this process. It almost implies to me
 15 that if we were to adopt such a legislation, we would have
 16 to put a State agency in place to monitor the fact that
 17 or the process.

18 MR. HANDEL: I don't think so. I think by
 19 accepting the safeguards, you have the Court as final
 20 arbiter of what's right and what's wrong, and the practi-
 21 tioners are aware as licensed practitioners as lawyers,
 22 as physicians, as psychotherapists are licensed to do what
 23 the legislature would require them to do, and breach of that
 24 would again go up against the enforcement arm of the State.
 25 I don't see an agency being involved at all.

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This is a list of safeguards that the State is mandating that the professionals be required to perform, and they are all licensed professionals that have already gone through the licensing requirements. No one can argue that we didn't know. We're not aware of State control.

REPRESENTATIVE MCVERRY: Thank you.

CHAIRMAN DEWEESE: Thank you very much.

Mr. Itkin, Allegheny County.

REPRESENTATIVE ITKIN: I am not an attorney, so you are not going to get that type of question from me. I am very much concerned about the differences between an artificial insemination, in-vitro fertilization and how it affects the surrogate parent in terms of the psychological affect and to what degree. In the cases you have experienced, how much is of one kind and not the other?

MR. HANDEL: The vast majority of cases through this country have been artificial insemination by the biological father. I think there have been four or five in-vitro implantations. Although many, many, many more people are now becoming engaged in that practice. Fully half of our requests for information at our Center right now involve in-vitro implantation. I think very rapidly we are going to be seeing many, many more. We have six going on right now in Los Angeles. As far as the surrogate view, there is no difference between the surrogate who becomes

PENGAD/INDY MUNCIE IN 47302 SF-740

1 artificially inseminated and carries the embryo. In one
2 case, we're dealing with a couple that needs a uterus to
3 carry the child. The other case, we need a donation of an
4 egg. We're really there to help a couple have a child. As
5 I said, we're there where nature has failed. We then try
6 to fill in the gaps. There is no difference between an
7 IVF surrogate and our artificially inseminated surrogates.

8 REPRESENTATIVE ITKIN: The desire of people that
9 want to clone themselves or populate themselves or reproduce
10 themselves with their own characteristics, do you not see
11 some type of genetic desire to reproduce one's self?

12 MR. HANDEL: Absolutely.

13 REPRESENTATIVE ITKIN: There may be a difference,
14 I don't know. I will ask Ms. Sutton that question, I assume
15 you were not only the surrogate mother, but the genetic
16 mother.

17 MS. SUTTON: I am genetically linked to both.

18 REPRESENTATIVE ITKIN: If the situation came to
19 you that you would then become the surrogate of a fertilized
20 egg of somebody else, would you feel differently or do you
21 think a surrogate mother might feel differently in terms of
22 the attachment or bonding?

23 MS. SUTTON: I had no bonding to either of the
24 babies I gave birth to. I would think with the proper frame
25 of mind, there would be no difference. The surrogates I have

1 had contact with had no bonding to the children. There can't
2 be a difference in bonding. I mean, it was my egg. I am
3 genetically connected. I had contact with one of the surro-
4 gate children and the family. I still don't bond to her when
5 I see her. It's like seeing a friend's child.

6 REPRESENTATIVE ITKIN: That's how you characterize
7 it. You are still the biological mother.

8 MS. SUTTON: I am the biological mother. They
9 both look like their dad.

10 REPRESENTATIVE ITKIN: Suppose they both looked
11 like you?

12 MS. SUTTON: That would be fine.

13 REPRESENTATIVE ITKIN: Your own looks, attractive,
14 blond hair, pretty eyes, all those features, you saw yourself
15 when you looked at that child?

16 MS. SUTTON: The one I can see features in. In
17 fact, the father analyzed that together. We talked about
18 his features and my features, the father, mom and I. I can
19 see a lot of similarity in her. But, as far as I am concerned,
20 it's okay. There's a lot of kids out there that look like
21 me that aren't even genetically connected. It doesn't make
22 any difference to me. My prime purpose, and all surrogates,
23 is to help infertile couples get children they want desper-
24 ately. I would go about it in any way to help them do that.
25 I'm very committed to the surrogate program. All the surro-

1 gates are committed. I must say, my life has been extremely
2 enriched and much better, and my children's life much better
3 from this relationship. My children are extremely proud of
4 what I did and they will speak to anybody about it. They
5 almost had fist fights, my son, about it. He has gotten some
6 opposition.

7 REPRESENTATIVE ITKIN: Since you represent an
8 organization, I assume you are not meek. There are others
9 out there who feel quite similar, who have done the process,
10 feel comfortable with the process, have no apparent feelings
11 of rejection though?

12 MS. SUTTON: No.

13 REPRESENTATIVE ITKIN: About what they have done?

14 MS. SUTTON: I represent, and I met with some of
15 the surrogates through this group. I met other surrogates
16 even from the East Coast. The feelings are very similar.
17 We all ask for the same things. We're very glad we have
18 done this. We don't have any regrets. We're proud of what
19 we did.

20 REPRESENTATIVE ITKIN: Do you think women who
21 might get involved might have a regret doing it?

22 MS. SUTTON: I think that people involved such
23 as Mary Beth Whitehead, who have not been properly screened,
24 they were not able to go through the process to merely decide
25 that it is not for me. If anyone can make it through the

1 rigors of the L.A. program and be accepted as a surrogate,
2 they should have no problem doing it.

3 REPRESENTATIVE ITKIN: You say, proper screening
4 is the key?

5 MS. SUTTON: One of the keys and the support
6 there. I had to go to surrogate meetings once a month,
7 and then a psychologist contacted me at least once a month
8 at another time just to discuss how things were going. It
9 came right after both deliveries to make sure I was doing
10 okay. They were open to my family if my family wanted to
11 discuss anything. It really is a key. You got the support
12 of our surrogates. You can bounce things off of them. You
13 also have the support of a professional who is there to help
14 you, too.

15 REPRESENTATIVE ITKIN: This may be a program that
16 may not be suitable for most women?

17 MS. SUTTON: Surrogates is not for everyone.
18 Everyone can not be a surrogate mother. I am not saying that
19 is true. I am saying it should be open to those women who
20 would love to do it. It helped me fill my life. I wanted
21 to be pregnant again before age 35 and not have any children
22 to take home. Giving a child up for adoption, having a
23 child with my husband was not an option. I could not have
24 given a child up that way. It's a totally different ballgame.
25 This was a child, both children were created just for this

1 couple. To see how happy they are and to see the one couple
2 now functioning as a family, it's great. It brings tears
3 to my eyes every time I see them. Now, I have made this
4 world a better place to live for a few people.

5 REPRESENTATIVE ITKIN: Thank you.

6 CHAIRMAN DEWEESE: Thank you.

7 REPRESENTATIVE BORTNER: Mr. Chairman, can I ask
8 one quick follow-up question. This is basic and maybe it's
9 obvious.

10 What defines being a surrogate mother in your
11 view, the contractual relationship? Is that what -- I guess
12 maybe this is to you.

13 MS. SUTTON: It's the trust relationship.

14 MR. HANDEL: Certainly the contractual relationship
15 but any contract, the contract is only as good as the people
16 involved on both sides of it.

17 REPRESENTATIVE BORTNER: Maybe I am not making
18 my question clear. I will try and be sort of blunt as I
19 can. Suppose you want to be a surrogate mother, and I am
20 a father and want to have another child. I come to you with
21 this, but we decide to do it the old-fashioned way instead.
22 Are you a surrogate mother?

23 MR. HANDEL: If you are paying her, she may be
24 a prostitute.

25 REPRESENTATIVE BORTNER: Okay. I am asking a

1 question. Is that under your --

2 MR. HANDEL: Of course not.

3 REPRESENTATIVE BORTNER: That's not a surrogate
4 parent? That would not be permissible under any regulation
5 you are proposing for surrogate parenting?

6 MR. HANDEL: That's not permissible. Even the
7 people who by themselves do surrogate parenting with abso-
8 lutely no professionals involved engage in a sexual act that
9 produces the child. Interesting enough, if you have States
10 that have sperm donor laws, that's the best way to get around
11 the sperm donor law is to establish a paternal right to the
12 child by natural conception. No, we're talking about a
13 very clinical, very fairly medicinal approach. You don't
14 need a doctor to do artificial inseminations. Artificial
15 insemination is not brain surgery. Any woman can be taught
16 to self-inseminate. We would never dream to not doing this
17 in a doctor's office.

18 REPRESENTATIVE BORTNER: Okay. That's all.

19 CHAIRMAN DEWEESE: Mr. Handel, Ms. Sutton, thank
20 you very much.

21 MS. SUTTON: Thank you.

22 MR. HANDEL: Thank you.

23 CHAIRMAN DEWEESE: Lynne Gold-Bikin, Esquire,
24 ABA Liaison, National Legal Resource Center for Child
25 Advocacy and Protection. Mr. Markosek will follow Ms. Gold-

1 Bikin and we will end it up this morning with Noel Keane
2 from Dearborn, Michigan. Welcome, Lynne.

3 MS. GOLD-BIKIN: Thank you.

4 Good morning, I am Lynne Gold-Bikin, at least
5 I was when I left Philadelphia this morning. I am family
6 law practitioner and a member of the American Academy of
7 Matrimonial Lawyers which is a relatively select group in
8 the country of people who specialize in family law and have
9 specific credentials. I am also an adjunct professor at
10 Temple University Law School where I teach family law in the
11 graduate program. I'm an active participant in the continuing
12 legal education of the State and in the area of family law
13 as well as the author of articles and books and all that
14 other good stuff. I hope that my remarks will answer some
15 of the questions that have already been asked, especially
16 by Representative Lashinger and Reber. My remarks are
17 basically as a result of the fact that I believe that many
18 couples are experiencing infertility and are turning to
19 surrogate parenting to help create their families.

20 It is estimated that in excess of 500, and maybe
21 as many as 5,000, children have resulted from such an arrange-
22 ment. To this point, however, national attention has only
23 been focused on breaches of surrogate parenting arrangements.
24 All of us have heard of the Baby M case and Mary Beth
25 Whitehead. We have also heard in Michigan where there was a

1 child who was born less than perfect, and the father changed
 2 his mind. We have not heard until today about the wonderful
 3 results from surrogate parenting.

4 The medical process has outpaced the development
 5 of the law. Let me start by saying that I strongly oppose
 6 House Bill 570 which would make surrogate parenting contracts
 7 a criminal offense. I think that would drive surrogate
 8 parenting underground. I think we are kidding ourselves if
 9 we think this can be stopped. I think what we must do is
 10 control it as you have heard earlier. I think to put people
 11 in jail for desiring to have a child would be unfortunate.
 12 I don't think you want to go back to the idea of people hiding
 13 under beds and in delivery rooms to insure the practice would
 14 end.

15 You heard about Griswold versus Connecticut.
 16 You heard about other privacy cases. I think we're far from
 17 that. I do not think we want to get into a baby blue and
 18 pink or black market in babies. What then is or should be
 19 the role of the legislature in this process? Surrogate
 20 parenting is a good, hopeful process and should be permitted.
 21 I support House Bill 776 with modifications.

22 If the Pennsylvania Legislature determines that
 23 the social policy of the Commonwealth is to permit surrogate
 24 parenting, and it is hopeful that it will, an Act must be
 25 drawn to meet these four goals; protection of the child,

SF-740
 PENGAD/INDY MUNCIE IN 47302

1 protection of the potential adopting couple, avoidance of
2 exploitation of any of the parties, and protection of the
3 right of individuals to enter into contracts.

4 Good screening as you have heard of potential
5 parents as well as the donor mother should be required.
6 Baby M is a case that never should have occurred. Mary Beth
7 Whitehead would have been rejected in any program, especially
8 the one you just heard. She should never have been there.
9 She would have been rejected under the provisions in House
10 Bill 776.

11 I suggest that the screening must occur prior to
12 the contract being entered to insure that the parties are
13 capable of entering into the contract and should be permitted
14 to do so. Therefore, extensive psychological testing of the
15 mother to insure that she is capable of giving up the child
16 as well as the father to insure that he is a healthy parent
17 should take place. The test results should be available to
18 both parties for their review.

19 This should be the first step in the process.
20 Thereafter, appropriate counseling should be made available
21 to all parties concerned. These would include the birth
22 mother and her husband, if any, as well as any of her
23 children to help them understand the implications of their
24 mother being pregnant and giving up the child. The birth
25 father and the adopting mother should also be counseled.

1 This should be an on-going process throughout the pregnancy
2 and, if necessary, should be made available after the birth
3 of the child.

4 An individual's right to contract must be respected
5 and protected. If there is any right of a party to change
6 his or her mind, it should be within 20 days of the contract
7 signing before the fertilization even occurs. Once the
8 fertilization has occurred, the contract has passed its
9 fail-safe point and the parties should be allowed no longer
10 to change their minds. We have not advanced so far in
11 science that we can unmake a baby once it's started.

12 Indeed, it is disrespectful to women as full
13 citizens of this great Commonwealth to suggest that they
14 can not make final decisions and should have the right to
15 change their minds after the contract is underway. No other
16 contract allows such a flip-flop after the service is
17 completed. To allow the rights of rescission, the right to
18 change one's mind, after the birth of the child would
19 effectively end legal surrogate parenting.

20 Attempts have been made to compare surrogate
21 parenting contracts to adoption. In adoption, they say, the
22 mother has a right to change her mind. Why not here? Make
23 no mistake about it, these contracts are not similar to an
24 adoption as we know it. Adoption is normally the result of
25 an unwanted, unplanned pregnancy. In adoption, the mother

1 wishes to give up the child to someone who is not at all
2 related to the baby. No financial claims may be made if
3 the mother rescinds her termination and changes her mind.

4 In a surrogate parenting contract, however,
5 there is financial liability to the birth father. Make no
6 mistake about it, if Mary Beth Whitehead had won in New
7 Jersey, she would have had a support action against Mr. Stern
8 the next day, and her attorneys have admitted that. In a
9 surrogating parenting contract, there is financial liability
10 to the birth father. What potential adopting couple would
11 expose themselves to not only the pain of the potential loss
12 of the child, but to the financial exposure of 18, perhaps
13 22, years of child support? This is the very scenario that
14 we set up if we allow a surrogate mother to change her mind
15 after fertilization. To allow the birth mother to be
16 fertilized, bear the child, and then decide yes or no, what
17 a scenario for blackmail. She can raise the ante.

18 Well, yes, I said I would do it for ten, but I
19 have changed my mind. On the other hand, if you make it
20 20, maybe I could give up the child. She can threaten a
21 suit for child support that I talked about. She can rescind
22 her agreement and then sue the father for child support for
23 18 years of the child's minority and possibly the four years
24 of college.

25 And, the custody disputes. We can not, as House

1 Bill 776 suggests, provide that breach of such a contract
2 would only bring money damages. This would predetermine
3 custody of the child in the birth mother. This would
4 completely ignore the well-established State interest in
5 insuring that the best interests of the child is served,
6 which, incidentally, is what happened in Baby M.

7 They had a custody action. It was clear who was
8 the better parent. It set up months and months in the Courts
9 and on television. This would completely cut off the child
10 from its natural father. Surely, no termination of parental
11 rights of the father in advance of the child's birth is
12 constitutionally permissible.

13 Surrogate parenting is a gift that a fertile woman
14 may provide to a childless couple. It is an agreement entered
15 into by two consenting adults. The mother, who desires to
16 help someone, or earn money while staying at home with her
17 other children, or for any number of valid reasons enters
18 into an arrangement to provide a service. Her service
19 provides a baby to a loving couple who might not otherwise
20 have one. The father, who desires to have a child who is
21 the biological progeny of his genes and ancestry, agrees to
22 pay for the service.

23 You heard a few minutes ago of a man who is a
24 Holocaust survivor. There is a great need for people like
25 this to have biological connection with their children

1 because all other relatives were destroyed in the Holocaust.
2 These are people who desperately, as Mr. Stern did, want
3 children who are related by genes.

4 The State interest in protecting the child should
5 go to insuring the screening of the couples and licensing
6 of the agents who are involved in negotiating the contracts
7 and matching couples. The weight of the State should not
8 be used to permit a party who has entered into a contract
9 to later change her mind. Women have fought long and hard
10 for the right to control their bodies and to be treated as
11 equals.

12 Let us not now say that they should be treated
13 differently when they are pregnant and bear a child. As a
14 mother of four, I never felt my thinking was impaired during
15 my three full years or 36 months, and it felt like it was
16 forever, during my months of pregnancy.

17 As one of the few people in this room competent
18 to talk on that issue, I can tell you right now that when
19 I woke up from anesthesia, they could have handed me anybody's
20 child. The bonding process does not take place during
21 pregnancy, no matter what people are saying. I just don't
22 buy it.

23 I have taken the liberty of redrafting some
24 clauses of House Bill 776 in conformity with my remarks and
25 respectfully submit it to you for your consideration. It is

1 attached to my remarks. Surrogate parenting should be
2 permitted as a form of family planning. The right of
3 recission after the child is born would be its death knell.

4 Thank you for the opportunity of addressing you.

5 CHAIRMAN DEWEESE: Thank you.

6 Gentlemen, ladies?

7 Kevin Blaum from Wilkes-Barre.

8 REPRESENTATIVE BLAUM: Lynne, you said that Mary
9 Beth Whitehead would have been rejected. Why?

10 MS. GOLD-BIKIN: If you read any of the newspaper
11 articles about her, you would know that the screening of
12 her showed that she was unable or would have great difficulty
13 giving up her child. That should have been a red flag to
14 anyone to know that this was a lady who was not suitable.
15 There were many, many other women who would have been happy
16 to have taken that job. She should not have been in the
17 program.

18 REPRESENTATIVE BLAUM: How is that determined,
19 and who determines that at the end of nine months, that Mary
20 Beth wouldn't and somebody else would?

21 MS. GOLD-BIKIN: The psychological screening that
22 is done by Mr. Handel's program and actually done by Noel
23 Keane's program goes to many of the issues that we're talking
24 about today. One of which is the ability to separate herself.
25 You heard a good candidate. Mary Beth was a bad candidate,

1 and the suit that is presently, the civil suit by Mary Beth
2 Whitehead against the agency, one of their factors is the
3 fact that the screening showed she was not a suitable
4 candidate but she was never told that.

5 REPRESENTATIVE BLAUM: What kind of questions do
6 they ask? Do you know?

7 MS. GOLD-BIKIN: I don't know. I am not a
8 psychologist. I'm sure that Mr. Keane can tell you. He
9 will be appearing before you.

10 REPRESENTATIVE BLAUM: Thank you.

11 CHAIRMAN DEWEESE: Anyone else for questions?
12 Joe Lashinger.

13 REPRESENTATIVE LASHINGER: Thank you, Mr. Chairman.

14 I have the luxury of practicing family law in
15 Montgomery County with Ms. Gold-Bikin. So far be it for me
16 to disagree with anything that Lynne says. I think Lynne
17 made a good case when you say there is no bonding. You make
18 a good case for having it. I think we heard a surrogate
19 parent earlier for having the cooling off period or an
20 opportunity for any natural mother to have an opportunity
21 to revoke subsequent to the birth of the child. Additionally,
22 you went on at length to say this is an economic consideration
23 on the part of the natural mother. Instead, I think those
24 of us again involved in the Adoption Act saw it differently.
25 Instead, it was a need for a cooling off period or a time to

1 make a decision because of the post-partum reaction on the
2 part of the birth mother. The ability to change one's mind,
3 not appreciating what you will feel like after you give
4 birth to the child. I disagree. I don't think having a
5 cooling off period would end surrogate parenting, especially
6 from what you heard Ms. Sutton say. That was, she didn't
7 bond. She didn't have any great affinity for the children.
8 It was a job. It was a profession. So, I don't see it,
9 and I think the proponents of a number of us here should
10 come to the realization that we're divided on this issue.
11 If we get something, I think we're fortunate in the Common-
12 wealth if we have to accept a 20-day. I think it's something
13 that we might prepare ourselves for, work for in getting in
14 Pennsylvania.

15 MS. GOLD-BIKIN: Let me tell you what my concern
16 is. I indicated to you that when I woke up from anesthesia,
17 I had not bonded to whatever they were going to hand me,
18 which was my child. I will tell you that once I had been
19 nursing that baby, I would have killed anybody who came in
20 the room to try to take him or her away from me. What
21 happened in Mary Beth Whitehead's case, was not only she
22 allowed to see the child, but she was allowed to nurse the
23 child. If you ask any adopting mother if she was allowed
24 to see the child after she gave birth to it and after she
25 made the decision, she would tell you no.

1 The policy of an adopting mother is that she is
2 not given that child to care for. The bonding process
3 begins when the mother begins to care for that child. If
4 you want to have that 20-day cooling off period, which I
5 strongly oppose for two reasons, which I will go into later,
6 the mother should not see the baby for that 20-day period.
7 Then, you encourage the bonding. We are trying not to
8 encourage bonding. We're trying not to make it more difficult
9 for that woman. But why give her the baby and let her nurse
10 it for 20 days and say, oh, by the way, how do you feel about
11 giving that baby up. I think that is simply wrong.

12 REPRESENTATIVE LASHINGER: I am thinking out
13 loud. Maybe what we could do in some circumstances is move
14 the child temporarily into foster care during that period.

15 MS. GOLD-BIKIN: What are we accomplishing?

16 REPRESENTATIVE LASHINGER: Our County offices
17 of Children Youth --

18 MS. GOLD-BIKIN: But, see, Joe, then we're saying
19 that women are incapable of changing their minds or incapable
20 of contracting because there is something psychological that
21 happens to them after they give birth to the baby. That's
22 what we fought against. That's the position that feminists
23 have taken that says you are wrong about that. If women
24 truly want to be equal in the Commonwealth, you got to take
25 the position that we're capable of contracting. Give her

1 the same right to change her mind about the contract that
2 you have by selling magazines door-to-door before she is
3 impregnated but not afterwards because I am concerned, as
4 I indicated to you, about the blackmail possibility and
5 potential liability. How are you going to prevent her if
6 she changes her mind --

7 REPRESENTATIVE LASHINGER: Couldn't we amend the
8 support law to carve out a specific section in support law
9 when there should be reconsideration in a surrogate contract
10 setting? Wouldn't that simply be an amendment to the support
11 law? Again, it's an interesting concept.

12 MS. GOLD-BIKIN: Could it? Sure, it could.
13 Would you take a woman, for example, who -- we all said that
14 surrogate parenting is an abuse of the poor. Poor women
15 who have no money which is not true, incidentally, as you
16 have seen from the surrogate mother who testified, who would
17 be ignorant and, and then we would have these wealthy, bright
18 men who want children that are by them from this woman. Now,
19 we say she can keep the baby. Are you going to say that
20 that child should not benefit from the wealth and power of
21 the father by simply saying she's going to have to live in
22 the ghetto with that baby and not get support from them? I
23 don't think that would pass. I am concerned about that.

24 REPRESENTATIVE LASHINGER: One other quick comment.
25 This is somewhat rhetorical, and should have been addressed

1 to Mr. Pierce when he testified. I think you should tell
 2 the Committee, given that you work in this area on a daily
 3 basis, Mr. Pierce said there is a glut of children in the
 4 Commonwealth, and why wouldn't we be enforcing synthetic
 5 coal, production of synthetic coal. We're not because we
 6 have an abundance of coal. He analogized it to coal in the
 7 Commonwealth. Tell the Committee what the real world is.

8 MS. GOLD-BIKIN: I didn't address that because
 9 I thought it was a red herring. I don't think that the
 10 number of children for adoption or not really should affect
 11 this. There are no babies available. I have a waiting list
 12 of some 20 people. Whenever I go to the American Bar
 13 Association meeting and meet people from all over the
 14 country, I say, please, if you have a baby, please, I have
 15 people who are desperate for children. We can not find white
 16 children. They are not available. I for one do not feel
 17 that we have to tell women who get pregnant, incidentally,
 18 that they have to be baby machines to enable us to produce
 19 children for Mr. Pierce's adoption center. I don't think
 20 that's an appropriate of a woman either.

