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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: House Bill 745 - Surrogacy Contracts

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Stenographic report of hearing held
in Room 140, Main Capitol Building,
Harrisburg, Pennsylvania

Thursday,
September 7, 1989
10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN
Hon. Kevin Blaum, Subcommittee Chairman on Crime and
Corrections

MEMBERS OF COMMITTEE ON JUDICIARY

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Hon. David J. Mayernik	Hon. Michael R. Veon
Hon. Paul McHale	Hon. Chris Wogan

Also Present:

Hon. Joseph Markosek, Prime Sponsor of HB 745
William Andring, Majority Counsel
Mary Woolley, Minority Counsel
Katherine Manucci, Staff

Reported by:
Ann-Marie P. Sweeney, Reporter

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1 CHAIRMAN CALTAGIRONE: We'll call the
2 committee hearing to order. This is the House Judiciary
3 Committee considering House Bill 745, surrogacy contracts,
4 and Joe, if you would like to start off and mention who
5 you are and then you can give us some information about
6 your bill. Other members will be joining us and we might
7 as well get the show on the road because we're going to
8 have a lot of people testifying on this issue.

9 REPRESENTATIVE MARKOSEK: Thank you very
10 much, Mr. Chairman.

11 My name is Representative Joseph Markosek,
12 prime sponsor of House Bill 745. This is the second
13 session that I've introduced this legislation. It had a
14 different number last year or last session.

15 My interest -- well, first of all, before I
16 go into that, I'd just like to thank the committee for
17 holding this hearing and letting us have the opportunity
18 to discuss our bill. I became interested in this issue of
19 surrogate parenting much like most of the American public
20 several years ago when the Baby M case came to trial and
21 hit the front page of the newspapers. Prior to that, I
22 had really no knowledge or very little knowledge, and
23 quite frankly, very little interest in this issue. But at
24 the time, I read an article about the case and it got my
25 thought process wondering about the various ramifications

1 of these kinds of things, and I started to do some
2 homework and came to the conclusion that surrogate
3 parenting may not be a great idea and as a legislator
4 looked at myself and said, well, somebody ought to do
5 something about that, and of course when we get up in the
6 morning and have those kind of thoughts we look in the
7 mirror because we're it. We're the people that get to do
8 something about it.

9 So what I did was did some homework, put
10 together some legislation which would, in effect, ban
11 surrogacy and ban the contracting of surrogacy. And I
12 think, first of all, we have to talk about legislation in
13 general. In Pennsylvania, we have none relative to
14 surrogacy and surrogate parenthood. We, in fact, can do
15 just about anything we want in this area. New Jersey had
16 the same problem prior to the Baby M case. There is very
17 little legislation anywhere in the country right now
18 pertaining to surrogacy. In effect, what that means is
19 that when problems arise because of either surrogacy
20 itself or the contracting of it, there will be problems
21 that will arise. These problems are going to end up in
22 the courts, just like they did in New Jersey with the Baby
23 M case.

24 I think we, as a legislature, have a right
25 and a duty to provide legislation, to provide public

1 policy pertaining to surrogacy. We currently have none in
2 Pennsylvania. If we do not do this, then essentially we
3 have given our right to provide this policy over to the
4 courts, because they, in effect, will do it. Their
5 decisions often become public policy in lieu of
6 legislation from us. So I think we certainly have a right
7 to be dealing with this issue. In fact, I think we have a
8 duty to be dealing with this issue.

9 My goal is to make the contracting of
10 surrogate parenthood illegal. The reason for that is if
11 we make it illegal, then such contracts cannot be upheld
12 in a court of law. As we saw from the Baby M case,
13 essentially what we had was a contract, apparently legal
14 in a lot of eyes in New Jersey, and it was a contract that
15 was written with lawyers and other people that know about
16 putting such things together. What happened was one of
17 the parties to that contract, in this case Mrs. Whitehead,
18 in effect reneged on her part of the contract. She
19 contracted with adopting parents to provide a child for
20 those parents. She agreed to provide that child and they
21 agreed to give her \$10,000. After the child was born, she
22 decided that there was an attachment there or she felt the
23 attachment, I believe the attachment is there anyway, but
24 it became evident to her that there was an attachment to
25 that child psychologically and physically. As a result,

1 she did not want to give that child up. She then took the
2 case to court, and we've seen since that time that the
3 courts have ruled that she had to give the child up.

4 if my legislation would pass in
5 Pennsylvania, the courts would not be able to even hear
6 the case because it would be much like other contracts
7 that are illegal in Pennsylvania, such as putting a
8 contract out on somebody's life. No matter how well
9 written that contract is legally, it's unenforceable in a
10 court of law because it's against public policy. And we
11 have the opportunity to do the same thing in Pennsylvania
12 now in the area of surrogacy. We can just simply outlaw
13 the contracting, which makes the contracts unenforceable.
14 And these contracts right now can be written almost any
15 way that the parties choose to write them. For example,
16 you have a situation, let's say you contract for a baby.
17 What if it's twins? Well, how do you write that into the
18 contract? Right now they can say, well, you know, we can
19 deliver one twin and not the other, put the other one up
20 for adoption; deliver both. What if the baby is found to
21 be handicapped prior to birth? You can write into the
22 contract that that pregnancy should be terminated.

23 We have nothing governing this right now in
24 Pennsylvania. We can do anything we want, which I think
25 is wrong, and I think, again, we, as a legislature, have a

1 right and duty to step in and to provide regulations, and
2 certainly if I had my way to simply outlaw the
3 contracting.

4 Why don't I like surrogacy? Well, that's a
5 good question because again, up until a year or so ago, I
6 really had no knowledge about this at all. I had nothing
7 personal to gain or lose. I don't know any of my friends
8 or relatives who are surrogates or anything like that.
9 I've met people involved with it since I've been involved
10 with this issue, but not prior to that.

11 I believe that surrogacy, when you stop and
12 think of it, in my opinion, is a form of child selling.
13 We have very strict laws on the books already in
14 Pennsylvania against child selling. It is something that
15 all States have laws against. If you consider this, as I
16 do, a form of child selling, then it, too, should be
17 illegal. It's a system, as we know even in adoption the
18 money that exchanges hands there is very strictly
19 regulated. We've seen court cases where courts have
20 denied certain fees for being paid because it started to
21 get into the realm of child selling. I mean, it's very
22 strict on what expenses. It's expenses only. There's no
23 profit at all in the adoption situation. All of a sudden
24 here we see in the surrogacy area there's a huge profit to
25 be made. In the Baby M case, for example, we saw where

1 the parents not only had to pay \$10,000 to the surrogate
2 mother for her services, but also had to pay \$10,000 to
3 the lawyer for his services, and he got his \$10,000
4 upfront, before all the problems started. He put the
5 contract together and walked away from it. Now all of a
6 sudden six or eight months, nine months, a year later,
7 you've got all kinds of problems between the adopting
8 parents and the surrogate mother, but yet the lawyer in
9 the case who set it up, the broker, if you will, walked
10 away with his fee.

11 And some of these brokers are putting
12 together hundreds of these things. We've seen evidence of
13 some brokers that had over 150 surrogacies that they've
14 brokered, you know, making \$10,000, \$12,000 a piece. And
15 for the adopting parents, they not only have to pay him
16 off but they have to pay the surrogate mother her fee plus
17 all the medical costs, which depending on the pregnancy,
18 depending on the health of the mother involved, depending
19 on the process of artificial insemination, which doesn't
20 always work the first time, that can be very expensive.
21 You can have up to \$10,000, \$12,000 expenses in that. So
22 what you're talking about here is not \$10,000 but in many
23 cases \$30,000, \$35,000 and up and going up. I think, as
24 we know, prices go up for everything.

25 So I think what we're seeing here is a very

1 big, lucrative business. It's gone beyond just providing
2 an altruistic service for people that can't have a child.
3 And I have feelings for those people, too. You know,
4 there's a lot of folks out there that want children and
5 can't have them, and even though I think adoption is an
6 alternative, I'm not that naive to know that it's not, in
7 many cases, a very good alternative. In many cases, it's
8 very difficult to adopt a child.

9 But the one thing that I've heard time and
10 time again from people who go to surrogates is they will
11 do anything to get a child. They don't like this
12 surrogacy business, but they're willing to do anything to
13 get a child. Well, if they're willing to do anything to
14 get a child, how about a child of another race? How about
15 a child that's a little older? How about a handicapped
16 child? Have they explored all of those kinds of adoption
17 options?

18 Adoption is very difficult for a lot of
19 people if you're looking for a white infant. But if
20 you're willing to expand the type of child -- your
21 horizons as to the type of child that you're willing to
22 adopt, it becomes easier to do. And these same people
23 that say they're willing to do anything aren't willing to
24 do that, and I think there's a fallacy there sometimes
25 with the idea that this surrogacy is an option where there

1 are no other options. I don't believe that's always true.

2 I also think there's problems involved, and
3 I'm not a psychiatrist or psychologist. I've read some
4 testimony and read some things from other folks that are,
5 but there are psychological and guilt problems with both
6 the mother and the child later on in life. Perhaps not in
7 all cases, but certainly in many cases. You know, how do
8 you tell the child 10 or 12 years later, 8 years later,
9 whatever it is, that you were bought; that you were sold
10 by your mother? What happens to the mother later on in
11 life? I mean, we've seen many surrogate mothers later on
12 in life that have said, hey, I wish I wouldn't have done
13 that. I've got guilt feelings about it and I can't
14 believe that I sold my child.

15 There is a bond between mother and child
16 that cannot be broken, no matter how much money is
17 transferred, no matter how many contracts are signed, no
18 matter the legality of that contract. There is a
19 psychological bond that Mother Nature put there that can't
20 be broken, and it's always going to be there. And I think
21 that taking that child away from its mother for money is
22 certainly not the kind of thing that we in Pennsylvania
23 should allow and we should establish public policy against
24 it.

25 How about the grandparents' rights here? I

1 mean, we've heard about this in divorce cases. If your
2 daughter becomes a surrogate mother, maybe you, as the
3 grandparents, don't like that idea or the parents of that
4 daughter don't like that idea, but she does it anyway.
5 She gets \$10,000 for it. Now she has a child. Isn't part
6 of that child your grandson or granddaughter? But yet
7 she's just selling it right from under you. What are your
8 rights to see that child? Is there any bond between you
9 and that child still available? We have, again, nothing
10 on the books in Pennsylvania dealing with this.

11 These kinds of questions are going to be
12 solved in court, and I guarantee that these problems are
13 going to come about. It's just a matter of time. This is
14 becoming more and more popular. The Baby M situation has
15 advertised it, has sensationalized it. I think a lot of
16 people never thought of surrogacy before, including
17 myself, are now thinking about it. Especially people that
18 can't have children. And I think we're going to see this
19 problem grow and grow, and I think down the road we're
20 going to have some court cases on it, and I think we're
21 going to see a lot of problems down the road because of
22 it.

23 So with that, those are primarily, you know,
24 my ideas with the bill, with the legislation. One of the
25 things I do not want to see, and it is not my goal, is to

1 have people thrown in jail or fined a lot of money because
2 of surrogacy. Now, the language of the bill some of you
3 may say, well, that doesn't say that in the bill or
4 whatever, and I'm willing to work with the committee and
5 the staff on some language regarding that area, but my
6 goal is not to have surrogate mothers or adoptive parents
7 thrown in jail because they sign contracts, surrogate
8 contracts. But what my goal is is to make those contracts
9 illegal so that they cannot be enforced, and I think if we
10 eliminate that aspect of surrogacy, we're going to
11 eliminate a lot of the surrogacy, because again, keep in
12 mind, most of the people are in it for money. The parents
13 aren't. They're in it for a child. They want a child.
14 But yet they're being taken to the cleaners by the lawyers
15 who set these things up, and also the surrogate mothers,
16 they're in it for the money. I can't think of too many
17 people, I mean, think about it in your own reference of
18 people that you know that would do something like this for
19 nothing, that would go through a pregnancy for nothing,
20 for altruistic reasons for strangers doesn't make sense.
21 There's got to be some kind of an exchange there of
22 monetary value for the whole thing to be worthwhile. So
23 if we can eliminate the financial aspect and the legal
24 aspect, I think what we'll do is cut down drastically on
25 the number of surrogacies.

1 Now, people say, well, what's to stop a
2 relative from doing it? You know, we're probably not
3 going to stop it. I'm not that naive. You know, laws
4 don't necessarily always -- they're only as good as
5 they're enforced and those kinds of things, but I think
6 that if we -- if my bill would pass in some form and we
7 can achieve the goals that I'm trying to achieve, I think,
8 number one, we will certainly drastically cut down the
9 number of surrogacies in Pennsylvania, and I think we'll
10 eliminate a lot of the problems that are going to arise.
11 I'm not saying might arise, they're going to arise. And
12 also I think we, as a legislature, will not be shirking
13 our responsibility to form public policy in this area.

14 So with that, I appreciate the opportunity
15 and will try to answer any questions.

16 CHAIRMAN CALTAGIRONE: Thank you, Joe.

17 Members of the committee, are there
18 questions?

19 Jeff.

20 BY REPRESENTATIVE PICCOLA: (Of Rep. Markosek)

21 Q. Joe, just one quick question. You indicated
22 you didn't really want to criminalize it. Have you
23 explored the possibility of a statute that merely declares
24 such contracts unenforceable by the courts of the
25 Commonwealth?

1 A. Well--

2 Q. Have you looked into that at all?

3 A. Well, I've thought about it. You know, I'd
4 be willing to work with you in looking into that. I guess
5 I need your help with that and, you know, would appreciate
6 any help I could get that way.

7 Q. Okay.

8 REPRESENTATIVE PICCOLA: Thank you.

9 CHAIRMAN CALTAGIRONE: Paul.

10 BY REPRESENTATIVE MCHALE: (Of Rep. Markosek)

11 Q. Good morning, Joe. Forgive me, Joe, I just
12 got here and I may be covering something that you spoke
13 about earlier. Would your bill cover an agreement that
14 did not involve the exchange of consideration? In other
15 words, if someone entered into a verbal agreement for the
16 purpose of surrogacy but pursuant to that agreement, which
17 might be formal or otherwise, no consideration was paid?
18 Would that kind of agreement, absent the payment of money,
19 be prohibited by your bill?

20 A. My goal is to prohibit those kinds of
21 agreements, period. Now, you know, I think anything we
22 can get on the books is better than what we have now. I
23 think if we have such an agreement where there is no money
24 transferred and the brokers are cut out of the profit end
25 of it, I think what you're going to see is a drastic

1 reduction in surrogacies. As I was trying to point out
2 here, in my opinion, and I perhaps am wrong, but in my
3 opinion, I think we're going to see a situation where if
4 money isn't transferred, there's going to be very few
5 people who are going to be interested in doing it. And
6 you might have some altruistic relatives that get
7 involved, that kind of thing.

8 Q. I guess that's my question. In that kind of
9 case, would that be criminal misconduct? If someone, for
10 altruistic reasons, from their own perspective, chooses to
11 do this without any request for, or payment of, financial
12 consideration, when that kind of perceived altruism is the
13 motivation for the surrogacy, would that be a criminal act
14 if we adopted your bill?

15 A. I don't want it to be a criminal act at all,
16 period. I just want to stop the practice. I mean, that's
17 basically what I'm getting at here, and maybe the wording
18 of the bill doesn't say that and I don't have the language
19 available right now. That's what I'd like some help with.
20 I think if we made it illegal, or if we made the
21 contracting illegal without any kind of criminal
22 penalties, even amongst relatives you could have problems
23 that arise where it ends up in court.

24 Q. Yes.

25 A. Maybe the money is no longer a factor but

1 what if the child now all of a sudden, through testing,
2 you know, after several months of pregnancy, is determined
3 to be handicapped, and even now the sister, you know, of
4 the other person backs off and says, wait a minute, that's
5 not what I had in mind? Okay, now all of a sudden this
6 whole thing ends up in court.

7 Q. I guess I just wanted to raise that gray
8 area. I am largely in agreement with your bill. I do not
9 support the legal validity of these contracts and I do not
10 support the payment of money or other forms of
11 consideration in order to enter into an agreement of
12 surrogacy. So in this respect I fully support your
13 intention and the language of your bill. I think a gray
14 area that we may want to explore would be the legal
15 validity, and I'm not commenting on the morality of it,
16 but the legal validity of perhaps the very informal
17 understanding with regard to surrogacy where the
18 motivation is altruistic and where there is no payment of
19 money or any other form of consideration. I think to make
20 that criminal misconduct might be something that would go
21 too far and we ought to take a look at that.

22 REPRESENTATIVE MCHALE: Thank you, Mr.
23 Chairman.

24 CHAIRMAN CALTAGIRONE: Thank you, Joe.
25 Appreciate your testimony.

1 REPRESENTATIVE MARKOSEK: Okay. Thank you.

2 CHAIRMAN CALTAGIRONE: Attached to your
3 packets we have House Bill 1843, which one of the members
4 of the committee, Representative Reber, has introduced,
5 and I would like at this time if Bob wouldn't mind saying
6 something about his bill that he has introduced.

7 REPRESENTATIVE REBER: Thank you, Mr.
8 Chairman.

9 Mr. Chairman, I don't want to take up too
10 much of the committee's time because obviously being a
11 member of the committee I will be available to all the
12 members as and when this particular issue goes through the
13 deliberative process in committee.

14 I do feel constrained to say that I think,
15 frankly, the only thing that really is criminal at this
16 stage about the whole issue of surrogate parenting is the
17 fact that the Commonwealth of Pennsylvania, through it's
18 General Assembly, has not in fact addressed the issue to
19 put it into a specific public policy like so individuals
20 who may be considering or in fact are involved in the
21 process have some knowledge as to what the state of the
22 law really is in the Commonwealth.

23 As many of the members of this committee are
24 aware, last session Representative Markosek as well as
25 myself did author similar types of legislation on the

1 issue. I personally really don't advocate the policy, I
2 don't have anything against the policy. I don't find
3 anything mortally wrong with it. I think the only problem
4 we do have, though, is creating a situation or allowing a
5 situation to be created where the rights and
6 responsibilities, the liabilities of the parties and the
7 rights of that ultimate child that is born as a result of
8 the surrogate process is somewhat in limbo, where the law
9 in the Commonwealth is unsettled in regard to the issue.

10 I dare say that I thought last session we
11 had a pretty good piece of legislation that closed the
12 loopholes, that allowed the review by the courts of such
13 an agreement before it could be valid, that allowed the
14 parties to have the appropriate professional counseling,
15 whether it would be medical, psychological, or whatever.
16 I think it also last session went a long way to establish
17 the rights and liabilities of the parties in relationship
18 to themselves, in relationship to the intended parents, in
19 relationship to the surrogate mother, and most
20 importantly, in regard to the child born as a result of
21 such relationship and procedure.

22 This session, in House Bill 1843, we have
23 gone what I consider to be a number of areas further to
24 close any and all possible loopholes that might exist, and
25 I feel constrained also to say that the war stories that

1 we've heard - the Baby M case, a case emanating out of
2 Michigan - I would dare say, after speaking to experts on
3 the issue, after discussing the issue with staff, that if
4 in fact in the jurisdictions where these so-called
5 unfortunate situations took place, if in fact a bill such
6 as 1843 was in place in those jurisdictions, we would not
7 have had those media event situations take place, we would
8 not have those unfortunate litigation situations take
9 place. The parties would have been ferreted out as not
10 being compatible for a surrogate relationship, or the
11 rights and responsibilities of the parties would have been
12 specific before they entered into the contract, or, for
13 that matter, the contracts would have been illegal under
14 this as entered into and the processes that followed would
15 have in fact been illegal in those particular
16 jurisdictions if legislation similar to 1843 would have
17 been law in the jurisdictions where these particular
18 horrible scenarios took place.

19 I think there are a number of people on the
20 agenda that have some thoughts on the issue on both sides.
21 I think we ought to spend our time today hearing from
22 those people.

23 In conclusion, I would simply say, too, that
24 there is an issue, there seems to me one of the primordial
25 issues, as Representative McHale was touching on in his

1 examination of Representative Markosek, and that's
2 regarding the consideration, the compensation aspect
3 issue. If you do take a look at House Bill 1843, we have
4 set forth in Section 3504, subparagraph (d), a reservation
5 section on the compensation issue. For all intent and
6 purposes, 1843 sets up the procedure, if it became law in
7 the Commonwealth of Pennsylvania, to which such an
8 agreement would be scrutinized, would be validized, would
9 be reviewed by the courts and would, in essence, set forth
10 the various rights and responsibilities of benefits,
11 liabilities, if you will, of the arrangement, of the
12 parties now and forever. And I have left reserve for the
13 deliberation of the committee and ultimately the
14 deliberation of the General Assembly whether we desire to
15 specifically set forth on the compensation issue, whether
16 we want to totally outlaw it by obviously leaving the bill
17 in the situation it is now, or I think it is very, very
18 important that if we deem, as Representative McHale was
19 saying, the situation where there is a family relationship
20 or a close friend relationship, certainly even in those
21 situations, even in those situations where the parties are
22 in agreement, the parties are close, there's a formal
23 understanding, I still think we have to dot all the I's,
24 cross all the T's, have a very detailed, regimented
25 procedure, have court jurisdictions, have scrutinization,

1 and have the appropriate professional counselings that
2 must go with that prior to even that type of an agreement
3 being entered into in the Commonwealth of Pennsylvania.

4 So with those various things before you,
5 ladies and gentlemen of the committee, I dare say that the
6 27-page document I have certainly doesn't take the length
7 of time to read the few sentences on the criminalization
8 of the conduct that Representative Markosek does, but I do
9 think both bills do define, in my mind, the issues as you
10 may look at them. I'd like to think that mine is the more
11 compassionate, is the more practical way to proceed, and I
12 dare say if everyone really looks at it, I think it can
13 serve the ends that Representative Markosek was concerned
14 about, and I, too, share his concern in those areas.

15 With that brief overview, Mr. Chairman, I
16 think we ought to get to the witness and the subject of
17 the public hearing. I thank you and I thank the members
18 of the committee for their indulgence.

19 CHAIRMAN CALTAGIRONE: Thank you,
20 Representative Reber.

21 We'll start off with Miss Stroud. If you
22 she would come up and for the record introduce herself?

23 MS. STROUD: My name is Della Stroud. I'm
24 the chairman of the National Committee for Adoption.
25 Thank you very much for inviting me to testify today.

1 The National Committee for Adoption is a
2 national nonsectarian, nonprofit organization that is
3 concerned about quality services to young women in crisis
4 pregnancies, is concerned about services to infertile
5 couples and others who wish to build families through
6 adoption. We have 150 member agencies, including 4 in
7 Pennsylvania, and several thousand individual supporters
8 and volunteers. I want to commend you for your efforts to
9 hold hearings concerning the surrogacy issue and for
10 proposing legislation you believe will remedy the
11 situation.

12 We agree with House Bill 745 that
13 enforcement of commercial surrogacy agreements equates
14 with the constitutionally prohibited act of baby selling.
15 I want to emphasize that NCFA is sensitive to the plight
16 of infertile couples. It is such couples, now mostly
17 adoptive parents, who makes up the core of our individual
18 membership. Because we are the only national organization
19 currently collecting statistics, we also know what the
20 imbalance is between infertile couples seeking to adopt
21 and healthy infants needing adoptive homes.

22 According to United States Centers for
23 Disease Control, the number of infertility consultations
24 has more than doubled since 1981. Couples paid more than
25 2 million visits to such doctors in 1983 alone. Yet

1 although there were more than 800,000 babies born in 1986
2 to young unmarried women, less than 5 percent of these
3 young women made adoption plans for their babies. For
4 example, in 1986, the last year for which there is data,
5 there were about 48,000 births out of wedlock in
6 Pennsylvania. Of those 985, or approximately 2 percent,
7 resulted in adoptions of healthy infants. A primary
8 reason for the tremendous disparity between the number of
9 babies born out of wedlock and the number placed for
10 adoption is the lack of adequate maternity services and
11 adequate counseling on the adoption option. Based on our
12 experience with current statistics from our agency
13 membership, about 40 percent of young women who do use
14 residential maternity services will opt for adoption. A
15 federally supported research study in Illinois suggests
16 that 30 percent of pregnant teens will choose adoption if
17 quality counseling and maternity services are provided.

18 These statistics indicate that through a
19 comprehensive strategy including provision of residential
20 maternity services and promotion of adoption, babies
21 already being born would increasingly be available for
22 adoption by infertile couples. Yet in Pennsylvania, under
23 House Bill 836, agencies cannot be reimbursed by adoptive
24 parent fees for such vital services as counseling and
25 housing. This law thus creates needless obstacles to

1 adoption and should be amended.

2 I am an infertile woman and an adoptive
3 parent. I understand fully the desperation felt by those
4 who desire to have a family but are unable to conceive. I
5 can nonetheless state unconditionally that my husband and
6 I would never have resorted to a surrogacy contract. In
7 spite of our desperate wish to become parents, we could
8 not have justified entering into an unethical contract
9 that exploits the child as a commodity and a woman as a
10 baby maker. The laudable end of parenthood does not
11 justify using whatever means one chooses. Instead, the
12 best route to parenthood for the infertile people is
13 adoption, as it legally and ethically meets the needs of
14 all concerned.

15 Adoption is a service for a child that needs
16 a home. Surrogacy is a service for a couple that needs a
17 baby.

18 Adoption is the result of an unplanned
19 pregnancy. Surrogacy is the result of a planned
20 pregnancy.

21 We know that we cannot approach a young
22 woman and buy her baby and place that baby for adoption,
23 regardless of how wonderful the adoptive parents are and
24 how much and how willing the birth mother agrees to that.
25 Yet, commercial surrogacy creates such a, quote, "class of

1 baby bearers for money," end quote, and thus threatens the
2 socially beneficial institution of adoption.

3 Four, there seems no distinction legally
4 between saying that a woman may receive money for a baby
5 intentionally conceived and saying a woman may receive
6 money for a child accidentally conceived.

7 Further, commercial surrogacy threatens the
8 stability of families by exploiting, first, the woman who
9 conceives the baby with the expressed intention of selling
10 it; secondly, her children, if any; and thirdly, her
11 spouse, if any.

12 The surrogate industry has theorized that
13 it's more logical to assume that a woman who has already
14 experienced pregnancy and childbirth understands what she
15 is doing when she signs a preconception contract. As a
16 result, most surrogacy brokers recruit women with at least
17 one child. The nature of surrogacy arrangements is such
18 that most children know their mothers are growing a baby
19 for someone else. And although they may see this as a
20 generous act on one level, on another level the idea can
21 create tremendous instability. Siblings see the mother's
22 proposed act of transferring custody, whether for a fee or
23 not, as a threat to their own stability. Will she sell or
24 give me away, too? We realize that it's unwise to
25 separate siblings in adoption. It is also unwise to

1 separate siblings in surrogacy.

2 Further, as the mother progresses, the
3 spouse of a surrogate mother may bond to that child
4 carried by his wife. As any adoptive parent could
5 testify, their love for their children is no less because
6 of a lack of a biological connection.

7 Finally, contrary to assertions by surrogacy
8 proponents, there is no constitutionally protected right
9 to bear or beget a child through surrogacy. Although
10 consenting adults have a constitutional right to deal with
11 matters of reproduction as they deem appropriate, the
12 effects on innocent third parties must be considered. As
13 a general rule, a person has the right to make decisions
14 affecting his or her own body, unless the choice adversely
15 affects others. Surrogacy arrangements do harm others.
16 Moreover, the right to make choices about reproduction
17 does not translate to a right to have custody of a baby.
18 If such a constitutional right to custody of a baby
19 existed, would we not have to allocate babies available
20 for adoption via Lottery or provide governmental subsidies
21 to enable every person to have a baby, regardless of his
22 or her marital status or ability to care for a child?

23 Given that surrogacy arrangements are
24 inherently damaging to all parties, we support prohibiting
25 any form of surrogacy and hope that Pennsylvania will

1 focus instead on providing comprehensive services for
2 those young women confronting crisis pregnancies. You
3 would thus address the critical human and financial crisis
4 of teen pregnancy and single parenting, and at the same
5 time help address ethically the needs of those who are so
6 desperate to become parents.

7 Thank you again.

8 CHAIRMAN CALTAGIRONE: Thank you.

9 Questions from members of the committee?

10 REPRESENTATIVE BORTNER: I have a question.

11 BY REPRESENTATIVE BORTNER: (Of Ms. Stroud)

12 Q. Thank you.

13 Let me just give you a situation,
14 hypothetical. My wife's sister cannot have children. My
15 wife has proven to be very good at having children.
16 Assume that -- suppose they would agree that my wife would
17 be, you know, without any fee, without any compensation, a
18 surrogate mother for her sister. How does that in any way
19 equate to baby selling?

20 A. I didn't say it did. I made very clear
21 commercial surrogacy.

22 Q. Okay, so you would agree that that is not?

23 A. No, I cannot see if absolutely no
24 compensation passes hands and she does it out of altruism,
25 I cannot say that that is baby selling. I still think

1 it's fraught with many problems, but I am not saying that
2 that constitutes baby selling. And if she has the right
3 to change her mind once the baby is born and assert her
4 parental rights. I'm talking about the sister-in-law in
5 the case that you gave me.

6 Q. You're talking about the biological--

7 A. That's correct. The birth mother.

8 Q. --mother.

9 A. That's correct. That she would have a right
10 after delivery to assert her parental rights of that
11 child.

12 Q. Who's right? You've lost me. Who would
13 have the right to assert their parental--

14 A. The birth mother. The one who carries. The
15 biological birth mother. Whatever term you want to use.
16 The one who carried the child.

17 Q. Right.

18 A. Gave birth to the child.

19 Q. Right.

20 A. That she would have a right to assert her
21 parent rights after delivery of that child. You cannot
22 sign a preconception agreement and take away that woman's
23 parental rights. It can't be done in adoption, and it
24 certainly should not be able to be done in surrogacy,
25 regardless of any money situation.

1 Are you following?

2 Q. I'm following what you're saying.

3 A. Do you see where it's fraught with
4 incredible problems right there with that scenario?

5 Q. I can see a lot of problems and I'm not sure
6 that it's an arrangement that I favor. I guess my
7 question is in a situation like that, however, is it
8 really any of my business or is it really our business to
9 ban those kinds of arrangements? That's the kind of the
10 question I have.

11 A. I would want the State to discourage those
12 kinds of arrangements, absolutely. Could they say that it
13 is a criminal act for a woman out of pure altruism, where
14 no money passes hands, to say she will bear a child for
15 someone else and decides to place that child with that
16 couple for adoption, I do not think that that is a
17 criminal act, no. But this act, as I read it, certainly
18 was restricted to commercial where indeed there was
19 compensation.

20 Q. Well, I'm not sure that's the case, because
21 as I look at it, the definition--

22 A. That was the way that I read it. Perhaps--

23 Q. Well, no, I think it's confusing, and that's
24 one of the reasons I'm asking the question. One part of
25 it defines the offense as participating in verbal or

1 written agreements which would, I think, cover any
2 surrogacy situation, but the definition of surrogacy is
3 limited to financial compensation.

4 A. I would have to read the act with the
5 definition section.

6 Q. I was curious whether your objections were
7 primarily directed toward the commercial aspect of--

8 A. Primarily, but again, let me go back to what
9 I said there. You cannot have any enforceable contract,
10 regardless of compensation, that says that a woman who
11 carries a child cannot assert parental rights to that
12 child after the birth of that child. Preconception
13 contracts where she supposedly signs away her parental
14 rights to that child are void and unenforceable and
15 against public policy. That I want to go on record as
16 saying. So I can't say the commercial aspect of it would
17 be the only concern.

18 Q. I understand what you're saying. I guess my
19 question and my confusion was you used the words "parental
20 rights," and I'm just questioning who has the parental
21 rights, and there certainly are rights to be asserted
22 probably by both women involved in the arrangement.

23 A. No. No. The woman who is presumably the
24 spouse of the sperm donor, the male, no, she would not
25 have parental rights to assert at the time of birth. I

1 don't think a contract can deal in human beings. We are
2 not talking about a commodity. We're talking about a
3 human being. So I do not believe that a woman can sign
4 away her parental rights preconception, mutually
5 exclusive.

6 Q. The only other thing I'd say in conclusion
7 is that, you know, I thought you made a very effective
8 case for additional support for adoption and adoptive
9 services, and I certainly support that. Although, as you
10 may be aware, I mean, in fact, the Pennsylvania Supreme
11 Court viewed paying for adoptive services baby selling,
12 and until we change the law, which was a bill that I
13 sponsored, along with Representative Hagarty--

14 A. Yes, I am aware of that.

15 Q. --that kind of compensation, even the most
16 minimal reimbursement for services, wasn't permitted. So
17 I think we have a long way to go and we can do a lot more
18 in promoting adoption as well.

19 Thank you.

20 A. Thank you.

21 CHAIRMAN CALTAGIRONE: Representative
22 Piccola.

23 REPRESENTATIVE PICCOLA: Thank you, Mr.
24 Chairman.

25 BY REPRESENTATIVE PICCOLA: (Of Ms. Stroud)

1 Q. Mrs. Stroud, I would like to commend you for
2 your testimony. It's very informative. Do you know of
3 any other States that have approached this subject
4 statutorily, and if so--

5 A. Louisiana has prohibited it.

6 Q. Louisiana.

7 A. Nebraska has ruled it legally unenforceable.
8 In Kentucky, the Supreme Court has said that while
9 non-commercial might be legally enforceable, that the
10 surrogate mother had to have a right to change her mind
11 and assert her parental rights after delivery. Many of
12 the States have commissioned study groups to look at the
13 issue, and I do not have the other statistics available.
14 Those are the ones that come off the top of my head.

15 Q. Well, it sounds to me like, and I don't know
16 what Louisiana did. Did they make it a criminal offense
17 or did they--

18 A. I would have to check, which I could find
19 out for you, and I cannot immediately say. I know that
20 they prohibited it. Whether or not it was within the form
21 of a criminal statute and they said that it was a
22 misdemeanor, as this statute would say, I don't recall
23 that, so I would have to check. I could find that out for
24 you.

25 Q. And the other States were all done in the

1 context of court decisions ruling the contract--

2 A. No, Nebraska's was also legislatively.
3 Kentucky was a court decision, and there's a fourth State
4 where there has been, as I recall, legislative action, and
5 then the others are in the study process. And there could
6 be some very recently that I am not aware of. Those are
7 the ones that I knew of. So in this past year there may
8 well have been some additional ones, so those are just the
9 ones that I can remember.

10 Q. I would be interested in knowing the basis
11 for the actions in other States, if you could compile
12 those for us?

13 A. I could do it very easily and I would be
14 glad to.

15 Q. As the prime sponsor of the bill indicated,
16 it really wasn't his intent to send these people to jail.

17 A. That would not be our intent or desire.

18 Q. And I think if I am to come down on the side
19 that you're advocating, I would prefer to see a statute
20 merely declaring such contracts to be void and
21 unenforceable.

22 A. We would like to stop the practice. We
23 don't want to send people to prison, I would definitely
24 say.

25 Q. So if you could provide us with some

1 background on that issue, I would appreciate it.

2 A. Certainly.

3 Q. Thank you.

4 A. Thank you.

5 CHAIRMAN CALTAGIRONE: Representative
6 McHale.

7 REPRESENTATIVE McHALE: Thank you, Mr.
8 Chairman.

9 BY REPRESENTATIVE McHALE: (Of Ms. Stroud)

10 Q. Ms. Stroud, your testimony, and indeed
11 answers to Representative Bortner's questions, followed up
12 very much the line of questioning that I had presented to
13 the prime sponsor of the bill when he spoke a few minutes
14 ago.

15 A. I missed a fair amount of that. I drove in
16 from Philadelphia and was running a little late, I'm sorry
17 to say.

18 Q. I was late myself, so you're certainly in a
19 position that's understood. I was interested in your
20 comments with regard to the Constitution and the scope of
21 our power in effect to address these issues. If I may,
22 I'd like to ask a series of questions that pertain to the
23 power that we have to exercise in this potential area of
24 the law. I gather from your testimony that consistent
25 with existing case law and the question of reproductive

1 rights, there would be no prohibition with regard to
2 legislative action that would criminalize surrogacy for
3 money, where there was an exchange of consideration, where
4 money or some other form of consideration is paid. We do,
5 in your opinion, I take it, have the constitutional
6 authority not to directly affect the reproductive decision
7 but rather the decision to enter into a binding legal
8 agreement for the payment of money. Is that correct?

9 A. I would say, yes, that that's correct.

10 Q. In short, we can address the commercial
11 aspects of this kind of relationship?

12 A. Absolutely.

13 Q. Now, as I understand the case law in some
14 other jurisdictions, moving back perhaps one step further
15 toward more reasonable ground, there is the question of
16 the validity of the contracts themselves. Some courts in
17 other jurisdictions have sustained, as I understand it,
18 the validity of these kinds of contracts. The choice
19 seems to have been presented to the courts of one, whether
20 the contracts would be voided on grounds of public policy
21 or whether they would be regulated and legitimized as a
22 form of a legally binding agreement. Have other States so
23 ruled? Are there States that do recognize--

24 A. Oh, I think that in the void, the vacuum
25 that exists where laws do not exist, that, yes, there are

1 certainly some courts that are trying to where you have
2 had the parties come to court and try to enforce the
3 agreement. What they're then looking at is the best
4 interest of the child, and it becomes a custody matter.
5 You know that is the issue.

6 Q. As I understand it, beyond the traditional
7 test of the best interest of the child, there have been
8 some courts, perhaps just trial courts, I'm not sure if
9 any appellate courts have so ruled, but I know there have
10 been trial courts that have respected the legal validity
11 of the these kinds of agreements?

12 A. Regarding the fee arrangements.

13 Q. That's correct.

14 A. I think that that may well be true, and I
15 would, again, have to check on that.

16 Q. Okay. My question at this point is, again,
17 consistent with the constitutional case law, is it your
18 opinion, and I gather that it is, that we can void such
19 agreements, contrary to the rulings that have been made by
20 certain trial courts, on grounds of public policy, that it
21 is within the constitutional scope of our authority to say
22 that these kinds of agreements shall not be legally
23 binding because they are--

24 A. They are void and enforceable up against
25 public policy?

1 Q. Yes.

2 A. Yes.

3 Q. Is that your position?

4 A. Yes.

5 Q. All right, and then I guess moving back
6 further to the question that I presented to Representative
7 Markosek, if we can in fact void the commercial aspects of
8 these kinds of agreements by saying that it would be a
9 crime to accept money to enter into these kinds of
10 agreements and if we can void the agreements themselves on
11 grounds of public policy, can we, consistent with the
12 constitutional case law that you mentioned earlier, void
13 these kinds of agreements when there is no consideration
14 paid, where the decision is made perhaps on altruistic
15 grounds to become pregnant for whatever purpose? Can we
16 tell people that they may or may not become pregnant,
17 based on whatever their motivation was, at the time they
18 chose to become pregnant, or do we at that stage enter on
19 to some very thin ice in a constitutional sense touching
20 upon the question of reproductive choice?

21 A. If the contract does not enable the
22 surrogate mother, the one who is bearing the child, to
23 change her mind after the birth of that child and assert
24 her parental rights, I don't think there is any question
25 that that contract can be considered void and

1 unenforceable as against public policy, regardless of any
2 issue of compensation. There is no adoption that could be
3 upheld in the United States of America with a
4 preconception consent. She could have every lawyer
5 around, she could have, you know -- she could say this is
6 a knowing, intelligent decision I'm making and I have a
7 child, whether this child was accidentally or
8 intentionally conceived, I have this child, this child I
9 want to place for adoption. I am signing away my parental
10 rights. No court would enforce that document that that
11 mother had signed.

12 Q. Would this be a reasonable, and I guess this
13 is my final question, would this be a reasonable consent
14 for the law to follow, and that would be to say that the
15 payment of consideration for the purpose of pregnancy and
16 the context of surrogacy shall be a criminal act? The
17 contract itself for surrogacy in exchange for payment of
18 consideration shall be null and void on grounds of public
19 policy, but that when it comes to the decision to become
20 pregnant, for whatever reason, we shall, in all cases,
21 simply apply the traditional law of custody and support,
22 without delving into the subjective purpose of the party
23 at the time she chose to become pregnant. You see the
24 three elements that I'm talking about?

25 A. Well, when you're talking about custody, you

1 would also be talking about adoption laws, and that goes
2 back to that ability of the birth mother to assert her
3 rights to parent the child once the child is born. So you
4 wouldn't just be talking about custody law. But custody
5 issues would obviously come into play because here you
6 have a known birth father as well, and there is no
7 relationship between the two of them. So it is positively
8 obviously going to end in some sort of a custody battle
9 and custody issue. So it is fraught with moral and legal
10 implications that are mindboggling.

11 REPRESENTATIVE MCHALE: I guess my belief is
12 that we ought to make the payment of money illegal. We
13 ought to void such contracts on grounds of public policy,
14 and then beyond that when there is no consideration paid
15 and no formal agreement between the parties, when two
16 people enter into a relationship that results in a
17 pregnancy, whatever their motivation at the time that they
18 had that physical relationship, we ought to apply
19 traditional laws of custody, support, and parental
20 obligations to the biological parents of the child, and
21 those, I think, are three elements that logically fit
22 together and provide an ethical basis for public policy,
23 and I think are consistent with your testimony and the
24 testimony that was presented by the prime sponsor of the
25 bill.

1 Thank you, Mr. Chairman.

2 CHAIRMAN CALTAGIRONE: Chairman Moehlmann.

3 REPRESENTATIVE MOEHLMANN: Thank you, Mr.
4 Chairman.

5 BY REPRESENTATIVE MOEHLMANN: (Of Ms. Stroud)

6 Q. I'm sort of curious about the notion that we
7 could simply deal with this by declaring such contracts to
8 be null and void. It appears to me that that would create
9 the worst of all possible worlds, in that we would allow a
10 small group of people who wanted to undertake a very
11 significant action to undertake that action, it would be
12 quite legal and they could do it, and yet when they wish,
13 if they had a disagreement somewhere along the line, all
14 the understandings that they had when they entered into it
15 could not be entertained in judgment by a competent
16 tribunal. It seems to me that we would be creating the
17 worst possible morass and one we would not have to
18 entertain. Would we not, in order to do what you would
19 like to do, have to criminalize it, when we're sitting
20 around this table saying, I don't want to put people in
21 jail, but if you want to stop what you want to stop, you
22 would almost have to criminalize it.

23 A. If you remove the commercial aspect of it
24 and if you focus your attention on the baby brokers, the
25 surrogate brokers, rather than the prospective adoptive

1 couples and the surrogate mothers, the industry--

2 Q. If you take the money out of it, why then
3 would you want to make the agreements null and void?

4 A. Because we would want to deter people from
5 intentionally getting pregnant with the purpose of
6 transferring custody of their child. That would be a
7 basic premise, and adoption is the socially beneficial
8 institution created to help provide some sort of solution
9 to a very difficult, wrenching situation - unplanned,
10 crisis pregnancy. That is where your attention should go.
11 There are already babies being born in the United States
12 of America, healthy babies are being born, and many young
13 women, sadly, or because of peer pressure, because of
14 media bias, they are deciding to single parent when they
15 are not prepared. They don't have the support.

16 Q. Well, I understand what you're saying.

17 A. That's where the attention needs to go.
18 When you were saying in a sense if we don't legalize these
19 and control these contracts, well, then we're having legal
20 morass.

21 Q. Well, what I'm saying is, number one, the
22 argument about encouraging adoption is not relevant to the
23 discussion of surrogacy.

24 A. Oh, I would disagree with you totally, sir.

25 Q. Excuse me. Excuse me, please.

1 It is not good enough, in my view, to say
2 that we should not do one thing which may or may not be
3 valid but say that we shouldn't do that thing because
4 another method is available. The question here is whether
5 the method of surrogacy is right, wrong, good, bad,
6 allowable, or not allowable?

7 A. And I've spoken to that.

8 Q. But it's not relevant to, I mean, I don't
9 think -- to my thinking, it has no relevancy to say we
10 shouldn't do surrogacy because adoption is available.
11 They're two independent things.

12 A. Excuse me, that was not what I said in my
13 testimony. I think I gave you many reasons I think that
14 surrogacy in and of itself is wrong. I did not merely say
15 look to adoption, don't look at surrogacy. So, I mean,
16 you know, that was not my simple statement at all.

17 Q. In answer to my question, a discussion of
18 adoption is not relevant. Maybe I'll put it that way.

19 A. Well, perhaps as to your specific question,
20 you don't view the discussion of adoption is. I think the
21 discussion of adoption is inextricably linked to the issue
22 of surrogacy.

23 Q. But the existence of one does not invalidate
24 the existence of the other. In that way one is not
25 relevant to the other.

1 A. There is no way that you can say adoption is
2 not relative to surrogacy. So I will disagree with you.

3 Q. I have another question.

4 A. Yes.

5 Q. If you say that a law regulating surrogacy
6 must contain the right of the birth mother to change her
7 mind--

8 A. That's correct.

9 Q. --you must necessarily be saying that the
10 right of the biological father does not exist.

11 A. Oh, I'm not saying that.

12 Q. That there are no rights of the biological
13 father?

14 A. No, no, no. Then if she asserts her
15 parental rights and the biological father wants to assert
16 his, you then go into a custody issue.

17 Q. What are his rights in that situation?

18 A. What are his rights in that situation? He
19 can assert his parenting rights just like birth fathers do
20 throughout the United States of America when it comes to
21 adoption issues. A young woman, when a birth father is
22 known, a young woman cannot unilaterally make an adoption
23 plan for that baby. If the birth father asserts his
24 rights, he has the right to go into court and get custody
25 of that baby. They have rights that are constitutionally

1 protected.

2 Q. I really think that you're advocating the
3 worst of all possible worlds.

4 A. No, you seem to have missed the intent of
5 this to say that we are advocating the worst possible
6 worlds. We want to deter surrogacy arrangements of any
7 sort. We think they are fraught with legal and moral
8 implications that are potentially devastating and that
9 they are not necessary. So to say that, gee whiz, people
10 will probably do them anyway, people also engage in many
11 other kinds of activities that as a matter of public
12 policy we have determined are not good, be it marijuana,
13 prostitution. Just because to say people will do it
14 anyway doesn't mean that we then legalize it, and that
15 seems to be what you are saying. And I would again
16 disagree.

17 Q. That is not at all what I am saying.

18 A. Then what was it? I'm sorry.

19 Q. What I'm saying is that if you void the
20 contract, you leave people doing a legal act with
21 absolutely no guidance whatever and no recourse if there's
22 any disagreement thereafter.

23 REPRESENTATIVE MOEHLMANN: Mr. Chairman, may
24 I ask--

25 MS. STROUD: No, you do not leave them

1 without -- you leave them where they will then have a
2 birth mother and a birth father who will then, if they
3 both want to assert custody, will go to the court and
4 under the laws of custody, the custody of that child will
5 be determined. You are not leaving them in a void, in a
6 vacuum. If these two people still go ahead, in spite of
7 the law saying such contracts are void and unenforceable
8 as against public policy, if they still go ahead and
9 choose to carry this child, you will then have a custody
10 law. You are not leaving them without any laws to
11 regulate their conduct.

12 REPRESENTATIVE MOEHLMANN: Mr. Chairman, may
13 I ask a very brief question of Representative Reber?

14 CHAIRMAN CALTAGIRONE: Sure.

15 (Silence)

16 REPRESENTATIVE MOEHLMANN: Bob?

17 REPRESENTATIVE REBER: I was waiting for the
18 question.

19 REPRESENTATIVE MOEHLMANN: Representative
20 Markosek's bill is very short and yours is quite a bit
21 longer, and I just want to make sure that the subject of
22 your bill is entirely surrogate mothering

23 REPRESENTATIVE REBER: That's correct.

24 REPRESENTATIVE MOEHLMANN: In other
25 committee hearings or other committee meetings when we

1 discussed the subject of surrogacy, inherent within the
2 subject was a discussion or an effect on sex surrogacy,
3 and I want to make sure that your bill has no effect
4 whatever on sex surrogacy, and we're talking only about
5 surrogate mothering, is that correct?

6 REPRESENTATIVE REBER: Just for definition
7 purposes, Mr. Minority Chairman, could I have a
8 delineation as to your definition of sex surrogate?

9 REPRESENTATIVE MOEHLMANN: No, does your
10 bill apply only to surrogate mothering?

11 REPRESENTATIVE REBER: I'm still not sure
12 what sex surrogacy is.

13 REPRESENTATIVE MOEHLMANN: Sex surrogacy,
14 I'm not a physician and I'm not a psychiatrist and I'm not
15 a sex surrogate, a sex surrogacy is used sometimes in the
16 treatment of sexual dysfunction or inadequacy. You're not
17 familiar with it?

18 REPRESENTATIVE REBER: No. In response to
19 your question, I do not think the bill contains that. If
20 in some way there could be an interpretation that it does,
21 I assure you that was not the intent.

22 REPRESENTATIVE MOEHLMANN: I appreciate
23 that.

24 Thank you very much.

25 CHAIRMAN CALTAGIRONE: Representative

1 McNally.

2 BY REPRESENTATIVE McNALLY: (Of Ms. Stroud)

3 Q. Ms. Stroud, thank you for your testimony.

4 The first thing, you know, with all due
5 respect to Chairman Moehlmann, I think that adoption is
6 highly relevant to this particular issue because as I
7 understand the process of surrogacy, it strikes me that
8 surrogacy is actually a specific type of adoption, an
9 unconventional type, but it involves a mother giving up
10 the child that she has given birth to to another
11 individual or individuals who will then become the legal
12 guardians and parents of that child. But one thing, I
13 agree a lot with what Mr. McHale said, and I think you
14 seem to agree with it, but I do see one problem, and I was
15 looking at some of the other testimony, and at least one
16 type of surrogate parenting seems to involve a process
17 where a man and a woman are genetic parents and the embryo
18 is then placed into a second woman who is then the carrier
19 parent. And when we get to the problem of, you know, in
20 the event that there is some difficulty, one obstacle that
21 it seems to me that our current system of child support
22 and custody and other laws are not prepared to deal with
23 is that here we have not a situation where there are two
24 parents but actually three. We have the two genetic
25 parents and then the mother who is not -- or I guess you

1 might say is the biotechnological mother because she
2 doesn't have any genetic relationship to the child but
3 through biotechnology has given birth to the child. And,
4 you know, has anyone contemplated what you do when you
5 have three parents?