21 REPRESENTATIVE LASHINGER: Thank you, Mr. Chairman.

22 CHAIRMAN DEWEESE: You are welcome.

23 Anybody else have any other questions?

24 Mr. Reber.

25 REPRESENTATIVE REBER: Just a question on observa-

PENGAD/INDY MUNCIE IN 47302
 SF-740

1 tion. Obviously, 776 has the 20-day period in there. That's
2 in there in a way that as far as I am personally concerned,
3 and as Representative Lashinger was attempting to get across
4 in one phrase of his statement, something is better than
5 nothing. I have personally, Bob Reber, attorney, reserva-
6 tions about that language being there. My staff has a much,
7 much less reservation about it being there. Quite frankly,
8 it is encouraging to me to have it when we drafted legisla-
9 tion and introduced it. I do feel there are some concerns.

10 Let me say this. Where I used to have concerns,
11 I have less concerns about that language remaining after
12 listening to Jane Sutton's testimony earlier today in saying
13 that going through the rigors that they go through, and I
14 certainly hope that the rigors as outlined in 776 will be
15 as encompassing and burdensome to the person to find out
16 if in fact you psychologically and/or medically qualify as the
17 California experience, that chances are even with the revoca-
18 tion period there, if it was in place in that type of
19 scenario, from what I heard, it would never have to be used.
20 As a fail-safe concern for that one shot in 5,000 or whatever,
21 you know, maybe it's not such a bad idea to be there.

22 Personally, I tend to agree with your conclusions.
23 Practically, politically, I don't know whether it's going to
24 survive. Let me just say this. I agree with Representative
25 Lashinger. The support issue should be addressed. If there

1 is a revocation in place or revocation exercise within the
2 20-day period thereafter, the natural, biological father
3 should not in fact as a public policy be required. That's
4 my own personal opinion. Again, all parties being aware of
5 that, fully informed and form consents given, et cetera, at
6 the outset of the contracting arrangement so there is no
7 doubt. Be that as it may.

8 MS. GOLD-BIKIN: Would you then have the husband
9 of the child adopt?

10 REPRESENTATIVE REBER: I am not sure the husband
11 would adopt.

12 MS. GOLD-BIKIN: Let me share with you an
13 experience I had with a surrogate mother in Philadelphia.
14 I met her a year after giving up her child in a very unusual
15 circumstance. She had entered into an agreement where she
16 did not know the adopting couple. When the child was born,
17 for some insane reason, the adopting couple were on vacation.
18 There was no one to give the baby to. She said to me later,
19 I wasn't about to give this baby to a lawyer. She took the
20 baby home. Then the child got ill. She nursed it for six
21 weeks. At the end of six weeks, she said, I couldn't give
22 that baby up. But, her husband who sounded like a real
23 together guy, he said, this child will be a thorn in our
24 sides forever. He is not ours. He is the child of another
25 man. This is a chapter in your life, close it. And, with

1 good counseling. Then, when she found out who the parents
2 were and recognized what a gift she was giving, she was able
3 to separate herself and give up the child. The fact is,
4 that this child if kept in that family, would cause problems.
5 We heard about the psychological damage to the child. Don't
6 you think that child would be treated differently by the
7 husband of the surrogate because he would have another man's
8 child?

9 I think we are dealing with a lot of issues here.
10 I just feel the right of the decision is a dangerous one
11 and at very least, I would recommend that if you are going
12 to leave that 20 days in, which you know how I feel about
13 it, it should not be there, at least make sure the surrogate
14 mother does not see the baby, and the child is placed in
15 some kind of care as Representative Lashinger suggests or
16 foster care.

17 REPRESENTATIVE REBER: That situation has always
18 had the problem in placement in adoption where they have
19 had the contact with the child, and all of the sudden, a
20 change of mind takes place. We have gone through that as
21 well. I agree that's also a problem here. Thank you very
22 much for travelling and taking the time.

23 CHAIRMAN DEWEESE: Special Counsel, John Connelly.

24 MR. CONNELLY: You heard Mr. Handel testify and
25 there was reference in there to providing independent legal

1 counsel. I presume from his testimony, and I didn't have a
2 chance to ask him, that somehow that is all worked into the
3 contract. Do you see a potential for conflict of interest
4 here? Are you familiar with the mechanics of how the
5 independent counsel works, how independent is counsel, who
6 pays counsel, can it be waived? What are your thoughts on
7 that?

8 MS. GOLD-BIKIN: In 776, there is a provision
9 for independent counsel and that the adopting parents would
10 pay the costs. In my proposed amendments, I put in the
11 reasonable cost. I felt reasonable should be there. I don't
12 think it's a conflict as long as the surrogate is able to
13 choose her own counsel. I would be concerned about waiver.
14 I think she should also be counseled as to the impact of
15 waiver.

16 MR. CONNELLY: Thank you.

17 CHAIRMAN DEWEESE: Any other questions?

18 Thank you very much.

19 We heard the protagonists. Now, Mr. Markosek,
20 we're anxious to hear from you to hear some of your observa-
21 tions with respect as to your legislation.

22 REPRESENTATIVE MARKOSEK: Good morning, Mr.
23 Chairman and members of the Committee. I want to thank you
24 very much for arranging this Committee hearing in Pittsburgh
25 today. I would like to thank those who had to travel to be

1 here as members of the Committee, but also the people
2 testifying coming in to our city this morning on a very
3 beautiful day, and hopefully, they can see it and we can
4 show it off a little bit to them today. Also, I want to
5 thank your very able and capable staff for their fine work
6 that they have done in arranging this Committee hearing this
7 morning.

8 As all of you know, the issue of surrogate
9 parenting has achieved national attention since the Whitehead/
10 Stern court proceedings. It is my opinion that one of the
11 greatest discoveries to emerge from those proceedings is
12 the importance of each State government to have a policy on
13 the books concerning surrogate parenting. We need to have
14 a defined policy to guide the judiciary in making decisions
15 on these types of cases. It was evident in the Baby M trial
16 that the Judge really had no policy to guide him in his
17 decisions.

18 It is our duty as a legislature to provide public
19 policy on major social issues. If we don't, then the
20 judiciary through their decisions will in effect be creating
21 public policy, and that, ladies and gentlemen, is not what
22 our Judges are supposed to do.

23 This is why, one of the reasons why I introduced
24 House Bill 570. It is my belief that entering into surrogate
25 contracts should be illegal in Pennsylvania, and my proposal

1 would make such actions a misdemeanor of the third degree.
2 Let me point out at this point in time that the intent of
3 my Bill is not really to be punitive. I am not trying to
4 force people to go to jail or pay fines. The intent of my
5 Bill is to discourage the practice of surrogacy in our
6 Commonwealth.

7 There are substantial reasons why I am opposed
8 to surrogate parenting. In my opinion, it is a form of
9 child selling. The Commonwealth and all our other States
10 in this nation have very strong laws which prohibit child
11 selling. Since there is a profit motive involved in surro-
12 gate contracts, we as a policy making body must presume that
13 this form of child procurement is really an extension of
14 child selling. In effect, we're treating the products of
15 surrogacy, the children involved, as a commodity.

16 Both the surrogate mother and the broker make
17 a profit. However, it is the profit of the broker that
18 bothers me more because the mother is being paid for services
19 rendered, the broker is in it strictly for money. Now,
20 there are services rendered by brokers, and I understand
21 that. I think that we look at what the brokers are making
22 through surrogacy. We heard \$28,000 mentioned here in a
23 previous speaker. There's a lot of money to be made from the
24 profiteering of surrogacy.

25 While there may be altruistic reasons to be

1 involved, I think reasonable people would assume that surro-
2 gate parenting would be greatly reduced if money were not
3 the key element in the contract. I would like to note that
4 both private and governmental run adoption agencies are all
5 non-profit.

6 There are some other problems that we must address
7 as well. How about the psychological problems that can occur
8 with both the mother and the child. And, while I am not a
9 psychologist or trained in this field, as an educated and
10 reasonable person living in our society, I feel strongly
11 that you can not separate a baby from its mother under the
12 surrogate situation without some repercussions. I believe
13 there is a bond that exists. I have no scientific training
14 to back that up. It just an opinion on my part.

15 You may ask yourself what is so different about
16 mother and child separation in adoption as opposed to the
17 surrogate plan. In a regular adoption, if the mother has
18 psychological problems after giving the child up or before
19 giving the child up, she is not forced to do so. Adoption
20 can be the solution to a problem, an unplanned pregnancy or
21 inability to provide for a new baby.

22 Surrogacy in many cases we can see where surrogacy
23 would be the creation of a problem such as the Baby M trial.
24 Even though the mother may not want to give her child up in
25 adoption, she has the alternative to do so. With a surrogate

1 mother, the law is not on her side to keep the baby as seen
2 in the Baby M case. If she has problems with her decision
3 after birth, well, that's just too bad. With adoption, the
4 law is on the mother's side.

5 I think we've seen in instances where natural
6 mothers have had psychological problems not so much talking
7 about surrogacy now, but even in normal situations, prior to
8 pregnancy or after pregnancy when they have psychological
9 problems. It is very difficult to take that child away from
10 its mother. In surrogacy, with the Baby M decision, we see
11 the opposite happening. We see the judiciary ruling on the
12 other side and not on the side of the mother.

13 This leads us into contractual problems such as
14 those we experienced in the Baby M case. Without specific
15 laws dealing with surrogate contracts, what is to prevent
16 either the father or mother from reneging on the deal. If
17 it is written into the contract that the mother must have an
18 amniocentesis during her pregnancy and the child is handi-
19 capped or suffers from Down's syndrome, who keeps the baby
20 then.

21 How are these contracts going to be written. Do
22 we have free reign to write anything we want into these
23 contracts, or should we have some law on the books that
24 regulates or even bans this practice. Are we going to allow
25 contracts to be written that only a healthy baby will be

1 accepted by the adopting parents. What if the mother is
2 poor and can't provide for the imperfect child. Can contracts
3 be broken if the child is not healthy. And, what about the
4 rights of the maternal grandparents or siblings.

5 Should they have the right to know their flesh
6 and blood even if the natural mother objects on grounds that
7 she signed a contract to give the baby up forever. When
8 everything goes well with a surrogate contract, you generally
9 don't hear much about it. So, as lawmakers, we are here to
10 insure for the future against situations that don't go well.

11 One last aspect to consider in surrogate parenting
12 is the dehumanization of women. Is surrogating parenting --
13 motherhood really nothing more than treating the woman as
14 a reproductive rental for cash potential. Is it exploitation
15 of poor women to give birth for cash. Or any woman to give
16 birth for cash.

17 Finally, would women do this if it were not for
18 a guaranteed profit. In my opinion, ladies and gentlemen,
19 I don't believe that we would have very many surrogacies if
20 there were not a profit motive involved.

21 If the members of the Committee can answer yes
22 to the first two questions, I think we should take a hard
23 look at my proposed legislation. As I mentioned earlier,
24 my Bill would make surrogate contracting illegal in this
25 Commonwealth by making it a misdemeanor of the third degree

1 to enter into such a contract.

2 The motivation behind my Bill is not punitive,
3 it is designed to discourage the practice.

4 Finally, I am not that naive to be fooled into
5 thinking that my Bill would totally stop the practice
6 altogether if it were passed. Surrogate parenting would
7 still take place in other States, and there would still be
8 the problem of blackmarket babies. However, I think by
9 passing a law to ban surrogate contracts, we could greatly
10 reduce the propensity of surrogate contracts being made and
11 entered into. If the law states that a surrogate contract
12 is illegal to begin with, no Judge can force one or the other
13 party to comply with an agreement as the Judge in New Jersey
14 has done.

15 Again, I want to thank the members of the
16 Judiciary Committee and their staff for their time and
17 attention and interest in this controversial subject.

18 CHAIRMAN DEWEESE: Thank you, Joe.

19 Before questions, the Chair would like to welcome
20 Elaine Farmer from the 23th District. You're welcome to
21 join us here now or after lunch.

22 Are there questions from the members or staff to
23 Representative Markosek?

24 Mr. Reber.

25 REPRESENTATIVE REBER: Just one question, one

1 observation. In the Bill as drafted, Joe, you have the
2 offense defined as a misdemeanor of the first degree. I
3 note during your testimony you are referring to it as a
4 misdemeanor of the third degree. In my perspective, already
5 one good thing came out of this hearing today. You have
6 taken it down to a third degree misdemeanor. Is that now
7 your intent? Maybe we can get it down to a summary offense
8 and by next week, off the criminal.

9 REPRESENTATIVE MARKOSEK: I am aware of that.
10 That is in fact -- the Bill was drawn in error. The intent
11 was a third degree. It never was a first degree. We have
12 an amendment prepared currently.

13 REPRESENTATIVE REBER: The observation only
14 recalling back that Representative Lashinger referred to it
15 a number of times today where we were reviewing the amend-
16 ment for the language to the adoption law, quite a bit of
17 the testimony if I close my ear at certain times, it reminded
18 me of the testimony concerning adoption and the involvement
19 of brokers and agencies and what have back during that process.
20 Obviously, that was not the case. We felt it not to be the
21 case with appropriately the legitimacy being the situation.
22 I would only hope that we would consider that in a form of
23 consistency when we look at the issue.

24 CHAIRMAN DEWEESE: Thank you.

25 Questions from the members?

1 Mike Bortner.

2 REPRESENTATIVE BORTNER: Joe, in response to
3 Representative Reber, you have indicated that your Bill
4 would be amended or under your proposal now, this would be
5 a third degree misdemeanor. I understand you don't intend
6 to be punitive, but to discourage the practice. Do you think
7 a third degree misdemeanor would discourage anybody from
8 becoming involved with this? Given the amounts of money
9 involved in doing this, a third degree misdemeanor under
10 the sentencing guidelines is minor probationary kind of
11 offense. Do you think it would really discourage it?

12 REPRESENTATIVE MARKOSEK: I think the main thing
13 we're trying to do here, the main thing I am trying to do,
14 of course, is to discourage the practice. If we make this
15 illegal, regardless of the penalty, whether it be very slight
16 penalty or a harsh penalty, and I think a slight penalty is
17 all that is necessary, but the key in making it illegal
18 because then no Judge, no jury can enforce the law. We
19 can not have a situation like the Baby M case where the
20 Judge says this is a legal contract. I believe, and I am
21 not a lawyer like some of the members of the Committee, but
22 I believe perhaps the Judge ruled correctly that it was a
23 legal contract under contract law. But under public policy,
24 he had no public policy to guide him. If my Bill passes,
25 we may have a member of the Pennsylvania judiciary in similar

1 situations rule that this is a legal contract under contract
2 law perhaps, but public policy stated by the General
3 Assembly, which I believe it is our duty to provide such
4 policy, would clearly state that we would have a policy that
5 would make -- discourage surrogacy and try to eliminate it.

6 Therefore, he would in fact rule or have to rule
7 that the contract is unenforcible, and not make Mary Beth
8 Whitehead live up to the contract, for example. And,
9 hopefully, some illegality would discourage from the front
10 end and simply not get into it. I have had constituents who
11 have told me that they were in disagreement with my parti-
12 cular Bill mainly because they are childless parents, and
13 they have felt frustrated through the adoption alternative.

14 However, but they have further told me that their
15 own legal counsel has advised them not to get into surrogate
16 contracting. It's currently legal. So, if they are getting
17 advice from their legal counsel now where we already have a
18 legal situation not to get involved with it, because of the
19 problems that could arise, I think in fact the General
20 Assembly spoke as a body through a piece legislation saying
21 this is illegal, I think it would greatly discourage further
22 contracting in the surrogate practice.

23 REPRESENTATIVE BORTNER: Your Bill would not
24 prohibit surrogate parenting where you are not paying the
25 surrogate mother; is that correct?

1 REPRESENTATIVE MARKOSEK: My Bill makes the
2 contract illegal. It doesn't say anything about money
3 changing hands. The contract is illegal. We could talk
4 about amendments that would perhaps, you know, make any
5 kind of payments illegal as well. Right now, the contracting
6 is illegal. Even if, let's say, a relative did it for another
7 relative and agreed to it for free, if there were a contract
8 stipulating certain parameters on health care, psychological
9 testing, amniocentesis, those kinds of things that could be
10 written into a contract, that in effect would be illegal.
11 So whether or not money is exchanging hands, the way my Bill
12 is written currently, the contracting would be illegal.

13 REPRESENTATIVE BORTNER: Is that your position
14 philosophically relating specifically to the question of
15 a relative agreeing to act as a surrogate mother, or one
16 sister say acting as a surrogate parent for another sister
17 who can't have a child?

18 REPRESENTATIVE MARKOSEK: My own opinion is that
19 if we pass my Bill, what I am really trying to get at is not
20 beyond surrogacy, the profit motive involved. I really
21 believe that if we eliminate the profit, you're going to
22 eliminate a great percentage of surrogacy. I am not quite
23 as bothered by the relative doing it for a relative not for
24 pay, because that is in effect more altruistic, obviously.
25 I am still bothered by the practice.

1 I would hope that we as a policy-making body would
2 discourage that from happening. I think if my Bill would
3 pass, we would greatly discourage it to the point where it
4 would almost be nonexistent with the exception of some of
5 the cases that you mentioned. As I mentioned before, I don't
6 think we can eradicate it. Just like difficult to eradicate
7 different things that we pass laws against. They still
8 occur. I think we can greatly reduce it by passing my
9 legislation.

10 REPRESENTATIVE BORTNER: Thank you. Thank you,
11 Mr. Chairman.

12 CHAIRMAN DEWEESE: Certainly.

13 Mr. McVerry and then Mr. Lashinger. And then,
14 we're going to take a two-minute break for the steno and
15 Noel Keane will wrap up our testimony, morning testimony.
16 Mr. McVerry.

17 REPRESENTATIVE MCVERRY: Joe, I understand your
18 intention, I think. Without commenting on whether I agree
19 with it or don't agree with it, I would just make a couple of
20 observations about the Bill as currently drafted that you
21 can consider with staff if you intend to pursue this to a
22 vote. Number one, the Bill as drafted does not make surro-
23 gate contracting illegal. The Bill as drafted prohibits a
24 person from engaging in a verbal or written agreement for
25 the practice of surrogate mothering. It does not deal with

1 the contract being void as against public policy. You may
2 want to make a statement in a preamble to legislation that
3 clarifies that issue.

4 But further, following up on Representative
5 Bortner's question with regards to prohibition of surrogate
6 mothering for the profit motive, you purport to ban one's
7 participation in a written or verbal agreement for the
8 practice of surrogate mothering. Surrogate mothering is
9 defined in this Bill as doing any of the following for the
10 purpose of receiving financial compensation for providing a
11 couple or single person with a child. Ergo, surrogate
12 mothering is defined as a profit motive. Therefore, this
13 has no effect whatsoever on any surrogate mother agreement
14 that did not have a profit motive involved.

15 In view of the fact that the agreement itself is
16 not banned by the Bill, but rather the person engaging in
17 it for a profit, I suggest that surrogate parenting agreements
18 without profit involved would be totally legal whether we
19 pass this Bill or not. So, you might want to think about
20 that.

21 REPRESENTATIVE MARKOSEK: Representative McVerry,
22 I appreciate these comments. Let me just say that my staff
23 and I have been working on some amendments to those particular
24 things. I didn't bring it up in my formal testimony. I
25 would further appreciate the opportunity of working with you

1 and the rest of the staff in completing those particular
2 amendments. Thank you.

3 CHAIRMAN DEWEESE: Joe Lashinger.

4 REPRESENTATIVE LASHINGER: Thank you, Mr.
5 Chairman.

6 I think Representative McVerry raises some
7 interesting points. Additionally, Joe, who are the
8 defendants in the criminal action? Who are the parties
9 to the action? Is it the surrogate mother? Is it all the
10 contracted parties?

11 REPRESENTATIVE MARKOSEK: Under the Bill, the
12 Bill is pretty broadly drawn. It would be all the partici-
13 pating parties in the contract.

14 REPRESENTATIVE LASHINGER: It would be the
15 adopting parents in addition to the surrogate?

16 REPRESENTATIVE MARKOSEK: And the broker.

17 REPRESENTATIVE LASHINGER: So the attorney
18 additionally who formulates the agreements would be guilty?

19 REPRESENTATIVE MARKOSEK: You know more about the
20 legal system than I do. Whether he could be involved with
21 that or not, I am not sure. I guess that would be a
22 possibility.

23 REPRESENTATIVE LASHINGER: I think that's something
24 maybe you can take a look at additionally. Let me make one
25 comment. I think the Supreme Court did recently in a case

1 called Baby Girl D that applies to adoption, really took the
 2 profit motive out of adoption and said that you can only
 3 be reimbursed for services performed for the natural mother,
 4 not the adopting parents, and drove, as most know on the
 5 Committee, a number of adoption agencies that were brokering
 6 for the Commonwealth, drove them out of Pennsylvania in the
 7 last 90 days. Really profit motive, given that Supreme
 8 Court decision did no longer exist in Pennsylvania or else-
 9 where in the country.

10 REPRESENTATIVE MARKOSEK: For adoption?

11 REPRESENTATIVE LASHINGER: For adoption. I
 12 think it did imply, I don't know, I think it's something you
 13 can look at. I think it's a theory that would also apply
 14 here.

15 REPRESENTATIVE MARKOSEK: If I understand what
 16 you are saying, you in effect have proven my point. If we
 17 eliminate the profit motive of surrogacy, we will drive
 18 that --

19 REPRESENTATIVE LASHINGER: I am not convinced
 20 that it is. I think we disagree on that. I am saying, are
 21 you satisfied that that case does apply, and you can't
 22 reimburse for services that aren't directly rendered to the
 23 natural mother. We drive brokers and the profit motive out
 24 of business, out of the industry. Are you satisfied then?

25 REPRESENTATIVE MARKOSEK: I would be satisfied

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1 that that would greatly curtail the practice.

2 REPRESENTATIVE LASHINGER: Thank you, Mr. Chairman.

3 CHAIRMAN DEWEESE: No is his answer, I think.

4 According to that clock, at 14 after, I would like to welcome
5 Noel Keane and give the steno a four-minute break.

6 (A recess was held from 12:11 p.m. to 12:15 p.m.)

7 CHAIRMAN DEWEESE: The public hearing will
8 continue.

9 The Chair recognizes Noel Keane of Michigan.
10 Dearborn?

11 MR. KEANE: That's correct.

12 CHAIRMAN DEWEESE: Dearborn, Michigan. We thank
13 you very, very much for sharing testimony and coming to
14 this bar to be with us today. Welcome.

15 MR. KEANE: Thank you very much.

16 I thank Mike Edmiston very much for inviting me
17 to be here this morning. I have no interest in Pennsylvania
18 law other than to add to it for you my 13 years of experience
19 in dealing with surrogate parenting and answer any questions
20 you may have.

21 I have not prepared written testimony.. I will
22 make a couple of comments on the proposed legislation, I
23 will speak to my involvement in the process itself, and I
24 will submit for each of the members to read an anonymous
25 testimony of an infertile Pennsylvania woman who happens to

1 be my client and presently in the process of obtaining a
2 child through surrogate parenting. She chose not to attend
3 this meeting and make herself known except she is available
4 for any of the members for a telephone communication. A
5 copy of her correspondence is on the table in the corner.

6 My brief comments on the proposed House Bill, and
7 I will address the most controversial one for the 20-day
8 period for the woman to change her mind. In my involvement
9 in surrogate parenting, I have been involved in three cases
10 of withholding of the child. A fourth case that is presently
11 beginning in the State of Michigan now. The one case was
12 the Mary Beth Whitehead, there were two other out-of-Court
13 cases. There was no other Court action in those cases.

14 The Mary Beth Whitehead case is the only case
15 that went to Court on a contract issue. The second case
16 that is starting to evolve at this time in the State of
17 Michigan will also center on the contract issue itself. If
18 in fact you pass legislation that allows surrogate parenting,
19 I certainly hope that you do, I would ask that you not
20 include in it a 20-day period for a woman to change her mind.
21 The reason being is that the couple will have to live that
22 nine to ten-month time wondering whether or not they in fact
23 are going to have the child.

24 If you attempt through legislation to make this
25 process available and as uncomplicated as possible, you will

1 not be doing that by adding the 20-day period of time for
2 somebody to change their mind. Exactly what you are attempt-
3 ing to eliminate, you will be creating in probably a more
4 frequent manner.

5 I think that somebody will say, well, maybe I
6 have this chance to change my mind, maybe I will want to
7 change my mind, maybe I will change my mind. I don't think
8 that's what you are trying to do with this legislation. I
9 think that you have to keep in mind and even in talking about
10 surrogate parenting, why are we talking about it.

11 I would like to say first of all, the most
12 traditional means of eliminating infertility has been through
13 the traditional adoption manner. Adoption has failed the
14 infertile at this stage. It is not allowing couples to
15 solve their infertility problems by doing adoption. There
16 are no babies for adoption. There is hard-to-place kids,
17 European kids, South American kids, wherever they can find
18 them. There is no white, American children available for
19 adoption. All you have to do is find out how many kids have
20 been adopted in this State and other States. Go to the
21 adoption agency and ask the waiting period. They will tell
22 you.

23 I know because they come to me. They don't come
24 into our office and Mr. Handel's office just because they
25 found out they can't have a child. Generally, it's after an

1 exhaustive search for some other type of way to solve their
2 problem. Very few people want their own biological child as
3 the only alternative to surrogate -- or infertility. The
4 fees, the fee cost in my office is around \$25,000. I devote
5 100 percent of my time to surrogate parenting. I do a lot
6 of travelling. I have a large office staff. I have five
7 lawyers that work with me and I don't take home \$10,000 from
8 each kid. I make a comfortable living. More importantly,
9 I enjoy what I am doing. It's a very exciting practice, and
10 I honestly can say that I help a lot of people.

11 I have two books here of photographs I will show
12 you. I don't have time to show you the photographs. They
13 are real people with real problems, with real babies, that
14 are very, very happy. Because of that and because of the
15 support I have had within my own immediate family and
16 watching what I do in my practice, I believe in what I am do-
17 ing. I must, to put up with the criticism and comments that
18 have gone on for 13 years. I can honestly tell you that I
19 believe there is probably more people that support what I
20 do than don't. Unfortunately, the people that we represent,
21 the infertile, are not organized. They are not willing to
22 come forth as this woman doesn't care to come forth in this
23 Committee and expose herself to whatever criticism might come
24 from this testimony.

25 There are a lot of people out there that appreciate

1 what is going on. I think that is what keeps myself in the
2 practice. Certainly, I make a living at it. If I didn't
3 make a living at surrogate parenting or some other practice,
4 I would do it another way in the law. I happen to enjoy what
5 I am doing.

6 Somebody mentioned that if there was a less-than-
7 healthy child born and became a ward of the State, I would
8 suggest very simply that you add a bond to your proposed
9 legislation so it doesn't happen. It has never happened to
10 myself, where somebody didn't step up to a moral obligation
11 or legal obligation. If you establish a minimum bond of
12 \$100,000 that won't cost very much money, it will never be
13 used. That should eliminate that potential problem.

14 I don't think you need an agency enforcing this.
15 I think if it's written in the statute that one can well
16 follow in the agreement, it can be enforced by anybody
17 charged with that responsibility. Again, surrogate parenting
18 is not going to go away. I heard the legal arguments earlier.
19 I think there is a constitutional right to procreate a child.
20 The baby-selling issue is really a red herring for somebody
21 opposed to it for other reasons but would like -- if you can't
22 yell, I'm opposed to it because my religion says I shouldn't
23 or the Pope says I shouldn't, I'm opposed to it because it's
24 baby selling or because it's unnatural, things like that.
25 You people have to realize if these couples could produce

1 their child in the natural way, in the confines of their
2 homes, they would love to do it. They don't enjoy going
3 into my office and doctors' offices and artificial insemina-
4 tion, courtrooms, for paternity, courthouse for adoption.

5 This could all be handled very simply in a Bill
6 that acknowledges the rights and opportunities of all people
7 involved. In the best interest of the child, you ought to
8 take a few moments out of your time and leaf through the
9 books and look at the families, look where these kids are.
10 I submit that these kids are probably going into some of
11 the best homes in this country.

12 I don't think that the child is going to have a
13 problem that it was bought or sold. I think that maybe mom
14 can tell them that mom couldn't carry you. This is what we
15 had to do to have you. This is how bad we wanted you. I
16 think it's a legitimate fee to give to somebody, the \$10,000
17 fee payment, for exposing themselves to what they do to
18 carry somebody else's child.

19 I don't think that extensive psychological screen-
20 ing, although I am not saying we shouldn't do that, because
21 we should, but I don't think it's going to eliminate the
22 problem entirely that we are not going to have a Baby M case
23 or a Baby M and M case, or any other case in the future.
24 We are going to have problems. We have problems in every-
25 thing else we do in society. We just need some laws that

1 will address the issues. I think with that, I will handle
2 any questions that you may have for me. You may draw on what
3 I have done in the past 13 years.

4 CHAIRMAN DEWEESE: Sir, what is the age of the
5 oldest child that has been born to surrogate parents that
6 you have been dealing with?

7 MR. KEANE. The first two children were born in
8 1978. So, we're looking at nine years. There were only
9 five people in the first five years. We don't have something
10 to draw upon there. To give you some idea of the growth,
11 we have 65 children born in 1986 and will exceed that number
12 this year. We're presently in the process with 32 pregnancies
13 right now, a total of 179 kids born to date and another 150
14 couples in the process of doing artificial insemination.

15 CHAIRMAN DEWEESE: You say that these children
16 are going into some of the best homes in America. Why would
17 the Pope be against that?

18 MR. KEANE: Got me. One might argue that all
19 children are from God as well as these kids. Why the Pope
20 would be against it? The Church believes in, what, natural
21 procreation, intercourse between husband and wife. Very
22 little substitute for that in the eyes of the Church. I
23 can only say that they would love to have their children
24 that way.

25 CHAIRMAN DEWEESE: Questions? Mike Bortner.

1 REPRESENTATIVE BORTNER: A couple quick questions.
2 I have to admit I have not read the Baby M case. It's in
3 our materials. I intend to do so when I'm going home. I
4 pursued it, so I'm going to cheat a little bit and ask you
5 because I'm sure you have. From pursuing that case, in my
6 understanding what I heard about it, that case was not
7 decided as a contract case, was it? It was decided as a
8 custody case.

9 MR. KEANE: Actually, there was two cases. There
10 was one on the contract and it upheld the contract.

11 Secondly, what is in the best interest of the
12 child. I think the Judge -- I'm going to secondguess the
13 Judge, but I assume he did that because if one doesn't stand,
14 the other one will. It was just the way he did it. He
15 in effect created new law when he made that decision.

16 REPRESENTATIVE BORTNER: In the event that
17 legislation was adopted which allowed a period of revocation,
18 that's really what you would end up with, then a custody
19 case.

20 MR. KEANE: That's correct.

21 REPRESENTATIVE BORTNER: Between two natural,
22 biological parents.

23 MR. KEANE: What you do is you create a situation
24 that you could probably eliminate if you did not have that
25 particular element.

1 REPRESENTATIVE BORTNER: I know you made reference
2 to the waiting aspect and the apprehension and uncertainty.

3 MR. KEANE: Let me go a little further on that
4 issue. Since we had a less than one percent problem in the
5 total number of cases that we have dealt with over the
6 years, that with the 20-day period would not destroy surro-
7 gate parenting. It would not stop couples from attempting
8 it because they would kind of roll the dice, 99 to 1, it is
9 not going to happen to me. It will happen to one of them,
10 two of them or three of them. I just would like to point
11 out that it's not the fatal blow to what is going to go on.
12 Surrogate parenting is probably here forever in some form
13 or another. It would be nice not to have to deal with
14 Baby M cases in the future, if we didn't have to. Go ahead,
15 I'm sorry.

16 REPRESENTATIVE BORTNER: I think you are right.
17 I think the couples that you refer to and described I'm
18 sure many of them are desperate enough to take that risk and
19 other risks and even the financial loss if it meant that.

20 MR. KEANE: I should comment also on the payment.
21 If you took the payment out and didn't allow payment to a
22 surrogate, you wouldn't stop it. You will reduce the number
23 of available surrogates. Keep in mind that very few women
24 are chosen out of the total number that would like to be
25 surrogates. If you take the payment issue out, more of those

1 that were normally not chosen for surrogates, assuming they
2 were doing it for other reasons, would just do it would
3 probably decrease the problems because you don't have the
4 same number to draw from. When you speak to exploitation,
5 I think that one could think that if you can't pay somebody
6 to do this for you, then you are going to be looking for
7 relatives within the families or friends nearby and probably
8 will create more problems if not immediately at least in
9 the society as the child grows since that particular person
10 will probably be in the same neighborhood, environment as
11 the child is growing up.

12 REPRESENTATIVE BORTNER: I guess the only other
13 sort of question-comment I would have is, when you talk
14 about the apprehension and uncertainty, it's not a whole
15 lot different from an adoption situation where parents are
16 waiting for a child to be born and really don't know in
17 Pennsylvania until a period of time after the birth whether
18 or not the natural mother in fact, in our law, the natural
19 mother has quite a long period of time before her rights
20 are actually terminated.

21 MR. KEANE: I wouldn't want to compare the two
22 only because one is a situation where the child is conceived
23 and born and then the thought of giving up the child, whereas
24 this whole process is prior to its inception. In the State
25 of Michigan, we have a 20-day period in the adoption before

1 the adoption consent or right to revoke it runs out. The
2 child is placed in a foster home for 20 days. We don't have
3 that apprehension, and the awaiting couple is not totally
4 available to the child until the right is terminated without
5 any possible irrevoking.

6 REPRESENTATIVE BORTNER: I think our practice is
7 a little bit different than that, but that's just an analogy.
8 Thank you very much. Thank you, Mr. Chairman.

9 CHAIRMAN DEWEESE: The Fertility Center -- in
10 the State of New York or the City of New York?

11 MR. KEANE: City of New York, Manhattan.

12 CHAIRMAN DEWEESE: Do you share that connection?

13 MR. KEANE. I am part owner of that and employee
14 of that Center, the Fertility Center of New York.

15 CHAIRMAN DEWEESE: Could you share with us also
16 your opinion on the screening that Mary Beth Whitehead went
17 through?

18 MR KEANE: I can. There is litigation as you
19 know involved in that. All I can say is that she was screened
20 by a psychologist. Her name is Joan Eynberger (phonetic).
21 Joan Eynberger made a recommendation that she could in fact
22 be a surrogate, but raised an issue that in Mary Beth's
23 interview, she exhibited some denial pattern to other
24 questions that were presented to her and said it would be
25 incumbent upon the Infertility Center of New York or someone

1 else for that matter to ask her in more detail as to her
2 ability to give up the child. That was done by the personnel
3 at ICNY which is on staff. There was two master social
4 workers on staff at che time. Secondly, she had been
5 selected by another couple before that who were both pro-
6 fessional psycnologists who had a report in her hand and
7 accepted her as a candidate.

8 I think the Infertility Center in New York is
9 a standby to the screening process on Mary Beth at the
10 same time stating that it is not an exact science in confines
11 and convinced to date that you will not completely solve
12 the withholding issue of children in the future no matter
13 how much screening you give to a woman. If that was so, we
14 would probably all do that with our wives one way or another.

15 CHAIRMAN DEWEESE: You said you had been suffering,
16 maybe suffering is not the word, but the recipient of numer-
17 able barbs and anonymous comments over the past decades or
18 maybe more. Where have they been coming from and what have
19 they been like?

20 MR. KEANE: I think initially a lot of people
21 were unsure about this particular practice. If it's con-
22 troversial now in 1987, you can imagine what it was like in
23 1976. There had been lawyers that would say, at least I can
24 sleep at night. There is obscene phone calls, obscene
25 letters. There are newspaper accounts of this practice, and

1 how it is at least in their eyes. Much less today than it
2 was back in 1976. But at the same time, since the Vatican
3 came out in total opposition to this type of practice, and
4 other religious groups, I think there has been an intensity
5 on the part of the people that will follow the Church totally
6 or blindly.

7 CHAIRMAN DEWEESE: Terry McVerry.

8 REPRESENTATIVE MCVERRY: Mr. Keane, what percentage
9 of surrogate contracts end up in litigation of one sort or
10 another? I don't mean the litigation as far as paternity
11 or adoption.

12 MR. KEANE: Every one of those cases do, obviously.

13 REPRESENTATIVE MCVERRY: Right.

14 MR. KEANE: I have been involved in four lawsuits
15 personally along with doctors or psychiatrists or couples or
16 surrogates to some extent in the 13 years. So, out of 179
17 children born, and another 132 couples that I am presently
18 working with, I can speak to four cases that have gone to
19 court. I can only say that this probably comes with the turf.
20 Because we have been dealing in a legal vacuum over these
21 years. When you stick your head out in front of you, I
22 guess you have to expect to get hit occasionally.

23 I might add that two of those cases have been
24 dismissed on a summary judgment motion, and the third one
25 is pending, and a fourth case is Mary Beth Whitehead.

1 REPRESENTATIVE MCVERRY: Were they basically
2 related to contractual issues or withholding of the baby
3 at the conclusion process?

4 MR KEANE: They were not. There was one case
5 where the child was born not from the semen that was intro-
6 duced into the surrogate. She had intercourse with her
7 husband in this case. So the couple made an analogy that
8 she was not properly medically instructed when and when not
9 to have intercourse in this process.

10 Another one is the Malhoff versus Stiver (phonetic)
11 case which is where we had a microcephalic child born with
12 a small head and therefore, retarded. It was an allegation
13 that the virus that created the retardation and microcephalic
14 condition was transmitted via the semen of Mr. Malhoff into
15 Judy Stiver. It was medically disputed and factually dis-
16 puted as to exactly where that originated at.

17 REPRESENTATIVE MCVERRY: In your practice, have you
18 developed prototype contracts that the parties enter into?

19 MR. KEANE: I have, subject to negotiations and
20 change, obviously. But, for the most part, the same.

21 REPRESENTATIVE MCVERRY: Is that confidential
22 work product or is it something you would be willing to share
23 with the Committee for our edification?

24 MR. KEANE: It is not confidential. It is
25 available for this Committee.

1 REPRESENTATIVE MCVERRY: Thank you.

2 MR. KEANE: You are welcome.

3 CHAIRMAN DEWEESE: Kevin Blaum.

4 REPRESENTATIVE BLAUM: Mr. Keane, what kind of
5 questions are asked in an office by a psychologist of a
6 prospective surrogate mother to determine whether or not at
7 the end of the nine-month period that she indifferently
8 hand over the baby?

9 MR. KEANE: I can honestly tell you I have not
10 sat through one of the questioning-answering sessions. I
11 do know they vary from psychologist to psychiatrist depending
12 on who is doing the interview. I can tell you that a
13 psychologist will use various testing where the psychiatrist
14 seems to work off verbal discussions between he and the
15 surrogate and the surrogate and her husband.

16 I do know, as Dr. Parker has made public, that
17 his intent is to make sure she is informed from a psycholo-
18 gical standpoint as to what she is getting herself into,
19 recognizing that there could be severe psychological impli-
20 cations at the end of this process. So he looks at it not
21 as somebody to judge somebody as to can or can not because
22 I think most medical experts will tell you there is no
23 conclusive form to do that. You can only make them think
24 about it and hope they make the right decision and look into
25 their background.

1 CHAIRMAN DEWEESE: Mary Wolly.

2 MS. WOLLY: Can I ask about the retarded situation.
3 What specifically as to the nature of litigation? Was it
4 the natural father did not want to pay the natural mother?

5 MR. KEANE: Not at all. As a matter of fact, the
6 case was reported in the media as a person that didn't want
7 to step forward and assume his legal and moral obligation
8 because the child wasn't healthy. The truth of it is that
9 the baby was born with an O positive, O negative blood
10 group. This man was an AB positive and couldn't be the
11 father of the child, with that particular blood composition.
12 He withdrew as an involved party in that birthing process
13 or taking care of the child. The story went awry that he
14 didn't want the baby. It wasn't his, and he knew it.

15 MS. WOLLY: This is the retarded baby?

16 MR. KEANE: That's correct. That's the same
17 retarded case as the other one I mentioned. It happened to
18 be the child conceived from the parents.

19 MS. WOLLY: Do you contain provisions in the
20 contract regarding the birth of the child if it's retarded?

21 MR. KEANE: Yes. Both by the State law puts
22 total responsibility on the mother and father as the natural
23 parents. In the contract, it puts total responsibility to
24 the father.

25 MS. WOLLY: He could be compelled to --

1 MR. KEANE: Under any conditions, that's right.

2 MS. WOLLY: Be the legal custodian.

3 CHAIRMAN DEWEESE: Are there any other questions
4 or comments? Ivan Itkin.

5 REPRESENTATIVE ITKIN: I want to make it clear
6 that the screening process, from what I understand what you
7 are saying, basically is an information program?

8 MR. KEANE: I don't think that's true. I think
9 the screening process does a few things. It's psychological,
10 it's medical and it's legal. Before any woman ever becomes
11 a surrogate, goes through each one of those stages.

12 REPRESENTATIVE ITKIN: But, some professional
13 makes the determination that that individual is an appropriate
14 person for surrogating, and then it's followed by implementing
15 authority in the matter? Is that the way it's handled?

16 MR. KEANE: That's correct. That's the way it's
17 handled.

18 REPRESENTATIVE ITKIN: It's not just with the
19 response of the person saying I will be willing to be a
20 surrogate parent?

21 MR. KEANE: Not at all.

22 REPRESENTATIVE ITKIN: As these things become
23 more popular, these instruments being surrogating, there is
24 a tremendous amount of demand for locating that type of
25 surrogate parent.

1 MR. KEANE: There could be. Go ahead, I'm sorry.

2 REPRESENTATIVE ITKIN: Isn't it possible that
3 you may desire to find surrogate parent admit that persons
4 who may ultimately want to keep that child would not be the
5 best type of candidate? I see that isn't pretty much in
6 terms of that 20-day rejection theory. If that 20-day
7 rejection theory is there, then the parties involved, the
8 principal parties involved that are arranging this matter
9 will be very careful to insure that the process works well.
10 That the surrogate person chosen in fact will be a good
11 candidate.

12 MR. KEANE: We do that now to the best of our
13 ability. But I can tell you that as sure as I am sitting
14 here, there will be some people that will probably change
15 their mind at some period of time.

16 REPRESENTATIVE ITKIN: I understand that. I'm
17 saying but to the degree that you can minimize it, I think
18 becomes a good thing.

19 MR. KEANE: I think you can eliminate it totally.
20 Somebody suggested put the 20 days up front. Put 40 days
21 up front if you want. But, don't put it at the end.

22 REPRESENTATIVE ITKIN: I guess what I am saying
23 is, my own personal feeling is, I would like to see everybody
24 happy at the end of the conclusion of the event. It is
25 distressing to me if along the way some parties of the contract

1 feel uncomfortable or distressed. That's what I would like
2 to eliminate because we had testimony from Ms. Sutton who
3 said she is very comfortable with what she did. She has
4 seen her -- the children that she has borne and she knows
5 it's not hers and is really comfortable with it. In that
6 regard, it would seem fine. Everybody seems to be happy
7 in that situation.

8 MR. KEANE: I might point out to you that many
9 of them do it a second time for the same family.

10 REPRESENTATIVE ITKIN: What I am saying is, those
11 types of circumstances might be the best type of circumstances.

12 MR. KEANE: They are.

13 REPRESENTATIVE ITKIN: But, as this becomes, as
14 you have indicated from your own status, you're handling
15 more and more cases. That means you have to go out and look
16 for more and more for a surrogate parent, right? As the
17 demand increases, you may not be as demanding in your
18 candidates as you might have been with a less number.

19 MR. KEANE: Well, --

20 REPRESENTATIVE ITKIN: Unless we put certain
21 conditions in the law that basically say, look, if you don't
22 act prudently and act upon reflection and careful scrutiny,
23 you may end up with a bad deal.

24 MR. KEANE: I agree. I think prior judicial,
25 some kind of approval by all parties in front of some sort of

1 a magistrate or judicial person will say, you read it,
2 counsel screened you, you understand what you are signing,
3 it's binding.

4 REPRESENTATIVE ITKIN: I understand, legally
5 binding. That may not eliminate the distress. If you are
6 dealing with someone who has done it many times, perhaps
7 they understand it. A person going into it for the first
8 time may not really understand how their emotion is going
9 to feel about it.

10 MR. KEANE: If you accept your approach, we don't
11 need legislation control. Everything would turn out nice
12 if we did all those things. I know sooner or later no
13 matter how many good intentions we have, we're going to have
14 problems. That's why we're trying to address it through
15 legislation.

16 REPRESENTATIVE ITKIN: I don't want a problem.
17 I may accept that there will be problems. I would prefer
18 to have a problem or a few problems than many problems.

19 MR. KEANE: I agree.

20 REPRESENTATIVE ITKIN: So therefore, I am more
21 concerned about how this legislation deals with the screening
22 process and insures that the candidates selected are in fact
23 capable of handling this whole complex emotional issue.

24 MR. KEANE: I don't think anybody would have an
25 objection to a very, very stringent regulation on screening.

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REPRESENTATIVE ITKIN: Thank you.

CHAIRMAN DEWEESE: Bob Reber.

REPRESENTATIVE REBER: Thank you, Mr. Chairman.

Mr. Keane, I'm going to direct my questions to the Baby M scenario. Unlike my colleague, Representative Bortner, I have in fact read the opinions, some of the transcript, some of the argumentation made by counsel. Having looked at it from the perspective if in fact the screening that was done, the report you alluded to, the controversy surrounding that, drawing upon my experiences in the adoption area and proceedings where there's been involuntary termination of parental rights, those types of proceedings before the Court, knowing the type of questioning you might get into detail to a great extent with the Judges, at least that I appear before get into on these kinds of very technical determinations that have been made when there are many, many competing thoughts and interests and psychologists and psychiatrists involved, would it be fair to say, and let me say at the outset, it's my opinion that if in fact there would have been judicial review of the contracting process, a review of the screening of the documentation that was done in this case, that very well the problem could have very easily been caught about a person who maybe was not the best candidate for this procedure. I think even the report of one psychiatrist or psychologist, whoever it was,

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1 made that statement. That would have been available to the
2 Court, reviewed by the Court as part of the pre-hearing
3 review that would have been with the petition. I'm certainly
4 sure it would have been brought out by me in examining that
5 prospective surrogate parent if I was representing the
6 intended parents. Because I think obviously not trying one
7 of these cases because no one has, you think of the kind
8 of things you would want to protect. Primarily in my mind
9 would be the protecting those intended parents from a
10 revocation in any form, statutorily granted or taking the
11 statute on as being unconstitutional or taking away that
12 right of the so-called natural, surrogate mother.

13 I guess what I am saying is, in your opinion,
14 do you feel that as a fail-safe as we as human beings can
15 get in our judicial type of review system, that that will
16 in effect be the best of all possible worlds of possibly
17 avoiding the situation?

18 MR. KEANE: I think it would.

19 REPRESENTATIVE REBER: Thank you. Thank you,
20 Mr. Chairman.

21 CHAIRMAN DEWEESE: Mike Edmiston.

22 MR. EDMISTON: Mr. Keane, in the Baby M case,
23 the Court proceeded to a termination of parental rights as
24 to Mary Beth Whitehead. The sense I have of that case had
25 it proceeded in Pennsylvania is that it's not at all clear

1 that there was sufficient grounds to terminate involuntarily
2 the rights of that parent. I am wondering whether or not
3 you have looked at Pennsylvania adoption law, in particular
4 our provision as to voluntary and involuntary termination
5 of parental rights, in a context of that case and whether
6 or not there is any commentary you have to offer as to
7 whether were we to see a Pennsylvania case like that one,
8 a Pennsylvania Judge could go forward and issue on the basis
9 of our statutes the kind of decision that was made in New
10 Jersey?

11 MR. KEANE: I have not read the Pennsylvania
12 law. I can not comment. I will simply say that I am
13 familiar with Michigan law and involuntary termination, and
14 it would appear to be difficult to do so in Michigan. I
15 am not so sure it wasn't difficult to do so in New Jersey.
16 I think one must simply say that Judge Sorkow looking at
17 the whole picture made some new law.

18 CHAIRMAN DEWEESE: Just one final questio...

19 Why did the Louisiana Legislature and why does
20 Joe Markosek and other people in positions of legislative
21 responsibility come up with these proposals that would
22 irrevocably ban this practice that we've been discussing
23 this morning? Other than the Vatican, is there any other
24 reason?

25 MR. KEANE: They might be offended. I mean, we're

1 all products of our environment. You know, as a young
2 Catholic that I am, we were taught to grow up, get married,
3 and have children one day and to follow these teachings as
4 close as you could. Maybe you can't change. I really think
5 that the major portion of opposition to surrogate parenting
6 is religiously rooted. I don't think it's straight out on
7 moral obligation or legal objections to what is going on.
8 I think they have a religious problem with procreating kids
9 in this manner.