6 A. Again, I mean, this is again the problems
7 that we have. That woman who bears that child is deemed
8 the mother of that child. There are no laws on the books
9 that say, and by the way, if you give birth to a child
10 that you don't happen to have a genetic link to that child
11 you carried in your womb, you are really not the mother of
12 that child and have no right to assert parental rights.
13 There are no such laws I'm certainly aware of.

14 Q. Now, the other thing that I had a question
15 about is I tend to agree that the commercial surrogacy is
16 something that should not be legally enforceable, but
17 suppose we have an individual who is altruistic and agrees
18 to be a carrier parent for a man and woman who want to
19 have a child and then also altruistically the genetic
20 parents, while they don't pay a compensation as such to
21 the carrier mother, they would, out of the goodness of
22 their heart, pay the medical expenses, hospital, prenatal
23 care, and that type of thing, that are related to the
24 pregnancy, and then after the child is born, suppose that
25 the carrier mother then decides that she wants to continue

1 to -- doesn't want to give up the child for adoption to
2 the genetic parents. It seems to me that especially under
3 some of the these procedures which are incredibly
4 expensive that, you know, the genetic parents have really
5 spent a lot of money to have this child conceived and for
6 the medical care and treatment of the child before birth
7 and now they're out of pocket perhaps tens of thousands of
8 dollars, even though such a contract I don't think should
9 be legally enforceable, would there be -- ought there to
10 be a right of restitution that somehow the carrier mother
11 is responsible for paying the out-of-pocket expenses that
12 the genetic parents made? I wonder if you could respond
13 to that. It's a long hypothetical.

14 A. It is a long hypothetical, but nonetheless,
15 the bottom line would be that there, in my mind, should
16 not be restitution of those expenses. That type of
17 agreement should never have been entered into to begin
18 with. So, you know, the woman who bore the child had a
19 right to assert her parental rights, and that is indeed
20 her right. And if the other couple had decided to pay
21 medical expenses for the care rendered, that was their
22 decision.

23 REPRESENTATIVE McNALLY: Well, Mr. Chairman,
24 I would just comment that the most disturbing thing about
25 this issue is it seems to me that there will be some

1 controversies that arise out of particular cases, and the
2 result of those controversies I think you need to have the
3 wisdom of Solomon to resolve them justly and fairly, and
4 that's certainly beyond the competence of the General
5 Assembly, and I think probably beyond the abilities of
6 anybody. Thank you very much.

7 MS. STROUD: Thank you.

8 CHAIRMAN CALTAGIRONE: Representative Reber.

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

11 BY REPRESENTATIVE REBER: (Of Ms. Stroud)

12 Q. Ms. Stroud?

13 A. Yes.

14 Q. On a number of occasions you used the words
15 that the surrogacy issue was fraught with legal problems.
16 I tend to agree. In my earlier statements, I don't know if
17 you heard them.

18 A. Yes, I heard part.

19 Q. Have you had the opportunity to review House
20 Bill 1843?

21 A. Not recently, no. I just got a copy today.
22 No, I was not sent that earlier. I'm sorry.

23 Q. Then with that in mind, take my word for it
24 that the fraught with legal problems that you related, and
25 I'm putting aside the compensation aspect because I think,

1 frankly, that becomes a red herring in the deliberative
2 discussions of this issue because even if, even if you
3 allow the situation to exist without compensation, I still
4 think we, as a General Assembly, have a duty to make sure
5 that all the parties to such an uncompensation
6 relationship do in fact understand the rights and
7 liabilities and the parties know full well what is going
8 on. I wish you would look at 1843, because I've heard the
9 concerns that you've expressed and the way you've
10 expressed them, I think they are very specifically
11 addressed, even to the point of the surrogate mother, if
12 you will, to have that right following the birth of the
13 child. Staff and myself are very concerned that if we did
14 not, if we did not track adoption law concepts,
15 principles, et cetera, and the basic tenets that are built
16 into those and long ingrained in our court decisions, and
17 knowing the tenor of the appellate courts in the
18 Commonwealth on that issue, if we did not in fact follow
19 the areas that are inextricably interwoven on this issue
20 of adoption, we may run afoul anyway and be right back at
21 square one.

22 So I do think that we have gone the miles to
23 try and bring that about, I would appreciate if you would
24 look at 1843 and members of your representative committee
25 would take a look at it, and notwithstanding whether you

1 agree or disagree but if you see some areas of improvement
2 or a loophole that you're concerned about, please let us
3 know, because it is our intent, and we believe we already
4 have addressed the concerns as I see them being raised by
5 you here today.

6 One other question. I've represented a
7 number of adopting parents over the years as an attorney.
8 I've represented a few biological mothers who have placed
9 their child up for adoption. I've also had dealings with
10 a number of adoption agencies. In my mind, I've always
11 felt that those adoption agencies in some instances were
12 for-profit type organizations because in many instances
13 they would take that crisis pregnancy situation, as you
14 used the phrase, and take that individual and take care of
15 that individual even to the extent of maybe paying
16 tuitions for school down the road for that individual,
17 caring for them, and ultimately those costs, as well as
18 other costs, are placed off by the agency to the adopting
19 parents. Isn't that, you know, when we really, really get
20 down and start looking at it, isn't that a type of
21 compensation changing hands in the course of a baby
22 relationship in the adoption process itself? I always
23 grapple with that problem when I hear the word "baby
24 selling," you know, being thrown about because I'm not so
25 sure that that doesn't go on legally, if you will, under

1 the purview of our current orphan's court systems in the
2 adoption process. And I'm just curious--

3 A. Are there abuses in the adoption process?
4 Of course there are. None of the agencies that are our
5 members are profit agencies at all. The adoptive parents'
6 fees cover, as a rule, less than 50 percent of the
7 overhead for the services provided to young women. Should
8 college tuition be a part of those services? Absolutely
9 not. Under no circumstances should a young woman's
10 tuition for a private school or college be a part of it.

11 Q. Are you aware of ever a scenario like that
12 taking place?

13 A. Not in a licensed nonprofit agency, no.

14 Q. However, it has taken place, to your
15 knowledge?

16 A. However, are there some agencies in the
17 United States of America who are not among our membership
18 who have some questionable practices? I would say yes.

19 Q. Then you've heard probably some of the
20 similar stories that I've heard.

21 A. But there are, again, laws to deal with
22 that, and also, you go back to the concept, too, of a
23 young woman, regardless of having had residential care,
24 which I would maintain is at a bear minimum for young
25 women who do not have family support, do not have

1 individual means, want confidentiality and privacy, that
2 that is something that, as a humane policy, should of
3 course be provided them, as well as the opportunity to
4 continue high school education and to receive quality
5 medical care and certainly to receive counseling so that
6 they can make an informed, intelligent decision and not be
7 coerced by anyone to terminate pregnancy, single parent,
8 marry when they're not really ready, or to place for
9 adoption but make the decision that's best for them. But
10 certainly there are some abuses by some of the people in
11 the adoption field, but there are also some laws to deal
12 with those people, and we need strengthening of laws in
13 that area, too. The adoption laws are not in and of
14 themselves perfect

15 Q. I would appreciate it if you would now take
16 an indepth analysis look at 1843.

17 A. I would welcome that opportunity.

18 REPRESENTATIVE REBER: Mr. Chairman, if I
19 might say to the committee, the committee may be wondering
20 why we have the Markosek bill in printed form and the most
21 recent surrogate bill that myself and a number of other
22 people have cosponsored and introduced in the unprinted,
23 informal form, because obviously it was introduced in the
24 waning days of the session and of course was not read
25 across the desk and a printer's number assigned, et

1 cetera. And I am somewhat concerned that the people that
2 have expertise on the issue, such as the witness currently
3 before us, did not have the opportunity to inextricably
4 intertwine the two so they could comment on it.

5 MS. STROUD: Yeah, I would have certainly
6 commented on it.

7 REPRESENTATIVE REBER: I think some
8 witnesses down the road may be more aware of it and
9 hopefully we will see some testimony on it.

10 Thank you, Mr. Chairman.

11 MS. STROUD: I'm sorry that I didn't have
12 that opportunity.

13 CHAIRMAN CALTAGIRONE: Representative McHale
14 has one other question.

15 REPRESENTATIVE MCHALE: Thank you, Mr.
16 Chairman.

17 Just one brief question.

18 BY REPRESENTATIVE MCHALE: (Of Ms. Stroud)

19 Q. Ms. Stroud, your position on this issue is
20 essentially my position, and I'm very nearly in full
21 agreement with the testimony you presented. However, in
22 answer to a question presented by Representative McNally,
23 an issue was raised that I think is important and caused
24 me some concern. He spoke to you about the question of a
25 hypothetical where the genetic parents of a child, of an

1 unborn child, make an arrangement for a third party to
2 serve as the carrier of that child, that unborn child,
3 during the gestational period, and there was some
4 discussion with regard to the payment of fees to that
5 carrier as a result of her services in providing that
6 assistance during nine months of gestation, and I think
7 you and I perhaps have some disagreement on that, but I
8 won't go into that. The concern I had was you indicated
9 to Representative McNally that if a disagreement arose
10 between the genetic parents and the carrier, that the
11 woman who had decided to be the carrier of that child
12 during the gestation period could then go to court and
13 assert her parental rights. Under the law, and you may
14 not have chosen your words carefully, and that's really
15 why I'm asking this question, under the law, were the
16 carrier of the child during the gestational period--

17 A. Are we talking in the vernacular
18 rent-a-womb? Is that what--

19 Q. Well, let's say there was no compensation
20 paid during that period of time and that as a result of
21 altruism, for whatever motivation, a third party, a woman
22 agrees to carry a child genetically produced by two other
23 persons and a dispute does arise and the three people end
24 up in court - the two genetic parents and the woman who
25 has been the carrier of the child during the gestational

1 period. Does the carrier, and I'm using that word
2 carefully because in my view she is not a parent, but does
3 that carrier have parental rights which she may assert in
4 opposition to the genetic parents in the event that a
5 subsequent dispute turns into a legal confrontation?

6 A. This is not something I have studied at
7 length, so may I say that this is an answer to that based
8 not on research, and I will be glad to research that
9 specific question. I am not aware of any law in the
10 United States of America that would define the, and you
11 use the term "carrier," but would define the carrier as
12 not the birth mother of that child. I am not aware of
13 that. I will do some research and I may be proven wrong,
14 but that, you know, as of right now, that would be my
15 position, that she indeed would have some parental rights
16 to assert.

17 Q. Really?

18 A. And I'm not aware of anything.

19 Q. Even though she was not the genetic mother
20 of the child?

21 A. That's correct.

22 Q. I would have some concern about that and I'd
23 be interested in seeing whatever case law--

24 A. I would be glad to research that specific
25 issue, and as I say, I may be proven wrong, but I am not

1 aware--

2 Q. Again, she may have certain rights that
3 *could be asserted, but consistent with the viewpoint that*
4 *I presented earlier and I think is consistent with*
5 *Representative Markosek's bill, we can certainly prohibit*
6 *the payment of money for surrogacy, we can void such*
7 *contracts on grounds of public policy, and when two people*
8 *or three people enter into an arrangement where no money*
9 *is paid, there is no formal contract, it seems to me that*
10 *we can apply traditional and evolving principles - the law*
11 *of custody, support and parental obligation - to the*
12 *parties involved, and I raise that because in this case it*
13 *seems to me we have two parents that are the genetic*
14 *parents of the child. We have a carrier who may have*
15 *certain interests in the child she carried through nine*
16 *months of gestation, but it seems to me we have only two*
17 *parents and the carrier, and the parents of the child,*
18 *regardless of who may carry that child during the*
19 *gestational period, are the people who genetically*
20 *produced that child. And I happen to think that the*
21 *common law in an evolving process can, consistent with*
22 *Representative Markosek's bill, address questions of*
23 *custody, support and parental obligation as applying to*
24 *the genetic parents of the child. But I was concerned*
25 *because in answer to Representative McNally's question,*

1 you did make reference to the, quote, "parental rights" of
2 the woman who had been a carrier though not a genetic
3 parent during the nine months of pregnancy, and I would be
4 hesitant to afford that carrier the parental rights we
5 have traditionally guaranteed under the law to the true
6 genetic parents of a child. She may be a carrier, she may
7 be acting in good faith, she may be well-motivated, but in
8 my view because she has carried the child through nine
9 months does not necessarily make her the parent of that
10 child with corollary parental rights.

11 A. You may be correct. I did not think that to
12 be the case.

13 REPRESENTATIVE MCHALE: Thank you, Mr.
14 Chairman.

15 CHAIRMAN CALTAGIRONE: Thank you very much.

16 MS. STROUD: Sure. Thank you for the
17 opportunity.

18 CHAIRMAN CALTAGIRONE: We will next hear
19 from Steve Litz.

20 And at this time I'd like to turn the Chair
21 over to Chairman Moehlmann.

22 (Whereupon, Representative Moehlmann assumed
23 the Chair.)

24 ACTING CHAIRMAN MOEHLMANN: The next witness
25 is Mr. Steven Litz, President of American Organization of

1 Surrogate Parenting Practitioners.

2 Welcome, Mr. Litz. Do you have a prepared
3 statement? I think I did see a prepared statement of
4 yours.

5 MR. LITZ: Yes, I do.

6 Good morning, Representatives, Mr. Chairman.

7 Let me start by addressing some of the
8 questions that were raised by the other Representatives
9 and first addressing Representative Markosek's bill.

10 My understanding of Representative
11 Markosek's intent with this bill is, as he said, to make
12 surrogate contracts illegal. Later in my speech I'll deal
13 with the laws that exist, and by the way, to answer your
14 question, there are 12 States that have laws on surrogacy.

15 If the goal is to make surrogate contracts
16 illegal, then the bill should do that. I agree with the
17 Chairman's viewpoint that by saying surrogate contracts
18 are illegal, you've done nothing. Indiana, and that's
19 where I'm from, has a law that says surrogate contracts
20 are illegal. I'm an attorney, I'm the President of the
21 American Organization of Surrogate Parenting
22 Practitioners, and I also have a surrogate program in
23 Indiana. Indiana's law saying surrogate contracts are
24 illegal doesn't mean a thing because the issue is not
25 whether these contracts are illegal or enforceable if

1 there's a dispute, the issue is who gets custody of the
2 child? And regardless of whether the contracts are
3 enforceable or -- not regardless, but by saying the
4 contracts are unenforceable, you haven't told the public
5 anything because you still have, in the traditional
6 surrogacy situation, you still have the surrogate, the
7 biological mother, and the father who each have parental
8 rights independent of the contract. So I agree that
9 drafting a law voiding the contracts sends mixed signals
10 to the public and in the long run does not clarify this
11 issue that needs clarification.

12 I've always been fond of a now defunct
13 cartoon by Berke Breathed called "Bloom County." In one
14 episode the cartoon's main character, Opus the penguin, is
15 distraught over what he perceives is the darkening of the
16 human soul. He's attempting to find something in which he
17 can believe, and his first thought is of world peace.
18 Unfortunately, he immediately sees a news update where the
19 anchorman says, "Today, Mohammar Quadaffi attempted to
20 blow up the United States." Despairing, Opus then places
21 his faith in financial security, only to read a headline
22 that "Ivan Boesky has sold all of his stock to Donald
23 Trump." Ready to give up, Opus encounters a pregnant
24 woman and suddenly believes his troubles are over. Having
25 finally found his answer, having located the last

1 remaining bastion of purity, he gently rests his head upon
2 her enlarged belly and sighs, "Ah, motherhood," to which
3 she looks down on him and replies, "Surrogate."

4 There can be no doubt that today's
5 technological advances have enabled us to redefine the
6 very notion of family and of motherhood. New technologies
7 unavailable even 10 years ago have brought thousands of
8 children to couples through in vitro fertilization.
9 Hundreds of couples have also created families through
10 surrogacy. Today we have the ability to combine these two
11 processes, thereby allowing a couple to have a child that
12 is biologically related to both the husband and the wife,
13 though carried to term by another woman.

14 Rather than deal exclusively with the
15 theoretical debate on surrogacy, as other witnesses may
16 do, I thought I would address surrogacy's practical
17 applications. In so doing, of course, I will be arguing
18 that surrogacy is a viable and valuable alternative,
19 although certainly not a solution, to infertility. In the
20 next few minutes then I will provide an overview of how
21 surrogacy works, or should work, in my opinion, what other
22 States' response to surrogacy has been, and what ought to
23 be done in the future to see that this relatively new
24 technology is used and not abused.

25 My program began in 1984, and to date we

1 have helped dozens of couples throughout the country. The
2 American Organization of Surrogate Parenting Practitioners
3 is a grassroots organization that we formed in 1988. It
4 is a self-regulating organization comprised of eight of
5 the country's dozen or so surrogate programs. It seems to
6 provide a uniform set of guidelines for its members to
7 follow and was formed mainly because of the total absence
8 of regulatory schemes for surrogate programs. To date,
9 not a single State regulates surrogacy. Many attempt to
10 regulate the participants, but no State has addressed the
11 issue with sufficient clarity so the public understands
12 what it can and cannot do.

13 The term "surrogate mother," of course, is a
14 misnomer. I prefer to refer to the surrogate as the
15 intended birth mother and will do so in my remarks. Today
16 couples have essentially two options if they choose
17 surrogacy. The embryo transfer option is becoming
18 increasingly popular if couples can afford the program and
19 are physically capable of participating in it. Couples
20 can make this choice where doctors combine the sperm from
21 the husband with his wife's egg and then transfer the
22 resulting embryo or embryos to a surrogate, or couples can
23 choose the more traditional surrogacy arrangement where
24 the birth mother is simply artificially inseminated with
25 sperm from the husband. In order to be a birth mother in

1 my program and in order to be a birth mother through the
2 programs that are members of the AOSPP, a woman must meet
3 two basic requirements: One, she must be over 21; and
4 two, she must have already had at least one successful
5 childbirth.

6 The reason for this latter requirement is
7 two-fold. First, it is my feeling that a woman can better
8 understand pregnancy having gone through it. This, by no
9 means implies that she will know what it is like to give
10 up a child, but at least she will have some idea of the
11 physical and emotional changes she will experience during
12 the pregnancy. Secondly, it will be quite ironic if a
13 woman chose to participate in a program only to discover
14 that she, like the couple that was working with her, also
15 was unable to have children.

16 Once a woman meets these basic criteria, I
17 send her an application. The application asks information
18 about the woman's marital and family histories, her
19 educational background, her employment, her and her
20 family's medical history. She also lists references,
21 obtains her medical records from her prior pregnancies,
22 explains why she wants to help a couple, and lists what
23 her fee is. After I receive the application, I or my
24 secretary, who also happens to be Indiana's first intended
25 birth mother, Indiana's first surrogate mom, contact the

1 woman for an interview. After the interview with me,
2 assuming everything is okay, I draw up a one-page summary
3 or profile sheet of her characteristics. Couples, where
4 infertility is required, defined as at least the wife's
5 inability to successfully carry a child to term without
6 jeopardizing her or the child's life, these couples who
7 have previously submitted their applications then review
8 the profile sheets and make a selection.

9 After the woman is selected, she and her
10 husband, if she's married, come to Indianapolis where they
11 are screened psychologically. No one knows, of course,
12 what qualities contribute to one's ability to successfully
13 complete a surrogate arrangement. It is the
14 psychologist's goal, however, to ensure that the women who
15 are eventually accepted are emotionally and mentally
16 mature, that they understand from a psychological
17 standpoint some of the things they might feel prior to and
18 after the birth, and that they have a support system that
19 will encourage them both during and after the pregnancy.
20 The psychologist prepares a report after seeing the
21 intended birth mother, submits a copy to me, to her, and
22 to the couple. Based on all the information the couple
23 has about her, the couple then makes a final decision if
24 she is the woman they wish to carry their child. The
25 intended birth mother also is given information about the

1 couple that is interested in selecting her and she, too,
2 decides if that particular couple is right for her.

3 At this point, contracts are prepared. I
4 always represent the couple, never the surrogate. She is
5 strongly encouraged to have her own attorney review the
6 contract with her, and the couple pays for his or her fee
7 from the escrow account they have set up with me.

8 Now, you heard Representative Markosek's
9 remarks concerning the cost of surrogacy programs. The
10 cost of the entire procedure in my program for the
11 ~~embryo transfer program~~ ~~is about \$25,000.~~ ~~either~~ ~~case,~~ ~~that~~ ~~breaks~~ ~~down~~ ~~as~~ ~~\$10,000~~ ~~for~~ ~~the~~ ~~surrogate.~~ ~~That~~
12 ~~embryo transfer program~~ ~~is about \$25,000.~~ ~~either~~ ~~case,~~ ~~that~~ ~~breaks~~ ~~down~~ ~~as~~ ~~\$10,000~~ ~~for~~ ~~the~~ ~~surrogate.~~ ~~That~~
13 case, that breaks down as \$10,000 for the surrogate. That
14 money is deposited with me once the couple signs the
15 contracts. My fee is \$5,000. I do not, as was suggested,
16 run away if the procedure breaks down. It never has in my
17 program, but my contracts specify that if the procedure
18 breaks down and the couple decides to pursue a custody
19 fight, then the fee that they already have paid me would
20 be applied toward any other fees as a result of that
21 decision, and that's the way that the AOSPP dictates fees
22 to be paid. The medical expenses will vary tremendously
23 depending on which program the couple is involved in. In
24 the artificial insemination program, the medical expenses
25 can be as little as \$100. In the embryo transfer program,

1 the medical expenses would range at the beginning anywhere
2 from \$5,000 to \$7,000. And the couple also pays
3 traveling, lodging, miscellaneous expenses, things like
4 that.

5 You probably have seen or heard some of the
6 terms of surrogacy contracts, and Representative Markosek
7 mentioned a couple of those. In my program, the contracts
8 make it clear that the birth mother's fee is for her
9 services of carrying the child and not for the baby itself
10 or for her consent to the child's adoption, if that
11 consent is necessary. So, for example, if the birth
12 mother miscarries at four months, she receives four-ninths
13 of her fee. If the child is stillborn, she receives her
14 full fee.

15 Representative Markosek asked, what happens
16 if there's twins? The contracts say that "child" means
17 children. The couple is obligated to accept the child or
18 children regardless of their mental or physical condition
19 upon birth, so we don't have a situation where couples can
20 turn their backs on a handicapped child, for example.
21 That situation, by the way, where a couple tried to do
22 that has only happened once. There have been over a
23 thousand births to surrogates mothers, to birth mothers,
24 in this country, and the only time that that situation
25 ever happened was in 1981 where a child, unfortunately,

1 was born with Down's syndrome. The end result of that is
2 that the child turned out not to be the husband's child.
3 The surrogate had slept with her own husband the night
4 before and the child was theirs and not the couple's. So
5 there's never been a case where a couple turned their
6 backs on a child that was handicapped or hard to place, as
7 the more appropriate term is.

8 Some of the other significant provisions of
9 the contracts are: The couple, as I said, agrees to
10 accept the child no matter what its condition upon birth.
11 The couple takes out a life insurance policy on the
12 intended birth mother. They pay all the expenses arising
13 out of the procedure. The intended birth mother has the
14 sole choice relating to terminating the pregnancy, and
15 this, I believe, was contained in the other House Bill,
16 1843. If the couple requests the intended birth mother
17 abort and she refuses, they are still obligated to accept
18 the child. Prior to the signing of the contracts, I
19 recommend to the couple that they and the woman, the
20 intended birth mother, meet to discuss this very sensitive
21 issue. I also feel that the surrogate experience is a
22 much more enjoyable one for all parties if they meet and
23 get to know each other.

24 Despite the safeguards we try to provide to
25 both the intended birth mother and the couple, many feel

1 that surrogacy in any form should be outlawed. The
2 potential for exploitation is too great, the argument
3 goes. Only poor, uneducated women apply to surrogate
4 programs, opponents argue, and this is something that
5 Representative Markosek mentioned, too. Surrogacy is
6 child selling, they cry. People who profess these views
7 simply are ignorant of the facts. The average woman
8 selected in a surrogate program is 28, a 28-year-old
9 mother of two, employed, married for at least three years,
10 at least a high school diploma and oftentimes college
11 education, and solidly middle class. I would invite
12 Representative Markosek to take a look at the studies that
13 have been done on this that show that the average income,
14 for example, of surrogates, of intended birth mothers that
15 are selected is somewhere around the neighborhood of
16 \$35,000. That places the woman solidly middle class.
17 Poor women applying to the surrogacy programs just for the
18 money either are rejected outright or are not selected.

19 House Bill 745 fails to recognize this, as
20 its premise is that women choose to participate in
21 surrogacy arrangements, quote, "for the purpose of
22 receiving financial compensation." That simply is not the
23 case. All of the women who become surrogates, intended
24 birth mothers, express deep empathy for the infertile
25 couple and all rejoice in the chance to enable them to

1 have what the intended birth mothers all have - the
2 opportunity to be a parent.