10 CHAIRMAN DEWEESE: Putting Roman Catholicism
11 aside, are there the same protestations emanating from the
12 Falwell element or the moral majority or some right-wing
13 religious Christian enclave that occasionally send me
14 obscene mail?

15 MR. KEANE: There is opposition in other churches
16 as well. I might add that about a month ago, the cover of
17 the Lutheran magazine that is sent nationwide had a surrogate
18 child on it. I suspect that maybe some religions aren't as
19 opposed as others.

20 CHAIRMAN DEWEESE: A mixed bag.

21 MR. KEANE: Pardon?

22 CHAIRMAN DEWEESE: It's mixed.

23 MR. KEANE: That's correct. I also might add
24 that infertility crosses every one of those lines too.

25 CHAIRMAN DEWEESE: Okay. Thank you very, very much

1 for visiting with us today. The lunch break will only be
2 for one half hour. I apologize. This is an imperfect kind
3 of event as far as timing is concerned. So at 1:20, we will
4 recommence.

5 (A recess was held from 12:51 p.m. to 1:38 p.m.)

6 CHAIRMAN DEWEESE: We are a little bit behind
7 but we are going to start this afternoon's testimony for
8 the September 3 House Judiciary Committee meeting on
9 surrogacy.

10 As I said earlier today, we have two proposals
11 before our Committee. One by Mr. Markosek and one by Mr.
12 Reber. Simply one would ban surrogating in Pennsylvania
13 and the other would allow it with strict definition. We
14 have had both points of views explicated over and over this
15 morning. We're anxious to continue this afternoon.

16 Our first witness we would welcome is Gena
17 Corea of the National Coalition against Surrogacy in the
18 United States. On behalf of the House Judiciary Committee,
19 welcome.

20 MS. COREA: Thank you very much. I would like
21 to thank the Committee for inviting me. As you mentioned,
22 I am a member of the National Coalition against Surrogacy,
23 the formation of which was announced Monday in Washington.
24 I am the author of a book called, The Mother Machine, which
25 concerns a number of newly reproductive technologies and has

1 a chapter on surrogacy. I brought one copy of the book for
2 the Committee. I am co-Latin and North American editor of
3 a new journal called, "Reproductive and Genetic Engineering,
4 International Feminists' Viewpoints".

5 In attempting to frame laws concerning surrogacy,
6 Pennsylvania is grappling with public policy issues of
7 enormous historical and worldwide significance. But these
8 are public policy issues evidenced from the following facts.

9 The rise of the surrogate industry does not take
10 place in isolation. It's part of the industrialization of
11 reproduction. It's part of the opening up of the reproductive
12 supermarket. At the same time, companies are being set up
13 to sell women as breeders so that customers can get the
14 product they order, babies. Other companies are forming as
15 well. Companies that sell sex predetermination technology
16 so that parents can predetermine the sex of their children,
17 Gametrics, Incorporated. Companies that flush embryos out
18 of some women for transfer into others, Fertility and Genetics
19 Research, Inc., and franchised in-vitro fertilization clinics,
20 In-Vitro Care, Incorporated, and IVF Australia, Limited.

21 The new reproductive technology such as amnio-
22 centesis, in-vitro fertilization, sex predetermination,
23 embryo flushing, have already been used in conjunction with
24 surrogacy and will be to an ever-increasing degree unless
25 there are public policy decisions stopping this. For example,

1 let's look at some of the recent surrogate cases.

2 One, Patty Foster. Surrogacy combined with sex
3 predetermination. Foster's sperm donor ordered that his sperm
4 be split, separating out male engendering and female engender-
5 ing sperm, and that Foster be inseminated only with the male
6 sperm. He wanted not just any child, but a son.

7 Two, Mary Beth Whitehead. Surrogacy combined with
8 amniocentesis. Although Whitehead was under 30 and not in
9 need of any prenatal diagnosis, she was required to submit to
10 amniocentesis essentially for quality control over the product
11 she was producing. She bitterly resented this and did resist
12 it unsuccessfully. The contract called for her to abort if
13 the test found the product not up to snuff, the only part of
14 the contract Judge Harvey Sorkow did not uphold.

15 Three, Alejandra Munoz. Surrogacy combined with
16 embryo flushing. Munoz, a 21-year-old Mexican woman with a
17 second-grade education and no knowledge of the English language
18 was brought across the border illegally to produce a child for
19 a man in National City near San Diego. She was told that she
20 would be artificially inseminated and that after three weeks,
21 the embryo would be flushed out of her and transferred into
22 the womb of the man's wife.

23 She was familiar with the concept knowing that that
24 procedure was used on cows on farms near her home in Mexico.
25 Several weeks into her pregnancy, she was told the procedure

1 couldn't be done and she'd have to carry the child to term.
2 According to Munoz and her cousin, she was kept in the
3 couple's home, and for most of the pregnancy not allowed to
4 leave the house even for walks because the wife planned to
5 present the baby as her own.

6 When visiting her husband's family, she wore
7 maternity clothes over a small pillow. Munoz, who had
8 planned to be in the country for only a few weeks, for what
9 she thought would be a minor procedure, ended up undergoing
10 major surgery, a Caesarian section. She was offered \$1,500,
11 well below the exploitive \$10,000 fee generally offered
12 white Anglo women.

13 She rejected the fee and has won nominal joint
14 custody of her daughter. However, the child lives with the
15 father and Munoz essentially gets visitation. There are
16 constant fears that she will eventually be deported as an
17 illegal alien.

18 Four, Susan B. Surrogacy combined with super-
19 ovulation, a procedure used and increasingly being developed
20 in in-vitro fertilization programs. She apparently didn't
21 get pregnant fast enough, whether for the doctor or the
22 customer is not clear. She was not an efficient enough
23 manufacturing plant. When I asked Susan if she had had any
24 say concerning whether or not she would be super-ovulated,
25 she replied, the doctor told me, we're going to give you.

1 He didn't ask me.

2 Five, Jane Doe. Surrogacy with super-ovulation.
3 Between the ages of 14 and 25, Jane Doe, obviously, a pseudo-
4 nym had had nine pregnancies, five of which ended in mis-
5 carriage. Rochelle Sharpe of Gannett News Service has
6 reported on this case. According to Doe, when the physician
7 who screened her for the surrogate company heard she had had
8 nine pregnancies, he was not alarmed. Instead, he said,
9 good, you're really fertile. Since she was breast-feeding
10 an infant at the time she agreed to be inseminated, she was
11 not ovulating. Instead of waiting for her to begin ovulating
12 again naturally, the physician super-ovulated her with
13 fertility drugs.

14 Six, Shannon Boff. Surrogacy with in-vitro
15 fertilization. An egg was extracted from an infertile woman,
16 fertilized in the lab with the sperm of the woman's husband,
17 and then transferred into the womb of Shannon Boff. She
18 gestated the child, delivered it, and then turned it over
19 to the couple.

20 Seven, Pat Anthony. Surrogacy with in-vitro
21 fertilization. Mrs. Anthony, a 48-year-old South African
22 woman, was implanted with four eggs removed from her daughter
23 and fertilized in-vitro with the sperm of her son-in-law.
24 She is pregnant with triplets. Anthony's daughter who
25 already has one child had reportedly had her uterus removed

1 as a consequence of an obstetrical emergency. The son-in-
2 law, a refrigeration engineer, said, I couldn't be more
3 delighted that my mother-in-law will give birth to my children.
4 An IVF clinic director commented, from an IVF, in-vitro
5 fertilization, point of view, I guess it's all over. It's
6 really an obstetric problem now, and from that point of view,
7 I imagine a 48-year-old with triplets would be no picnic.

8 Harvey Berman, the lawyer who took on the defense
9 of Alejandra Munoz, decided at some point during his involve-
10 ment in the case, that it would be a good idea for him to
11 start his own surrogacy business. I interviewed him on this
12 last April 24th. His plans called for using surrogacy with
13 in-vitro fertilization, sex predetermination technology,
14 embryo freezing, embryo flushing and eventually cloning.

15 The physicians associated with his firm will use
16 whatever technology they are developing, he said. Of his
17 future clients, he said, quote, people that want to be certain
18 what they're getting and are willing to go against the, quote
19 laws of nature, unquote and get a product in advance that
20 they have chosen. I don't see anything per se wrong with
21 that, end quote.

22 So these technologies are being used and will
23 increasingly be used in conjunction with each other. I think
24 this raises the most significant public policy issues of our
25 day.

1 To me, reading over the above list, the question
2 is not what's wrong with Alejandra Munoz that she got herself
3 into such a fix. Or what's the matter with Mary Beth
4 Whitehead that she once worked as a go-go dancer, had marital
5 difficulties or signed a contract to bear a baby.

6 The real questions are, is reproductive slavery
7 appropriate for women. Is this good public policy. Should
8 we create a class of paid breeders, calling the women as
9 Dr. Lee Salk did in his testimony at the Baby M trial,
10 surrogate uteruses or as Harvey Sorkow did in the Baby M
11 judgment, alternative reproduction vehicles, or as the
12 American Fertility Society did in its recent ethics report,
13 therapeutic modalities.

14 Can we tell the women to bring their children to
15 interviews with potential clients so the client can see what
16 kind of product he's buying. Is it okay to have catalogs
17 with pictures of women available for breeding and vital
18 statistics on their previous reproductive performances as
19 John Stehura's surrogate outfit has in California.

20 Can we line women up and super-ovulate them, suit
21 them up with powerful hormones so their ovaries now turned
22 into egg factories, produce more efficiently. Then, can we
23 lay them down on tables and inseminate them with split male
24 engendering sperm and later during pregnancy, get them up on
25 the table again and poke a needle into their bellies to do

1 the quality control tests on the fetus.

2 Can we let the sperm donor client accompany a
3 surrogate mother to doctors' appointments and childbirth
4 preparation classes and take her out to dinner afterwards
5 and tell her how important she is in his life, how deeply
6 concerned he is over her health and well-being and then,
7 when she's produced the product and handed it over, walk
8 away without a backward glance. The woman is left there,
9 grief-stricken at the loss of what she thought was a friend,
10 bewildered because she thought he thought she was a human
11 being, not an alternative reproduction vehicle. Are we to
12 remain indifferent to this emotional, as well as physical,
13 manipulation of women.

14 I nearly wept on the phone as one mother described
15 such treatment to me and then struggled to explain as if this
16 would be a difficult concept for me to grasp that she is a
17 human being with feelings, not a machine. Her expectation
18 was that I wouldn't know what she was talking about. Her
19 experience had repeatedly been that when she asserted her
20 humanity, no one knew what she was talking about.

21 During delivery, should the sperm donor be at the
22 woman's head, and the infertile wife at the woman's open legs,
23 as described recently by a sperm donor client in Newsweek, a
24 description that parallels that of so-called handmaids giving
25 birth in Margaret Atwood's dystopic novel, The Handmaid's Tale.

1 If the woman refuses to give up the child, can we
2 send five cops to her house to get the baby while the sperm
3 donor waits outside in the car. Can we put the woman in
4 handcuffs as those five cops did to Mary Beth Whitehead.
5 Can we throw her into a patrol car while her neighbors look
6 on and her 11-year-old daughter stands screaming and begging
7 the sperm donor and his wife to stop what is being done to
8 her mother. That is what Tuesday Whitehead did. Is that
9 okay? Is there any problem with treating a woman like that.

10 The surrogate industry has existed only ten years.
11 And, it has taken no more than those ten years for this
12 image to cease to shock the public, the mother of a newborn
13 being handcuffed by five cops and thrown into a patrol car
14 because she refuses to give up her baby to the man who paid
15 for it.

16 One public policy question is, are women human
17 beings or are we reproductive meat. And I guess I'm not
18 talking here about a special class of women. I'm talking
19 about women period. That could have been me up on that table
20 instead of Mary Beth Whitehead. That could have been my
21 sister or my niece. Are we human beings. Are we worthy of
22 any human dignity, or should it be stripped from us as
23 crudely and cruelly as it was stripped from Mary Beth
24 Whitehead. Making mistakes as Whitehead sometimes has, is
25 that an appropriate precondition for stripping someone of

1 human dignity. Then, mine could be stripped as well. Going
2 over my life, I could match Whitehead mistake for mistake.

3 Is it in the best interest of female children to
4 be born into a world where there is a class of breeder women.
5 How damaging might that be to the self-esteem of girl
6 children. If it is damaging, does it matter.

7 Another public policy question, as a society, do
8 we want to industrialize reproduction. Is absolutely every-
9 thing grist for the capitalist mill. Are there any limits
10 to what can be bought and sold.

11 In thinking about all this, an image that keeps
12 coming to mind is that of a shell game played at carnivals.
13 The barker quickly shuffles the shells around, and you must
14 choose under which one the pea lies. The public thinks the
15 pea, that is the heart of the matter in the issue of the
16 new reproductive technologies, lies under the shell marked
17 personalities of people involved or new hope for the infertile
18 or prevention of genetic disease. But the barker/huckster
19 is using sleight of hand to keep an eye focused on the wrong
20 shell. The pea is really under the shell clumsily
21 marked, reproductive slavery. Industrialization of reproduc-
22 tion. Reduction of women to raw material, to interchangeable
23 parts in the birth machinery. Eugenics. Control over
24 human evolution.

25 All of those issues are expanded on in much greater

1 depth in my book. I refer you to my book, and I will answer
2 any questions you may have.

3 CHAIRMAN DEWEESE: Are you in favor of choice
4 relative to abortion?

5 MS. COREA: I am.

6 CHAIRMAN DEWEESE: Grist for capitalist mills,
7 what about what happened in Great Britian recently where
8 obviously the financial incentive was taken away and yet
9 surrogacy is allowed where there is not a money exchange.
10 Do you have a comment on that?

11 MS. COREA: I think the commercialization of
12 surrogacy is the greatest evil in all of this. The Coalition
13 has come together around stopping that. Once that is stopped,
14 that will largely take away surrogacy. And, Noel Keane has
15 written in his book that if you were not able, if it were
16 not possible to pay a fee to the woman, that he would not be
17 able to get women to do that. I think that is the greater
18 evil. I do not think so-called altruistic surrogacy is
19 without problems. I don't think a law is probably the
20 appropriate way to deal with that problem. I also don't
21 think it should be minimized, the effect of that.

22 But, the Coalition is specifically against
23 commercialization. I would remind you that the Alejandra
24 Munoz case was one which originally looked like a so-called
25 altruistic case. They subsequently offered her \$1,500. But,

1 originally said she was doing a favor for a member of the
2 family. That is one of the most exploitive cases I know of.

3 CHAIRMAN DEWEESE: Questions from the membership?

4 Bob Reber.

5 REPRESENTATIVE REBER: On the Munoz case, I would
6 only comment that that's one of the surrogacy issues being
7 involved. I can probably tell you hundreds of cases that the
8 adoption issue is involved, and Munoz' set of facts fits
9 into that situation just as we're talking. The sad part
10 about the marital difficulty issues in the Whitehead case,
11 the illegal alien in the Munoz case, the five miscarriages
12 of the Jane Doe case and the use of super-ovulation in both
13 the Susan case and Jane Doe case. I think all of those
14 scenarios would have been non-existent if legislation of
15 some type, not necessarily House Bill 776, but legislation
16 of some type patterned thereafter would be in effect in the
17 jurisdiction. None of the scenarios would have come to vest.
18 Also, you make comments about the repugnancy of the amnio-
19 centesis and what went through or what the individuals went
20 through. To be quite frank, many of those same scenarios
21 that you have found repugnant, my wife giving birth to my
22 son had an amniocentesis. We went out with flowers and
23 dinner following the birth and everything else. I don't
24 think there is any indignity involved in that particular
25 aspect of it.

1 I appreciate the emotion that you have and have
2 attached. I appreciate the consideration that you have
3 given to empathize and I think every member of this particular
4 Committee empathizes with those people that have in fact
5 been exploited. I don't believe that the issue or the concern
6 or the practice has exploited these people. I think it was
7 the frailty of a few human beings who took advantage of the
8 situation just like situations are taken advantage of every
9 day in practices that go on both in the Commonwealth and
10 statewide.

11 I do appreciate your view concerning those issues,
12 and thank you for taking the time to come here under the
13 circumstances.

14 MS. COREA: Thank you very much. I think that
15 surrogacy in itself is exploitative. I don't think there is
16 a good way to do that. I don't think it's a good way to use
17 women as breeders. I think if women are human beings, you
18 don't use them as objects. I don't think if you get a lot
19 of psychologists in there screening women that that really
20 takes care of the problem at all. I think that in itself
21 surrogacy is exploitative.

22 I might mention and you can read this in more
23 detail if you have a look at my book, I interviewed a man,
24 John Stehura, for the Mother Machine who set up a surrogacy
25 outfit in California. He explained to me that surrogacy is

1 too expensive an option for most middle-class American couples.
2 The way to bring the price down is once surrogacy has been
3 more generally accepted by the American public, once it is
4 no longer a new concept, once as I would put it, the soften-
5 ing up process had gotten us all used to this idea, then it
6 would be possible to go into areas of the country where
7 poor women live and pay them much less than the current
8 \$10,000 fees. They are women that would be very happy with
9 half the current fee or even less.

10 He said once it is possible to use embryo transfer
11 in which the surrogate did not provide a genetic component
12 of the child, but the egg and sperm of the commissioning
13 couple were used, it would be possible to go into the Third
14 World countries and use the women there. I asked him what
15 countries he had in mind. He said, Central America would be
16 fine.

17 He also said he thought not only might it be
18 possible to pay very little money, but in some cases, the
19 woman would not need to be paid at all because they were in
20 survival situations. Under that arrangement, they would get
21 to live. They would have food. They would have shelter, so
22 this would benefit these women.

23 I think the Munoz case shows the potential for that
24 to be done.

25 REPRESENTATIVE REBER: Mr. Chairman, can I just

1 suggest --

2 CHAIRMAN DEWEESE: Certainly.

3 REPRESENTATIVE REBER: Unfortunately, we don't
4 have jurisdiction over the Third World countries and South
5 American countries. I know Your Chairman travels rather
6 freely to keep us advised on the international basis to the
7 plights and problems of those residents. Notwithstanding
8 that fact, I would submit that even if we did have so-called
9 lower-income people being involved in these types of arrange-
10 ments, if we do have in effect a procedure that we're talking
11 about -- and by the way, there is criminal sanction in House
12 Bill 776 for obvious illegal operations under the contract
13 or deviation from the contract. But, I think that concern
14 of exploiting lower-income people of a lower fee, that's a
15 concern again can be counteracted by the impartial tribunal
16 reviewing the situation, making sure that that type of
17 exploitation is not in fact taking place, seems not to be
18 taking place in a haphazard fashion in the Los Angeles area.
19 But to avoid the concern for that taking place, I think we
20 do have those kinds of safeguards.

21 Again, I am obviously using your argument to give
22 a counterapproach. I do appreciate your concerns and expres-
23 sions. Thank you.

24 MS. COREA: Thank you very much. I have not had
25 the opportunity to read the two Bills in question since I was

1 invited after the Committee learned of the existence of the
2 Coalition.

3 REPRESENTATIVE REBER: I will trade you a copy of
4 the Bill for a copy of your book.

5 MS. COREA: You got it.

6 REPRESENTATIVE REBER: I think you got the short
7 end of the deal.

8 CHAIRMAN DEWEESE: The Chair would like to welcome
9 the distinguished gentleman from Philadelphia, Mr. Fattah.

10 REPRESENTATIVE FATTAH: Excuse my delay. The
11 House Education Committee, as you are aware, held hearings
12 early this morning in Beaver County.

13 CHAIRMAN DEWEESE: No problem. Very well.

14 Do you see an economic class -- do you see an
15 economic class problem? That is one of the centerpieces of
16 your argument.

17 MS. COREA: That is one argument. Also when we
18 talk about exploitation of women, I think that some exploita-
19 tion is simply not recognized. Perhaps you would think that
20 \$10,000 fee is a reasonable fee to pay a woman for what she
21 goes through. I am not arguing that women should be paid
22 anything at all for gestating children. I think that should
23 be left entirely outside of the marketplace.

24 If you do look at the fee and you realize that
25 when this industry started a decade ago, the fee paid to

1 women was \$10,000. Arbitrarily decided upon fee. It is
2 now 1987. The fee is still \$10,000. I bet if you look into
3 it, you will certainly find the fees of the lawyers involved
4 have gone up with inflation. The fees of the psychologists
5 who screen the women have all gone up. The fees of the
6 doctors who are doing the inseminating have all gone up.

7 No one has been raising an objection to that,
8 seeing there is anything wrong with that. That's sort of
9 an unusual exploitation that nobody notices because it seems
10 pretty normal.

11 CHAIRMAN DEWEESE: In the Whitehead case that I
12 was going to raise or was raised, wasn't it, if you divided
13 the number of hours into the amount of money that she was
14 getting, it was less than one-half of the minimum wage?

15 MS. COREA: The question was raised, correct.

16 CHAIRMAN DEWEESE: Questions from the membership,
17 Chief Counsel, Special Counsel, Counsel for the Republicans?
18 Representative Dawida.

19 REPRESENTATIVE DAWIDA: Mr. Chairman, will you
20 arrange for the meeting of Senor Tortaco (phonetic) in Central
21 America?

22 CHAIRMAN DEWEESE: The acquaintance we have
23 rendered is not that robust. One second please.

24 Counsel reminded me that for the benefit of the
25 people in the audience, I should say to clarify things, I do

1 leave the country a couple of times a year at my own expense.
2 A significant amount of the time that I do spend out of the
3 United States is in a Third World. On Sunday, I came back
4 from Peru. I was in Nicaragua and Honduras earlier this
5 spring. So, I don't know what that has to do with anything,
6 although I am not an attorney, I listen to both my lawyers.
7 They flank me as I reach for the microphone. I did want to
8 say that some of the colloquy you have been observing up
9 here.

10 Are there no further questions?

11 MS. COREA: Could I just make one comment.

12 CHAIRMAN DEWEESE: Yes, you may. That's what we're
13 here for today.

14 MS. COREA: The issue has repeatedly been asserted
15 this morning that couples have a constitutional right to
16 procreation. I think there is nothing in the Constitution
17 that says you have a right to use another person's body to
18 create a child for you. This issue has been dealt with in
19 a very extensive way. In the Domicas (phonetic) brief in the
20 Whitehead case, I would like to leave that with the Committee
21 and hope that it can be xeroxed and returned to me, it has
22 been done in a very extensive way in that Domicas brief.

23 CHAIRMAN DEWEESE: Gwendolyn Miller, our admini-
24 strative assistant to the Committee, can make sure that is
25 done. One final observation. You don't believe that surro-

1 gacy is a fait accompli? You don't believe it is here to
2 stay?

3 MS. COREA: No. I think that there is a woman
4 in Australia, Dr. Robin Rolland, who has been the chief
5 critic of surrogacy in that country. She has written about
6 what she has called the softening up process. She thinks
7 that what we are now in is full industrialization of repro-
8 duction, we're in the softening up process now. People
9 are becoming accustomed to accept such things as paid human
10 breeding and all kinds of variations which would allow you
11 to control what kinds of people are allowed to be born in
12 the world by controlling which sperm comes into contact with
13 which egg, male or female, what is done to the embryo once
14 it is available in laboratories.

15 I think when the surrogate industry repeatedly
16 asserts, surrogacy is here to stay, it's here to stay, it
17 can't be stopped, you can't do anything about it, that is
18 part of the softening up process which gets us to accept it.
19 We do not have to accept surrogacy. We do not have to accept
20 using women as breeders and selling women in this new way.
21 That is not inevitable. We can stop it. There is now a
22 large national coalition built around the attempt to stop it.

23 CHAIRMAN DEWEESE: What about the one out of six
24 national figures that we read that are given to our Committee
25 that can not have children of their own? The simultaneous

1 scarcity of white children for adoption. Are there no
2 sympathetic bones in your body for some of the women who
3 have undergone this process and given of themselves willingly
4 and participated as surrogate mothers, like Ms. Sutton, who
5 is sitting in back of you, who has as you have, favorably
6 impressed this Committee. I speak for myself, but I am very
7 perplexed about this whole issue. I gave her a great deal
8 of credit in my own heart and mind. I give you credit in
9 my heart and my mind. I am not being the hard-to-tackle,
10 old p trying to waiver because before this thing is over,
11 I won't waiver. I will make up my mind and go forward.

12 Don't you have any empathy for the other perspective at all?

13 MS. COREA: I absolutely have empathy. I think
14 one of the tactics used in the softening up process is to
15 present critics as extremely callous, insensitive people who
16 don't care about the suffering. I think that the suffering
17 caused by infertility is enormous. There are a number of
18 questions that ought to be asked about that. If infertility
19 is the problem that surrogacy is supposed to be solving, we
20 need to ask questions about that infertility. How extensive
21 is it, and we're going to accept that this infertility
22 continues on. To what extent is infertility preventable.
23 I think if we're really concerned about infertility, we have
24 studies to look at the extent to which it is preventable.
25 A great deal of infertility is caused by previous medical

1 experimentation on women with unproven contraceptives such
2 as the IUD which has a greatly increased risk of pelvic
3 inflammatory disease.

4 Many women who were subjected to DES, diethylstil-
5 bestrol; this is a drug given to women in the 1940's through
6 the 1970's. Many of the daughters in fact, the majority of
7 the daughters born of those women have reproductive problems
8 as a result of that experimental drug and now in in-vitro
9 fertilization programs.

10 Sexually transmitted diseases are a very large
11 cause of infertility. There are ways to stop that. We know
12 those ways. We've known them for years. We could institute
13 public health programs to --

14 CHAIRMAN DEWEESE: Ways to stop sexually trans-
15 mitted disease?

16 MS. COREA: Absolutely. There are definite
17 public health measures that can be taken to really slow down
18 the spread of those diseases. We don't put money into those
19 public health measures. Instead, we look to technological
20 fixes at the end. Another problem is here. It is often
21 asserted that surrogacy is supposed to solve infertility.
22 While many of the directors of these companies never said
23 they plan to limit their clients to infertile couples or
24 couples at all. Noel Keane writes in his book, that surrogacy
25 presents a terrific new option to single men who want to have

1 a child without romantic entanglement. You can look that up
2 in his book. You can ask a number of the heads of these
3 surrogate companies. Many do not plan to limit their business
4 to infertile couples. Many of the couples involved in these
5 programs, and I would love to have some study done. I would
6 love to get into the records of these companies. How many
7 of those couples are actually childless.

8 Time and time again what we find is that there
9 are children in the family. The trouble is they are not the
10 husband's children. Very often, the wife has children by
11 a previous marriage. She subsequently becomes infertile or
12 has undergone a voluntary sterilization. She remarries. She
13 can not provide a child to her second husband who has a
14 genetic link. I think we do have, as a society, to look at
15 this whole romance with the genes, with genetics. Why is it
16 so important. Why can't you love a child who doesn't contain
17 any of you in it. So, the wife then has to provide her
18 second husband with a child.

19 Another thing we haven't looked into at all, and
20 we need to is what is the experience of the infertile wives
21 into these couples. We don't know what their story is yet.
22 We're beginning to hear the stories of some of the women who
23 have been used by this industry. We haven't heard from many
24 of the infertile wives who are often in quite humiliating
25 positions with their husbands making another woman pregnant,

1 even by artificial insemination. In Noel Keane's book, he
2 writes of a woman who took a bus from New York to Detroit
3 to see him. She had married a Nigerian man. They were going
4 back to Nigeria. She had not been able to produce a child.
5 She was quite terrified that when they went home, her
6 husband's family would force him to divorce her if she did
7 not provide a child.

8 So, we need to look as well at the experience of
9 the wives. It's often presented as though this is something
10 that is being done for a couple. They are not -- it isn't
11 necessarily done for the couple. It is done for the husband.

12 CHAIRMAN DEWEESE: Thank you very much.

13 I will spare the Committee and the audience any
14 comments about my trip to the Gulf of Guinea.

15 Bob, you are next. Bob Wettstein, medical doctor,
16 assistant professor of psychiatry, University of Pittsburgh.
17 Those of you who have the schedule, Cindy Mentzer of
18 RESOLVE, Incorporated of Pittsburgh has allowed Bob to
19 precede her. He has a previous commitment this afternoon.
20 So, thank you, Ms. Mentzer.

21 DOCTOR WETTSTEIN: Are we ready?

22 CHAIRMAN DEWEESE: Yes, sir, Doctor.

23 DOCTOR WETTSTEIN: Good afternoon. I am pleased
24 to have the opportunity to testify before you today about
25 some very important issues faced by many members of our

1 society, mental health professionals, and our State Legisla-
2 ture.

3 When I wrote to each of you last spring requesting
4 public hearings on the topic of today's hearings, little did
5 I anticipate that my call would be so promptly heeded. I
6 would like to applaud each of you for endeavoring to consider
7 some admittedly controversial issues faced by our society
8 both today and in the foreseeable future.

9 I hope today to first share with you some of
10 the mental health implications that surrogate parenting
11 presents. I will then briefly review the issues that surro-
12 gate parenting presents for the mental health professionals,
13 of which I am one. Finally, I will conclude with some
14 remarks addressed specifically to the legislation before
15 the Pennsylvania House of Representatives.

16 I would like to point out as well that I address
17 this Committee today as an individual psychiatrist, one who
18 devotes himself primarily to the study of the interface
19 between psychiatry, including medicine, and society through
20 its laws and policies. Because of the limited time available
21 to me today, I can only just briefly sketch out some of
22 what could be said about these issues.

23 Mental health implications of surrogate parenting.
24 Surrogate parenting presents a variety of mental health
25 issues and problems to the parties involved. Here the parties

1 include the prospective surrogate mother, the infertile
2 parental couple, the child born of the surrogate mother,
3 the immediate families of the surrogate and the couple, as
4 well as the marital and family relationships of the parties.

5 Let's begin with the infertile couple. I am
6 going to skip through some of this because of the considera-
7 tion of time for those of you who are reading along.

8 By now, you have heard about the growing prevalence
9 of infertility among married couples in the U.S. It is
10 experienced by one out of every six couples, some ten million
11 people in the United States. What is not so widely publicized
12 is the tremendous emotional distress of the childless couple,
13 and the stress that this presents to the infertile couple's
14 marital relationship.

15 The uncertainty of infertility is a timeless
16 process and lasts until the couple abandons all hope and
17 stops trying to conceive. Living with infertility for many
18 is accompanied by depression, frustration, despair, rage,
19 feelings of being defective or bad and loss of personal and
20 sexual self-esteem. Infertile couples often undergo extremely
21 expensive, time-consuming, and personally disruptive gambles
22 with innovative and invasive medical technologies.

23 Infertility is an intensely private event, whose
24 grief is largely unshared with others, if ever truly
25 acknowledged by the individuals themselves. Indeed, the

1 couple's failure to resolve these issues through divorce is
2 an unfortunately common consequence of infertility in marriage.
3 From this perspective then, surrogate parenting provides
4 one resolution to this lack of generativity as well as a
5 reasonable expectation of a future life with a child or
6 children of one's choice.

7 What about the prospective surrogate mother?
8 Who are these women, how do they perform their roles as
9 surrogates, and how do they and their families deal with
10 this process? As might be expected, surrogates participate
11 in the process for a variety of reasons. Most who apply
12 to be surrogates, and even more who finally enroll, have had
13 children and are or have been married.

14 They enjoyed being pregnant in the past, had
15 little difficulty carrying and delivering a child, and
16 welcomed the opportunity to be pregnant again. Many offer
17 the injustice of infertility as an important motivation for
18 participation as surrogates, though others, while acknowl-
19 edging altruistic feelings are attempting to resolve prior
20 emotional losses in themselves and their families incurred
21 through previous adoptions, abortions, and death.

22 The fee for surrogates appears to be important as
23 an adjunct to the psychological components rather than
24 standing alone as a motivation for participating.

25 As a group, surrogates appear to be psychologically

1 healthy. Yet one must inquire the consequences of surrogate
2 parenting for the surrogate herself. Again, we need research
3 to answer this question. We know that post-partum psychiatric
4 disturbances occurred in the general population, and there
5 is no apparent reason that such disturbances will not occur
6 among surrogates as well.

7 In addition, of course, the surrogate must deal
8 with relinquishing the child she bears, and some women
9 require psychological therapy to help resolve this loss,
10 whether the child is surrendered in a surrogate parenting
11 agreement or in the usual case of an adoption.

12 We know that grief symptoms following surrender
13 of a child are highly variable, but may be prolonged. Mental
14 health professionals must pay particular attention to women
15 who relinquish their first child rather than a later one.

16 Thus, we might be more concerned about the
17 emotional complications to surrogate parenting for a childless
18 surrogate who will not only have more difficulty surrendering
19 her only child, but whose consent to the process may be less
20 ideal than one who has already delivered a child and knows
21 what she's getting herself into. This, however, remains to
22 be confirmed.

23 What are the consequences of surrogate parenting
24 to the child? Some of have argued, of course, that surrogate
25 parenting is not in the best interests of the child though

1 not yet conceived. We know that adopted children and those
2 resulting from artificial insemination by donor often bear
3 additional burdens in life. But, can the same be said for
4 those of surrogate arrangements? We simply can not at this
5 time address this issue meaningfully given the recency of
6 surrogate births.

7 Undoubtedly, such children will require special
8 and unique consideration from their parents, but a great
9 deal will depend upon society's view of them as well, some-
10 thing which should be considered in the drafting of legisla-
11 tion in this area.

12 What about the affects of surrogate parenting on
13 the family relationships of the parties? Again, we can only
14 speculate here given a vast array of family and extended
15 family considerations. As noted, surrogates generally have
16 children of their own prior to engaging in the surrogate
17 process, and surrogates must consider the impact of their
18 pregnancy through another man on their psychological health.

19 Surrogates may also encounter the less than
20 enthusiastic reception to the practice from their own
21 families. Finally, infertile couples may not receive the
22 expected joy from their own families that they might hope
23 for when a child is born into the family through a surrogate.

24 Let me now turn to the roles of mental health
25 professionals. Mental health professionals play a variety

1 of roles in surrogate parenting. We discussed some of them
2 today already. They include evaluator, gate-keeper, educator,
3 consultant, and therapist, as well as some combination of
4 these. They also participate in various administrative
5 arrangements with surrogate parents and agencies.

6 Mental health professionals commonly perform
7 psychological evaluations of women applying to be surrogates
8 and somewhat less commonly, evaluate the infertile couple.
9 The expenses of the evaluations are paid for by the parental
10 couple. Psychiatric interviews or psychological testing
11 with the prospective surrogate and her husband with or without
12 tests are administered prior to the signing of the surrogate
13 contract by the parties.

14 Mental health experts examine the parties for
15 evidence of psychopathology in them or their families, any
16 impairment in functional competence to contract and evidence
17 of difficulty that any of the parties may have in fulfilling
18 their part of the surrogate parenting contract, particularly
19 whether the prospective surrogate will have difficulty
20 relinquishing the child at its birth. Mental health experts
21 also provide information about the surrogate process to the
22 parties involved as illustrated by House Bill 776 before you.

23 What happens though when the evaluator detects some
24 psychopathology in the history or examination of the surrogate?
25 Does the evaluator exclude the surrogate from participating

1 in this program as a surrogate, or is the evaluator simply
2 obligated to share this information with the infertile couple
3 and allow them to consider its implications?

4 Some have argued that the role of the professional
5 is not to screen out those prospective surrogates who appear
6 unfit, but to help the parties, the adoptive couple, to
7 screen themselves out. No concensus about this question has
8 been developed, and each approach is used depending upon the
9 surrogate program or mental health professional at issue.

10 At minimum perhaps, the mental health professional
11 as gate-keeper might recommend that the infertile couple
12 reject those prospective surrogates who would pose a signi-
13 ficant and foreshadowable harm to the fetus by the surrogate's
14 own behavior during the pregnancy and delivery.

15 Finally, some mental health professionals make
16 themselves available to conduct psychotherapy groups for
17 surrogates or parental couples during or after the surrogate's
18 pregnancy. Some of these professionals will have performed
19 the initial evaluations on the parties, while others will
20 only be involved in the treatment phase of the program.

21 In general, the standards of care for mental
22 health professionals in surrogate parenting have not been
23 formulated, but they do parallel those for evaluations in
24 other employment or forensic contexts. Research, I think, is
25 needed to establish the reliability and validity of the

1 participation of mental health professionals in this process.

2 Let me now turn to legislative proposals. Perhaps
3 it may already be clear from what I have stated that from
4 a mental health perspective, criminalizing the practice of
5 surrogate parenting would be undesirable. Thus, I would
6 urge the rejection of House Bill 570. On the whole, the
7 balance of risks, psychological risks and psychological
8 benefits to all parties to the process clearly falls to
9 supporting surrogate parenting, not abolishing it. One can
10 not use the potential psychological risks or imagine abuses
11 to argue for removing much less criminalizing this important
12 opportunity for many infertile couples.

13 A few comments about House Bill 776 which seeks
14 to regulate surrogate parenting. A provision of the Bill
15 provides that the surrogate mother has 20 days from the
16 birth of the child to revoke her consent to relinquish
17 custody. Such a provision clearly undermines the entire
18 purpose of the surrogate parenting contract as well as this
19 statute by failing to insure as much as possible an agreed
20 upon outcome.

21 This provision introduces an unacceptable degree
22 of uncertainty for the parental couple as well as for the
23 surrogate. Permitting the surrogate to delay deciding whether
24 or not she will relinquish custody of the child prevents her
25 from deciding, in advance, that she will in fact be a surrogate

1 mother rather than a custodial mother. It should be recalled
2 that from the beginning of the entire process, even before
3 the woman becomes pregnant, surrogate mothers mourn the
4 anticipated loss of the child.

5 One method of doing so is for the woman to deny
6 that she is the mother and to gradually come to accept the
7 child is not mine but is the couple's. Providing her with
8 an out, so to speak, by permitting her to change her mind
9 at the last minute, prevents her from using this psychological
10 defense mechanism which is so essential to her ability to
11 physically and emotionally relinquish the child to the
12 parental couple.

13 This revocation provision prevents a parental
14 couple from truly excluding from consideration those prospec-
15 tive surrogates who are ambivalent about serving as surrogate
16 mothers. It also allows a mother who is highly ambivalent
17 about being a custodial mother at the start to later assume
18 custody.

19 In short then, from a psychological perspective,
20 a prospective surrogate must make the decision to be a
21 surrogate mother before signing the contract, not after the
22 child is born. If you wish to provide an opportunity for
23 the prospective surrogate to change her mind, then a statute
24 could institute a short waiting period during which the
25 surrogate can reconsider her decision and terminate the

1 contract, but only just after she signs it and before she
2 is inseminated.

3 Following up on this point further, the Bill
4 fails to consider the outcome of the mother retaining custody
5 in this manner. Will there be a child custody and visitation
6 dispute? What will be the father's rights and responsibilities
7 regarding the child in such an event? Such a contest we
8 should recall will undoubtedly be highly destructive to
9 the emotional stability of all the parties involved as well
10 as the family, both in the short and the long term.

11 From the mental health perspective then, statutory
12 authority which allows the surrogate to decide to retain
13 custody of the child after its birth would be deleterious
14 to all parties. Surrogate parenting is so distinguishable
15 from adoptions that this post-natal revocation provision
16 is not consistent with surrogate parenting.

17 Another section of the Bill provides that the
18 Court may order each party to receive counseling from a
19 licensed, independent mental health care professional as
20 the Court shall deem appropriate. This provision needs to
21 be clarified. The Court should have no jurisdiction to
22 order mental health evaluation or treatment to a signatory
23 of a contract prior to its approval, of course, insofar as
24 the Court could refuse to approve the contract in its absence.

25 Once the Court approves the contract, it con-

1 ceivably should have only the authority to order the reason-
2 able prenatal medical and psychiatric treatment which is
3 in the best interest of the unborn child.

4 Other issues. You may have noticed that I have
5 failed to review the mental health issues involved and the
6 roles of the mental health professionals in contested custody
7 cases following the birth of a child in a surrogate parenting
8 arrangement. Mental health professionals are commonly
9 involved in determining the best interests of the child, in
10 evaluating parents and family members about their fitness for
11 parenting, and in terminating the parental rights of unfit
12 parents.

13 There is more here to say than time will allow.
14 Sufficed to indicate that, in contrast to custody and visita-
15 tion disputes in divorce and neglect situations, joint or
16 shared custody after a surrogate birth would likely be
17 detrimental to the mental health needs of the child and
18 destructive to the psychological environment of both families.
19 Sole, rather than joint custody and visitation arrangements
20 should be the rule for children born to surrogate contracts.

21 I would like to conclude by noting that surrogate
22 parenting represents just one of the many reproductive
23 technologies presently available to infertile couples or
24 in biomedical research today. Here I refer to in-vitro
25 fertilization, artificial insemination by donor, use of frozen

1 eggs and frozen embryos, and medical research on human
2 embryos or fetus tissues. Legislative action in this parti-
3 cular area should proceed in consideration of these other
4 reproductive technologies and methods. Regulation in one
5 area should not conflict with that in another. Thank you.

6 CHAIRMAN DEWEESE: You are very welcome.

7 As a mental health professional, what do you think
8 of the screening process that Ms. Whitehead went through?

9 DOCTOR WETTSTEIN: Well, I don't have any more
10 information about it than any of the rest of us do.

11 CHAIRMAN DEWEESE: You have a different bank of
12 knowledge to evaluate what I was reading this morning. I
13 don't have any.

14 DOCTOR WETTSTEIN: I guess I can't comment about
15 the facts because there may be a factual dispute about
16 whether information about Ms. Whitehead's predicted ability
17 to relinquish was conveyed to the couple or not. I think
18 more to the point is whether the mental health professional
19 should be asked to do that or can in fact do that. We talked
20 here a lot today about trying to predict or trying to
21 guarantee, trying to assess, to screen out, so to speak,
22 those prospective surrogates not able to relinquish. I think
23 there isn't any fail-safe way to do that.

24 If we look at it in the context of an employment
25 interview, if we look at it how mental health professionals

1 are involved in screening prospective police officers for
2 the City of Pittsburgh, we don't find much success in other
3 employment areas. We can think that mental health profes-
4 sionals will be able to predict how she will react, whether
5 she will relinquish and whether some of the consequences
6 will eventually occur.

7 They should be involved in evaluating prospective
8 surrogates and providing information to the parental couple
9 about the deficits and strengths of the surrogate. Whether
10 or not they should be asked themselves to make the gate-
11 keeper decision, I am not so sure.

12 CHAIRMAN DEWEESE: Thank you.

13 Bob Reber.

14 REPRESENTATIVE REBER: Thank you, Mr. Chairman.

15 Doctor, I guess you are going to be the best
16 person from the professional standpoint that I can ask the
17 question today. It relates to the concerns expressed by you
18 on page nine of the 20-day provision. There were basically,
19 in my mind, two concerns when we addressed that language,
20 and believe me, this Bill as written is not etched in stone.
21 It's not even etched in paper sometimes I think. It's
22 certainly subject to change, the reason for these hearings.

23 My concern was, one, that we track and I alluded
24 to this earlier today, we track as much as possible the
25 consistency that it is existing in the adoption laws and

1 concerns expressed of that procedure. That was one of the
2 reasons why there was the revocation of consent, consideration
3 even given in the first instance. The second concern I
4 had was, what, if any, there could potentially be in a need
5 from certainly not medically, but psychologically, for that
6 surrogate mother in needing to exercise some form of revoca-
7 tion. Where do you then place that to effectively give that
8 individual the best psychological situation to exist in.

9 My question to you then, Doctor, is is there any
10 harm that could befall that individual by moving that revoca-
11 tion period to some other period of the arrangement and
12 still serve the purposes that I think we're both interested
13 in preserving and protecting, I think? Or asked another
14 way, if we move it to the point immediately prior to insemina-
15 tion, like you suggest, is there, in your professional opinion,
16 some psychological formality that might come about as a
17 result of that during the next period of time which would lead
18 up to the point of revocation we placed at the present time
19 in the proposed legislation?

20 DOCTOR WETTSTEIN: I think that the analogy between
21 adoption and surrogate parenting breaks down at this point.
22 People go into adoption not with the intent to adopt. The
23 woman doesn't become pregnant in order to subsequently adopt.
24 In contrast here, the woman does enter into the surrogate
25 arrangement in order to relinquish custody.

1 REPRESENTATIVE REBER: Doctor, can I interrupt
2 you there. This is a very, very important matter. It is
3 probably the most troublesome point of the Bill for me
4 personally. This is a very personally troublesome issue.
5 Do you feel that you or colleagues such as yourself in
6 reviewing the surrogate mother in whatever those interviews
7 or counseling sessions or whatever you want to clarify it
8 as, preapproval of the Court of the parental-surrogate
9 agreement that you would be able to detect, in your opinion,
10 what would be a problematic candidate as a surrogate mother
11 to aid and assist counsel for the intended parents making
12 sure he is in essence dotted all the i's and crossed all the
13 t's, and more importantly, fulfilling a professional role
14 and advising the Court who would ultimately issuing the stamp
15 of approval in the contract at the end of the proceeding
16 proposed?

17 DOCTOR WETTSTEIN: Maybe I should ask what is
18 the standard of proof here? Is it beyond a reasonable doubt?
19 The question is a sole guarantee.

20 REPRESENTATIVE REBER: Let's say, clear and con-
21 vincing evidence.

22 DOCTOR WETTSTEIN: You're asking a mental health
23 professional to make an assessment to predict what is going
24 to happen nine months, and maybe more, twelve months, fifteen
25 months from now. This happens all the time in hospital

1 situations where the psychiatrist is asked to predict future
2 violence in patients and other committees. The legislature
3 changed commitment laws based on the difficulty that
4 psychiatrists have in predicting future behavior, usually
5 violence, of a particular patient. Here we're talking about
6 a prediction of a different sort.

7 There is no way to guarantee. There is no predic-
8 tive test, no psychological test to predict whether she is
9 going to relinquish or not relinquish. All we can do is
10 provide an estimation or assessment of the risks involved.
11 That is to say in the event that while Mary Beth Whitehead
12 might have had a five percent chance of not relinquishing
13 or someone might have a 20 percent chance or a 70 percent
14 chance, we can do that. We can't say she will or won't.

15 REPRESENTATIVE REBER: Let me ask you this. If
16 I am counsel for intended parents, and during the course
17 of that examination, reports, or whatever, I would see any
18 kind of report that says that that candidate for the surro-
19 gate mother provision or position has even a scintilla of
20 possibility under these kinds of provisions, you're going
21 to rule her out from advising your people going forward.
22 When I say your people, your clients, the intended parents.

23 DOCTOR WETTSTEIN: If I am the intended parents,
24 I wouldn't want to take the risk either. They may like to.

25 REPRESENTATIVE REBER: Let me just interject.

1 DOCTOR WETTSTEIN: I'm sorry.

2 REPRESENTATIVE REBER: If you are the psychiatrist
3 that is evaluating intended parents for purposes of the
4 procedure, and I would assume made available to use those
5 kinds of responses from the intended surrogate mother, would
6 you suggest to them that, look, there is a one percent that
7 it is probably not going to happen, but in my opinion as
8 there, I would say I would not want to get involved in that
9 relationship. Would you, as a professional, react that way
10 as well?

11 DOCTOR WETTSTEIN: Sure.

12 REPRESENTATIVE REBER: I don't think there is any
13 need to take it much further. I interrupted you three times.
14 If you want to conclude, go ahead.

15 DOCTOR WETTSTEIN: The need to provide information
16 to the couple, that it's the couple's decision. They may
17 like in fact this woman very much. They may say, well, I
18 understand there is a risk involved, but what effect the
19 relationship builds during the pregnancy. There may be a
20 five percent risk that she won't give up the child will
21 be attenuated during the course of the relationship built
22 between the couple and woman. That's subject to some
23 inference.

24 REPRESENTATIVE REBER: That's all I have. Thank
25 you, Mr. Chairman.

1 CHAIRMAN DEWEESE: You are welcome. Thank you
2 very much.

3 DOCTOR WETTSTEIN: Thank you for taking me out
4 of turn.

5 CHAIRMAN DEWEESE: Cindy Mentzer? We'll go to
6 Delia Stroud. Ms. Stroud is the chairman of the Pennsylvania
7 Committee for Adoption. Welcome.

8 MS. STROUD: Thank you.

9 The Pennsylvania Committee for Adoption which is
10 a local branch of the National Committee for Adoption with
11 seven member agency locations in Pennsylvania, appreciates
12 your invitation to testify here today about House Bill 570
13 and 776 and on surrogacy in general.