3 It is also especially frustrating to
4 encounter those who maintain that if the infertile couple
5 wants a child so badly that they can always adopt a
6 handicapped child. To this I respond that no one makes
7 that suggestion to fertile couples; how dare they make it
8 to infertile couples. No couple should be deprived of a
9 chance to nurture a healthy child, if that's their wish,
10 and if other people are able to knowingly and voluntarily
11 assist them in that goal.

12 The difference between surrogacy and
13 black-market babies is equally apparent. In the
14 black-market situation, a baby broker attempts to extract
15 as much money as possible from the purchasing couple. The
16 woman relinquishing her child never has legal
17 representation, is always impoverished, has little or no
18 information about the child's father, and little, if any,
19 education. Contrast that scenario to surrogacy. The
20 couple and the intended birth mother are each represented
21 by different attorneys, all fees are spelled out ahead of
22 time, the intended birth mothers have been screened
23 psychologically, both sides have been screened medically
24 for AIDS, hepatitis, drug use, et cetera, and most
25 importantly, the decision to conceive is the intended

1 birth mother's, made before any pressure could be exerted
2 on her. Surrogacy simply is not comparable to
3 black-marketing, and most States that have addressed this
4 issue have felt similarly.

5 Of the 12 States that have passed laws in
6 some way relating to surrogacy, only 3 actually prohibit
7 it - Michigan, Arizona, and Washington. Eight States,
8 including the prior three, say that surrogacy contracts
9 calling for the relinquishment of custody prior to birth
10 are enforceable. Four States have laws that in some
11 fashion recognize and accept surrogacy. No State has
12 passed legislation equating surrogacy with child selling,
13 nor has anyone ever been prosecuted criminally under such
14 theory. States addressing the area have felt most
15 uncomfortable with the notion that the decision to consent
16 to the child's adoption is one which can be made prior to
17 the birth of the child, a concept with which the AOSPP and
18 I personally agree. Under our contracts, the intended
19 birth mother could only consent to the child's adoption
20 after it's born. If she refuses, then the couple has the
21 option of pursuing a custody fight, similar to any custody
22 dispute between biological parents. In the embryo
23 transfer situation, and this may answer or at least shed
24 some light on your question, where the intended birth
25 mother is not genetically related to the child, it is

1 unclear whether she could assert any, quote, "parental
2 rights," although it is my opinion that faced with the
3 choice between simple contribution of gametes or nine
4 months of gestation, courts would probably give more
5 weight to the latter and at least allow the intended birth
6 mother the opportunity to press her custody claim.

7 House Bill 745, as currently drafted,
8 signals infertile couples that they no longer can go to
9 licensed professionals to help them. Surrogacy would be
10 driven underground where couples would be left on their
11 own to screen, counsel, and select an intended birth
12 mother. It can hardly be doubted that in fact no
13 screening would occur, and we would see far more Baby M's
14 than ever before.

15 Surrogacy is an idea whose time has come.
16 Of the thousand babies born through surrogacy, only a
17 handful of cases have gone awry, and all of those involve
18 inadequate testing. Not a single case exists where the
19 birth mother receives sufficient psychological counseling
20 or the couple received a copy of the psychologist's
21 findings and where the birth mother then decided to keep
22 the child. The vast majority of arrangements result in
23 four tremendously satisfied people - the couple who has a
24 child it otherwise never could have loved, the child
25 itself, which otherwise would not exist, and the intended

1 birth mother, who has given the couple a rare and precious
2 gift, one which few women have found themselves capable of
3 giving, one which will literally last a lifetime, the gift
4 of life.

5 Thank you.

6 ACTING CHAIRMAN MOEHLMANN: Thank you, Mr.
7 Litz.

8 Are there questions from the members of the
9 committee?

10 Representative Blaum.

11 REPRESENTATIVE BLAUM: Thank you, Mr.
12 Chairman.

13 BY REPRESENTATIVE BLAUM: (Of Mr. Litz)

14 Q. My question deals with the embryo
15 transplant. That does not offend me at all, and to the
16 extent that it is practiced, I think that is true
17 altruism. In your opinion, that is covered under this
18 legislation?

19 A. Well, it is covered under HB 745. Sure,
20 it's covered. HB 745 makes no distinction between
21 artificial insemination and embryo transfer. It defines
22 surrogate mothering as becoming pregnant, completing the
23 gestation cycle or delivering a child. Those three things
24 occur regardless of whether the child is biologically the
25 surrogate's or not.

1 Q. I didn't hear the prime sponsor speak to
2 that, and I don't know if Joe is here if that is his
3 intent. That was surprising to me and I'm glad that you
4 pointed that out.

5 ACTING CHAIRMAN MOEHLMANN: Are there any
6 other questions?

7 Representative Piccola.

8 BY REPRESENTATIVE PICCOLA: (Of Mr. Litz)

9 Q. Do your clients come from States other than
10 Indiana?

11 A. Yes. I have clients from all over the
12 world, actually.

13 Q. How do your contracts approach the subject
14 as to what law is applicable? Because every State
15 apparently is either in the process or has already adopted
16 different standards.

17 A. Well, as I said, 12 States have laws. If a
18 couple, for example, came to me from Michigan, where
19 surrogacy is criminalized, when I draft a contract, we can
20 include any State's law as the law controlling. So we
21 would either -- we ordinarily use the couple's home State
22 law or the surrogate's home State law. Even -- the
23 trouble with the laws that criminalize surrogacy is, as I
24 think Representative Markosek mentioned, they're not
25 enforced. Even in Michigan, where surrogacy is a crime,

1 we just did an adoption in Michigan, a step-parent
2 adoption. In the traditional surrogate situation, only
3 the wife of the couple adopts the child. Her husband
4 doesn't adopt it because he's the biological father. So
5 it's a step-parent adoption, and the laws in most States
6 concerning step-parent adoptions are much more relaxed
7 than ordinary adoptions. Those laws obviously never
8 contemplated surrogacy, but that's the framework with
9 which we work under. So we can have really any State law
10 control the contracts, although as I said, which State law
11 applies is really not important.

12 Q. So in other words, if we had two
13 Pennsylvania -- a Pennsylvania couple and a Pennsylvania
14 surrogate and we adopted a statute which made such
15 contracts void or even criminal, whatever we decide to do,
16 and those three individuals go through your firm, you
17 would make some other State's law applicable to the
18 contract and are you indicating that Pennsylvania would be
19 out of the loop in terms of jurisdiction?

20 A. Well, to take that scenario, if Pennsylvania
21 criminalizes surrogacy and a surrogate, an intended birth
22 mother, from Pennsylvania came to me, since the contracts
23 are drafted and prepared in Indiana, we would have
24 Indiana's law applied, even though Indiana says the
25 contracts are unenforceable. I mean, that just shows

1 that--

2 Q. Indiana's law says those contracts are
3 unenforceable?

4 A. Yes. Indiana's law says that surrogate
5 contracts violate public policy and are unenforceable.

6 Q. And you're an attorney?

7 A. Right. I enclose a copy of the Indiana law
8 and explain to the couple that if there is a dispute, they
9 cannot go into court in Indiana and say, "Look, Judge,
10 here's a contract." But that's the problem.

11 Q. You put that in the contract? Do you put
12 that in the contract?

13 A. That they cannot -- do I put what into it?

14 Q. Well, it's not even a contract. It's a
15 piece of paper with writing on it.

16 A. Well, I'm the first one to tell my clients
17 that regardless of what the State law is, in all
18 probability, the contracts are unenforceable. There's
19 only been one court ever that has said surrogate contracts
20 are unenforceable where that opinion stood up. Judge
21 Sorkow in New Jersey said it in the Baby M case, but that
22 was reversed by the Supreme Court. The Kentucky Supreme
23 Court has held that surrogate contracts are enforceable,
24 but Kentucky has a law, as a result of the Kentucky
25 Supreme Court's opinion, the legislature passed a law that

1 says you can't do it, effectively nullifying the Kentucky
2 Supreme Court's decision.

3 Q. So what you're telling us is that no matter
4 what we do, this practice will continue?

5 A. Well, I don't think so.

6 Q. So it's immaterial what we do?

7 A. No, I definitely disagree with that. I
8 think that the public needs to know where they stand on
9 this. If you decide to criminalize surrogacy, that will
10 send a signal to the public that surrogacy is something
11 that should not occur. I think that despite the
12 tremendous pains of infertility, if this bill passes as it
13 stands right now, even though Representative Markosek says
14 he doesn't want to send people to jail, they're looking
15 at, I think my understanding of Pennsylvania law is 5
16 years and a \$10,000 fine. Couples are not going to
17 participate in surrogacy if surrogacy is criminalized.

18 My position on surrogacy is if public policy
19 of this State dictates that surrogacy should be outlawed,
20 then outlaw it. Don't say you can do it if there's no
21 fee, or don't say the contracts are unenforceable, because
22 then you're sending mixed signals, and then people like me
23 who want to help couples are going to find a way around
24 it.

25 Q. What happens when, or what would happen,

1 maybe this hasn't happened in your case, but I believe
2 your testimony was that you take all the money and put it
3 into your escrow account.

4 A. Right.

5 Q. And incidentally, have you had any
6 difficulty with the Indiana Bar Association on your
7 practice?

8 A. No.

9 Q. I find it -- well, you were here to convince
10 me one way and you've actually gone the other direction.

11 A. That wasn't my intent.

12 Q. Well, I find it very cold. But you put all
13 the money into your escrow account?

14 A. That's right.

15 Q. The \$15,000 to \$25,000. And you do that
16 prior to conception?

17 A. Right.

18 Q. Okay. And then how is that money paid out?
19 At what stages is it paid out?

20 A. Which part of the money?

21 Q. All the money. In other words, are they
22 paid out as expenses are incurred?

23 A. Yeah.

24 Q. When does the surrogate mother receive her
25 fee?

1 A. The surrogate receives her fee after the
2 child is born.

3 Q. What if the child is born and the surrogate
4 mother refuses to give up the child, wants to assert her
5 parental rights? Do you still pay the money?

6 A. Then according to the contracts, I would be
7 obligated to pay the surrogate her fee.

8 Q. And would you? Because the contract is not
9 enforceable.

10 A. Well, that's right.

11 Q. And you're standing there holding the bag.

12 A. I think the first thing that I would do is
13 ask the couple what they want to do, since the money is
14 their's. My advice to the couple would be that they
15 should pay the surrogate her fee since her fee is for
16 carrying the child to term, not for the child.

17 Q. I think you put yourself in a very, very
18 precarious ethical situation because you're holding money
19 that under a nonexistent or voidable agreement can't be
20 paid either to the surrogate by a legal process or
21 refunded to the parents. I don't -- I think you've dug
22 yourself a terrible hole and you're an accident waiting to
23 happen.

24 A. Well, I don't think so. The contract, as I
25 said, is not necessarily unenforceable.

1 Q. It is in Indiana.

2 A. If the contract specifies that Indiana law
3 were to apply.

4 Q. Well, I'm assuming that your procedures are
5 the same regardless of which State you make in terms of
6 the applicable law?

7 A. Well, the procedures are the same but
8 whether the contract is enforceable or not depends on
9 whichever State law applies.

10 Q. Okay. What if the surrogate refuses to give
11 up her parental rights and wants to keep the child and the
12 parents tell you not to pay her the \$10,000. Then what do
13 you do?

14 A. I have not been faced with that situation
15 and I don't know--

16 Q. Well, what would you do?

17 A. Well, my first response is that the money is
18 in escrow for the surrogate. The couple signs an
19 agreement saying that that money is hers to be given to
20 her upon completion of--

21 Q. But you just told me earlier that it isn't
22 hers, it is your clients'. You represent the couple, you
23 don't represent the--

24 A. That's right. Well, an escrow account is
25 set up. I mean, a trust account.

1 Q. Yes, I understand what that is.

2 A. So that the money is earmarked for the
3 intended birth mother, and what I would probably do is
4 seek some assistance from the Bar Association.

5 Q. I think you should seek that now.

6 REPRESENTATIVE PICCOLA: Thank you, Mr.
7 Chairman.

8 MR. LITZ: No, I don't think that -- I mean,
9 I'd like to respond to that. I don't think that ethically
10 I'm doing anything wrong. I mean, I spell out all of the
11 laws, I explain to the couple that this is a risky area
12 because of the absence of the State laws, and I tell them
13 that if faced with a dispute, that the contract may very
14 well be unenforceable. As an attorney, I've got my
15 ethical obligation to explain to the couple what they're
16 getting into. I'm not violating the law, so I'm not doing
17 anything that is unethical.

18 BY REPRESENTATIVE PICCOLA: (Of Mr. Litz)

19 Q. How as, an attorney, can you even -- I have
20 a problem even drafting an agreement knowing that it is
21 unenforceable because it is not an agreement by
22 definition. I mean, how can you, as an attorney,
23 ethically do that?

24 A. Because I don't know that the contract is
25 unenforceable.

1 Q. You know that's what the State law of
2 Indiana says and you know what law you're applying to the
3 contract.

4 A. Well, that's right. We generally do not
5 apply Indiana law to surrogate contracts. We have in the
6 past. The only contracts we've applied Indiana law to
7 involve embryo transfer. It's unclear whether under
8 Indiana law that applies to embryo transfer. Again, no
9 State has made a distinction between that.

10 Q. That is another distinction we probably
11 should deal with. But I find it mindboggling.

12 REPRESENTATIVE PICCOLA: Thank you, Mr.
13 Chairman.

14 ACTING CHAIRMAN MOEHLMANN: Representative
15 McNally.

16 BY REPRESENTATIVE McNALLY: (Of Mr. Litz)

17 Q. Mr. Litz, first of all, in your testimony,
18 you had indicated that the average surrogate mother is 28
19 years old and -- but you didn't say any indications as to
20 how many surrogate mothers you had studied in order to
21 come to these statistics?

22 A. The study was based on 85 applicants to our
23 program. There have been other studies with numbers that
24 are significantly higher than that.

25 Q. Another question I had that occurred to me,

1 looking at the bills a little bit more closely, is there
2 such a thing as surrogate fathering, where, you know,
3 suppose we have a couple and it is the husband who is
4 infertile and so they go to another man and through a
5 process of artificial insemination the wife is
6 impregnated?

7 A. Well, certainly there are sperm banks across
8 the country. I don't know if Pennsylvania has an
9 artificial insemination law. Many States do, and every
10 State that has an AI law says that the sperm donor is not
11 and has no rights -- is not the father and has no rights
12 to the child. Obviously, that type of law makes sense.
13 You wouldn't want all of these sperm donors trying to come
14 back and assert their parental rights.

15 Q. The one thing that occurred to me is, you
16 know, I guess a certain question mark is that, you know,
17 since we have a statute, we in Pennsylvania have an Equal
18 Rights Amendment in our State Constitution and we have a
19 statute that only prohibits surrogate mothering. I mean,
20 you can be a surrogate father but you're not allowed to be
21 a surrogate mother, and there was one aspect that, you
22 know, I don't think has been addressed, and I don't know
23 what the answer is.

24 A. Well, some people have said that there is a
25 constitutional right to engage in surrogacy, precisely for

1 those reasons. My thoughts are that that's probably not a
2 valid argument, or at least one that probably would not be
3 accepted by the courts, because there's always -- it's not
4 so easy to say, well, if a man can provide the sperm, then
5 why can't the woman provide the egg? Because she's doing
6 much more than that. She's investing nine months of her
7 life with the child. So I think that theoretically while
8 that argument may have some merit, I don't think that
9 practically the courts would buy it.

10 Q. The last thing that perhaps I'd like you to
11 elaborate on is something that troubles me about surrogate
12 parenting, and probably the best illustration of my
13 concern was in your description of the scenario of
14 surrogacy, where the couple and the intended birth mother
15 are each represented by different attorneys, fees are
16 spelled out ahead of time, they've been screened
17 psychologically, they've been screened medically, and so
18 on, and you know, all of this is, you know, test tubes and
19 all of the apparatus of technology and now attorneys, and
20 I'm an attorney, but we have this -- we've assembled this
21 massive technology and scientists and physicians and
22 lawyers to conceive a child, and you know, it almost --
23 well, it does remind me of Aldous Huxley and George
24 Orwell, and at some point -- well, I'm concerned when
25 technology and the law intrudes so far into something

1 which is, you know, natural and, you know, in my opinion a
2 positive result, and I think that having a child being
3 born and conceived is a very positive and commendable
4 thing, but that doesn't necessarily mean that I agree with
5 the way or think that the way that that result is achieved
6 is equally commendable. And, you know, as I said, it
7 would prompt me to really think about this as your
8 scenario of surrogacy, and does it trouble you at all?

9 A. Well, ideally, surrogacy would not exist
10 because there wouldn't be infertility, or there would be
11 an abundance of healthy children available for adoption.
12 But that's not the case. In 1986, I think the last
13 available statistic was that for every 50 infertile
14 couples looking to adopt a healthy, white infant, there
15 was 1 child available. People don't come to me as a first
16 resort. They come to me having spent thousands of dollars
17 trying to go through adoption, trying to use some of these
18 technologically advanced alternatives and nothing has
19 worked. And they want a child and they want a child
20 that's biologically related at least to the husband of the
21 couple. And if the child can be biologically related to
22 both the husband and the wife, then the couple generally
23 pursues that option first.

24 I agree that the technology, as is normally
25 the case, has far surpassed the law in this area, and I

1 don't know if this is something that is susceptible to the
2 type of regulation where you close all the holes. I don't
3 think that dealing with this area that the holes will ever
4 all be closed, because if you pass a law saying that
5 surrogacy is illegal, you still have the situation where
6 what if somebody engaged in it and what if there's a
7 dispute? And the only way I can see to close the holes
8 would probably be judged unconstitutional, and that is by
9 saying either that the intended birth mother automatically
10 gets the child if there's a dispute, or the couple
11 automatically gets the child. And I agree with, I think
12 it was Ms. Stroud who said that you can't adjudicate that
13 and you certainly can't legislate that prior to the birth
14 of a child.

15 ACTING CHAIRMAN MOEHLMANN: Representative
16 Heckler.

17 REPRESENTATIVE HECKLER: Thank you, Mr.
18 Chairman.

19 BY REPRESENTATIVE HECKLER: (Of Mr. Litz)

20 Q. I just have two areas I'd like to explore
21 briefly. Has your organization, or any other that you're
22 aware of, done any follow-up studies tracking these
23 families and children in the years after an adoption
24 procedure that arose from a surrogacy situation to see how
25 things are going with the children, the psychological

1 well-being of the family, that sort of thing?

2 A. There has been no longitudinal study done
3 that I'm aware of. Certainly it could begin, but
4 surrogacy has only been around popularly for the last 7 to
5 10 years. You're looking at a very small number of people
6 that have gone through it, and I don't know if it's
7 something that really could ever be done because these are
8 couples that once they have their child, as any couple
9 does, they want to get on with their life and they don't
10 want to open themselves up to all of these probing
11 questions.

12 Q. The other area I'd like to explore with you,
13 and I've heard the comments of a number of colleagues
14 today and I agree with those comments, that there is a
15 distinction to be made between the surrogacy which
16 involves the biological or genetic participation of the
17 birth mother and surrogacy which involves the implantation
18 of a fertilized embryo and in a situation in which she
19 simply carries that child which is the genetic product of
20 the couple who is seeking this service to birth. Are
21 there, and I apologize if I missed this along the way, do
22 States with whose laws you deal make a distinction and
23 perhaps create a more favorable legal setting for those
24 kinds of arrangements than they do the more traditional
25 artificial insemination surrogacy situation?

1 A. No State that has passed a law has made the
2 distinction between embryo transfer and artificial
3 insemination.

4 Q. Thank you.

5 REPRESENTATIVE HECKLER: That's all I have,
6 Mr. Chairman.

7 ACTING CHAIRMAN MOEHLMANN: Go ahead.

8 REPRESENTATIVE HAGARTY: Thank you.

9 BY REPRESENTATIVE HAGARTY: (Of Mr. Litz)

10 Q. I'm just curious, do you locate the intended
11 birth mothers or have the couples, on occasions, located
12 them? How does that occur?

13 A. On occasion, couples have attempted to find
14 their own birth moms. That normally does not work. I
15 generally find the surrogates myself. We advertise
16 looking for surrogates. There are ads in newspapers and
17 in the yellow pages, things like that.

18 Q. What do you find is the motivation of people
19 who choose to be surrogates?

20 A. Well, that's one of the questions that I ask
21 them on the application, and if I've come across as cold,
22 that's really not my intent. This is something that I've
23 been personally involved in and absolutely believe in with
24 all of my heart. The women that do this feel similarly,
25 and on the application, almost without exception, they say

1 that they love their kids very much and that they can
2 understand at least a little bit what it would be like not
3 to be able to experience that emotion. And then three or
4 four sentences later they may say, and I want to set up a
5 college fund or we want to put a downpayment on a house,
6 or something like that. I have never had a woman -- we
7 have never accepted a woman in our program that says, "I
8 need \$10,000. I'll be a surrogate." That's cold and that
9 is the type of attitude that we do not encourage or the
10 type of response that we don't allow to lead to an
11 acceptance into the program.

12 Q. You may have mentioned it and I may have
13 missed it, do you believe without reimbursement there
14 would be any surrogates?

15 A. Without a fee, you're talking about?

16 Q. Without a fee. Without a fee paid to her.

17 A. Well, certainly it would cut it down
18 drastically. There's no reason why a woman should do this
19 for free. I mean, the surrogate is entitled to be paid
20 for her services. She is giving up nine months of her
21 life for this couple. If surrogacy for pay were
22 criminalized, I think with it would effectively eliminate
23 it.

24 Q. I'm also curious about your statement of if
25 we're going to outlaw it, just outlaw it. I mean, I don't

1 know that I'm in favor of surrogacy, on the other hand, I
2 have trouble thinking of criminalizing women's conduct,
3 and so by your saying better to criminalize it than make
4 it unenforceable, I'm troubled.

5 A. Well, I certainly don't believe that
6 surrogacy should be criminalized, and I don't think that
7 the participants of surrogacy are the types of people that
8 this State or any other State wants to see behind bars.
9 But if the intention is to rid Pennsylvania of this
10 immoral action, then I think that that is the only
11 effective way to do it. I mean, my position is that it's
12 not immoral and therefore it doesn't -- first of all, it
13 doesn't occur that often. I mean, my best estimate, I'm
14 working with three Pennsylvania couples right now - two in
15 the embryo transfer, one in the artificial insemination
16 program. I would say that there have probably been
17 something along the lines of 25 to 50 couples in
18 Pennsylvania that have had children through surrogate
19 programs. Now, the actual number that have had children
20 through surrogates on their own, who knows? You're not
21 talking about a large population, and certainly the types
22 of people that, one, can afford; and, two, elect to
23 participate in surrogacy are not the kind of people you
24 want to put in jail for five years.

25 Q. What are the reasons that the women who

1 choose to be surrogates give them for not simply keeping
2 the children themselves?

3 A. Regardless of which program the women are
4 in, the artificial insemination or the embryo transfer,
5 these women are in it to help a couple. They do not view
6 the child as their child, regardless of whether they've
7 provided the egg for it. They all view it as the couple's
8 child. In addition to the support that we generally
9 require the surrogate to have on her own, we also have all
10 of our birth moms that have gone through the program stay
11 in touch with those that are actively involved, sort of a
12 Big Sister type thing. And the women so far, without
13 exception, have all expressed very positive feelings about
14 what they've done.

15 Q. Do they see the baby after the baby's born?

16 A. Most stay in touch with their couple simply
17 because they've become friends.

18 Q. So they stay in touch with the child then?

19 A. Well, the oldest child in our program is a
20 little over 3 right now.

21 Q. Oh.

22 A. So there really hasn't been the opportunity
23 to stay in touch with the child. Even though they stay in
24 touch with the couple, I think that the couple is
25 sensitive to the issue of the child coming to terms with

1 the way in which it was brought into the world, and most
2 couples would probably prefer not to have the surrogate
3 stay in touch with the child until the child expresses
4 some desire to contact the birth mother.

5 Q. I presume though that they see the child. I
6 mean, there would be some kind of bond one would expect to
7 develop between a woman who carried you?

8 A. In very few situations. Normally where the
9 birth mother and the couple have been from the same town,
10 but since we have couples and birth moms from all over the
11 country, normally that doesn't happen.

12 Q. I'm concerned about the long-range
13 implications, and we certainly have no experience with how
14 these children will grow up, how they will deal with this
15 and what kind of bonding needs there may be later between
16 a mother who carries a child and the child.

17 A. Well, certainly that's true, but if you look
18 to traditional adoption, I think that the studies have
19 shown that these children are well-adjusted and as normal
20 as any other child. My own feeling is that children
21 through surrogacy are certainly some of the most desired
22 and therefore probably some of the most loved children
23 around.

24 Q. Thank you.

25 ACTING CHAIRMAN MOEHLMANN: Thank you,

1 Representative Hagarty.

2 Are there any other questions?

3 (No response.)

4 ACTING CHAIRMAN MOEHLMANN: Thank you, Mr.
5 Litz.

6 I'll now turn the gavel back to the
7 Chairman.

8 (Whereupon, Chairman Caltagirone resumed the
9 Chair.)

10 CHAIRMAN CALTAGIRONE: We'll next hear from
11 Diane Rothberg and daughter, Vienna.

12 MS. ROTHBERG: Vienna is not with us.

13 I am Diane Rothberg and my daughter Vienna
14 is at home as a surrogate mother to her six-week old baby
15 bunny. She refused to leave, and so I brought her
16 testimony, and if I can manage to make it through mine,
17 I'll deliver hers as well.

18 Thank you for inviting me here. I'm a
19 member of the National Coalition Against Surrogacy in
20 Washington, D.C. And it's difficult for me, because of my
21 own personal experience, to see the difference between
22 commercial contractual surrogacy and the act of surrogacy.
23 I believe they're both wrong. However, I strongly support
24 any legislation that will put an end to the commercial and
25 contractual end of surrogacy.

1 My attorneys request that I refrain from
2 answering questions concerning facts related to the
3 pending litigation. Even though it has been over two
4 years, custody has yet to be final, and the courts move
5 very, very slow. Also related matters to the pending tort
6 suit I have against the agency, New England Surrogate
7 Parenting, Inc., the director individually, the attorney
8 who was counsel to all parties, and the brother of the
9 director of the agency, who was my donor, as well as his
10 wife.

11 I can tell you that my contract was ruled on
12 in the Commonwealth of Massachusetts. It was found to be
13 void and unenforceable and contrary to public policy, and
14 without really going into any of the constitutional
15 issues, which included the right of the father to demand
16 that I abort the child.

17 I rarely make it through one of these
18 testimonies without crying, and I hope you'll just kind of
19 bear with me. I'm not a surrogate mother. I know it says
20 so, but I'm not. I can be referred to as a contract
21 mother, but not really a surrogate mother. The term was
22 coined by a baby broker. It's part of the strategy that
23 is used to distance the mother from her child, and also
24 serves to train your mind away from what's really true.
25 It works sometimes for the mother, at least for a while.

1 I find it wholly interesting that we accept it as a term
2 and we use it, yet when we go home and turn on the news
3 and watch stories about people who are caring for young
4 animals in zoos, we also accept them as surrogate mothers,
5 even though we realize that it was totally impossible for
6 the sometimes charming woman holding the chimpanzee to
7 have conceived and given birth to it. The term
8 "surrogate" means in replacement of. Correctly used for
9 IVF surrogacy in AID surrogacy the adoptive mother is
10 correctly the surrogate. She replaces the mother, even if
11 it is a lifetime job she is the true replacement.

12 A few years ago I had simply more empathy
13 than common sense, more naivete than perception, and I saw
14 these desperate people dying of thirst, and instead of
15 helping them, I, simply unknowingly handed them a glass of
16 poison. I signed a contract promising to surrender a baby
17 I would conceive, carry, and bear. I saw myself as
18 selfish to say no, when I knew I could physically have a
19 child. I now pay the price for that mistake. The price
20 is one of guilt, shame, and self-contempt, and an endless
21 sea of loss. The guilt is one of believing I should have
22 known better, and the shame is not being able to keep the
23 promise, no matter how wrong I was to ever make it. The
24 self-contempt is for myself, what I've done to my family
25 and to my baby. I found that I could not direct my love

1 nor my emotions, and I find now I can't control grief.

2 For 34 years my entire being was radiant
3 with optimism, innocence, and hope. I loved life, even
4 when bad things happened to me or those that I loved, but
5 today, it's different. I can no longer determine which
6 days I will wake with depression so intense I can't
7 function. The pain of the separation from my child is
8 simply too great. My optimism, innocence, and hope left
9 with that contractual surrender of my child.

10 They call this post-traumatic stress
11 disorder. Labeling it doesn't make it go away, nor lessen
12 its impact on my life or those in my family. I can't take
13 you into my heart and allow you to see the empty spots
14 that's left as a result of the loss of my youngest child,
15 but I can paint a picture in your minds of the many nights
16 that I wander down my home, unable to sleep, wishing with
17 my soul that I could slip in to watch my youngest child in
18 his sleep, but I can't because he's not there. If you
19 could see the moments when we're all together as a family,
20 laughing and talking, and then my husband looks up to see
21 the sadness in my eyes when I realize that deep pain is
22 washing over me again and one of us is gone and now
23 missing. I only wish for the chance to bathe him and
24 dress him and watch his eyes drift close as I read him a
25 good night story. And as I go through the everyday paces

1 of parenthood, I am acutely aware of the endless pain of
2 being separated from this child.

3 I knew what it was like to give birth, but I
4 lacked the knowledge of what it was like to surrender a
5 child. I can predict for you years of the same kind of
6 potential regret for any woman who enters into a surrogate
7 contract or you'll regret if you have the chance to stop
8 this now but you simply don't. It's not too late for you
9 to realize that the loss for the couple is imaginary. A
10 child they dreamed of, one they've pictured in their
11 minds. It's not a loss they have touched or felt or that
12 they will give birth to. It's a vision. Yes, the pain is
13 real, but that child is not.

14 Unlike the infertile couple, I know what my
15 child's eyes are like. I've seen his face and touched him
16 and he has touched me. And I know he looks like me. And
17 when we stand in the sun, the color of our hair is exactly
18 the same. My loss is real. He's a real part of me and I
19 don't imagine it. My loss is human. His birth was not
20 imaginary, it was physical and not mental, not a dream and
21 not a vision. The pain that came from the contractual
22 surrender of my baby is not the same pain that accompanies
23 the loss of a vision but the loss of a real human being,
24 the loss of a mother to a child and a child to a mother.

25 I was encouraged by the contracting couple

1 to grow close to the baby. The biological father wanted
2 the baby to receive love and nurturing and comfort not
3 only from me but from my family as well. I have memories
4 of my children placing their hands on my stomach and
5 talking to the baby. The smiles and the awe they showed
6 when the baby moved beneath their small hands. They were
7 loving and gentle and they welcomed him into their daily
8 lives without any reservation. While he was within me,
9 this was encouraged, only to be severed at birth. The
10 couple wanted to ensure the best possible product, but the
11 feelings for my children were of no importance whatsoever.

12 I'm worry my youngest child will suffer the
13 same lack of compassion from this couple. They might some
14 day look on his pain and tell him what they told me:
15 "It's the price you paid for our happiness." This
16 knowledge didn't limit my overwhelming pain, and I doubt
17 it will limit my child's pain and confusion when he faces
18 the circumstances of his conception and his birth.

19 I worry about women who recount positive
20 stories about being surrogates. They refuse to admit the
21 baby is theirs. One quote I never forget is this, it came
22 from a mother who agrees with surrogacy. "That child will
23 never be out of my mind. I loved that child for nine
24 months, but I didn't fool myself into thinking it was
25 mine." That's the key. She didn't fool herself into

1 thinking it was hers. I worry about these kind of
2 statements and these women, and you should, too, because
3 when the reality hits, as it surely will one day, I worry
4 they'll suffer what I suffer now, combined with the added
5 pain of living that lie.

6 Baby brokers, they set the prospective
7 mother's focus on the pain of the infertile couple.
8 Prospective mothers are told that those who criticize
9 surrogacy just don't understand the pain of the couple.
10 They don't understand how it takes a special kind of woman
11 to be a surrogate mother. But don't be taken in by their
12 borrowed motto of "E Pluribus Unum," or "Out of Many,
13 One." If you're 18 or 21, preferred white, breathing, and
14 you can sign your name, you qualify as a surrogate mother.
15 They don't practice full disclosure, they tell you it will
16 be a 9-month commitment. It's a lifetime commitment.

17 Records show that the highest trauma is the
18 loss of a child. Not the loss of not getting a child, the
19 loss of a child. Studies show that 39 percent of the
20 women who have lost a breast a year later experience
21 anxiety, depression, and sexual difficulties severe enough
22 to warrant psychiatric help. This is a breast. One can
23 only weigh this information against the loss of a child
24 for a woman. It is a lifetime of giving and can easily be
25 a lifetime of grief.

1 What the surrogate industry wants us to see
2 is a sharing, humane, straight, clean, and honest approach
3 to infertility, but it's none of those things, nor is it
4 any part of a new technology. Saying new technology leads
5 you to believe that highly trained individuals are in
6 charge. I see images of white lab coats and sterile
7 procedures dancing in your minds, but this industry has
8 not one single aligning role with the new technology of
9 reproduction. This is a new social arrangement, not new
10 technology.

11 I know now it's not in the child's best
12 interest for society to accept the change of the promise
13 exchanged between two adults prior to conception from a
14 promise to love, honor, and cherish, in sickness and in
15 health, until death do us part, keeping unto you so long
16 as we both shall live, and replace that with the profane
17 promise that states that the surrogate mother understands
18 that as the surrogate mother she'll attempt to become
19 pregnant via artificial insemination of the sperm donor,
20 herein after referred to as father, and the surrogate
21 mother promises not to form any mother-child bond with the
22 child she carries. These promises do bear closer viewing.
23 What do we do with this man who later changes his mind
24 about the promises he made in his vows? His vows of
25 marriage to love, honor, and cherish, keeping only unto

1 you so long as we both shall live, unless I find out
2 you're infertile.

3 I agree with the right to procreate, but I
4 believe it should also be tempered with how one goes about
5 exercising that right. Doesn't the quasi-adulterous act
6 of surrogacy make him as sick as it made me? Where is our
7 sense of moral value? How many values will we leave by
8 the side of the road over the right to procreate? The
9 industry has taken the conception of a child out of the
10 confines of an intimate act between a couple and placed it
11 between two strangers, a sterile jam jar, and a plastic
12 syringe, oftentimes without medical supervision of any
13 kind.

14 Future medical participation is very
15 questionable. The American Medical Association has
16 denounced its practice with this statement: "Surrogate
17 Motherhood does not represent a satisfactory reproductive
18 alternative for people who wish to become parents, because
19 of its legal, ethical, psychological, sociological, and
20 financial concerns." These concerns are some of the very
21 reasons that prostitution and drugs are illegal, because
22 the long-term ramifications outweigh any argument that
23 they simply work for some people. Commercial surrogacy is
24 presently capable of reducing an altruistic intent and
25 human plight into a profitable business that renders the

1 victim helpless in what becomes a shattering experience
2 that lasts a lifetime. This industry uses their legal and
3 their psychological expertise to guide them in their cruel
4 destruction that only begins with the young mother and her
5 child.

6 Surrogate agencies tell us that their
7 purpose is to assist in the very basis of our strength as
8 a society - the growth of the family unit. Agencies say
9 that their motives are pure, but under the smoke screen,
10 their only motive is based on pure profit. Go ahead, ask
11 any broker. They're not even covered by malpractice
12 insurance. It's too expensive. Even the gambling
13 insurance business won't place bets with them.

14 The professionals presently involved in this
15 industry are con artists. They seek complacent females,
16 like I was, and then they practice skillful manipulations
17 to get them to sign a contract. Once signed, should our
18 voluntariness become an issue, we're subjected to massive
19 doses of guilt, coercion, and emotional blackmail. I was
20 phoned every single day for the remaining month of my
21 pregnancy. It was like being held captive emotionally as
22 well as physically. If these techniques fail, we can
23 simply be reminded of our \$25,000-plus penalty for our
24 lack of voluntary action.

25 There is no test, no psychological

1 evaluation, simply put, no screening that we can determine
2 if a woman can relinquish a child. If we had such a test
3 that could measure success based on sheer desire and
4 determination, we would never have another college dropout
5 and we could give out the Nobel Prize today for medicine
6 for who will conquer AIDS. The possibilities are endless,
7 but there's no such test. There's no prior way to
8 determine if a woman will be able to relinquish her baby,
9 and you must understand that without this knowledge,
10 you're using these unaware women like laboratory animals.
11 If we can't determine how the mother will emotionally cope
12 or how strong she will unknowingly bond to her baby, how
13 can we ask her to sign a contract? A contract is used to
14 ensure performance, and since we don't know how she will
15 perform, how can we, in all honesty, consider her
16 signature valid?

17 When a woman signs a contract, she is not
18 exercising her rights to do with her body what she wants.
19 She is giving another the right to do with her body what
20 they want. It is the removal of her rights. I knew
21 months into my pregnancy that I couldn't part with my
22 baby. I just couldn't satisfy the agreement that I had
23 foolishly signed. And if I were a famous baseball player
24 who signed a contract, I would say, I don't want to
25 fulfill my contract, and I wouldn't play ball. But that's

1 baseball, a business, a game, and a sport. But I was a
2 contract mother who wanted out of my contract and I
3 couldn't simply refuse to play ball. These contracts are
4 nothing short of automatic weapons that insure the couple
5 ultimate control and the brokers a steady business. They
6 can and they do take the children through court orders
7 because we don't have the rights to change our minds
8 because we signed a contract. I say by virtue of how much
9 more important a child is we should have the right to
10 change our minds and to keep our children.

11 Without a contract, the couple may only be
12 asked to risk their participation in joint custody. This
13 requires a skill no more demanding than one taught to
14 kindergartners - to share. If they can't tolerate that
15 risk, they're not worth the sacrifice for the woman, nor
16 are they the kind of person that a child deserves as a
17 parent. If we allow commercial contractual surrogacy, I
18 don't think there will ever come a time in the future
19 we'll look back on this as one of society's sterling
20 advances.

21 Surrogacy assists the couples who need to be
22 accountable for their personal choices. It's a silent
23 biological clock we hear the tick of, and when this clock
24 is ignored, couples must face the rising chance that their
25 pleas will go unheard by adoption agencies because of age

1 limits. We accept we cannot plan for retirement in
2 midlife, and we must also accept that we cannot plan for a
3 family past the tick of the biological clock. Maybe they
4 need to be told that we just can't always get everything
5 in life we ever wanted.

6 No one thinks of the siblings left in the
7 aftermath. My fears extend past the natural ones of how
8 the production and the purchase of human life will
9 eventually take its toll on our world. How can mothers
10 explain to their children that some of the children she
11 gives birth to are keepers and some aren't? We could tell
12 them that children make the most elegant gifts, but I
13 don't believe we want to, and I don't believe any child
14 would swallow our dip in values.

15 Had I known the negative effects of
16 surrogacy, I never would have considered it. My
17 6-year-old son, Dak, tells everyone about his brother,
18 Ezra. He talks of him to women in the grocery line at the
19 store, and each time I hear him speak of his brother, I
20 see the weight of surrogacy balanced on his narrow
21 shoulders, and I wonder what changes it will make as he
22 grows taller and into manhood. He's a bright, cheerful
23 child with a very quick grin that absolutely melts hearts.
24 I see the person he is now and a glimpse of the man he may
25 someday become. I worry that the burdens he carries now

1 regarding surrogacy will somehow change that man. His
2 sisters are older, and at 14 and 11 they, too, are
3 tarnished. They wonder if the future will allow for
4 children to be ordered by phone like pizza, and how long
5 will the delivery take? And if it takes longer than
6 predicted, will they get their money back? Or will we
7 decide it was all a bad idea, like nuclear weapons? Will
8 anyone ask that question? We know we can, but should we?
9 Who will be brave enough to stand up and say no? Maybe
10 you will.

11 Robert Fulghum wrote a wonderful book, "All
12 I Really Needed to Know I Learned in Kindergarten." He
13 has some wonderful advice in his book. Aside from a story
14 that I will tell you, he also stated a lot of other
15 things. He had some fast rules about what people learned
16 in kindergarten. Surrogacy ignores the kindergarten
17 rules: Play fair, don't hit people, put things back where
18 you found them, clean up your own mess, don't take things
19 that aren't yours, say you're sorry when you hurt
20 somebody, and the first word we ever learned in the
21 Dick-and-Jane books, look.

22 Robert describes a wonderful story about an
23 afternoon he was left with 80 children ages 7 to 10. They
24 were to play a version of the child's game Rock, Paper,
25 and Scissors. This game was named Giants, Wizards, and

1 Dwarfs. The purpose of the game is to make a lot of
2 noise, run around chasing people, and not care who won.
3 The excitement of the chase had reached a critical mass
4 and Robert yelled out, "You have to decide now which you
5 are - a giant, a wizard, or a dwarf."

6 While the groups were deciding, there came a
7 tug on Robert's pant leg, and when he looked down he saw a
8 small girl looking up and she asked in a concerned voice,
9 "Where do the mermaids stand?" After a long pause he
10 answered back, "Where do the mermaids stand?" The little
11 girl answered, "Yes. You see, I'm a mermaid." "There are
12 no such thing as mermaids," was his response. "Oh, yes, I
13 am one."

14 She just didn't relate to being a Giant, a
15 Wizard, or a Dwarf. She knew her category - mermaid - and
16 was not about to leave the game and go over and stand
17 against the wall where a loser would stand. Without
18 giving up dignity or identity, she intended to play the
19 game. She took it for granted that there had to be a
20 place for mermaids.

21 Like the little girl, I know my identity,
22 too. You can't fool little mermaids, and you can't fool
23 me. I'm a mother, not a surrogate mother. I'm a mother
24 to each child I conceive and I bear. It takes real
25 strength to hang on to one's own identity, especially in

1 surrogacy, and particularly in the court system. My
2 identity blends into my love for my child and is simply
3 overpowered by any promise or any contract. My instincts
4 to nurture, protect, and mother him are an integrated part
5 of my being that can't be amputated by my own signature or
6 by court ruling or regulation or any legislation. I know
7 now there's no on-off switch for maternal love, and I need
8 you to learn that, too. And past that, I need you to
9 teach others.

10 Please consider favorable passage of House
11 Bill 745. There is no virtue, liberty, and independence,
12 like it says on the banner behind you, in a surrogate
13 contract.

14 Thank you.

15 CHAIRMAN CALTAGIRONE: Thank you.

16 Questions?

17 REPRESENTATIVE BORTNER: Mr. Chairman?

18 CHAIRMAN CALTAGIRONE: Mike.

19 REPRESENTATIVE BORTNER: Just a couple brief
20 questions.

21 BY REPRESENTATIVE BORTNER: (Of Ms. Rothberg)

22 Q. I think your testimony indicated you were
23 married at the time that you entered the arrangement, is
24 that correct?

25 A. Yes.

1 Q. And your husband agreed--

2 A. Yes.

3 Q. --with your decision as well?

4 A. Yes.

5 Q. Yes?

6 A. My husband of 18 years.

7 Q. At what point did you change your mind about
8 the arrangement you had entered into?

9 A. Probably four to five months.

10 Q. You began to have doubts at that point?

11 A. Yes.

12 Q. Did you voice them to the people that had
13 arranged the surrogacy?

14 A. Yes, I did. Obviously to not much avail.
15 Unfortunately, my situation arose at the same time that
16 Mary Beth Whitehead's case arose, and also unfortunately
17 the broker was the aunt of the child I carried, so
18 obviously the influence that she pressed forth was not
19 favorable to my direction.

20 Q. And this was not an embryo transfer, is that
21 correct?

22 A. No. I was not a surrogate mother.

23 Q. I just wanted to make sure I'm -- we're
24 throwing a lot of terms around here.

25 A. I think that's one of the key things here is

1 that once people start calling you a surrogate, they very
2 quickly realize that they're confused about whether the
3 child was ever yours or not. While people will say they
4 won't use the term, they do, and we all understand what a
5 surrogate is. I'm not a surrogate.

6 Q. You do not have custody of the child now?

7 A. No, I do not.

8 Q. And I understand that's being litigated?

9 A. Yes.

10 Q. I won't ask you about that. Obviously, this
11 was a commercial arrangement on your part, is that
12 correct?

13 A. Commercial?

14 Q. Well, did you receive a fee?

15 A. I was to receive a fee in the contract. I
16 did not wish to receive a fee and I do recognize that that
17 is very uncommon, but understand Massachusetts law, the
18 attorney that was used insisted that a fee be put in
19 there. The fee, to my biased view, obviously, had twofold
20 purpose. One, to give me money in the end if I wanted it;
21 and two, to make sure that should I have accepted that
22 fee, I would have been breaking the law, so it would have
23 made me guilty of a felony inside the Commonwealth of
24 Massachusetts.

25 Q. What was the fee arrangement?

1 A. The fee arrangement, according to the
2 contract, was \$10,000 and all my expenses met. I cannot
3 divulge what ultimately ended up because that's still part
4 of litigation, but I can tell you that I never received
5 full payment.

6 Q. You did not receive full payment?

7 A. Not even for medical expenses.

8 Q. I beg your pardon?

9 A. Not even for medical expenses.

10 Q. Not even for medical expenses. Well, I
11 realize there's some areas that you probably would prefer
12 not or can't go into.

13 A. I'll tell you if I can.

14 Q. Well, you've answered most of my questions.
15 I appreciate that. Thank you very much.

16 REPRESENTATIVE BORTNER: Thank you, Mr.
17 Chairman.

18 BY REPRESENTATIVE REBER: (Of Ms. Rothberg)

19 Q. In response to Representative Bortner's
20 question, I think you said your emotional attachment and
21 everything else seemed to foster about four to five months
22 after the child had been given up, if you will?

23 A. No, into the pregnancy.

24 Q. Okay, four to five months in the pregnancy?

25 A. Correct.

1 Q. I'm glad I asked that question because some
2 of us sitting here had, you know, a different viewpoint on
3 that.

4 As you were testifying, and recognizing, you
5 know, the emotional scars and what have you that this has
6 vested upon you, in all sincerity, and I know this may be
7 of no consolation to you, but there are countless numbers
8 of biological mothers that have similarly experienced a
9 situation you have. I know of two instances where I have
10 been contacted as private counsel on behalf of biological
11 mothers who gave up their children for adoption to locate
12 those particular biological children. And in the course
13 of the interviews, as I sat here and listened to your
14 testimony, and I'm sure any attorneys that have done any
15 type of adoption work or attempts to locate adopted
16 children following that long process having long been
17 before have listened to that biological mother and heard
18 many, many, many of the same thoughts and feelings and
19 emotions and what have you that you've experienced here
20 today. And I say this not so much for you, please bear
21 with me, but for the benefit of members of the committee
22 to recognize and understand that the current procedures in
23 adoption and the current sanctification of those laws in
24 the Commonwealth of Pennsylvania also lead to the same
25 type of feelings and views by natural biological mothers

1 who have gone through adoption proceedings and shared the
2 same types of concerns, attachment, feelings of bonding,
3 however you want to the characterize it. It's not my
4 field in child psychiatry or psychology to use those type
5 of terms, but I just closed my eyes and it was deja vu to
6 some of the concerns that were expressed by these people.

7 My question then to you is, have you had any
8 type of contact with anyone else that has experienced
9 these type of feelings in the surrogate field other than
10 yourself?

11 A. Yes. Through the National Coalition Against
12 Surrogacy, I am in constant contact with other contractual
13 mothers, whether they have chosen to go through court
14 processes like myself or some of them who are just in need
15 of somebody who's been through it. I'd like to pretty
16 much confirm with you that whatever I've had to say today
17 you could close your eyes and put a dozen of those members
18 of the national coalition up here and remarkably it would
19 come out the same story. We could write one another's
20 stories; we could live one another's lives. The pain is
21 the same, the emotions are the same, and we find over and
22 over and over repeats.

23 Q. Have you, in the course of your attempts to
24 deal with this, had any discussions with biological
25 mothers that went through adoption processes? Have you

1 ever had any contact, compared and contrasted some of the
2 concerns and feelings you have?

3 A. Some. It varies substantially, and I think
4 the thing that seems to always be the keynote is that with
5 surrogacy, it is -- it's the contract. It's that
6 overwhelming contract that is hanging over your head.
7 It's not an open deal where at the end you get to make the
8 decision on whether you want to relinquish this child.
9 And I think that the other mean thing that mothers have,
10 ironically, most of the agencies insist that you have a
11 child, a child at home. I guess so that ones you go home
12 they figure, well, you already have one. Gee, you know,
13 it should be a breeze. She won't miss the one she lost.
14 Au contraire. It's not fundable. Each living thing -- I
15 think if I've learned anything out of this it's the
16 strongest sense that every single living thing has its own
17 value and is nonreplaceable. You are nonreplaceable and I
18 am nonreplaceable. There is no replacement.

19 Q. The use of the word "value" is again a very
20 interesting choice of words because that same
21 nomenclature, if you will, was used by someone that I had
22 this similar conversation, again in the adoption
23 situation. I do think, as some of the earlier witnesses
24 have said, this whole issue is interwoven, and I think we
25 have to view it in that fashion.

1 Thank you very much.

2 REPRESENTATIVE REBER: Thank you Mr.
3 Chairman.

4 CHAIRMAN CALTAGIRONE: Representative
5 Hagarty.

6 REPRESENTATIVE HAGARTY: Thank you.

7 BY REPRESENTATIVE HAGARTY: (Of Ms. Rothberg)

8 Q. In the process, did you answer an ad? How
9 did you become aware or think about being -- I won't use
10 the word surrogate, getting involved in this?