14 As an organization concerned with ethical quality
15 services for pregnant women as well as with the best interests
16 of children and the plight of those seeking to adopt, PCFA
17 opposes legitimizing surrogacy. For, a careful analysis
18 of surrogate arrangements affirms that they are inherently
19 damaging to all the parties involved.

20 As noted in the first findings of House Bill 776,
21 female infertility has increased markedly in recent years.
22 According to the United States Center for Disease Control,
23 the number of infertility consultations with doctors has more
24 than doubled. There were two million such visits to doctors
25 in 1983 alone. Yet there were more than 300,000 babies born

1 in 1986 to young, unmarried women, less than ten percent of
2 those young women made adoption plans for their children.

3 Rather than legalizing surrogacy as a solution to
4 infertility, we recommend that Pennsylvania focus on the
5 reasons for the tremendous disparity between the number of
6 children born out of wedlock and the number for whom adoption
7 plans are made.

8 A primary reason for this imbalance is the lack
9 of adequate maternity services and adequate counseling con-
10 cerning the adoption option. If society provides the quality
11 and quantity of services that pregnant women need, fairly
12 presents the facts about adoption, and eliminates needless
13 barriers to adoption, thousands more of these young women
14 will choose that loving option. As noted for example in
15 the Adoption Factbook published by the NCFCA, 13.9 percent
16 of birth mothers who received pregnancy counseling placed
17 their child for adoption in contrast to 1.5 percent of those
18 who received no counseling.

19 Yet in Pennsylvania, a recent Supreme Court decision
20 in re: Baby Girl D, severely restricts the services for
21 which or of which can be reimbursed by adoptive parent fees.
22 This decision threatens the ability of agencies in Pennsylvania
23 to deliver to pregnant women such quality services as first
24 rate medical and hospital care, counseling, housing, and
25 transportation. Rather than eliminate these needed services,

1 one agency has already moved to another State.

2 Moreover, if young women confronting unplanned
3 pregnancies can not legally receive the comprehensive services
4 they desire and need, they may choose to terminate the
5 pregnancy or choose to deliver the baby in another State
6 providing such requisite services.

7 As the amended version of House Bill 836 introduced
8 by Representative Lois Hagarty remedies this situation only
9 in part, we hope that pursuant to your leadership, House
10 Bill 836 will be further amended to eliminate these needless
11 obstacles to adoption in Pennsylvania.

12 I am an infertile woman and an adoptive parent.
13 I understand fully the desperation felt by those who desire
14 to have a family but are unable to conceive. I can nonethe-
15 less state unequivocally that my husband and I would never
16 have resorted to surrogacy. In spite of our desperate wish
17 to become parents, we could not have justified entering
18 into an unethical contract that treats the child as a
19 commodity and a woman as a baby maker.

20 The laudable end of parenthood does not justify
21 using whatever means you may. Instead, the best route to
22 parenthood for infertile couples is adoption, as it legally
23 and ethically meets the needs of all concerned.

24 Unlike adoption, surrogacy creates a class of
25 people who are baby-bearers for money. As such, it threatens

1 the stability of families by exploiting in particular first
2 the woman who conceives the baby with the express intention
3 of selling it, her children, if any, and thirdly, her spouse,
4 if any.

5 Further, surrogacy would destroy the socially
6 beneficial institution of adoption as there is legally little
7 difference between saying a woman may receive money for
8 the transfer of a child she intentionally conceived and
9 saying she may receive money for a child she has accidentally
10 conceived.

11 Moreover, contrary to the second finding of
12 House Bill 776, there is no constitutionally protected right
13 to reproduce. If such a constitutional right to a baby
14 existed, would we not have to allocate babies available
15 for adoption via lottery and provide governmental subsidies
16 to enable every person to have a baby regardless of his or
17 her marital status or ability to care for a child?

18 In addition to the multitude of moral and legal
19 concerns we have with surrogacy in general, the following are
20 some of the specific concerns we have with House Bill 776
21 itself.

22 Number one, it would allow any young woman, age
23 18 or older, regardless if she were single and never before
24 pregnant to become pregnant for hire.

25 The definition of infertile woman is overly

1 inclusive. That was number two.

2 Number three, it would legalize embryo transplants
3 which may or may not involve any genetic or biological
4 contributions from either of the intended parents.

5 Number four, there is no attempt to screen
6 effectively either the woman who is to conceive to determine
7 if she is psychologically suited for such an arrangement or
8 the couple who would receive a child to determine if they
9 can provide a suitable home. Placements of children should
10 be based on preliminary home studies conducted by trained
11 case workers employed by licensed child placement agencies.

12 The contract is inherently unequal as evidenced
13 in the inclusion of a waiver of counsel provision for the
14 surrogate mother. For example, the rights of all parties
15 are always in potential conflict given, inter alia, the
16 surrogate mother's right to revoke consent and the interest
17 of the intended parents to finalize adoption of the child
18 produced.

19 Number six, there is neither a minimum nor
20 maximum fee to be paid to the surrogate. Such a fee, for
21 example, could be limited to actual medical and maternity
22 expenses, reasonable attorney's fees and the loss of any
23 income directly related to the pregnancy.

24 Number seven, among the myriad questions left
25 unanswered by the Bill are the following. What if the child

1 is born deformed or with mental handicaps? What if the
2 intended parents then refuse the child? What if the biologi-
3 cal father dies before or after the child is born? Or what
4 if he seeks a divorce from the infertile woman who has no
5 blood ties to the child produced? Does the infertile woman
6 have any legal rights concerning the child?

7 Thus, even if Pennsylvania decides to legalize
8 surrogacy, House Bill 776 is inadequate. We hope, however,
9 that pursuant to House Bill 570, Pennsylvania prohibits
10 surrogacy and focuses instead on improving its laws to
11 promote rather than hinder adoptions, the ethical solution
12 to infertility.

13 At the least, before validating this unnecessary
14 human and societal experimentation with its concomitant
15 legal entanglements and long-term negative impact on the
16 stability of the family, we ask that you subject it to the
17 intensive scrutiny it deserves as evidenced in these hearings,
18 but also as proposed in Lois Hagarty's resolution for a
19 bicameral, bipartisan Task Force.

20 Again, I appreciate your inviting me to testify
21 and welcome any questions you may have.

22 CHAIRMAN DEWEESE: Do you think we ought to go
23 along with Lois and have another task force?

24 MS. STROUD: Well, I would hope that the hearings,
25 I think are certainly a wonderful first step. I think that

1 the issue is so complex that one day of hearings is not going
2 to do it.

3 CHAIRMAN DEWEESE: I agree that one day of hearings
4 probably won't do it. But there does seem to be an avalanche
5 of material.

6 MS. STROUD: A task force --

7 CHAIRMAN DEWEESE: In the other 50 States as
8 well as some people at the Federal level are looking at it.
9 I was just curious.

10 MS. STROUD: That's relatively a minor concern.

11 CHAIRMAN DEWEESE: I would like to be amenable
12 to Ms. Hagarty's --

13 MS. STROUD: We don't want to unnecessarily spend
14 the taxpayers' money.

15 CHAIRMAN DEWEESE: Gentlemen, ladies, questions,
16 observations?

17 Mike Bortner, and then Bob Reber will be second.

18 REPRESENTATIVE BORTNER: Thank you.

19 I am somewhat interested in your comments on
20 House Bill 836 because I am second sponsor of that Bill.
21 I notice you indicated that it only partially solves the
22 problem. Is the part that you are referring to that is not
23 solved sliding scale fees?

24 MS. STROUD: No, that would only be a part of it.
25 Counseling for both parents. Pre-natal care, the transporta-

1 tion, room and board. Pre-natal care, it would be room and
2 board and counseling and transportation issues such as that
3 as well as sliding scale. Sliding scale is not the only
4 issue.

5 REPRESENTATIVE BORTNER: You are supporting the
6 sliding scale fees in adoption?

7 MS. STROUD: Yes. I think that sliding scale fees
8 could be in adoption.

9 REPRESENTATIVE BORTNER: I don't mean to get off
10 on another Bill, but I think it is relevant, particularly
11 in light of your observations on surrogacy and the idea that
12 people are being paid for babies. Sliding scale fees means
13 you pay a fee in adoption based on your income; is that
14 correct?

15 MS. STROUD: That would be correct, yes.

16 Let me just give an example. For the agency from
17 which we adopted which happens to be in Texas, the Edna
18 Gladin Home, has a sliding scale fee. The fee paid by the
19 adoptive parents cover less than 60 percent of the costs
20 incurred by the Home. So in no case are you selling a baby
21 even when you have a sliding fee scale. The private agency
22 are not covering all of their costs by adoptive parents' fees.
23 They require donations, private donations to make up the
24 deficit. It does, in no way, cover the entire costs of all
25 the services rendered to the birth mother and adoptive

1 parents. So the problem of dealing in humanity or baby
2 selling would not be present even with sliding fee scales.

3 REPRESENTATIVE BORTNER: I understand that, but
4 isn't the incentive with the agency to place a child with the
5 parents that have the highest income?

6 MS. STROUD: On the contrary. Where you have a
7 sliding fee scale, you could still continue to provide
8 quality comprehensive services that are needed by both the
9 birth mother and the prospective adoptive parents, and the
10 child. Yet also work with couples with lower means because
11 those with greater means would help subsidize some of the
12 deficit in the costs. Because, as I say, even with a sliding
13 fee scale, no agency is covering all the costs at all.

14 REPRESENTATIVE BORTNER: I don't want to get off
15 on that. I was curious of how you would reconcile what I
16 see is some contradiction there. By the way, I am familiar
17 with the Edna Gladin Home. My sister-in-law adopted a child.

18 MS. STROUD: Oh, did she? That's a marvelous
19 home.

20 REPRESENTATIVE BORTNER: Just one other question
21 then. You are affiliated then with the National Adoption
22 Center?

23 MS. STROUD: No, I am not affiliated. The National
24 Committee for Adoption. I am on the National Committee for
25 Adoption. I am not affiliated with the National Adoption

1 Center.

2 REPRESENTATIVE BORTNER: I'm sorry. The National
3 Committee for Adoption. The gentleman that testified here
4 this morning.

5 MS. STROUD: Bill Pierce.

6 REPRESENTATIVE BORTNER: I missed his testimony,
7 but I looked at his written statement. Do you agree with
8 him? He seems to imply there are plenty of children out
9 there to adopt.

10 MS. STROUD: There is no question that there are
11 babies available to adopt. One has to be persistent. But
12 the idea that there is no babies available for adoption is
13 indeed not true. In the case, for instance, with the
14 Whitehead case, they had not pursued adoption extensively
15 at all. So, to use as a rationale for our legalizing
16 surrogacy that there are no babies to adopt, that is
17 inaccurate.

18 REPRESENTATIVE BORTNER: If there are, I would
19 like to know where they are. I could place a number of
20 them right away. I don't have a big practice for adoptions.
21 I have clients and just friends who have been waiting and
22 are very anxious to adopt.

23 MS. STROUD: Is there a disparity? There is a
24 difference in saying there is none and in saying there are
25 more people. There is no question. In my testimony I talk

1 about the rise of infertility. You certainly have a dis-
2 parity in those numbers. But why not go through the avenue
3 of one that is already legal, already has been investigated,
4 has been in place for years and try to promote that, enhance
5 that, encourage, educate young women about how adoption is
6 a loving way to form a family instead of having these
7 hundreds of thousands of young women who don't want to be
8 single parents, but also do not want to terminate their
9 pregnancy and are really left in that situation.

10 There are many more children who would be placed
11 if we could improve the counseling, education about adoption
12 option and improve the law.

13 REPRESENTATIVE BORTNER: The comments I am hearing
14 here is there is a shortage of white babies to adopt. The
15 people I am talking about would be happy to adopt a black
16 child, an Asian child, a racial mixed child. The people
17 I am familiar with just want to have a baby.

18 MS. STROUD: They run an adoption fair for the
19 last two years in Philadelphia which was the first of its
20 kind in that area wherein our last one we had 28 organizations
21 there who place children in the Philadelphia area and South
22 Jersey area. The last fair attracted over 350 people. There
23 are groups there that -- we had groups dealing with minority,
24 international adoption, special needs as well that were not
25 saying we're not -- our lists are all closed. We're not

1 taking any others. There were ones saying, there is a
2 waiting list.

3 REPRESENTATIVE BORTNER: What is the typical
4 waiting?

5 MS. STROUD: I don't think I can -- I can not
6 generalize that in that way. With some groups, they were
7 saying from the time of the approval to the actual placement,
8 was a year and a half. At the Edna Gladin Home, that is
9 the case. It is not five years.

10 REPRESENTATIVE BORTNER: Just one other point.
11 You used the example of the Edna Gladin Home. You just don't
12 walk in there and sign up to adopt a baby.

13 MS. STROUD: For people in this area. For
14 people in the Texas area, where it's in the State, it's
15 much easier. But, the majority of the babies are placed
16 there.

17 REPRESENTATIVE BORTNER: I don't know what your
18 experience was, but you also make a tremendous commitment
19 as I understand it at the Edna Gladin Home before you adopt
20 a baby.

21 MS. STROUD: Absolutely not at all.

22 REPRESENTATIVE BORTNER: You weren't required to
23 do volunteer work and things like that?

24 MS. STROUD: No. It amazes me that people don't
25 want to do it. We have many adoptive parents who do not

1 dedicate hours in volunteer work at the adoption agency.

2 REPRESENTATIVE BORTNER: Just in talking, this
3 question of revocation. At the Edna Gladin Home, as I
4 recall reading, there is a very major case in litigation
5 involving a woman there who gave birth to a child and in
6 fact revoked her decision.

7 MS. STROUD: Her rights had been legally termina-
8 ted by the Court.

9 REPRESENTATIVE BORTNER: She refused to leave the
10 home and give up the baby.

11 MS. STROUD: That went through the Supreme Court
12 and said she had absolutely no grounds for having challenged
13 that.

14 REPRESENTATIVE BORTNER: That was made after she
15 gave birth?

16 MS. STROUD: After she gave birth, she had placed
17 this child. Her rights had been legally terminated. Then,
18 after that point, she decided she wanted the child back.
19 A completely different situation.

20 CHAIRMAN DEWEESE: We still have several questions.
21 I believe Mr. Reber, please.

22 REPRESENTATIVE REBER: Thank you, Mr. Chairman.

23 A quick question, observations, and maybe your
24 response. I find it extremely troublesome that someone like
25 yourself coming from the representation of a group like

1 yourself and listening in part to some of the comments of
2 Mr. Pierce this morning would take the position that there
3 is no constitutionally protected way to reproduce, that would
4 seem to me to go against the basic tenants of the ultimate end
5 results of what you people are in the business of doing or
6 a byproduct.

7 MS. STROUD: I am not in the business of doing it
8 nor is Mr. Pierce. He is not the head of the adoption
9 agency. I don't understand your question, no.

10 REPRESENTATIVE REBER: I guess a counterposition
11 would be, if there is no constitutionally protected right
12 to reproduce, there is a protective right to enforce sterili-
13 zation or something of that or coming and allowing people
14 not to go forward to reproduce.

15 MS. STROUD: I can't make that logical extension.

16 REPRESENTATIVE REBER: I can't see how you made
17 the logical extension to say there is none in light of the
18 grounds in the Skinner case and Griswold and the Ninth
19 Amendment and some of the arguments we heard earlier today
20 concerning amendment rights and what have you.

21 MS. STROUD: Griswold talked about a right to
22 privacy as did the very controversial Roe v. Wade.

23 Interestingly enough, if indeed the constitutional
24 right to procreate exists, such a right is not held only by
25 a woman. It is also held by a man. Yet in the very contro-

1 versial Roe v. Wade decision, in which the woman was afforded
2 pursuant to the constitutional right of privacy and an uncon-
3 ditional right to terminate a pregnancy in the first trimester.
4 How could the Supreme Court afford that right?

5 REPRESENTATIVE REBER: It was a limited right
6 because if it was unconditional, she could do it at will.

7 MS. STROUD: Well, she can have a legal abortion
8 by going in and requesting one. That is her legal right.

9 REPRESENTATIVE REBER: Not in the second and
10 third trimester.

11 MS. STROUD: I said the first.

12 REPRESENTATIVE REBER: I understand.

13 MS. STROUD: That's not what I said. I said in
14 the first trimester. Yet they afforded her that right with-
15 out any discussion of a competing constitutional right that
16 the biological father would have had to procreate because
17 she would have been in direct conflict. If such a right
18 exists, how could the Supreme Court not discuss that right
19 in that decision? There is no such discussion of the right.

20 We would have two absolute polar rights there,
21 biological father's right to procreate and the mother's
22 right to privacy. So, I have not seen this constitutional
23 right to procreate established by the case law.

24 REPRESENTATIVE REBER: I understand, ma'am. Let
25 me ask you this. I have a situation, a hypothetical situation.

1 Clients of mine are tragically killed in an airplane crash.
 2 I am appointed by them through the Court as guardian of
 3 their four-year-old child. Obviously, I can't handle that.
 4 I come to you as executive director of the agency and desire
 5 for you people to move forward with the implementation of
 6 an adoption process for that child. I guess scenarios like
 7 that take place occasionally. There are situations.

8 MS. STROUD: They may well. I am not directly
 9 aware of that.

10 REPRESENTATIVE REBER: In the course of coming
 11 to you, I say to you, after going through all the information
 12 of what has happened and I say, look, by the way, this child
 13 was the product of a surrogate arrangement. Would you have
 14 trouble placing that child for adoption?

15 MS. STROUD: No, I don't see again why that means
 16 -- why that has to do anything with the stance I would feel.
 17 That child is there. That child has been produced. The
 18 best interest of that child has to be protected. That's one
 19 of the reasons we have such great concerns about that. Of
 20 course, I would place that child for adoption.

21 REPRESENTATIVE REBER: That's all the questions
 22 I have. Thank you very much.

23 CHAIRMAN DEWEESE: John Connelly.

24 MR. CONNELLY: A question for you about the
 25 availability of adoptive children. If you don't mind telling

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 SF-740

1 me, how long did you wait?

2 MS. STROUD: The letter was sent by my husband
3 and I to the agency in March of 1980, and in August of '81,
4 we had our son.

5 MR. CONNELLY: You are aware, there was testimony
6 earlier this morning by a family law practitioner from the
7 Philadelphia area who indicated that she had over 20 couples
8 that were interested in placing children through adoption,
9 that she attends all the national family law type seminars
10 and conventions, speaks to attorneys from all over the
11 country, and I personally have the same experience practicing
12 family law extensively, and universally, it's the same
13 response you heard from Representative Bortner. Children
14 are difficult to find.

15 MS. STROUD: But, it's not because there are not
16 babies being born to unwed young women who might well choose
17 adoption. If the services are available, counseling available,
18 I think once again, you got to go back to what perhaps is
19 the root of the problem rather than some quick fix in an
20 area that is fraught with legal and moral problems.

21 MR. CONNELLY: Do we not have to deal with what is?

22 MS. STROUD: Absolutely.

23 MR. CONNELLY: Those that support surrogacy want
24 to make changes. Those that want to eliminate surrogacy and
25 expand adoption rights want to make changes. We have to deal

1 with what is, not what could be.

2 MS. STROUD: Adoption is. It does exist.

3 MR. CONNELLY: As a realistic alternative as it
4 stands now, couples who are tenacious in their attempt to
5 find children who have the connection to locate children
6 often wait extended periods of time before they can have
7 children placed with them. That is a reality. And, in
8 effect, what you are saying today is, we need some changes
9 in adoption laws in order to make it easier.

10 MS. STROUD: Absolutely.

11 MR. CONNELLY: Obviously there is a problem.
12 Your remedy is to adjust adoption laws in order to make it
13 easier to adopt. Those that support surrogacy suggest that's
14 the other alternative.

15 My other question to you is, do you agree with
16 the Supreme Court decision in Roe?

17 MS. STROUD: Roe versus Wade, it is the law of
18 the land. I am not pro-choice.

19 MR. CONNELLY: You are pointing out, in talking
20 to Representative Reber what you believe was a constitutional
21 argument the Court made and did not reflect certain parts
22 of it that were relating to the right to procreate. You do
23 not agree with the decision as written?

24 MS. STROUD: I can say I do not agree with the
25 decision as written. I nonetheless say, intellectually, I

1 can see where they got to where they are. That is not my
2 personal --

3 MR. CONNELLY: You can rely on a portion of it
4 to support your position relating to the rights to --

5 MS. STROUD: Do I think the decision -- I see
6 what you are talking about.

7 MR. CONNELLY: It strikes me that you don't agree
8 with the decision except when it supports your view in
9 another manner.

10 REPRESENTATIVE DAWIDA: Mr. Chairman, I object
11 to the House as that being ridiculous.

12 MS. STROUD: I am reading the law of the land.

13 CHAIRMAN DEWEESE: After a year and a half of
14 being Chairman, this is the first time I ever felt like a
15 Judge. I have to admit I am not circumspect enough to know
16 what to do with your objection.

17 REPRESENTATIVE DAWIDA: I just object.

18 CHAIRMAN DEWEESE: Do other people have questions?

19 MS. STROUD: Let me just to counsel. Everyone
20 is talking about this right that exists and talking about
21 case law. I am giving you Supreme Court decision that exists
22 on the books and is indeed law. I'm saying it is not found
23 there at all. Not only is it not found there, it is very
24 striking in its omission.

25 MR. CONNELLY: It is an omission as opposed to --

1 MS. STROUD: If such a right existed, they would
2 have discussed it. That doesn't mean whether you agree with
3 what they did in the decision or not. Those are two
4 different things.

5 MR. CONNELLY: Do you feel had it existed it would
6 have been discussed?

7 MS. STROUD: I certainly, yes, would say that.

8 MR. CONNELLY: I can respectfully disagree with
9 you and Representative Dawida's perception without being
10 ridiculous.

11 MS. STROUD: I did not call you ridiculous.

12 MR. CONNELLY: You are very perceptive.

13 CHAIRMAN DEWEESE: We have a number of people who
14 have to catch an airplane. I am not one of them.

15 MS. STROUD: I thank you very much.

16 CHAIRMAN DEWEESE: We have three more witnesses.
17 But on page two of your testimony at the bottom of the page,
18 we recommend that Pennsylvania focus on the reasons for the
19 tremendous disparity between the number of babies born out
20 of wedlock and the number placed for adoption. This is a
21 very sensitive area of questioning, but could you expand for
22 the Committee on what the racial aspects of the adoption
23 picture are and give us some statistics or some other view
24 for Pennsylvania.

25 MS. STROUD: I could not do that broken down for

1 Pennsylvania. I do not have those.

2 CHAIRMAN DEWEESE: Do you have anything on the
3 national level, even a rough?

4 MS. STROUD: On the national level, I know that
5 50,000 -- over 50,000 unrelated adoptions, international
6 adoptions comprised almost 9,000 of the statistics. And
7 that there are minority children available for adoption.
8 There are more of those. There are some waiting for homes.
9 The statistics are a bit different when you deal with the
10 minority as opposed to Caucasian.

11 CHAIRMAN DEWEESE: Bluntly, bluntly we're told
12 inside sidebar conversation that there are many Hispanic
13 or minority children available for adoptions. There are
14 very, very few white children available for adoptions. Is
15 this true or is this not true? Between the dialogue I
16 monitored with Mr. Bortner and Mr. Pierce earlier this
17 morning, I am really confused. Is this true or not true?

18 MS. STROUD: It is true that there is minority and
19 Hispanic available for adoption and there are many fewer
20 white children available.

21 CHAIRMAN DEWEESE: There is a disparity.

22 MS. STROUD: Yes, there is a disparity. It is
23 a disparity. We're saying, nonetheless, that it can be
24 treated and cured in a way other than surrogacy. That's our
25 point. No one is trying to deny. If there are couples that

1 want to adopt, there are children available for adoption.

2 That was not stated. I would not state that.

3 CHAIRMAN DEWEESE: What ways around that so I
4 can just look at you and without reading this one more time?

5 MS. STROUD: One of the ways around that is to
6 insure that agencies are able to offer young women confronted
7 with unplanned pregnancies comprehensive pregnancy services
8 so that more would choose not to abort and not to go elsewhere
9 to carry a baby to term, and that they would get counseling
10 so they can at least consider fully and intelligently the
11 adoption options. Those are two very specifics.