11 A. Contract mother. I had seen articles in the
12 paper and there was a large article about surrogacy in my
13 hometown paper, ironically, in Washington State about a
14 woman who had relinquished a child to a couple here in
15 Pennsylvania, as a matter of fact. And this was years ago
16 and I thought, isn't that wonderful? These people will
17 have a child. We had our two daughters at that point and
18 it left my mind, never to resurface until we had moved to
19 the east coast and there was another article in the paper.
20 And it's these articles, it's these ads, these articles in
21 the press, and women go, "Oh, well maybe I'll look into
22 it," much like I did. And it's the sense that you do it,
23 so many of them say they did it for the very reasons that
24 have already been said - because they love their own
25 children. And ironically, it is that love for the

1 children that you already have that ultimately I believe
2 is the key problem in the woman's ability to cope
3 afterwards. She can't sever that. There isn't an on-off
4 switch. Look, you won't find one. She can't find a way.
5 If she's a woman who loves children and loves life and
6 loves families, eventually that will take a toll to
7 relinquish one.

8 Q. Well, my sense of this is as you described,
9 and I accept that as what you say, I'm curious though, do
10 you make a distinction between embryo transplants and
11 artificial insemination? I mean, if there is no
12 biological bond. I think that's a weighty difference
13 myself.

14 A. My personal experience in surrogacy, my
15 husband's reaction to the child that I carried tells me
16 that IVF, the in vitro fertilization transplant program,
17 is an abomination of the use of a woman. It is a
18 nightmare waiting to happen, it is an emotional struggle.
19 What are we going to do with her when she finds out that
20 she's bonded that baby? How are we going to explain to
21 her that it's not really hers? I mean, ultimately she can
22 live with the truth that it isn't maybe, but I think it's
23 a usage of a human being that we don't need to do. Just
24 don't need to do. I don't have a lot of statistics on it.
25 I'm just coming from my own personal--

1 Q. I'm confused.

2 A. Under in vitro, where another woman carries
3 a child for somebody else, an in vitro transplant, that's
4 where you're talking about.

5 Q. Okay, in other words, it's not hers
6 biologically?

7 A. It's not her egg, it's been transplanted, is
8 abusive.

9 Q. To that woman?

10 A. I think it is so potentially abusive to her
11 emotional and physical stability that I think it is just
12 far too dangerous to even consider.

13 Q. And let me try to understand your sense of
14 that. For what reason do you think that that's
15 emotionally difficult? I mean, the experience you
16 described to me you were describing primarily a biological
17 tie to a baby, so this is separate from that.

18 A. Well, it was difficult for my husband. The
19 same process that he walked me through three pregnancies
20 was the same with this fourth, and he found himself
21 terribly attached to this child. It's very difficult for
22 a person to somehow say, all right, now my wife is
23 pregnant and the point of conception was this other man's
24 sperm. It's therefore going to be also difficult for this
25 woman who is involved in in vitro to say, well, this baby

1 isn't really mine. I've had others before. This is what
2 it felt like. Oh, my gosh, are we sure that it really
3 isn't? I mean, I think you're playing with dynamite.

4 Q. Have you talked to other women who don't
5 share your -- I guess what your feeling is is that
6 ultimately any woman who goes through this will at some
7 point feel the emotion that you feel. You don't
8 acknowledge that there may be people who are able to
9 successfully separate from a baby?

10 A. I think that they do successfully separate,
11 but I believe that it's only for a period of time, and I
12 think that the key to that is that they will always say,
13 as Mr. Litz confirmed, that they always think of the child
14 as the couple's child. It's not their child. Well, what
15 happens when these naive women realize it really is? I
16 mean, they're living a lie. Now, we all know that
17 eventually when we live a lie and the truth finally comes
18 out, we are devastated. Now, they're not only going to be
19 devastated by living the lie, they're going to be
20 devastated by the lie itself.

21 Q. You don't object to adoption, I take it?

22 A. Not at all. I think it's a wonderful,
23 wonderful option, and I think we should teach these people
24 who want children all about adoption. We have friends who
25 live near us and they have adopted two children from Korea

1 and she said never, never, ever in a million years would
2 they have ever considered surrogacy.

3 Q. Why do you think the mother who places a
4 baby for adoption then can successfully separate from that
5 baby?

6 A. I think that they do have a difficult time,
7 but I think their reasons for separating, pardon me, but
8 I'm not real familiar with this category of it, but their
9 reasons for separation are totally and completely
10 different. It's a child that's been conceived out of
11 probably a loving act between somebody else, it was an
12 unplanned pregnancy, and she doesn't have the means to
13 support it. I'm going home to three children that I am
14 supporting. What excuse do I have? What excuse do I give
15 this child later on? Well, I could supply support for
16 these other three but you I just didn't want; I never
17 wanted. This isn't the kind of society we want.

18 Q. I agree with you. I think this is fraught
19 with terrible problems for the child as well as for the
20 mother.

21 I'm curious that you make any distinction.
22 As I have authored a number of adoption bills it has
23 always been my belief that we must always allow time for
24 the natural mother to change her mind after birth because
25 I don't believe that you can necessarily determine what

1 your feelings will be prior to birth. Do you see any
2 merit if, and I mean, I hear all of the reasons why you
3 don't think these arrangements should exist at all, do you
4 see any merit though that if they were to exist, giving
5 the natural mother essentially also in the surrogacy
6 situation the right to keep the baby should she choose to
7 do so? Does that make any sense to you to make that
8 distinction? In other words, so that in your case you
9 clearly would have been able to keep the baby?

10 A. I think that as long as you have an
11 overwhelming, and I will use the word "overwhelming,"
12 automatic weapon hanging over the top of her head by
13 virtue of a contract, it's going to be literally
14 impossible for her to make a free choice.

15 Q. I don't disagree with you. I mean, that's
16 also why in answer to, and I wasn't here when a former
17 witness testified, as to the reason we should reimburse
18 natural mothers for all kinds of expenses. And one of the
19 reasons I don't believe we should reimburse natural
20 mothers for various related pregnancies is because I think
21 it then makes it impossible for them to choose to keep the
22 baby. So anyway, I understand what you're saying.

23 One other question about your pregnancy.
24 Did you ever see a counselor or was it suggested to you
25 that you see a counselor during your pregnancy?

1 A. It was never suggested that I go to an
2 independent counselor outside of the agency. No. The
3 counselor that I had inside the agency, as I stated
4 before, was the aunt of the child I carried. She did this
5 for her brother. She opened up an agency approximately --
6 I think it was three or four years ago in conjunction with
7 another agency on the east coast, and the first child was
8 to be received by her. Then she did, I think it was 11
9 for profit, at a profit of \$10,000 each, and then she did
10 mine, I was later to learn at half price for her brother,
11 which was \$5,000, and then she's gone on to do I think a
12 half dozen or more since then.

13 Q. Okay, thank you.

14 MS. ROTHBERG: If you'll like, I'll read my
15 daughter's testimony, and then I'm done. She's not here
16 to answer questions.

17 If you can imagine me as an 11-year-old
18 porcelain-faced, Victorian looking daughter, I will try.

19 "I was lied to. They said it was wonderful,
20 and it wasn't. They said I'd feel good, and I don't.
21 They said it was giving, but I saw more taking. People
22 who like surrogate stuff say it benefits the kids
23 involved. It didn't benefit me or anybody else. Every
24 time a child hears it's to benefit them or it's done for
25 them, they get a little suspicious. Teenage Mutant Ninja

1 Turtles are for kids, and surrogate contracts are for
2 adults. They want it to sound like Disneyland with a
3 little something for everybody, but it isn't.

4 "There shouldn't be any surrogacy at all
5 because if you want to have a baby and you can't have one
6 naturally, you can adopt. I know lots of adopted kids and
7 they're perfectly happy together. Every time a surrogacy
8 happens, it takes away one more chance for an orphan to be
9 adopted. I wouldn't like it if my parents sold me to my
10 husband, even if my husband loved me. I would hate the
11 idea of being sold with a price tag on me.

12 "Sometimes I lie in bed and cry, thinking of
13 all the times I can't be with my brother. I worry he'll
14 die, or even me before I get a chance to be his real
15 sister. It's hard to spend holidays and birthdays without
16 him. My brother and my sister are very special, and so am
17 I. We'll never share childhood memories together, like
18 teasing him about his girlfriend in kindergarten, or all
19 the funny words he said when he was learning to talk. My
20 Grandpa's 65 and he has a peppermint farm. He's harvested
21 peppermint every summer, just like his father did when my
22 Mom was a little girl, and I've been there during harvest
23 and it's wonderful to know the feeling of knowing my only
24 grandfather and to have the memories of the farm. Someday
25 I hope my brother has that same wonderful feeling.

1 "Surrogacy stinks. If there wasn't
2 surrogacy, none of this would have happened. Besides,
3 we've taken almost every job God used to do away from him,
4 except conception. Let's not take this one away, too.
5 Isn't anybody just a little worried he'll think he doesn't
6 have anything to do?"

7 Thanks.

8 CHAIRMAN CALTAGIRONE: Thank you.

9 Are there any other questions?

10 (No response.)

11 CHAIRMAN CALTAGIRONE: Thank you very much.

12 Carmina D'Aversa.

13 MS. D'AVERSA: Good morning, or should I say
14 good afternoon?

15 My name is Carmina D'Aversa. I'm an
16 attorney who presently co-chairs the Surrogate Motherhood
17 Committee of the Pennsylvania Bar Association Family Law
18 Section. I also chaired the Section's Surrogate
19 Motherhood Task Force.

20 My interest in the surrogacy issue began in
21 law school where I wrote an article entitled, "The Right
22 of Abortion in Surrogate Motherhood Arrangements." This
23 article is currently published in the Northern Illinois
24 University Law Review. Today, I am testifying in my
25 individual capacity and not as a representative of the

1 Pennsylvania Bar Association.

2 I have reviewed House Bill 745 and find it
3 lacking in many respects. First, I note that the bill
4 makes use of the Commonwealth's policy against baby
5 selling as a means to outlaw commercial surrogacy. This
6 approach is faulty in part because it fails to acknowledge
7 the distinction between surrogates who serve as
8 gestational carriers and those surrogates who are
9 genetically related to the babies which they carry. When
10 a woman carries an embryo which is not genetically related
11 to her, any financial compensation she receives as a
12 result of engaging in the surrogacy process cannot be
13 considered payment for a child. As a gestational carrier,
14 she is not the mother of the child, but instead serves as
15 a vessel to carry the embryo to term. Any compensation to
16 the surrogate, therefore, is compensation for services
17 rendered to a party or parties who cannot conceive a child
18 in the customary manner.

19 I also believe denial of compensation to a
20 gestational carrier is patently unfair in light of the
21 specific services rendered. These services obviously
22 entail complete bodily commitment and potential risk to
23 physical and mental health. If we pay skydivers, police
24 officers, and other individuals for engaging in risky
25 activities, there is no reason why a gestational carrier

1 should not be compensated. In addition, the General
2 Assembly need not prohibit compensation to a gestational
3 carrier to protect societal values of personal autonomy
4 and bodily integrity. Instead, these values can be
5 protected by legislation that requires voluntary and
6 informed consent by women engaged in the surrogacy
7 process. By requiring psychological and medical
8 counseling for the surrogate, independent legal counsel
9 for the surrogate, and a court determination that a
10 surrogate has the capacity to enter into the surrogacy
11 agreement and her decision is voluntary and informed, the
12 Commonwealth can be assured that a woman's dignity as an
13 adult individual is maintained.

14 Finally, I find House Bill 745 ignores the
15 advances of medical technology and ignores the welfare of
16 children born as a result of the use of this technology.
17 Despite criminal penalties or other prohibitions that may
18 be imposed by the Pennsylvania legislature, the world of
19 reproductive technology will continue to advance, and
20 couples will continue to seek and in fact use these
21 alternatives. Given these circumstances, it is essential
22 that the General Assembly enact legislation that regulates
23 the use of reproductive technologies and specifies the
24 rights and responsibilities of the parties engaged in the
25 process. In this way, parties will not be faced with the

1 artificially inseminated with the sperm of the intended
2 parent or the sperm of a donor or agrees to be implanted
3 with the embryo created from any combination of sperm and
4 ovum from the intended parents or donors; carry to term
5 and relinquish the child to the intended parents upon
6 birth.

7 b. If the surrogate provides the ovum,
8 that is if she is genetically related to the child, she
9 shall consent to the termination of her parental rights
10 and responsibilities and relinquish custody of the child
11 immediately after the child's birth. The surrogate may
12 not withdraw her consent after the birth of the child.

13 c. Regardless of the child's physical
14 or mental state, the couple shall be required take custody
15 and responsibility of the child immediately upon birth.
16 This provision shall not prevent the intended parents from
17 exercising the option of placing the child for adoption.

18 I strongly recommend court approval of the
19 surrogacy agreement. The court can therefore make a
20 determination of each party's capacity to enter into the
21 agreement, determine whether the surrogate has voluntarily
22 entered into the agreement, and determine whether each
23 party understands his respective rights and
24 responsibilities. In addition, the court can assess the
25 fitness of the intended parents as parents and verify

1 whether each party has been counseled regarding the
2 potential risk of engaging in the surrogacy process.

3 I stress that these recommendations are what
4 may be minimally required to achieve the objectives I
5 discussed earlier. Other regulatory mechanisms may be
6 implemented, making House Bill 745 unnecessary, at least
7 when the surrogate is a gestational carrier.

8 CHAIRMAN CALTAGIRONE: Representative
9 Hagarty.

10 REPRESENTATIVE HAGARTY: I have a question.

11 BY REPRESENTATIVE HAGARTY: (Of Ms. D'Aversa)

12 Q. I'm interested in your statement that the
13 surrogate should not withdraw her consent. Do you believe
14 in the adoption area that we should, as we do in our law,
15 allow the natural mother a fairly significant period of
16 time to withdraw that consent?

17 A. I think the surrogacy situation is very
18 distinguishable from the adoption situation. In an
19 adoption, you'll have a biological mother but you won't
20 have a biological father. If we allow the surrogate to be
21 able to terminate after birth, the biological father has
22 no rights, and basically it would be a suit for support.
23 And I think that would be a problem.

24 Q. Well, just assume for a moment that we don't
25 allow a suit for support.

1 A. I don't think you could deny a child the
2 right to support from the biological father.

3 Q. I guess I'm curious because you're making
4 the attachment then of the biological father to the child
5 of greater worth than the biological mother simply because
6 she has entered into a contract.

7 A. No, I don't think so. What happens is I'm
8 giving the equal worth to both the biological mother and
9 biological father, placing emphasis though at the
10 beginning of the contract to the biological mother. I
11 want to make sure that she has voluntary informed consent
12 before she enters into this agreement. I recognize her as
13 an adult individual, that once she has all the information
14 before her, and even the lack of information that might
15 not be there, all the potential risks that we really don't
16 know about, that she can make that informed decision, and
17 once she makes that informed decision, then I'm interested
18 and concerned about the biological father.

19 Q. I guess what troubled me so much and I
20 cannot support, in this kind of form, surrogacy is the
21 hurdle that contracting prior to giving birth is, I guess,
22 denies the fact of human nature that adult or not, you
23 simply cannot imagine what your attachment may be to a
24 baby once born.

25 A. I think that's one of the risks that the

1 surrogate will have to take.

2 Q. Are you a mother, by the way?

3 A. No, I am not.

4 Q. Thank you.

5 A. But I'd like to respond to that.

6 Q. I can't help but I just go through this all
7 the time. I just can't help but think that we simply
8 cannot expect someone who has never -- who has not had
9 that baby to contract away that right. I just think it
10 belies human feeling, nature, and love.

11 A. Well, then the surrogate, I would feel,
12 would not want to enter into that contract, knowing in
13 advance that she could not change her mind, where it is
14 now legislatively mandated that she cannot change her
15 mind. She probably will have second thoughts about it.

16 Q. Well, what do you do about the woman who just
17 testified who just didn't know that, just didn't know how
18 she would feel once she was carrying her baby?

19 A. I did not hear all of her testimony, but
20 from what I heard, I understood she didn't have
21 independent counsel, there was not psychological
22 counseling for her. There was a lot of problems in the
23 situation she was in. There weren't any precautions
24 taken. I'll give an example, the Mary Beth Whitehead
25 case. There was a psychological report that said most

1 likely that Mary Beth would not be able to relinquish that
2 child at birth.

3 Q. Do you really believe that psychiatrists
4 today, with all the counseling and all the attorneys and
5 the courts approving it, can predict the feelings in every
6 instance of this mother?

7 A. You just took the words right out of my
8 mouth. I don't think psychologists, and they will tell
9 you, they cannot predict, but wouldn't it have been a lot
10 better if Mr. Stern's counsel had a copy of that
11 psychological report and advised Mr. Stern that there is
12 this problem? Now, it's not a guarantee, psychologists
13 can't predict, but I strongly recommend against hiring
14 Mary Beth. I'm not saying that the problems can be
15 prevented, but I think there's a lot of regulations that
16 could be implemented to prevent most of the problems.

17 Q. I agree if we're going to sanction this that
18 we certainly better regulate it better. I mean, we can
19 certainly improve upon it. I just don't know how we can
20 sanction something that I think is impossible to enforce,
21 and as you say, not being able to enforce it raises
22 irreconcilable problems for a biological father. I mean,
23 for me those problems are too fraught with disaster for
24 this legislature to sanction this.

25 A. Well, we do that in adoption. I mean, even

1 if you give that certain amount of time to the biological
2 mother to change her mind, there are still biological
3 mothers that are still upset after that time period that
4 gave up the child.

5 Q. Sure. Sure. And we made a policy decision
6 that we are going to balance there the right of that
7 natural mother with some time with that couple and with
8 that child.

9 A. Right.

10 Q. I see no balance here. I have one other
11 question and then I'll let someone else ask questions.

12 If there had been a contract, what do you do
13 about the situation that during pregnancy the woman
14 changes her mind, even after the court has validated this?
15 Do you think during pregnancy she should be forced to go
16 through with this also if she changes her mind while she's
17 pregnant?

18 A. I'm answering this question under Roe v.
19 Wade, I just want to say that first of all. Under Roe v.
20 Wade, I believe the surrogate would have the right to
21 terminate the pregnancy, and there's no way that the
22 couple could say, no, you can't. That's my view of it.

23 Q. I'm saying suppose she decides during
24 pregnancy to keep the baby?

25 A. Oh, okay, to keep the baby. No, she can't.

1 I'm sorry. I misunderstood your question. No, she can't.

2 Q. So she could terminate because of Roe v.
3 Wade, since the biological father has no right there, but
4 she can't decide to keep the baby?

5 A. Right.

6 Q. Is there any court that has -- I'm not
7 familiar with all the court decisions on this. Do we have
8 courts that have essentially--

9 A. Dealt with the abortion issue?

10 Q. No, I know that. Interpreted it the way you
11 are during pregnancy these contractual arrangements?

12 A. I don't believe so.

13 Q. Okay, thank you.

14 CHAIRMAN CALTAGIRONE: Representative
15 Heckler.

16 REPRESENTATIVE HECKLER: Thank you, Mr.
17 Chairman.

18 A couple preliminary comments. I really
19 would like to commend the Chair and the committee on
20 having this hearing. It's been much more productive than
21 I really thought it would be going in of ideas that may
22 lead to some kind of rational way of dealing with this.

23 And now to direct myself to the witness.

24 BY REPRESENTATIVE HECKLER: (Of Ms. D'Aversa)

25 Q. I want to thank you. Unless I have missed

1 it in Representative Reber's bill, I had not seen the
2 concept of prior judicial approval of this arrangement.

3 A. (Indicating in the affirmative.)

4 Q. Oh, it is. Then I just didn't read closely
5 enough. I think that makes an awful lot of sense to me.
6 Let me, however, toss one thought back to you, which is
7 that I am also rapidly being persuaded by what I have
8 heard today and my general thoughts on this that it might
9 not be such a bad idea to one way or another endeavor to
10 prevent the arrangements that as a previous witness
11 pointed out really aren't surrogacy, arrangements in which
12 the birth mother of the child is also the biological
13 mother of the child. However, at the same time, I am more
14 and more convinced that we should provide every protection
15 and facilitate the situation in which two parents, a
16 mother and a father, contribute to a fertilized egg which
17 is then carried by a birth mother. Is it feasible, in
18 your view, to have a combination of those two - to
19 prohibit the one arrangement and to, at the same time,
20 regulate the second, the IVF pregnancy situation?

21 A. That is possible, but I believe you're
22 ignoring the welfare of the child in the first situation
23 where you use the traditional method, the surrogate being
24 artificially inseminated. I think the result is the same
25 whether a surrogate is artificially inseminated or whether

1 a surrogate is implanted with an embryo. There is a
2 child. And I think that child has to have a permanent
3 home and settled rights to inheritance, and that's why
4 there has to be certain legislation that sets forth
5 paternity/maternity in each situation.

6 Q. Okay, maybe I'm missing something. You're
7 saying that if we don't have regulation in the, let's call
8 it the Type A surrogacy where the mother is the biological
9 mother.

10 A. Right.

11 Q. Her egg went to produce this child. You're
12 saying if we don't regulate it that it's going to go on
13 anyway, that there's no way we can prohibit this so that
14 we will have just tossed that whole kettle of fish up in
15 the air?

16 A. I'll be real frank about it. You don't even
17 need a physician to be artificially inseminated. It will
18 happen anyway. And there is much more difficult medical
19 procedures involved in implanting an embryo, and the
20 surrogacy situation Type A is much more prevalent today.

21 Q. Well, do you have any feel in your general
22 expertise in this issue for how prevalent this is? I
23 mean, is there a do-it-yourself contract like there are
24 do-it-yourself wills floating around out there? I mean,
25 I'm not being facetious. Are people just kind of doing

1 this on their own?

2 A. For example, a sister will turn to another
3 sister and say, I can't have a child and they'll use the
4 brother-in-law's sperm. That type of situation has
5 arisen. And in addition, if you compare the Type B
6 surrogacy, the cost of it is enormous and it is -- how can
7 I -- I don't think it's as effective. It takes a lot of
8 tries to make sure that a child will result from the
9 process.

10 Q. But isn't this legislature in the position,
11 in an appropriate policymaking position, to say, wait a
12 minute, where we are creating or blessing a situation in
13 which a mother is contracting away her maternal rights we
14 are transgressing an area of public policy that -- don't
15 we have the right to say that's -- to draw a distinction
16 and to prohibit one and prevent the other?

17 A. You do that in adoption. Even though
18 there's not what you call a contract, you still do that.
19 You still give away the biological right. I mean, well,
20 you take away the parental responsibility in adoption. I
21 don't see the difference.

22 Q. Well, again, that situation only arises --
23 only becomes binding, at any rate, after, as was pointed
24 out by Representative Hagarty, significantly after birth.
25 Up until then any contract, as I understood it, the mother

1 who is proposing to give the child up for adoption is not
2 going to be affected. It's not going to be enforced
3 against her in terms of her rights. In a surrogacy
4 situation, we are entering into, ab initio, a situation in
5 which everybody contemplates a baby or they wouldn't be
6 doing it. The father wouldn't be donating the sperm if he
7 didn't anticipate that he and his wife would end up with a
8 baby in the end. That's a much different situation from
9 adoption, which is really making a virtue out of a
10 circumstance that's arisen out of it.

11 A. I think there's other avenues that the
12 General Assembly can proceed instead of totally
13 prohibiting Type A surrogacy. What I'm saying is, for
14 example, if we have that informed consent, that's a way of
15 protecting the surrogate. If we want a certain policy,
16 there are different regulatory mechanisms that we can use.
17 For example, we don't want to have a population of
18 surrogates who are doing this because they're financially
19 coerced. Well, why can't we have a court determination
20 that the surrogate is not doing this for financial
21 reasons? Okay? There's different avenues we could pursue
22 where we're protecting bodily integrity, we're protecting
23 the concept of anti-baby-selling. There's all different
24 ways of doing this, and I think we can't forget again that
25 there is a biological father involved in this situation

1 and it's not only the biological mother.

2 REPRESENTATIVE HECKLER: Thank you, Mr.
3 Chairman.

4 CHAIRMAN CALTAGIRONE: Chief Counsel
5 Andring.

6 BY MR. ANDRING: (Of Ms. D'Aversa)

7 Q. Do you know, in the IVF surrogacy
8 situations, in what percentage of those are the, I guess
9 you call them the adoptive parents or the parents who are
10 supposed to get the baby, in what percentage are they
11 contributing both the sperm and the egg for that baby?

12 A. I wouldn't be aware of the percentages. I
13 understand there's a program in Ohio and I think most of
14 the time it is the intent of parents who are providing the
15 sperm and the ovum. There is also further studies with an
16 artificial womb where they would not need a human body,
17 but I am told by the practitioners in the Ohio practice
18 that that is very far in the future.

19 Q. Do you see a distinction between the
20 situation where the, I guess we'll call her the adoptive
21 mother would provide the egg and the situation where the
22 egg would come from an egg bank of some sort?

23 A. That situation could arise. And as I said,
24 these were only the minimal regulations I would see that
25 were necessary. What also could be done, and I think the

1 ABA model act does this, is you could have any combination
2 of sperm and ovum, however you want to limit certain
3 combinations of genetic materials. For example, you don't
4 want brother and sister being combined, and that can be
5 prevented if you provide in the legislation.

6 Q. Okay, and I have one further question. If
7 we're to assume a scenario where surrogacy contracts are
8 not void as against public policy, they are enforceable,
9 and the surrogate mother breaches that contract, now under
10 normal contract law, if a person breaches a contract, the
11 damages to which the other party is entitled are the value
12 of the loss of the bargain. Essentially in a surrogacy
13 situation it would be a refund of their money if the
14 contract were breached. Now, what you're proposing is a
15 situation where you would provide statutorily that those
16 parents would be entitled to specific performance of the
17 contract as somewhat unique remedy under Pennsylvania law,
18 or I believe law in just about any State, and I haven't
19 heard advanced rationale for awarding specific performance
20 in these cases, and I was wondering if you could follow
21 that opinion?

22 A. Well, as I said earlier, what happens in a
23 surrogacy situation and with my regulations that I'm
24 proposing, there would be prior court approval of the
25 surrogacy agreement, so that you're insuring, first of

1 all, that specific performance is in the best interest of
2 the child. Okay? What would happen would be there would
3 be a home study of the persons who intend to raise the
4 child, there would be counseling, there would be a
5 determination of voluntariness and informed consent, as I
6 said, with the surrogate. Everyone would know of any
7 potential risk involved, and the court would actually have
8 to make a determination that this was something that was
9 not detrimental to any of the parties involved. Once you
10 have that, that follows that you can have a specific
11 performance. And at the same time, it protects the
12 biological father. I think we simply seem to ignore the
13 biological father. I mean, I don't think it's fair that
14 once a child is born that now he's -- he'd be buying
15 himself a support suit, and I think that's totally unfair.
16 That's my opinion and that's the way I feel about it.

17 CHAIRMAN CALTAGIRONE: Representative Reber.

18 REPRESENTATIVE REBER: Thank you, Mr.

19 Chairman.

20 BY REPRESENTATIVE REBER: (Of Ms. D'Aversa)

21 Q. Carmina, if you don't mind, I don't think
22 you should have been embarrassed by your response that you
23 had to give Representative Hagarty about whether you have
24 given birth to a child because I daresay that all but
25 three members of this committee will always give the same

1 response you gave.

2 REPRESENTATIVE HAGARTY: To their
3 disadvantage.

4 BY REPRESENTATIVE REBER: (Of Ms. D'Aversa)

5 Q. Be that as it may, let me also say this,
6 that there has been a lot of discussion about the dollars
7 and cents that's paid to the surrogate mother. I know the
8 birth of my son, who was delivered by Cesarean section,
9 and in the conversations I've had with my wife over the
10 last six years following that event, she says there is no
11 money in the world that would, in essence, be able to be
12 given to me to go through that again, so there must be a
13 lot of love and compassion for that surrogate mother.

14 Chief Counsel Woolley just had such a
15 similar event and recanted to me earlier a similar type of
16 thought that for all the money in the world I don't know
17 if I would be going through this, per se. It's got to be
18 a love of family.

19 Be that all as it may, I might as well say,
20 Mr. Chairman, I'm slightly disturbed today sitting here
21 listening to testimony and very little, if any,
22 referencing being given specifically to House Bill 1843 in
23 essence in the way of compare and contrast, criticize, or
24 provide any areas of support, or for that matter areas of
25 suggestion. Obviously, at the outset of the hearing we

1 did reference that there was no way under the rules of the
2 House and what have you that the bill could be
3 specifically listed because of its introduction during the
4 last week of session prior to the summer recess and
5 because of not being read across the desk and all kinds of
6 other procedural quirks of the House it doesn't have the
7 constitutionally sunshined number that it should have and
8 therefore cannot appear on the agenda. But make no
9 mistake about it, it is and will be and will continue to
10 be pending before this House when we do return.

11 Be that as it may, and in hopes of not
12 having to have a second hearing, I would like to have some
13 idea about your thoughts on that piece of legislation,
14 because unless I'm mistaken, the comments that you set
15 forth in your testimony, they very, very much track, with
16 the exception of my concern on the right of revocation by
17 the surrogate mother issue. I think that's a big issue.
18 I think you see that to be a big issue from a
19 constitutional argument standpoint as well as from a long
20 embodiment of case law in Pennsylvania on the adoption
21 side of the same aspect of the issue. And I'm just
22 interested in one, since I do know from speaking to Chief
23 Counsel that the Family Law Section was apprised in the
24 latter part of June of the introduction and the assignment
25 of 1843 as the bill number to this. Has the committee had

1 an opportunity to at all review this and discuss that
2 bill?

3 A. I don't think at this time that I'm able to
4 give any information pertaining to the committee's
5 activities, not as a representative of the PBA. We've
6 reviewed a number of model acts and a number of
7 legislative bills--

8 Q. Could I specifically request, since I am a
9 member of the Pennsylvania Bar Association myself, that
10 you apprise Mr. Catone that I would appreciate if he would
11 call that on the agenda at the next available business
12 meeting of the committee, because frankly, I don't think
13 I'm mistaken, Mr. Chairman, that this particular hearing
14 has been scheduled for a number of months, and I also know
15 that various members of the Family Law Section, for a
16 number of months, have had the opportunity to have copies
17 of this and I sort of find it disturbing that the legal
18 community which, in listening to your testimony, is
19 supportive of the regulatory aspects isn't at least being
20 critical of certainly a vehicle of monumental proportion,
21 consistent with at least what you have in fact postulated
22 here today or many of the areas that should be looked at
23 in the form of regulating this.

24 And I'm not being critical of you. I
25 understand the politics of the Bar Association like I

1 understand the politics of the General Assembly, and I
2 only think that we are here on a factfinding basis. I
3 personally like to deal in specific sections of change, if
4 there's areas that can be changed, and I would appreciate,
5 not to take any further time, if the committee could
6 digest and/or dissect HB 1843, and if there is any
7 suggestions or changes, reasons therefore, I would be glad
8 to have that presented to myself and the members of the
9 committee.

10 A. I just want to respond to that and say that
11 the committee has been working on legislation and so
12 forth, reviewing different model acts, but we cannot
13 present our result of our efforts until it gets approved
14 by the Board of Delegates, and that's why I can't present
15 our findings.

16 Q. I understand that. I understand that. It's
17 just that as I listened to your testimony, I heard
18 hypercritical scenarios to Representative Markosek's bill,
19 justified or not, I'm not going to get into that. I would
20 have also liked to have heard hypercritical suggestions to
21 HB 1843 as well. And I say this statement on the record
22 for all witnesses that have testified heretofore and will
23 follow, because that's, frankly, certainly the purpose,
24 and we are, in fact, dealing with an issue that has major
25 sub-issues, and you've heard various philosophies from

1 various members of the committee, as we all have heard, on
2 various aspects of this that, quote, they can live with,
3 that they can't live with, that they have concern with,
4 that they think is public policy. Public policy is
5 nothing more than what the General Assembly says is the
6 law. I mean, that's my observation on human public
7 policy. It's legislative fiat, I call it, not public
8 policy.

9 With that in mind, if you want to respond,
10 fine.

11 A. Well, it is my understanding that we were
12 reviewing a certain specific House Bill and it is also my
13 further understanding that I am not to represent the view
14 of the PBA unless the Board of Delegates approves that
15 view. And again, I want to make very clear that I'm not
16 representing the PBA's view on any other matters.

17 Q. I understand that. Let me ask you, from
18 your own personal opinion, one, have you personally,
19 individual, on your own time, not of the time of the PBA
20 Family Law and/or in your capacity as the co-chair for the
21 Surrogate Motherhood Task Force, had an opportunity to
22 review House Bill 1843 or any of the concepts embodied
23 therein?

24 A. Yes, and I believe it's very similar to the
25 ABA model act.

1 Q. That's correct.

2 A. A lot of the provisions are borrowed from
3 there.

4 Q. Were you familiar with, and, boy, the number
5 escapes me, of the surrogate parenting bill that was
6 introduced by myself and a number of cosponsors last
7 session?

8 A. I believe so, but my memory does not recall
9 it.

10 Q. Okay, thank you.

11 REPRESENTATIVE REBER: Thank you.

12 CHAIRMAN CALTAGIRONE: Yes, Chris.

13 BY REPRESENTATIVE McNALLY: (Of Ms. D'Aversa)

14 Q. Yes, Ma'am. Now, one thing that I wasn't
15 entirely clear about from your testimony is your general
16 attitude about surrogacy and surrogacy agreements, and do
17 you think they're a good thing or, for example in your
18 testimony on page 2, you said despite criminal penalties,
19 et cetera, the world of reproductive technology will
20 continue to advance and couples will continue to seek and
21 use these new alternatives, given these circumstances, et
22 cetera. Do you think that surrogacy agreements are good
23 and helpful and valid, or do you think they're here to
24 stay and we just have to make the best of them?

25 A. I think if medical technology will advance,

1 the law will always have to keep up with it. I really
2 don't make an opinion whether I think it's good or bad,
3 but I'm saying if it's here, then we need to regulate it,
4 because there are a lot of parties that need to be
5 protected in this situation.

6 Q. Okay. Would you agree that the surrogacy
7 contract is, in effect, you're making a contract to
8 conceive a child?

9 A. I think when you have a gestational carrier
10 -- in both situations. I'm sorry, I think both situations
11 it's a situation where you're contracting to make use of
12 medical technology, and yes, the end result will be a
13 child.

14 Q. Coincidentally, I guess. I mean, doesn't
15 that bother you? I mean, it bothers me. Truthfully, as I
16 indicated before, that the child itself I think is a
17 positive result. I mean, it's a wonderful thing, but that
18 doesn't mean that I think that the process is wonderful.
19 And--

20 A. I think you can equate a situation where a
21 lot of people thought the car was a terrible thing when
22 there was a horse and buggy, and that's what's happening
23 now. Medical technology is advancing and some people
24 don't approve of the medical technology, but if you want
25 to make use of it, and people do, then there will be

1 surrogacy.

2 Q. Well, but how far does technology have to
3 advance before we decide that, you know, it's
4 inappropriate to be a part of our society? You know,
5 people want compatible partners in marriage. You know,
6 what happens when medical technology and psychiatry and
7 other social sciences advance so far that we can pick the
8 perfect partner for you, the perfect wife and husband, and
9 maybe we ought to have, at that point, contracts for
10 marriage, as in the old days? I think there's a big
11 difference between the horse-and-buggy age and the
12 automobile age and, you know, what is in essence a process
13 by which we make contracts and agreements and court
14 proceedings and laboratory procedures in order to bring a
15 child into the world. It's a quantum leap that I don't
16 think we're ready for. I'm not sure that we ever will be.

17 A. I don't really think it's a question whether
18 we're ready for it or we're not ready for it. It's
19 happening now and there are children that are resulting
20 from the use of this medical technology, and the question
21 is, what are we going to do with these children? How are
22 we going to treat these children? Who will have the
23 parental responsibilities for these children? What are
24 their rights of inheritance? Will these children have a
25 permanent home? And that's what the focus should be, not

1 whether should we allow it or not allow it, but it's
2 happening and now what do we do for these children that
3 are resulting from use of this medical technology?

4 Q. So you would argue then that the march of
5 technology is relentless and we can't stop it and we have
6 no control over the kind of society we live in because--

7 A. You definitely have control, and that's
8 through the regulations.

9 Q. Well, how about a regulation that says we're
10 not going to allow it at all?

11 A. I just think that's totally impractical.
12 That's my view. I feel if a surrogate gets pregnant, are
13 you going to force it to abort the child? The child is
14 going to result. There's going to be a child. Are we
15 going to have policemen in the bedrooms or in the
16 hospitals saying, "Now, don't inseminate this surrogate"?
17 And once she's pregnant, what are you going to do? Put
18 her in jail? There's still going to be that child.

19 Q. No, I think we ought to put the doctors and
20 the other people who engage in profiteer from the process
21 in jail.

22 A. Okay, that's one regulation. That's one
23 regulation. We put those people in jail. Now, the
24 surrogate's pregnant and there's going to be a child.
25 What are you going to do with that child? That's the

1 question.

2 Q. I'm prepared to deal with that problem. I'm
3 not prepared to simply, well, allow and accept this as a
4 device that, you know, is deemed acceptable, and I
5 truthfully don't think that you feel comfortable with this
6 process.

7 A. Well, I don't think it matters whether I'm
8 comfortable or not comfortable with it. What I'm saying
9 is the General Assembly wants to prohibit it and they want
10 to pass this bill. There's got to be other regulations
11 implemented that will provide for the best interest of the
12 child, for the welfare of the child. That's what has to
13 happen. You just can't prohibit compensation. You just
14 can't prohibit the activity unless you have regulations
15 implemented that will protect the child.

16 Q. I'm in agreement with that one.

17 REPRESENTATIVE McNALLY: That's all.

18 CHAIRMAN CALTAGIRONE: Thank you.

19 Thank you very much for your testimony.

20 Just for the record, I wanted to share with
21 the members the dilemma that we were faced with. House
22 Bill 1843 was submitted on 6-22-89 and it was not assigned
23 to a committee, but for the benefit of the members we did
24 include that in the packet because I felt that it had a
25 lot of relevance to this issue and I did want it to be

1 part of the packet.

2 REPRESENTATIVE REBER: Thank you, Mr.
3 Chairman.

4 CHAIRMAN CALTAGIRONE: I guess the
5 Pennsylvania Catholic Conference is supposed to submit a
6 written statement for the record. Is anybody here
7 representing them or will that be done later, I would
8 assume? It probably will be done later where we will get
9 a written statement and then forward it to the members.

10 We will go right on to Mary Eliza English,
11 and if she'd like the other two ladies to come up with
12 you.

13 REPRESENTATIVE REBER: Mr. Chairman, could I
14 just say something for the record on that? I would like
15 to advise that the Pennsylvania Catholic Conference has
16 been apprised and has been transmitted to them a copy of
17 1843, too, because I did want their indepth analysis.
18 They are aware of a particular piece of legislation
19 semi-pending, at this point, in the hallowed halls of the
20 House.

21 Thank you.

22 CHAIRMAN CALTAGIRONE: Thank you.

23 Please start.

24 MS. ENGLISH: Thank you very much.

25 My name is Mary English. I'm the Clinical

1 Director of the In Vitro Fertilization Program at
2 Pennsylvania Hospital in Philadelphia.

3 We began our in vitro fertilization program
4 in 1983, and at that time we were only performing the IVF
5 process, which is removing the egg from the wife, taking
6 the sperm from the husband, inseminating the two in a
7 Petri dish. Once embryo development had occurred, the
8 embryos were then replaced into the mother from whom the
9 eggs were taken. At that time we did utilize, in cases of
10 compromised male fertility or sterility donor sperm, and
11 that happens without any problem.

12 What has happened over the years, and I can
13 personally testify to this because I started the program
14 at Pennsylvania Hospital, is that it's come to include
15 many other off-shoots of the IVF process. I can remember
16 sitting in the very beginning when one of our physicians
17 said, you know, we're going to start a gestational carrier
18 program in a couple years. I said to him, the day you
19 start doing that I'm out of here because I don't know if I
20 could handle that. I mean, it just gets very complicated,
21 and certainly today has proved that to me.

22 However, as I've been working in this field
23 for the last few years, you of course get very emotionally
24 tied with patients and you begin to work with them. And I
25 came, once it was approved by the hospital, and I might

1 add that we had a Bishop who was on the board who left the
2 board of the hospital because of the decision to do this.
3 Once it was approved for us, we had several couples come
4 to us and ask us to consider doing this, and I -- once I
5 became involved with them, one of the couples being here
6 today, it's hard to say no when it seems like when
7 everything is well-defined and it seems to be a good thing
8 to do.

9 As I sit here today, our very first couple
10 that we did is undergoing an egg retrieval this morning.
11 That couple, the woman was born without a uterus due to
12 DES exposure and her husband is fertile and they had
13 contracted with a carrier. They have already been through
14 once, they conceived a pregnancy and the pregnancy ended
15 in a miscarriage at about six weeks, so they are now
16 attempting a second cycle.

17 My purpose of coming today was just that
18 because I knew there were probably, even though in House
19 Bill '45 it was not mentioned about gestational carriers,
20 I certainly felt that the way it was defined, that it
21 certainly, if passed, would include all these things. I'm
22 not going to read specifically my testimony because almost
23 everything in here has been addressed already, so I just
24 thought that I would speak to a couple of the concerns I
25 had.

1 I guess I don't really need to go through
2 the difference between a surrogate and an in vitro
3 transfer. In our current program, it is possible to be
4 able to have the husband and wife have an embryo
5 transferred into a gestational carrier. If it comes to
6 the point where the wife -- excuse me, but we also have a
7 donor egg program for women who have a uterus but for some
8 medical reason or surgical reason have no ovaries. We
9 would not take someone who wants to carry -- has no
10 ovaries, take a donor egg, put it with her husband and
11 then put it into another carrier. What I'm trying to say
12 is there is a limit, you know, as to where we're taking
13 this technology. So in the case of a gestational carrier,
14 it is with the husband and wife of the infertile couple.
15 There is not a fourth party involved. It's complicated
16 enough with three parties.

17 I wanted to be able to make the distinction
18 between surrogacy and IVF embryo transfer into a
19 gestational carrier and also to be here to answer any
20 medical questions because as I sat through today, there
21 seems to be a little bit of confusion as to the difference
22 between the two, so I would welcome any questions about
23 that, as well as the different issues of insemination,
24 donor sperm, donor eggs, and all the new reproductive
25 technologies.

1 We are the first program, I believe, in
2 Pennsylvania, well I know for a gestational carrier
3 program, and Myree App delivered our first child, which
4 was March 2, 1989. I'm sorry, Nancy delivered our first
5 child. That was a mistake. I get confused with those
6 two. But at any rate, our program started a year ago in
7 April, and we have had one delivery, and it is not a
8 service. I want to make it clear that it is not a service
9 that we have people banging down our doors to do, nor are
10 we advertising in a sense to try to get a lot of people
11 because we certainly know we're sailing on unchartered
12 waters. We have couples that we've worked with for a long
13 time and we feel obligated, when we feel comfortable with
14 the circumstances, to provide the service.

15 I'd just like to briefly mention the medical
16 indications for a gestational carrier. I'm going to focus
17 on that more than surrogacy. We, at Pennsylvania
18 Hospital, have elected not to do surrogacy, so that is not
19 a part of our practice - surrogacy in the sense where a
20 woman has a genetic investment in the child. The
21 principal indication for gestational carrier is to provide
22 a treatment option for women who cannot otherwise carry a
23 pregnancy and wish to have a biological child. Medical
24 indications include:

- 25 1. The absence of the uterus from surgical

1 or genetic causes. Such examples include women who have
2 been severely DES exposed, those born with either an
3 absent uterus or severely deformed uterus, and women who
4 may have had their uterus removed for a disease at a young
5 age, such as uterine cancer or cervical cancer.

6 2. Medical conditions which make the
7 occurrence of pregnancy unacceptably hazardous to the
8 mother would include things like previous eclampsia,
9 uncontrolled or brittle diabetes, chronic renal disease,
10 congenital or acquired heart disease, or Systemic Lupus
11 Erythematosus with renal involvement.

12 In our program, the carrier does agree to
13 provide these services for the infertile couple on a
14 contractual basis completely defined before treatment has
15 begun. And of course, psychological screening of all
16 parties is mandatory in our program. And for anybody
17 that's reading this, I apologize for the typographical
18 errors.

19 One of the current concerns that we have is
20 redefining the term "mother." Is the mother the woman who
21 delivers the child or could the term "mother" also be
22 applied to the genetic source of the child? I'd like to
23 remind you that the American Fertility Society has
24 enthusiastically endorsed the egg donor program, which is
25 reserved for women who have a uterus but nonfunctioning

1 ovaries that I mentioned, and that is mostly for women
2 with premature menopause or who have had ovarian cancer
3 and had their ovaries removed.

4 The concern I have about House Bill 745 in
5 its present format, as I mentioned before, is that it
6 probably would eliminate the ability of us to provide this
7 service for women. My statement in my testimony that says
8 that I would like no legislation to happen and that I
9 think it should be left up to doctors and patients I would
10 sort of like to rescind after today. First of all, that's
11 partially worded from one of our physicians who I was
12 speaking to yesterday, but I think what I think is
13 important is that we consider some legislation, and
14 Representative Reber's bill 1843 to me answers a lot of
15 the problems that I have.

16 My stance on surrogacy is pretty much middle
17 of the road. You know, I have some ambivalence but I
18 think that the concerns I have pretty much could be taken
19 care of with some legislation. With gestational carrier,
20 I feel very strongly this should be a service that we
21 should be able to offer to our couples. I think it is
22 something that requires an awful lot of attention in terms
23 of the psychological, ethical, moral, and physical
24 implications it has for the carrier and for the parents.

25 As far as what I think should happen with

1 the adoption Miss Stroud was speaking about and that women
2 have the ability to give up their child, I think that
3 maybe in the case of, I feel that with surrogacy that
4 maybe if the woman did have that option, I think that it
5 would certainly take some of the psychological issues away
6 because I think if women knew that they had that option it
7 might give them a little bit more control over the
8 situation and be able to say okay, as an adoption I know
9 that I could keep this child. Of course, that's a risk to
10 the biological father. The biological father, at the same
11 time, has to realize just as parents do that want to adopt
12 a child that they have the risk of losing the baby once
13 they get it, you know, as with an adoption the adoptive
14 mother can decide to take the baby back.

15 With the gestational carrier program I feel
16 quite a bit differently because there's no genetic
17 investment in the child. If we were to, as we talked
18 earlier or as was discussed earlier, if you were to apply
19 custody laws in this case, then there would not be a
20 problem because the biological parents would obviously get
21 custody. That's a little bit of a problem with surrogacy
22 because the genetic father, you know, may not want to have
23 custody with the surrogate mother, but with gestational
24 carrier I feel that that certainly is more defined. The
25 problem is that in Pennsylvania if the mother of the child

1 is that woman that bears the child, then we have a
2 problem. Certainly something has to be done about that.

3 As far as -- I'd like to just comment on
4 Diane Rothberg, the problems that she encountered. I have
5 a lot of sympathy for her in what she went through. The
6 problem I have with it is that I don't feel, from what I
7 know and what she was able to tell us, I don't feel that
8 she was adequately screened or counseled in what she was
9 doing. I also feel that although this may seem to be very
10 cold and I think that all of us make decisions in our
11 life, whether it be about children, whether it be about
12 marriage, divorce, whatever it is, that are very, very
13 painful, and I think the biggest concern that comes from
14 me about what Diane has gone through is that my concerns
15 lay around the welfare of the child that's being conceived
16 and delivered. We all make mistakes which we have to live
17 with and that are very emotionally painful, but I think
18 for the child that's coming into the world, I feel that
19 it's at their expense that custody battles and all these
20 kinds of things that are happening because there is no
21 legislation that is really affecting the child more than
22 it's going to -- it's not fair. I feel it's not fair. I
23 mean, I think that for the adults that are making the
24 decision, it's something that they have to sort of live
25 with.

1 Lastly, I think I mentioned this before,
2 that I, unfortunately, was not aware of House Bill 1843,
3 and I read through it briefly this morning and I feel that
4 this certainly would offer -- would really help the
5 selection process in gestational carriers as well as with
6 surrogacy, because I think anyone that would have to go
7 through everything that's suggested in here, it would be
8 by default that you would eliminate a number of people
9 that would not be appropriately chosen as carriers.

10 And lastly, I would just like to say that in
11 terms of adoption, many people have said to me, including
12 close family members, I can't understand why anybody would
13 go through all this, why don't they just adopt? And
14 unfortunately, adoption is not a viable alternative. My
15 statistic that I always say is that 1 out of every 10
16 people will end up with a baby if they try to adopt.

17 I think with many couples it's not as much
18 the issue of having their own genetic child as it is that
19 sometimes they have to go to these more advanced
20 reproductive technologies in order to have a baby. I have
21 a number of people in our IVF program that if I said to
22 them today, which I have done before when I've been called
23 that there is a baby available for adoption, and I say to
24 them, we have a baby that you could adopt, probably easily
25 40 percent of our couples would say, I'll take it. You

1 know, I will stop pursuing in vitro. So it's not only for
2 the biologic aspects of having a child, it's sometimes the
3 only option for them.

4 And lastly, I'd just like to say the
5 gestational carrier, and I would like to include egg
6 donor, although that's not really an issue here, and other
7 methods of assisted reproduction are not without legal,
8 ethical, moral, and psychological overtones. We are very
9 aware of this and know we are sailing on unchartered
10 waters. The programs are under constant scrutiny of the
11 American Fertility Society and local hospital boards who
12 demand, as in our program, extensive psychological testing
13 prior to initiation of treatment. With proper screening
14 and selection criteria, we are able to offer a very
15 special service to our infertile couples, and that is the
16 gift of life.

17 And I would ask anybody if they have any
18 questions about the medical distinction, I'd be more than
19 happy.

20 CHAIRMAN CALTAGIRONE: If we could hold on
21 to those questions and just have the other two testify and
22 then we'll open all three of you up to questions.

23 Who's next, Myree?

24 MS. APP: Yes. My name is Myree App.

25 Ladies and gentlemen, my very dear friend

1 has given to my husband and me what I consider to be the
2 most precious gift in this world. On March 2nd of this
3 year she delivered for us a beautiful baby boy, our son
4 Nathan. You see, I am infertile. I have what is
5 diagnosed as infertility secondary to DES exposure. My
6 mother, threatening a spontaneous abortion in the first
7 trimester of her pregnancy, was put on bed rest and given
8 diethylstilbestrol daily for the duration of her
9 pregnancy. The end result was that I was born with a
10 severely deformed cervix and abnormal uterus, causing my
11 inability to become pregnant and sustain a pregnancy. The
12 only reproductive organ not affected were my ovaries.
13 Even my fallopian tubes are blocked.