12 CHAIRMAN DEWEESE: Mr. Fattah from Philadelphia.

13 REPRESENTATIVE FATTAH: It's my understanding that
14 the number of pregnancies for black and white for females are
15 about even in the State and what has happened is that many
16 more of the people who come from Hispanic or black families
17 go to term with the pregnancy. That is not necessarily so
18 for many of the white parents of the children. You know,
19 they terminate their pregnancies. Is that the point you
20 are raising that needs to be more counseling and more up
21 front? So that perhaps more of these babies, more pregnancies
22 go to term and, therefore, be available for adoption?

23 MS. STROUD: That would be one thing, yes.

24 REPRESENTATIVE FATTAH. That the problem on the
25 other end is not enough minority families are seeking to

1 adopt and not enough white families are seeking to adopt,
2 want to adopt minority children?

3 MS. STROUD: That issue I have not dealt with
4 all in the comments. But, I do know that there is a
5 difference. I can not state the statistics for you. I do
6 not have them.

7 REPRESENTATIVE FATTAH: Thank you very much.

8 CHAIRMAN DEWEESE: Rather than belabor the issue,
9 thank you very much.

10 I had a few more questions. I will ask you at
11 the next hearing or some other time. Thank you very much.

12 MS. STROUD: Thank you.

13 CHAIRMAN DEWEESE: The next person we'll hear from
14 is Cindy Mentzer from RESOLVE, Inc., the Pittsburgh area.
15 Then, Mr. Fetterhoff and then Ms. Amato. Thank you all for
16 being very patient and enduring. This is one of the longest
17 hearings we have had this year. But, I think it's been
18 worthwhile at least for my perspective. Thank you for joining
19 us, Cindy, and thank you for waiting into the late afternoon.

20 MS. MENTZER: Thank you for inviting me.

21 My name is Cynthia Mentzer, I represent RESOLVE,
22 Incorporated, and I am here today to tell you about infertility.
23 Infertility is defined as the inability to conceive a
24 pregnancy after one year of trying or the inability to carry
25 pregnancies to a live birth.

1 The couple desires a child, yet is unable to
2 produce a child. They must move outside the privacy of their
3 home and marriage and go to the medical community for help
4 in attaining parenthood. They begin with testing on both
5 partners. Female testing may include a physical and complete
6 history, basal body temperature charting, post-coital tests,
7 urine and blood tests for various hormone levels, hystero-
8 salpingogram, endometrial biopsy, cervical mucous tests,
9 and laparoscopy. Initial testing for the male includes a
10 physical and complete history, semen analysis, and urine and
11 blood tests for various hormone levels.

12 The testing may take several months, often leading
13 to still further testing. Treatments selected may and often
14 do take years. Medical treatments and surgeries are expensive,
15 many are not covered by insurance. Medical testing and treat-
16 ments are often intrusive, embarrassing, and can be quite
17 painful.

18 During the medical workup and treatment, infertility
19 is also taking a tremendous emotional toll. If the couple
20 has been open with family and friends about their medical
21 pursuits, they open themselves up for the well-meaning but
22 poorly given advice of, relax, take a vacation, drink some
23 wine, stand on your head. More likely, the couple keeps
24 their medical pursuits private. Remarks from family and
25 friends then include, we're ready for grandchildren, what's

1 the matter, don't you like kids, who are you going to hug,
2 a dollar bill.

3 Whether you've come out of the closet or not, it
4 hurts to learn of a friend's pregnancy, it hurts to see
5 babies in strollers pushed by women pregnant again, it hurts
6 to suffer the side effects of a drug therapy only to have
7 a menstrual period month after month, and it hurts to have
8 your 35th birthday and still no pregnancy, it hurts to have
9 extensive corrective surgeries that don't work, it hurts to
10 celebrate Christmas and still no child, it hurts to have
11 yet another treatment fail with options becoming less and
12 less, it hurts when the months and months turn into years
13 and still no baby.

14 This is true for one in six couples of childbear-
15 ing age or roughly ten million people in the United States.
16 Infertility is attributed 40 percent of the time to the
17 female, 40 percent to the male and 20 percent to both
18 partners. Fortunately, with proper medical care, at least
19 50 percent will achieve a pregnancy and birth.

20 But for still too many infertile couples, the
21 medical community is unable at this time to help them become
22 parents. The options available to these infertile couples
23 are adoption, childfree living, or surrogate parenting.

24 Adoptions of healthy infants are a dwindling
25 option as there are currently 50 couples wanting to adopt an

1 infant for every one baby available.

2 Childfree living should be a choice, freely,
3 confidently, positively chosen, not merely accepted because
4 there is nothing else.

5 Surrogate parenting is an option not for everyone
6 but an option to be considered. It is another way of
7 becoming a parent.

8 I know the joys of parenting. I have held my
9 baby in my arms. I have heard the words, Mommy, I love you.
10 I have watched my child take her first steps. I've seen her
11 run and play. We've lied in the grass and looked at the
12 clouds. I've seen her marvel at a flower and delight at a
13 bug. I've become young again looking at the world through
14 her eyes. I know the pride of being a parent. I know the
15 fears and frustrations too. I know that complete joy.

16 I will never know or experience a pregnancy.
17 But, I am a parent. I was very fortunate to adopt. It
18 doesn't matter how a child comes into your family, parenting
19 makes you a parent.

20 How and whether to have a family in the view of
21 RESOLVE is a very personal decision. Currently, RESOLVE
22 neither favors nor opposes surrogating. RESOLVE is committed
23 to preserving and upholding legal options for couples who
24 wish to have a family.

25 Children that come to an infertile couple by

1 birth or otherwise are wanted children. They have been
2 desired, hoped for, yearned for, thought about, planned.
3 They are wanted children. They are loved.

4 I would be happy to answer any questions you
5 may have.

6 CHAIRMAN DEWEESE: For my own personal information,
7 just so I can have a better idea of where each witness comes
8 from, Roe versus Wade, are you pro-choice, are you not pro-
9 choice, what is your perspective on that?

10 MS. MENTZER: Personally, I am pro-choice. I am
11 speaking today representing RESOLVE. I sit on the Board of
12 Directors of RESOLVE, Incorporated, which is the national
13 organization. I sit on the Board of the Pittsburgh Area
14 RESOLVE. Currently, our national RESOLVE policy is we favor
15 nor oppose. That is under consideration. I am not at
16 liberty to divulge that. I can say we have had a referendum
17 that was held this summer with 46 chapters nationwide. The
18 Board meets September 19th and 20th. This is on the agenda.
19 I would be happy to tell you the Committee results after.

20 CHAIRMAN DEWEESE: That was my own personal
21 curiosity.

22 MS. MENTZER: May I say --

23 CHAIRMAN DEWEESE: Counsel says the Committee would
24 like to know the results of the overall poll of the overall
25 survey.

1 MS. MENTZER: All right.

2 Pittsburgh RESOLVE vote was that National RESOLVE
3 recognize surrogacy as an option and asks that advocacy or
4 Legislature to keep it open as an option.

5 CHAIRMAN DEWEESE: These are questions that come
6 before our Committee. There is some legislation before the
7 Committee on abortion. We have adoption legislation before
8 our Committee. It's just my own advantage to know where
9 people are coming from because I think --

10 REPRESENTATIVE FATTAH: Was the referendum on
11 Roe versus Wade or on surrogacy?

12 MS. MENTZER: Our referendum was on RESOLVE policy
13 concerning surrogacy.

14 CHAIRMAN DEWEESE: I am glad you straightened that
15 out. I was mixed up.

16 REPRESENTATIVE DAWIDA I was going to ask you
17 that, too. I hadn't figured out why you were asking that
18 question. Maybe later, you can explain it to me.

19 CHAIRMAN DEWEESE: You know me. I am unabashed.
20 It gives me an idea because I think they are inextricably
21 linked to the subject whether one wants to admit it or not.
22 There is some degree of feeling of pro-choice on not only
23 this issue, but seat belts. I know that's ridiculous and
24 peripheral, but nevertheless, when we're talking about
25 abortion, when we're talking about surrogacy, when we're

1 talking about adoption, it gives me a better frame of
2 reference. As the Chairman, I am going to assume that as a
3 prerogative and ask that question.

4 REPRESENTATIVE DAWIDA: May I ask a question?

5 CHAIRMAN DEWEESE: You can ask innumerable
6 questions.

7 REPRESENTATIVE DAWIDA: Sorry, I don't want to
8 take away one of your prerogatives. I think I am probably
9 for surrogacy and probably characterized as pro-life, so I
10 may confuse your whole scenario.

11 CHAIRMAN DEWEESE: We've been confusing each
12 other.

13 REPRESENTATIVE DAWIDA. Ms. Mentzer, I appreciate
14 your thoughts. You skipped one by the way. You forgot the
15 boxer shorts. That's one.

16 MS. MENTZER: Oh, yes.

17 REPRESENTATIVE DAWIDA: I am not quite sure I
18 understand --

19 REPRESENTATIVE FATTAH: Mr. Chairman, can you ask
20 them to explain to the Committee the reference of the boxer
21 shorts?

22 CHAIRMAN DEWEESE: There are many things discussed
23 today. What's happening?

24 REPRESENTATIVE DAWIDA: Boxer shorts is one of the
25 recommendations that every infertile male is recommended to

1 pursue by his family and friends and other willing people.

2 My question is, you made a point of saying
3 basically you felt that RESOLVE and your group felt that
4 surrogacy was a legitimate option. I didn't get the sense
5 though in regards to the two pieces of legislation before
6 us whether you felt that that piece of legislation was an
7 appropriate one, and you didn't deal with that. Was that
8 by choice? Do you have an opinion on how we should regulate
9 or if we should regulate?

10 MS. MENTZER: I was under the understanding that
11 I was here representing RESOLVE, and in our official policy,
12 we neither favor nor oppose. I felt I could not comment.

13 REPRESENTATIVE DAWIDA: The philosophical question
14 of whether or not -

15 MS. MENTZER: Personally, I believe surrogacy
16 should be an option, and I am against House Bill 570.

17 REPRESENTATIVE DAWIDA: Thank you.

18 CHAIRMAN DEWEESE: How about Mr. Reber's proposal
19 and some of the ostensible changes that could take place
20 that were discussed earlier today. Do you have any observa-
21 tions that would be salient as far as changes in his proposal?

22 MS. MENTZER: I believe that we should have
23 legislation, and there should be guidelines, and that this is
24 obviously a very complicated issue. We need to really investi-
25 gate with House professionals and others interested to allow

1 -- I am concerned with the 20-day after wait. That seems
2 to be an issue at the discussion today. Reading at home,
3 I felt that -- I felt it should be in there. I adopted
4 privately. I had my child in my home when she was four
5 days old. But, I was at risk. I cared for that child in
6 my own home until parental rights were terminated. I under-
7 stand.

8 CHAIRMAN DEWEESE: How long was that?

9 MS. MENTZER: Three months.

10 CHAIRMAN DEWEESE: Again, Michael, please forgive
11 me. If it is not appropriate, you just tell me and we'll
12 go on.

13 After four days, again thinking of Ms. Hagarty's
14 legislation and other adoptive legislation before the
15 Committee, did you know who the biological parents were?

16 MS. MENTZER: We have not met. Since then, we
17 have been corresponding by letter. We have spoken over the
18 telephone. I would very much like to meet.

19 CHAIRMAN DEWEESE: I probably should have asked
20 that question to Delia and Mr. Pierce earlier. Do people
21 normally know, or is it half and half?

22 MS. MENTZER: Every situation is different. I
23 did not adopt through an agency. I adopted privately.

24 CHAIRMAN DEWEESE: Mr. McVerry, any questions?
25 Mr. Reber.

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REPRESENTATIVE REBER: A couple of observations, frankly.

Other than being not an adoptive parent, I think I experienced everything in your two pages. I would like to say you are the first witness today that I agree with everything you have said before this Committee, including your right to neither favor nor oppose the concept of surrogate parenting. I appreciate the candor with which you exhibit the concerns that exist on this issue for many ends of the spectrum of people that have to deal with troublesome issues. Yes, I had the boxer-short routine as part of my experience. Thank you, Mr. Chairman.

CHAIRMAN DEWEESE: You are welcome.

MS. MENTZER: May I comment briefly on 836 or not?

CHAIRMAN DEWEESE: Absolutely. You can expatiate on the matter.

MS. MENTZER: Obviously, I am very interested in adoption as an adoptive parent and RESOLVE is too because many of my members became adoptive parents. I would be happy to see clarifications requiring adoptive expenses. I do want to mention that I would like to see counseling permitted for both parents. In my experience as an adoptive parent and working with RESOLVE, I have met many birth mothers, and my heart goes out to them. I feel counseling, counseling would help anyone to make a decision under stress-

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1 ful situations. Obviously, a person with an unplanned
2 pregnancy is under a stressful situation. They have to make
3 a very big decision in their lives. To have an objective
4 person to help them to weigh the pros and cons and see all
5 the options available can only help everyone involved; the
6 adoptive parents, the adoptee, birth parents, and all of
7 society. I would hope that that would be put back in the
8 Bill to allow for counseling.

9 CHAIRMAN DEWEESE· Terry McVerry.

10 REPRESENTATIVE MCVERRY What about sliding scale
11 fees and reimbursement for transportation and pre-natal
12 medical care and the other items that are being excluded
13 from inclusion in that Bill, excluded as reimbursable
14 expenses. Do you think sliding scale fees are appropriate
15 or inappropriate?

16 MS. MENTZER: Personally, I think they are
17 inappropriate because there is the possibility of whoever
18 decides -- if there are ten people on the list, and only
19 one person gets the baby, I think that is very open for that
20 one person chosen to have a higher income. It's possible.

21 REPRESENTATIVE MCVERRY· What about other expenses
22 that were excluded by the Pennsylvania Supreme Court decision
23 related to transportation?

24 MS. MENTZER: Prior to that decision, it was my
25 understanding that expenses, transportation, room and board

1 were to have never been in the State of Pennsylvania. They
2 are permissible in other States. Personally, I think it
3 would be all right. Pre-natal care is very important. I
4 would hope that that would be included. I thought that was
5 in 836.

6 REPRESENTATIVE MCVERRY: It is. Thank you.

7 MS. MENTZER: Pre-natal care is not just for the
8 birth mother, but the child does benefit.

9 CHAIRMAN DEWEESE: Did you ever testify before?

10 MS. MENTZER: No.

11 CHAIRMAN DEWEESE: You have done a superb job.
12 You have come through very, very credible as have the people
13 that have preceded you. Thank you very much for your
14 testimony. Despite the fact that Dawida probably thinks
15 that DeWeese has made up his mind completely, this thing is
16 more complex, I think, than any issue period that I can
17 recollect.

18 MS. MENTZER: I agree.

19 CHAIRMAN DEWEESE: I hear somebody. I think, well,
20 that makes sense and then I hear somebody else, and I think,
21 that makes sense. So thank you very much.

22 MS. MENTZER: Thank you for your time.

23 CHAIRMAN DEWEESE: Mr. Fetterhoff, will you bring
24 that phalanx forward? You can bring anybody you want to.
25 You have been very kind to put up with me for 12 years, let

1 alone one afternoon. You were also, as Counsel reminds me,
2 very gracious to not necessarily be rigid relative to when
3 you testified. For the second time in one minute, thank
4 you for that.

5 MR. FETTERHOFF: We understood that there are
6 many witnesses who have more inconveniences than we had to
7 even though we drove from Harrisburg.

8 For the record, I should mention that I am
9 Howard J. Fetterhoff, the Executive Director of the
10 Pennsylvania Catholic Conference. I have with me Mr.
11 Viglietta of our staff, who works on this issue with me, Mr.
12 Chire (phonetic), our communications officer and Father
13 George Newmeier (phonetic) of the Diocese of Pittsburgh,
14 who is a member of our Conference. We are interested in
15 this issue as you can see.

16 As you know, our Conference represents the
17 Catholic Diocese of the State. We are opposed to surrogate
18 parenting and think it should be prohibited. Regarding
19 House Bill 570, I think it needs some study to clear up some
20 of the questions that were brought up this afternoon.

21 To set the issues in context, first of all, let
22 me say this. I think it's a benefit to a great extent to
23 have heard many of the other witnesses. Our opposition to
24 this is not based on a judgment of the intentions or aspira-
25 tions of either infertile couples or people in the profession

1 of arranging surrogacy contracts.

2 There are many good objectives and understandable
3 objectives in this whole process. But, we have difficulty
4 in the means to those objectives. I will try to explain
5 that as I go.

6 To start with, we have given a brief overview of
7 Catholic teachings on marriage and family and then got into
8 some specifics on the issue of surrogacy. I have some
9 additional questions that occur to me because of hearing
10 the other witnesses.

11 According to the Catholic Church, marriage is
12 a sacred commitment in which a man and woman vow to share
13 their lives totally, to be faithful conjugally and to remain
14 open to procreating children only through each other as an
15 expression of their mutual love. If the marriage is blessed
16 with children, the parents assume the additional responsibil-
17 ity of providing for child's well-being.

18 Children are persons before and after birth and
19 entitled to the rights and respect due all persons. To
20 answer a little bit of your questions to the others about
21 Roe versus Wade.

22 CHAIRMAN DEWEESE: I wasn't going to ask you.
23 That's a compliment to your integrity and to your stick-to-
24 itness.

25 MR. FETTERHOFF. Thank you, I appreciate that.

1 They are not considered to be possessions of the
2 parents. Consequently, no one has such an absolute right
3 to a child that any means are acceptable to obtain one.
4 Parenthood is not a transitory commitment. It can never be
5 denigrated to the level of a commercial transaction.

6 The Catholic Church places a special emphasis on
7 the significance of a stable family. The family is the
8 place where individuals learn to accept and love each other
9 as children of God. It is where individuals grow together
10 physically, emotionally, morally and spiritually in prepara-
11 tion for becoming productive members of society. The family
12 is a vital unit of society.

13 However, respect for the integrity of marriage,
14 family cohesiveness, and the innate dignity of all persons
15 is not only a question of religious or private morality,
16 although in answer to earlier questions raised, we certainly
17 do have more religious convictions on this issue apart from
18 the specific social consequences. But, it's a concern that
19 we have for all who strive to promote and maintain the common
20 good. Sound public policy has always and should always
21 continue to protect, enhance and support the family, and the
22 institution of marriage as being a key ingredient of an
23 enduring society.

24 In our view, the surrogate mother concept weakens
25 the institution of marriage and the family. By introducing

1 a third party into the exclusive commitment of the couple,
2 the marriage loses an essential aspect of its unity. Family
3 relationships become redefined in terms of contract law.
4 risking the reduction of human beings to the status of
5 property. Therefore, surrogate mothering is contrary to
6 sound public policy on moral and ethical grounds according
7 to our teachings.

8 Regarding the child of surrogacy arrangement.

9 By means of a premeditated agreement, the child conceived
10 and born to a surrogate arrangement enters the world without
11 being able to establish and maintain a substantial relation-
12 ship with his or her genetic mother. The relationship is
13 intentionally destroyed in advance in accordance with the
14 terms of the surrogacy contract.

15 Although the full effect of this disconnection
16 may never be known, it seems clear that the child will
17 encounter a serious self-identity obstacle on the path of
18 maturity. Moreover, the danger of self-alienation is com-
19 pounded when the child is the product of a commercial
20 transaction. When in the case the surrogate mother is paid
21 a fee to produce a child. If the adult participants in
22 such arrangements view the child as a commodity rather than
23 the creation of human love, it should not be surprising for
24 the child to eventually see himself in the same light.

25 In addition, several other questions need to be

1 asked. For instance, and these were asked before by others,
2 would the surrogacy contract be void if the child is born
3 with a handicap to the displeasure of the infertile individual
4 or couple? If so, where does that leave the child? Or, what
5 if pre-natal testing indicates that the child will be born
6 with a deformity? Would then the surrogate mother be required
7 to abort that child or to keep him or her herself?

8 Perhaps one of the parties may simply change his
9 or her mind about the agreement during the course of pregnancy.
10 What happens then? We have been wrestling with that today.
11 I have questions about that later I want to bring up.

12 If the surrogate mother has other children, what
13 message is given them when they see their mother giving away
14 a newborn brother or sister? These are but a few of the
15 potential problems for the child of surrogate mothering
16 contracts. We suspect there are many others which are
17 unforeseen at present.

18 Proponents of regulating instead of prohibiting
19 these arrangements contend that a carefully crafted legal
20 contract would be able to anticipate and address many of
21 these problems. We dispute this claim because surrogacy
22 is such an emotionally charged situation where the human
23 factor plays such a permanent role that it is virtually
24 impossible to provide adequate protection for all the parties
25 involved.

1 It is also impossible according to some mental
2 health experts to have a fail-safe counseling as indicated.
3 A contract may be able to anticipate many of the legal
4 problems of surrogate mothering, but it would not foresee
5 the total impact in human terms upon the rights and needs
6 of the people involved.

7 Surrogate mothering arrangements tend to treat
8 children as commodities which are ordered and paid for upon
9 delivery. In our society, we are accustomed and encouraged
10 to negotiate deals for the purchase of houses, televisions,
11 automobiles, and so on, but up until now, not for the
12 purchase of a child.

13 The fact that surrogacy constitutes such a
14 negotiation is an additional reason for prohibiting the
15 practice by law. Surrogacy must be condemned for what it
16 says about and to children. Sound public policy will always
17 insure that the rights of the most innocent members of
18 society are protected.

19 I know that you get into some semantic arguments
20 whether we're talking about purchasing children or purchasing
21 services. But, I think basically it's deep enough that it
22 escapes the semantics. The surrogate mother serves primarily
23 as a functionary. As commonly understood, she agrees to make
24 her own ova and womb available to a couple for conceiving
25 from the husband's semen and carrying a child to term. Upon

1 the birth of the child, the surrogate's responsibility ends,
2 and she surrenders the child to the couple. Generally, the
3 surrogate mother is compensated financially for her baby-
4 producing services.

5 It is disturbing to realize that surrogacy asks
6 women to act in a manner which is directly contrary to
7 values associated with responsible parenthood. Traditionally,
8 the basis for a parent-child relationship is an act of love
9 which must continue after birth to insure that the child will
10 be respected and raised as a person.

11 Surrogacy ignores this reality. It requires
12 mothers, natural mothers, to be prepared not to love their
13 newborn child. The recent Baby M case is a prime example
14 of the difficulties of such a requirement. In the midst of
15 the swirling moral and legal controversies of the case, one
16 thing was clear. Mary Beth Whitehead, as a natural mother,
17 was unable and unwilling ultimately to deny her innate
18 maternal affection for the child she bore.

19 Of course, proponents of surrogacy contend that
20 adequate screening and counseling of applicants is necessary
21 to prevent a future reoccurrence of the Whitehead situation.
22 Although it's questionable that this can be foolproof
23 regarding this contention. Daniel Callahan of the Hastings
24 Center has made the following insightful observation.

25 By the patent need to screen out women with the

1 sensibilities of Mary Beth Whitehead, we introduce as
2 destructive a notion as can be imagined. A cadre of women
3 whose prime virtue is what we now take to be a deep vice,
4 the bearing of a child one does not want and is prepared
5 not to love. End of quote.

6 Clearly, surrogacy exploits women. It uses a
7 uses a woman's womb for commercial purposes while disregard-
8 ing her innate dignity and needs as a person. The mother's
9 body becomes an instrument used for the benefit of others
10 as indicated by Mr. Stern's public statement that Mrs.
11 Whitehead was not the mother of his child, only the surrogate
12 uterus.

13 Furthermore, there is a strong possibility about
14 surrogacy becoming a class issue. Given the fact that such
15 arrangements usually involve some type of financial compensa-
16 tion for the surrogate, we believe that the potential for
17 exploiting low-income women is always present. A low-income
18 woman seeking additional money to support herself and/or
19 her family may be more inclined to act as a surrogate for
20 a more affluent couple. Surrogacy must be condemned and
21 ruled out for what it says about women as well as children.

22 I'm going to skip this conclusion because I want
23 to refer to one or two other things. But, I want to make
24 it clear that we oppose the practice of surrogacy, and as
25 a result, would support legislation like House Bill 570,

1 although we understand it needs some refinement. We would
2 not be able to support House Bill 776 because we think that
3 the concept is fundamentally objectionable and can't be
4 laundered or purified regulation or legislation.

5 Just a few more observations, and then, if you
6 have any questions, I will try to answer them. I was
7 intrigued to hear that the surrogate mother's contract should
8 be more binding when we're talking about the 20-days that
9 Representative Reber has in his Bill and the general opposi-
10 tion of that to people experienced in the field of surrogacy.
11 This contract then -- it would be more binding than the
12 surrogate mother's commitment to her own marriage, for
13 example. She will not be allowed to change her mind about
14 being a surrogate mother. But she will be allowed to change
15 her mind about being a husband's wife if she wants to get a
16 divorce. The same thing applies to the adopting parents.
17 The surrogate mother is forced by the contract to give them
18 the baby, but they are not forced by anything to stay together
19 and raise that baby.

20 If a divorce occurs in a situation like that, I
21 think the custody fight would be even more complicated because
22 you have a father who has a genetic investment in the child,
23 but maybe his wife, the adoptive mother, has become a marvelous
24 mother for several years before they decided to get a divorce.
25 I think it's strange that we're going to put more binding

1 contract on surrogate mothers than we are on either of the
2 set of parents involved in this.

3 Regarding the cost factor, \$28,000, for the work
4 involved and especially for the time spent on the part of
5 the woman, that does not seem to be an exorbitant figure.
6 But, from the standpoint of segments of our society who
7 wouldn't be able to afford that, that's an interesting
8 question for the Legislature to wrestle with.

9 I don't want to get into any lengthy discussion
10 whether or not there is constitutional right to procreate.
11 But, for those who say there is, then I guess we're going to
12 have to put up \$28,000 for every poor, infertile couple
13 who can't afford that constitutional right which is now
14 available at this figure.

15 One last thing. I don't know all of the figures
16 about the availability of children for adoption. I will
17 certainly rely upon witnesses from the National Committee
18 for Adoption, but even if to say there is 300,000 children
19 available or born to single mothers, young, unmarried women,
20 ten percent are available for adoptions, and better adoption
21 laws could make more of them available. On the other hand,
22 we were told there is probably up to a million couples in
23 the country with a fertility problem.

24 CHAIRMAN DEWEESE: Ten million.

25 MR. FETTERHOFF: Ten million.

1 CHAIRMAN DEWEESE: Latest estimate.

2 MR. FETTERHOFF: But, that makes it even worse.

3 We're talking here that if you are really serious that
4 surrogacy solves this problem of the infertile couple, you
5 know, you are talking about quality control and all that.
6 You are talking about ten million surrogate mothers. Not
7 just 500 like we had so far. If you solve that problem,
8 it's not going to make it okay with us. Before you get
9 too optimistic about the problems of most infertile couples,
10 it's just not going to be in the wood. I don't think you
11 are going to find ten million or one million surrogate
12 mothers to do what the first 500 did.

13 CHAIRMAN DEWEESE: You might not find -- you only
14 might find one person out of ten million. If they really
15 wanted to have that child, the Catholic Church's position
16 would be --

17 MR. FETTERHOFF: That's correct.

18 CHAIRMAN DEWEESE: -- contrary to surrogacy?

19 MR. FETTERHOFF: That's correct.

20 On the essential issue itself because what we
21 said of the unit of the marriage and the love of both
22 parents for the child and so forth. Yes, we're opposed to
23 it. There is no way to make it right for us.

24 CHAIRMAN DEWEESE: Just for your own awareness,
25 Mr. Callahan, the gentleman you quoted, was invited by

1 Chief Counsel Mike Edmiston, and he could not attend today's
2 hearing. He forwarded information which will be made avail-
3 able to the Committee. So, inspite of some question or
4 comment you may have heard, we're trying to make this as
5 even-ended as possible.

6 MR. FETTERHOFF: I don't have any objections to
7 that score. Everybody has their shot at putting their
8 views across to Legislature, not just this Committee.

9 CHAIRMAN DEWEESE: This is a strange Committee.
10 Questions? Terry, Kevin?

11 Mr. Reber.

12 REPRESENTATIVE REBER: Just an observation. It's
13 getting that time of the year again when we're thinking about
14 running for new campaigns and my wife and mother always say
15 to me that this is going to be the last year. My comment
16 is usually, when I get the Catholic Conference to agree with
17 the Bill, I'm going to get out. It looks like it's going
18 to be a few more years. Thank you, Mr. Chairman. I think
19 we're getting closer though.

20 MR. FETTERHOFF: On some issues, I think we are.

21 CHAIRMAN DEWEESE: Howard, real fast. On page
22 three in the middle, although the full effect of this dis-
23 connection may never be known, it is clear that the child
24 will encounter a serious self-identity obstacle on the path
25 to maturity. Just as a comment on your part, would that be

1 worse than the disconnection relative through adoption
2 although the child really couldn't help that, the identity
3 obstacle, do you have a comparison contrast on that?

4 MR. FETTERHOFF: I think that we think as others
5 have said, there is considerable difference between surrogacy
6 and adoption even though some of the laws given adoption
7 seem to have a bearing on this. The child that is put up
8 for adoption because his mother discovers that she can't
9 handle that, it has not been decided in advance by his mother
10 that she is going to have him, and then, you know, let him
11 go. So, there is more intentional separation involved which
12 we think could be more significant to the child as he learns
13 that.

14 CHAIRMAN DEWEESE: Just as a final observation,
15 question. The way I know you pretty well, well, just turn
16 around. The lady in the red dress, Ms. Sutton. I know who
17 she is. I wanted to be graphic. Holy mackerel, Howard
18 Fetterhoff. Catholic, sensitive human being. She wanted to
19 help some people bring a little baby into the world, and
20 the good lawyer from Dearborn had pages and pages of little
21 children and happy families. We're trying to make it a better
22 world, and we're trying to sunder some of the ecclesiastical
23 dogma that has stood in our way down through the ringing
24 groves of the years. Can't we be flexible on this one,
25 Howard?

1 MR. FETTERHOFF: Let me say, as I said earlier,
2 I have been on TV shows with other surrogate mothers. I
3 said earlier that I am not questioning their intentions,
4 their altruism. I am not saying they are doing it for money.
5 I am not saying there is anything wrong with the parents
6 that they serve desiring a child. All right. All of that.
7 There is no judgmental thing on that.

8 But we do have a way of judging the means, the
9 morality of many types of means. You know, there is a
10 standard axiom in Catholic theology. I think it probably
11 exists in some others that the end doesn't justify the means.
12 Sometimes these ends, which seem so good and are very tough
13 to resist, make us a little bit disinclined to really come
14 to grips with the means and see if that means is really the
15 right means even to these good ends.

16 Now, regarding -- what was your other thing about
17 unbending dogma or something like that? I think as long as
18 the Church, as I know it, we'll have to take these stands.
19 As you know, Catholics are a minority in most States. We
20 just present --

21 CHAIRMAN DEWEESE: You control the Legislature
22 though and the gubernatorial mansion at this point.

23 MR. FETTERHOFF: We present our views to you, and
24 you evaluate our views along with everyone else's and then
25 you vote your conscience.

1 CHAIRMAN DEWEESE: Well, as usual, I enjoyed your
2 exchange.

3 If there are no further questions, thank you very,
4 very much.

5 MR. FETTERHOFF: Thank you for having me.

6 CHAIRMAN DEWEESE: Thank you for participating
7 this afternoon.

8 Our final witness, Charlene Amato, social worker,
9 Montefiore Hospital, Pittsburgh, Pennsylvania.

10 MS. AMATO: I am sure that you are all bored
11 sufficiently and ready to catch your planes and get home.

12 CHAIRMAN DEWEESE: Some of us are going to dutch-
13 treat, figure out what to do later on tonight. We're not
14 in any big hurry. I am not bored because unforgivable as it
15 may seem, I have already announced I was in Peru only three
16 days ago. I really don't know where most of you people are
17 coming from relative to what you are going to say. I read
18 a lot of background data the last day or so. As far as
19 specifics, I look at your name and I don't know what you are
20 going to say. Ms. Mentzer, I didn't know what she was going
21 to say. I knew what Howard was going to say. I knew what
22 Markosek was going to say. But anyway, well, to be our last
23 witness. I am not bored. We're ready to go. You are going
24 to sum things up, aren't you?

25 MS. AMATO: I will provide inclusive and conclusive

1 summation.

2 I am Charlene Amato. I am married. I am part
3 of an infertile couple. I am a mother. I am also an adoptive
4 parent. I anticipate that I have been asked to provide
5 testimony because of these aspects of my life. I believe
6 that I bring to this hearing some distance from the infertil-
7 ity experience as well as some assurance that life returns
8 to some sense of normalcy once the quest for a child comes
9 to fruition. My husband and I have been married 19 years
10 and seven of those years were invested in attempting to have
11 a child. I know the pain of being childless and can remember
12 it now with a buffering cloud that covers that memory.

13 I would like to share with you that my life will
14 not be the same having had the experience of infertility.
15 I have grown, matured, and changed. My self-concept is
16 different. I am now a wife, mother, and a career woman.
17 As a result of the infertility, when I returned to college
18 after we adopted our two sons, I majored in social work. My
19 goal was to be a private practitioner specializing in
20 infertility counseling.

21 Life has strange twists to it and I am now employed
22 by Montefiore Hospital Social Service Department at the
23 neurosurgical, neuro-oncological social worker. The majority
24 of my patients have malignant brain tumors. I constantly
25 deal with issues of grief and loss. The loss of many things.

1 For example, the use of a limb, an unseen grandchild, the
2 marriage of a child, or the ultimate loss, the loss of one's
3 own life.

4 My involvement with RESOLVE and all of my fellow
5 infertiles and our mutual losses helped to season me for my
6 present work. We mourned the loss of the child that might
7 never be, the pregnancy we might never experience, and the
8 nuclear family we might never have. Our desperation levels
9 were all different. Each couple setting their own limits
10 on what they would do to achieve the ultimate goal, a baby.

11 As I began preparing to give this testimony, I
12 went to Hillman Library at the University of Pittsburgh and
13 searched current publications for information regarding
14 surrogacy. I was amazed at the large amount written on the
15 topic. I wanted to make some attempt at being informed about
16 the current status of surrogating parenting nationally. I
17 read articles from many magazines and newspapers, and I came
18 away confused. I wonder, can a fair and equitable law be
19 drafted? One that can protect the rights of all parties
20 involved, the infertile couple, the surrogate, and the baby.
21 Other States have attempted to enact bills regulating
22 surrogacy, and none to my knowledge have accomplished this
23 task.

24 When my husband and I were trying to adopt our
25 children, we had to face the reality that our needs would not

1 be met quickly. An agency adoption would take time, waiting
2 lists were long, competition stiff. There were opportunities
3 for us to adopt from sources out of the State, but they
4 required a large sum of money that we did not have.

5 We contemplated selling our house, refinancing,
6 but we opted to be placed on the waiting list of a local
7 agency. It seemed safer. It took two years to get our
8 first son. We made an intellectual decision not to take any
9 increased risks. Maybe we were not as desperate as some
10 couples. I certainly felt desperate at times, but I did not
11 want to add further complications to an already complex and
12 emotional decision.

13 I suggest to you that you are charged with an
14 insurmountable task. Surrogacy is an issue fraught with
15 emotions. It is not logical. There are vulnerable, needy
16 people involved, the childless couple and the surrogate.
17 The implications are staggering. If fees are charged, are
18 we not purchasing a service, a child? If it were an adoption,
19 any fee beyond reasonable lying in expenses would be dis-
20 allowed by the Court. Any agreement made before the birth
21 of the baby with a birth mother would not be binding.

22 If the birth mother's needs are not met emotionally,
23 will she reappear at some other point in time to reestablish
24 a tie with her child? Can contracts protect us from her
25 physical and emotional bonding with the baby? Who will

1 protect the public from entrepreneurs capitalizing on a
2 recognized need?

3 A shortage of white, healthy infants and an
4 increase in infertility create the perfect opportunity for
5 an enterprising business to be created. This, complicated
6 by the vulnerability and desperation of the infertile couple,
7 and the atmosphere of the free enterprise system, is the
8 ideal environment for surrogacy programs. I have strong
9 concerns about tens of thousands of dollars paid for a
10 child.

11 I worry about how to prepare my children for the
12 hardships of life as all parents do. But my children are
13 different. They are adopted. Yes, that is a beautiful and
14 wonderful and acceptable way of getting children. But even
15 then, there are complicated adjustment problems that can
16 occur particularly during adolescence. How will this surro-
17 gate child feel? How will the child's emotional needs be
18 met? Surrogacy is too young to predict the long-term effects
19 on the child.

20 Legislators can not ignore this issue. A vague
21 law is as good as no law. To have no law leaves the door
22 wide open for unscrupulous people to charge exorbitant
23 amounts of money for the service. You must protect the
24 rights of the unborn child. If surrogacy is made illegal,
25 it will just go underground.

1 I have been intimidated yet challenged by the
2 opportunity to give testimony at this hearing. I know that
3 for me surrogacy would not be appropriate. But I can not
4 say the same for someone else. To reiterate, I am not sure
5 a fair and equitable law can be drafted, but I challenge
6 and encourage you to do so.

7 REPRESENTATIVE FATTAH: I think that sums it up,
8 Mr. Chairman.

9 REPRESENTATIVE BLAUM: When you say, things return
10 to normal after the adoption, is that about at the 20-month
11 period when they start making the move to take over the
12 house?

13 MS. AMATO: About the same as everyone.

14 REPRESENTATIVE BLAUM: My daughter, around 21
15 months, made her move. We held the fort.

16 MS. AMATO: I guess it gets better.

17 CHAIRMAN DEWEESE: You think it would go under-
18 ground, do you?

19 MS. AMATO: I think it will survive inspite. I
20 do believe that if it is made illegal, people will find ways
21 to do it. When exorbitant fees are against the law to be
22 charged in adoption, people go to other States unless there
23 is a national law that is adopted. That is something
24 different. In adoption, when exorbitant fees are charged
25 and there is a shortage of infants in Pittsburgh, people go

1 to South Carolina or some other State where babies are made
2 available. It depends on the individual, the desperation
3 level of the infertile couples.

4 CHAIRMAN DEWEESE: Mike Edmiston.

5 MR. EDMISTON: Ms. Amato, when you were updating
6 your familiarity with the writings in the area, did you
7 consider those writings as to whether there was much written
8 on the separation phenomena with grieving involved on the
9 part of the surrogate? Some of the things that Dr. Wettstein
10 testified to earlier in terms of the kind of screening that
11 should be done as one contemplates an individual as a candi-
12 date for one of these arrangements. Did you compare that
13 at all to your own professional experience? Do you have any
14 insight to offer us from that respect?

15 MS. AMATO: I think the terms that Dr. Wettstein
16 is coming from, I can understand there is not some -- many
17 mental status tests that can be given or developed to be
18 able to give you a quick answer as to whether or not a birth
19 mother will actually terminate those parental rights. I
20 think that when you begin to enter into a situation, everybody
21 hopes that, of course, the ultimate end is when she will
22 give up that baby. There is no prediction. I think to
23 minimize the carrying of that child and the unintentional
24 bonding that occurs prior to birth, we would be remiss if
25 we did ignore that.

1 Now, again, I think maybe by doing what Dr.
2 Wettstein said, if you take out your 20 days, you then
3 legally don't address it. It must be addressed before in-
4 semination takes place. But I don't think the outcome would
5 be incredibly different. What are you going to do if she
6 decides at the hospital that she wants to keep the child?
7 I mean, it will be a horrendous scene. Okay. You make it
8 illegal that she can not change her mind. What prevents
9 her from coming back anyway?

10 CHAIRMAN DEWEESE: You wanted to know if I was
11 going to my choice question.

12 MS. AMATO: What is your choice question?

13 CHAIRMAN DEWEESE: I would ask anybody in the
14 audience if they have anything to say. Everything has been
15 pretty well said. I will ask it anyways. Anybody? Yes.

16 MS. MENTZER: The issue of money has been dis-
17 cussed a great deal. It is a large amount of money. I hope
18 you can keep in mind that large amounts of money are spent
19 on adoption on an agency. It is charged from four to seven
20 thousand dollars for an adoption. Private adoptions range
21 from five to ten thousand dollars. Foreign adoptions, nine
22 to thirteen on adoption. If couples go through in-vitro
23 fertilization attempts, they charge five to seven thousand
24 dollars per month with the less than 20 percent success rate.
25 The couple does that four times, that's \$28,000. They still

1 may not have a pregnancy. These are all phenomenal large
2 amounts of money, but it's not just surrogates. It's being
3 spent elsewhere, I think because these couples want the
4 children. I am not saying it's right, wrong. I am saying
5 please keep in mind that in other areas, large amounts are
6 being spent.

7 CHAIRMAN DEWEESE: The California crew, do you
8 want to say anything else? You came a long way.

9 MR. HANDEL: One thing that was not brought up.
10 People, protractors against surrogate parenting mentioned
11 that out of over 600 children that have been born to surro-
12 gates in an area that has absolutely no control, no legisla-
13 tion right now, they are considered birth mothers under the
14 law and have every right to keep their child. And every
15 birth mother and every surrogate is told the law that I
16 know of. There have been five women who changed their minds
17 out of 600 people.

18 CHAIRMAN DEWEESE: Mr. Pierce from Southeastern
19 Pennsylvania.

20 MR. HANDEL: He is obviously disagreeing with the
21 figures. How many do you have, Mr. Pierce?

22 MR. PIERCE: One of the problems, Mr. Chairman,
23 is even some of the surrogate procurers who have testified
24 here today --

25 MR. HANDEL: Why don't you call me an attorney

1 instead of a procurer.

2 CHAIRMAN DEWEESE: You called him a protractor.

3 MR. HANDEL: There's a big difference.

4 MR. PIERCE: I thought procurer was a polite
5 term for what I really think.

6 MR. HANDEL: That's offensive, Mr. Pierce.

7 CHAIRMAN DEWEESE: You are in a Legislative
8 hearing. We're used to getting offended all the time. I
9 do apologize from the Chair that you are offended. I am so
10 used to it that I don't even notice it.

11 MR. PIERCE: I don't mind being called a protract-
12 tor because I think things like surrogacy are worth protract-
13 ting. The fact is, that there are cases that are already
14 perhaps known to people in these businesses and cases that
15 have not yet been filed. There are people who are unhappy,
16 we are told, with all of the surrogate people, even those
17 who have stricter controls than Mr. Keane who has, you know,
18 has just been sued again by another couple. There's an
19 awful lot of stuff, Mr. Chairman, that has not reached the
20 Court.

21 CHAIRMAN DEWEESE: It is easy to say that in most
22 of the Legislative hearings that I have been a part of, the
23 last chapter has not been written. The middle chapters have
24 not been written. The proverbial phrase, new world, seems
25 to indicate that we are on the threshold. We are on the

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1 horizon. We don't really know what to anticipate. They are
2 doing different things in Australia, England, and Eastern
3 Europe. I think it was Mr. Dawida being the beneficiary of
4 the superb law education might help me. I think Louie
5 Brandis, Supreme Court Judge, in the times past said the
6 States would be laboratories of democracy and hopefully,
7 through that percolation process, something would come for-
8 ward possibly the Federal level to make good laws. Pennsyl-
9 vania, by having this public hearing and possibly other
10 events in the biennium, which has a year and a quarter to
11 run, will hopefully make some strides in the direction of
12 finding some answers. I think it is appropriate that we
13 end the hearing with Ms. Amato's comments. I have absolutely
14 no idea what is going to happen. Fetterhoff has a better
15 Legislative barometer than I do. He knows the nuances of the
16 Legislative voting arena better than I do. I am staunch
17 way to the left of Kukovich and four or five of the others.
18 Off the record. I won't say it. Everything is on the
19 record.

20 So, I really don't have a good panoramic point
21 of view how this is going to turn out. Maybe Markosek has
22 already counted the votes. I don't know. I do want to
23 thank you very much for attending at the sake of being
24 ingratiating old Paul to say, my friend, Dwight Evans in
25 Philadelphia said it about each and every one of you for

1 coming to the hearing and sharing some time with us. We
2 know a little more about it than we did when we started this
3 morning. If no one has any further comments, I will call
4 this meeting adjourned.

5 You do have one more comment, Ms. Sutton?

6 MS. SUTTON: A child being born to a husband and
7 wife by natural means does not guarantee the child is going
8 to be emotionally healthy. I worked in the Pediatric
9 Intensive Care Unit and have seen children die from child
10 abuse from the quote family. So worrying about children's
11 well-being and being adopted or through surrogate, I think
12 is a concern. But, being brought up in a loving home who
13 really wants this child, and these couples have gone through
14 great means to have a child. I have seen it in action. I
15 have seen the results of a two-and-a-half year old that is
16 dearly loved by her parents. I witnessed it. I am not the
17 mother. When she sees me, she could care less about me.
18 I think that's more of a concern about the child's well-
19 being rather than the means that the child was conceived.

20 CHAIRMAN DEWEESE: The gentleman in the back that
21 hasn't spoken yet. Did you have your hand up?

22 MR. HERCHENROETHER: I have been sitting here all
23 day because I am an attorney in Allegheny County who has a
24 client that wants to get into a surrogate relationship.

25 CHAIRMAN DEWEESE: Could you identify yourself?

1 MR. HERCHENROETHER: I am Peter Herchenroether.
2 I will tell you, from a practitioner's point of view, it's
3 difficult to advise such a client. You are struggling with
4 no guidelines, no safeguards from any direction. The
5 Legislature does not announce. You should at least do some-
6 thing on these Bills rather than -- I don't know what the
7 process is going to be in the future, but please keep in
8 mind that it's an initiative. It's not going to go away.
9 Do something to give the society the landmarks to go by.

10 CHAIRMAN DEWEESE: Did your client look into
11 adoption?

12 MR. HERCHENROETHER: Oh, yes.

13 CHAIRMAN DEWEESE: How deeply?

14 MR. HERCHENROETHER: Fairly deeply. Both private
15 and agency.

16 CHAIRMAN DEWEESE: You are the last of the
17 Mohicans here. What is your story? Are there young children,
18 babies? Are there kids out there to adopt?

19 MR. HERCHENROETHER: No.

20 CHAIRMAN DEWEESE: Thank you very much, ladies
21 and gentlemen, for attending.

22 Yes? Mr. McVerry.

23 REPRESENTATIVE MCVERRY: I wanted to ask a
24 question of the audience generally, and Mr. Fetterhoff may
25 be aware of any one of you may be aware as to whether there

1 are any inquiries being made into this issue on a Congress-
2 sional level at Federal level?

3 MR. PIERCE: There is a Bill that has been
4 introduced by a pro-life Democrat.

5 CHAIRMAN DEWEESE: There are a lot of them.

6 MR. PIERCE: From Ohio. A gentleman by the name
7 of Mr. Lukan, which would basically take the same approach
8 that has been taken by the United Kingdom, which is to ban
9 surrogacy. That is the only piece of Federal legislation.

10 CHAIRMAN DEWEESE: Commercial surrogacy?

11 MR. PIERCE: Yes, sir.

12 CHAIRMAN DEWEESE: Not surrogacy, but commercial.
13 If you take 90 percent --

14 MR. PIERCE: Take the money out, and there are
15 contentions that it wouldn't exist.

16 REPRESENTATIVE MCVERRY: Having made reference
17 to the United Kingdom, are there any other countries of which
18 you are aware where the issue has been addressed?

19 MR. PIERCE: In West Germany, Israel, France and
20 Australia, basically surrogacy is (motions thumbs down).
21 There is no country that has said good things. In fact, at
22 a press conference earlier this week, there were supporting
23 telegrams from a whole lot of countries at the formation of
24 an organization to fight surrogacy, especially women's
25 groups saying they considered it, and they were pro-choice

1 groups, saying that surrogacy should be banned.

2 CHAIRMAN DEWEESE: This is a final comment. This
3 is amazing to me that we have some radical feminists, some
4 Orthodox Jewish rabbis, and Catholic bishops all agreeing.

5 MR. PIERCE: They must be right.

6 CHAIRMAN DEWEESE: Twelve years in the public
7 life, I have never experienced that.

8 REPRESENTATIVE FATTAH: I think that proves your
9 theory that somehow these things are intertwined. The issue
10 of pro-choice, pro-life and surrogacy is --

11 CHAIRMAN DEWEESE: Doesn't hold water.

12 REPRESENTATIVE FATTAH: It's perhaps failing.

13 CHAIRMAN DEWEESE: It wouldn't be the first time.
14 With a modicum of humility, I will close the hearing.

15 Thank you very much for attending.

16 (Whereupon, the hearing terminated at 4:06 p.m.)

17 - - -

18 I hereby certify that the proceedings and evidence
19 taken by me before the House Judiciary Committee Public
20 Hearing are fully and accurately indicated in my notes and
21 that this is a true and correct transcript of same.

22
23 
24 Susan L. Mears, Reporter
25