14 After three years of trying to get pregnant
15 and going through artificial insemination, a diagnostic
16 laparoscopy was performed. The procedure determined the
17 severity of my deformity and confirmed the dreaded
18 diagnosis of no possible pregnancy in my future. After
19 months of feeling inadequate, incomplete, and crying
20 buckets of tears, I turned to my dear friend, Nancy.
21 Nancy was aware of our attempts to get pregnant, trips to
22 the doctor and endless testing and temperature taking.
23 She expressed the thought that maybe she could help us
24 achieve our goal, which was to have a baby.

25 In my continued pursuit of finding a doctor

1 to perform a miracle, I came upon Pennsylvania
2 Reproductive Associates at Pennsylvania Hospital in
3 February of 1988. They had just started a new program as
4 part of the in vitro fertilization program. It is called
5 the gestational carrier program. It is basically the same
6 as IVF whereby a woman is stimulated with hormone
7 injections and has daily sonograms and hormonal levels to
8 monitor follicular development. Once she approaches the
9 time of ovulation, she is given a hormone to stimulate the
10 maturation of her eggs and ovulation.

11 The eggs are retrieved and placed in a Petri
12 dish with the husband's sperm for fertilization. On the
13 third day, the embryos are replaced into the woman. This
14 is the point at which the difference takes place. Instead
15 of replacing the embryos into the woman from whom the eggs
16 are retrieved, the embryos are replaced into another woman
17 who becomes the gestational carrier.

18 This is the simplified, watered down
19 explanation of IVF. There is much preliminary blood work
20 for all involved. Physical exams, semen analyses, and
21 extensive psychological evaluation for both the genetic
22 parents and the carrier parents. This is only to name a
23 few of the things we had to go through before being
24 accepted into this program.

25 It is a very trying and anxious time. One

1 must be very dedicated, persistent, and faithful to go
2 through IVF. A lot of sacrifices are made during this
3 process. Someone said to me a few years back that a woman
4 with infertility problems will persevere through just
5 about anything. I have found this statement to be very
6 true. I have been poked, prodded, stuck, and had multiple
7 doctors and nurses examine me and comment on my
8 reproductive abnormalities. I have endured it all in
9 pursuit of something I have dreamed about continually -
10 the joy of holding a precious human baby of my own flesh
11 and blood and that of the man I love and married; a baby
12 to love with all my heart, to watch grow up and go through
13 all the trials and tribulations of raising a child, and
14 more important, to grow up to be a stable, well-rounded,
15 loving adult who can leave his mark in the world.

16 I believe in God and I prayed a lot last
17 year during the pregnancy. I believe my God meant for us
18 to have this baby. The Bible tells us that when man and
19 wife were unable to conceive in biblical terms, the
20 husband went to concubines to bear his children. I
21 believe God gave man and woman the intellect to develop
22 modern techniques to give infertile couples the
23 opportunity to have their own child. I believe our son is
24 a precious gift from God.

25 I implore each of you to consider long and

1 hard before making a decision on voting on this bill.
2 Everyone deserves the right to have a child. I ask you
3 one and all, do you want to be responsible for taking this
4 right and the miracle of birth away from couples who have
5 no other alternatives? I can only add that I thank God
6 every day for our son and my dear friend Nancy, my son's
7 birth mother.

8 Thank you.

9 CHAIRMAN CALTAGIRONE: Nancy.

10 MS. RANDALL: I get choked up.

11 My name's Nancy Randall, and I'm Nathan's
12 gestational carrier and primary caretaker for him for the
13 first nine months of his life and development. Our
14 decision for me to become a carrier was not taken lightly.
15 My husband and I discussed the issues at great length
16 between ourselves and with our children. Our decision to
17 proceed with the program was unanimous.

18 My part in the decision to carry Myree and
19 David's baby was so that they may experience the same joy
20 and love I have for our children. The little arms that
21 give you the big hugs and the little lips that give sweet
22 kisses, the wide-eyed look of awe and wonder are only a
23 part of being a parent. Wiping away the little tears and
24 the runny noses, the sound of laughter of a small child,
25 the endless curiosity and fascination for life bring us

1 much happiness and pleasure. Our love grows daily through
2 the love for our children.

3 The miracle of motherhood is a very special
4 gift, and to give that gift freely to a woman who is
5 unable to bear her own child is one of the greatest
6 pleasures of life. The look on Myree's face as a new
7 mother as she held her baby for the first time gave me the
8 final assurance that I had made the right decision to
9 carry their baby.

10 Infertility results from many problems.
11 Couples with infertility problems should have the same
12 rights as couples without infertility problems - the right
13 to have their own child. The decision to have a child
14 whereby a surrogate mother, gestational carrier or the
15 ability to carry one's own child should be an individual's
16 decision. The few women who have had unpleasant
17 experiences as surrogate mothers due to inadequate
18 screening, poor self-mental preparation, or whatever
19 problems, should not be the cause for ruining other
20 people's dreams of having children.

21 I would like to point out again that a
22 surrogate mother's egg is used, whereas the fertilized egg
23 of another woman is implanted in a gestational carrier.
24 There is no genetic or biological link with the
25 gestational carrier. The means by which a couple should

1 have a baby is a personal decision, not one made by the
2 State.

3 I would like to add that the decision to
4 become a carrier was purely and solely for the purpose of
5 bringing joy to another couple.

6 Thank you.

7 CHAIRMAN CALTAGIRONE: Thank you.

8 BY CHAIRMAN CALTAGIRONE: (Of Ms. English)

9 Q. I'd like to ask Mary, and I know that this
10 is relatively new as far as your involvement with this
11 practice, do you know or do you have any knowledge of any
12 practice on genetic engineering that may or may not be
13 taking place in either sperm or eggs? Now, the reason why
14 I'm saying that, in our society today as we've progressed
15 all these millions of years to where we're at, we take the
16 good with the bad when a child is born, regardless of any
17 birth defects. But of course knowing what genetics and
18 genetic engineering can do in a laboratory, and this is
19 the area that I think we're heading, whether we want to be
20 going there or not, it seems like we're going to be going
21 there, certainly with a deformed person, let's say who has
22 a defect, doesn't have any hearing or may not have any
23 sight, one parent or the other, and may not be genetically
24 involved in the form of parents or grandparents, the
25 chances of wanting to allow that person to have an

1 offspring if in fact the wife could not carry, does that
2 automatically limit or reject that person or persons from
3 wanting to have a child in your program or any program
4 that may be involved in the reproductive area?

5 A. I'm just a little confused as to if someone
6 had--

7 Q. Suppose I'm blind and my wife can't carry.

8 A. And it's a genetic cross.

9 Q. And we come to you and I want you to provide
10 us with a carrier to carry our child because my wife, for
11 whatever reason, she doesn't have a uterus that will hold
12 a baby through the nine months' pregnancy, would you, in
13 fact, find me or us a carrier after we met all of your
14 standards and if we met them all except--

15 A. If I understand you correctly, we would be
16 using your sperm?

17 Q. Yes.

18 A. Yes, we would. Certainly we would recommend
19 that you have genetic counseling so that you know what
20 your chances are of having a child with that problem, but
21 that's not really genetic engineering.

22 Q. No, I know.

23 A. Okay.

24 Q. But I wanted to know if you know of anybody
25 that may be, in fact, doing any types of genetic

1 engineering that you know of or you don't know of?

2 A. I'm pretty familiar with what people are
3 doing because we have several meetings during the year
4 where everybody in the United States that are in the
5 reproductive technologies meet and publish. By the time
6 something's published, it's old news in this field, so
7 it's pretty much word-of-mouth and from our conferences.

8 The American Fertility Society pretty much
9 keeps up on everything and we get regular letters from
10 them on what's going on. In the United States there's a
11 major problem, it's not really a problem, it is just that
12 embryos are not -- it is not looked upon kindly to
13 experiment with embryos. We all, every one of us that are
14 involved in an embryo transfer program, struggle with the
15 issues of cryopreservation, frozen embryos, as I'm sure
16 you're all familiar with some of the problems with that
17 and what can happen if we have excess embryos and they're
18 not going to be frozen. We do not dispose of any embryos.
19 I know this isn't the question, but I'm getting to it.
20 There are programs in the United States where there are
21 consent forms that are signed that if a couple does not
22 want to cryopreserve embryos that they may be left to
23 develop in culture in the incubator and they will
24 degenerate within two to three days.

25 That leads me to the whole other issue.

1 There is no genetic engineering that I know of clinically
2 being done in the United States. There's experimentation
3 being done with primates, monkeys, you know, animals, to
4 determine if it's possible. There is, in Europe, it
5 amazes me that England is far ahead of us as far as the
6 kinds of things that are done, and there is a lot of
7 experimentation and I would venture to say clinical
8 application, although I'm not exactly sure at this stage
9 of that sort of thing happening. That is not to say that
10 somebody that thinks that their husband is not smart
11 enough for them and they want to have, you know, some
12 geniuses as the sperm donor, as far as I know, it has been
13 reserved for sex linked diseases and things like that, but
14 I do not believe that any births have occurred from that.
15 I still think it's in the experimental stages.

16 I'll just add at the most recent meeting of
17 the World In Vitro Fertilization Conference, which was in
18 Jerusalem in April, probably one of the fathers of genetic
19 engineering gave an update as to what was going on and at
20 that time there was just experimentation going on in
21 England and some other European countries, but there is
22 nothing as far as I know here.

23 Q. But in other countries around the world?

24 A. The potential does exist, and I think it is
25 going to be the decision, because there is no legal

1 precedent at this point, the decisions that we've had to
2 make in doing our consent forms, and our consent forms for
3 just in vitro fertilization, forget the carriers and
4 donors and all that, just for in vitro and
5 cryopreservation, it's very tough because there is no
6 legal precedent, and we have to define where we want to
7 draw the line, and I think that's what has to be done
8 until there is some legislation.

9 Q. That brings us to another point that wasn't
10 approached yet I don't think this morning. Let's say the
11 woman that my wife and I contract through you who is now
12 carrying our baby decides, for whatever reason, that she
13 doesn't want to continue to term and wants to abort. What
14 happens, and has that happened?

15 A. No, it has not happened.

16 Q. To the best of your knowledge?

17 A. To the best of my knowledge. There are,
18 just for anyone's information, I think about eight
19 programs in the United States doing gestational carrier.
20 I'm not talking about surrogacy, just in vitro programs
21 that do this. As far as I know, and I've been in regular
22 contact with a couple of programs with people that I know
23 that are doing this, that problem has not occurred. We
24 have provisions in our contracts that we have, or consent
25 forms, however we want to call them, we have provisions

1 for that, and that is something that is decided between
2 the couple and the carrier and their attorneys. It's not
3 something that we get, and certainly we are there for, you
4 know, counseling and things like that. But in terms of
5 what's actually decided.

6 CHAIRMAN CALTAGIRONE: Okay. Questions from
7 the members?

8 Jeff.

9 BY REPRESENTATIVE PICCOLA: (Of Ms. English)

10 Q. Gestational carrier, is that a medical term
11 of art?

12 A. Yes.

13 Q. Does it have a medical definition?

14 A. Oh, I'm sorry. I thought you meant -- I
15 don't know the answer to that. It is not in the
16 dictionary at this time.

17 Q. It's not in--

18 A. Of course I haven't looked at the latest
19 Webster's.

20 Q. It's not in that book we look through when
21 we're doing our medical malpractice cases?

22 A. Taber's?

23 REPRESENTATIVE REBER: I don't do medical
24 malpractice.

25 REPRESENTATIVE PICCOLA: I'm sure.

1 THE WITNESS: Taber's Medical Dictionary.

2 BY REPRESENTATIVE PICCOLA: (Of Ms. English)

3 Q. It's not in there?

4 A. No, it's not in there.

5 Q. Is it possible that -- how would you define
6 it, I guess?

7 A. Gestational carrier?

8 Q. Yes?

9 A. If I could start by saying why we chose
10 gestational carrier, that might help you. We did not,
11 when we started this program it was at the height of the
12 Mary Beth Whitehead ordeal, and it was going through our
13 Research Review Board and the Ethics Committee and
14 everything else at the hospital and we did not want to use
15 the word "surrogacy," and in fact, we didn't feel,
16 although I think in the true sense of the word way back,
17 you know, probably surrogacy applies to this, I mean the
18 definition more truly applies the replacement of, serving
19 as a replacement. But at any rate, simply put, we did not
20 want to use the word "surrogacy" because of what surrogacy
21 means now. Some programs use "embryo host," we chose
22 "gestational carrier" because the person is carrying the
23 child for its gestation. That's why. But no, I don't
24 have any other definition for you.

25 Q. But I guess my question is it carries the

1 implication that the person who is the gestational carrier
2 is not related in any way genetically to the child?

3 A. That's true.

4 Q. That is true?

5 A. But we do not do artificial insemination of
6 women for the purposes of surrogacy.

7 Q. In other words, what Mr. Litz does in
8 Indiana, those would not be gestational carriers?

9 A. No, he does have women that will -- I mean,
10 some women, if they want to do some form of whatever you
11 want to say, surrogacy, may apply to him and say, I want
12 to be a surrogate mother, and they may not care whether
13 they give their egg and they become a surrogate mother or
14 whether they're going to serve as a carrier. Or they may
15 have strong feelings one way or the other. He has both
16 people in his practice.

17 Q. Oh, I see, he has both?

18 A. Yes. Women that will serve as a carrier or
19 as a surrogate.

20 Q. Do you work with him and others like him?

21 A. I just met Steve Litz for the first time
22 when I was in Indianapolis for business and wanted to talk
23 to him about his program and see, you know, what he did,
24 and that was only two weeks ago. We have not -- I have
25 had patients ask me if I know anybody, you know, that

1 deals in finding carriers, because we do not, as a
2 program, solicit carriers. The couples that come to us, I
3 will help them and give them some ideas, but we do not
4 have a list of carriers for people. You know, I don't get
5 involved in that. Once the carrier is chosen, we do the
6 screening, et cetera, but that's a whole other issue.

7 To answer your question, I have told people
8 that they can call him for information. We have not, as
9 of yet, worked with particular couples.

10 I need to rescind my last statement. I just
11 told a lie. We had a couple who wanted a gestational
12 carrier at a time when we did not have a gestational
13 carrier program, and they live locally to me in
14 Philadelphia, and at the time they went out to the program
15 in Cleveland and they selected a carrier through Mr. Litz.
16 So in fact when they were not, for a number of reasons,
17 did not want to stay with the program in Ohio, they came
18 back to me and the carrier that they had already
19 contracted with and et cetera we did screen her, so I
20 guess you could say we have worked together in a sense,
21 because the carrier she had gotten on her own for another
22 program was through Mr. Litz.

23 Q. Okay, so then I guess you're really just the
24 medical provider?

25 A. Right. We just facilitate the process.

1 Q. You don't get involved in contracts or
2 retainers?

3 A. We get very involved with -- I'll just
4 briefly describe how it happens. If a patient contacts us
5 for this, they will come in and interview, have a medical
6 evaluation, they'll have an evaluation by me, they'll see
7 a psychiatrist and be psychologically screened and at some
8 point in time will have legal counseling, depending on how
9 serious they are about it. They may just want information
10 at this point.

11 Once that happens, if they have a carrier,
12 we have had situations where it's been a relative, a
13 sister, a niece, you know, or something like that. At
14 that time, the niece may come in to be screened and all
15 that. We then have a meeting and decide if any of these
16 couples, all these couples, are accepted into the program.
17 So, I mean, once they're accepted into the program, there
18 is more extensive psychological screening that is done
19 prior to ongoing counseling throughout the whole procedure
20 and process.

21 I don't think I answered your question.

22 Q. Well, you did. You did somewhat. I mean,
23 you indicated what you do, what your role is, and that was
24 my question.

25 A. Okay. Well, we do get involved with the

1 counseling, we get involved with the legal counseling. I
2 mean, I'm in very close contact with our lawyers. We work
3 together with it, but we do not do the legal contracts and
4 we do not -- we have generic legal contracts which are
5 then tailored to the individual couple with their lawyers.

6 Q. For example, you don't get involved in
7 whether the gestational carrier is going to be paid, and
8 if so, how much?

9 A. No. Absolutely not.

10 Q. Okay. I'll tell you, politicians hate to
11 seem wishy-washy on issues, but I've gone about 180
12 degrees in one direction and about 180 degrees to the
13 reverse on this.

14 A. So do I, so don't feel bad.

15 Q. And you've indicated that you did that even
16 today, and I presume that it wasn't with respect to the
17 gestational carrier. I'm presuming that you are sold on
18 that in terms of that you're doing it?

19 A. I'm there.

20 Q. But I presume that you have difficulty with,
21 for lack of a better term, the surrogate mother who is
22 actually carrying her own baby, and could you tell us what
23 those problems are?

24 A. What my concerns are?

25 Q. What those concerns are.

1 A. I think that I just see the gestational
2 carriers being much more clear-cut, and I think with
3 proper screening selection and all that, I truly think
4 that in the majority and almost all of the cases, that
5 women that are doing this, whether they get compensation
6 or not, I think that's just a whole separate other issue
7 that, you know, I have other feelings about. But, you
8 know, I think that it can happen and it's not laden with
9 as many problems as surrogate parenting is, in my own
10 eyes. And a lot of this is personal, you know, so I don't
11 know that I should really get into it.

12 Q. The whole thing is personal.

13 A. I mean, I think that's something that we're
14 all dealing with is that this is a very personal issue.
15 And for surrogacy, I'm not against it. I really was happy
16 to see House Bill 18-- what number is it?

17 Q. We're not sure.

18 REPRESENTATIVE REBER: We're not sure, so
19 don't feel bad.

20 THE WITNESS: 1843, because that solved all
21 the issues in my mind. The issues to me are what are the
22 child's? That really is my major personal concern. But I
23 think that, as I mentioned before, I think one of the
24 things that could happen is that if people entered into
25 this with the same way they enter into adoption, a lot of

1 the problems could be solved. If people knew they were
2 taking the same risk and the husband knew that he may have
3 a child somewhere in the world that he's not, you know,
4 that's partly his child that he can't have, you know, if
5 everybody knows where it stands, I think you're
6 eliminating a lot of problems. I don't disagree with the
7 fact of having a time where a mother may have the choice
8 to keep the child, and that's something sort of new that I
9 thought about this morning, you know, when all that came
10 up.

11 But to answer your question, I think that
12 surrogacy is okay if there's certain guidelines and
13 regulations, but I do think there's more potential for
14 problems than there is with gestational carrier. That
15 doesn't mean I'm against it.

16 Q. Are you aware of any litigation involved in
17 gestational carriers? In other words, litigation where
18 the mother claims parental rights -- not the mother, when
19 the gestational carrier claims parental rights, and if so,
20 what was the disposition of that litigation?

21 A. There is not any, to my knowledge, and the
22 last report I heard, which was a survey done by someone in
23 New York who did a survey of all the gestational carrier
24 programs, which if I thought I would have included for you
25 because it would be helpful, and the number of births and

1 all those kind of statistics, and there has not been, for
2 a gestational carrier, a problem to my knowledge, and they
3 did not talk of one.

4 In all fairness, I have to say the
5 gestational carrier, the oldest program in the United
6 States, which is in Ohio, I believe, there have been 8 to
7 10 births, I think. So, I mean, it's not that there have
8 been millions of babies.

9 Q. How many have you had?

10 A. We have had one delivery. It's only been
11 one year since we've been. The other thing I might
12 mention with that is that we've only done five embryo
13 transfers. It's not something that we do. We've done 600
14 of them for IVF for husbands and wives. I mean, we have a
15 large program. This is not something that there are
16 people knocking down the doors. It is expensive. I would
17 like to comment on, I cannot remember at this moment who
18 said it would be \$25,000 to \$30,000. I would like to
19 comment IVF does not have high success rates, but normal
20 reproduction is not efficient either. There's a 20
21 percent chance that any given couple will take home a baby
22 in a given month that they try, for a number of things
23 happen along the way, and the only reason why that's
24 important is that in IVF there's about a 60 to 70 percent
25 chance that a couple, after four tries, will conceive.

1 There is a higher pregnancy rate, I don't
2 know that you're really that interested in this, but
3 there's a higher pregnancy rate when you're putting them
4 in fertile women. Remember, for in vitro fertilization
5 you're putting them in a woman that already has a lot of
6 problems, and very often it's her problem. So when you're
7 putting them in someone that's already had three children,
8 and we have certain guidelines under the age of 35 and a
9 lot of other things, we have a higher pregnancy rate. We
10 had two pregnancies in five embryo transfers.

11 Q. Do you this see this type of program
12 growing?

13 A. Our IVF program has grown leaps and bounds.
14 In fact, we also do donor egg and another procedure called
15 Gift. As far as this goes, I don't see -- our major
16 limitation is that we don't provide carriers for people.
17 You know, I mean, I have more people that are interested
18 in the program but they are at a loss at the moment for
19 somebody to carry the child for them. And I might add
20 that the selection process in doing that, we've done a
21 couple things on TV, when Myree delivered her child there
22 was a press conference and a three-night sort of series on
23 the whole thing, and I had tremendous numbers of phone
24 calls about women calling about being carriers, about
25 women that wanted to know more about the program, and out

1 of all those people, there were maybe two or three that I
2 would even consider to let them come in to talk to them
3 about being a carrier.

4 So we do make a decision, if somebody calls
5 me and says, we want to be a carrier, it's not that I will
6 say we don't have anything to do with carriers. I will
7 talk to them, we will medically screen them. Before doing
8 that, we might have a couple meet with them. We do not
9 believe in doing this anonymously where the couple does
10 not have any idea who's carrying the child. You know,
11 it's a very difficult thing to do so that it's anonymous.
12 So therefore, I'll have the couples meet first before they
13 go through the expense of even starting to get screened.

14 REPRESENTATIVE PICCOLA: Thank you, Mr.
15 Chairman.

16 CHAIRMAN CALTAGIRONE: Are there any other
17 questions?

18 REPRESENTATIVE HAGARTY: I have some.

19 CHAIRMAN CALTAGIRONE: Yes.

20 BY REPRESENTATIVE HAGARTY: (Of Ms. English)

21 Q. Why is Pennsylvania Hospital, I've heard
22 your view of surrogacy, what is the reason that
23 Pennsylvania Hospital does not? If you can't answer that,
24 that's fine. I'm just curious. This is the first time I
25 thought about this distinction and I'm persuaded that

1 there's a big distinction between surrogacy and
2 gestational carrier and I'm wondering why the hospital
3 made that distinction?

4 A. I probably don't have the exact answer to
5 that, although I did sit in on all the meetings as far as
6 approval for this program and was the one that presented
7 all the information. We didn't get into a big discussion
8 about it because it's not something we wanted to do. It
9 wasn't as if we said we wanted to do surrogacy and
10 gestational carrier and the hospital said, okay, you can
11 do gestational carrier but you can't do surrogacy. It was
12 never really a big question because it wasn't something
13 that we wanted to do. And so I'll answer that as why we
14 didn't want to do it, we never asked the hospital, is that
15 we just felt we didn't want do get involved in it because
16 we couldn't justify it as much as we could gestational
17 carrier in our own minds.

18 Q. Because of the problems that it appears to
19 be fraught with because of the biological connection?

20 A. Pretty much that and a lot of the
21 psychological implications, which I think personally, and
22 probably our program would say, can be minimized, the
23 problems can be minimized with appropriate screening and
24 counseling. I'll be the first one to say in this whole
25 Mary Beth Whitehead thing and even Diane Rothberg, what

1 they went through as far as counseling isn't even
2 one-fifteenth of what our couples go through for
3 gestational carrier.

4 Q. I guess I'm impressed with your experience
5 with this and objectivity and unquestionably most of the
6 problems could be eliminated with proper screening and
7 counseling. I guess my concern is, can we eliminate all
8 of them, and if we can't, do we still have in surrogacy
9 such tremendous problems that it's not worth doing?

10 A. Well, you can see I'm sort of hedging on the
11 whole surrogacy thing, and it's not that I'm against it,
12 it's just that I think that my main reason for coming was
13 that I wanted people to understand the medical distinction
14 and be available for questions and so that people
15 understood the difference and things like that. It's not
16 that I don't want to answer it, either, it's just that
17 it's very complicated in my mind.

18 Q. Okay. I don't mean to pressure you. I
19 understand the purpose for which you're here.

20 A. Yeah.

21 Q. Let me ask you one other question. Does
22 your program use in vitro fertilization for unmarried
23 women?

24 A. I only react like that because I had a woman
25 who yesterday completely laid me into the ground because I

1 told her we would not accept her because she wanted to use
2 a donor, just come in and have in vitro, you know, for us
3 to provide a donor for her. And we don't have a sperm
4 bank, per se, or an egg bank, per se, but we do have a
5 pool of sperm donors, which one might say is a sperm bank.
6 In other words, we don't send it out around the country.
7 I mean, we don't have people call us up and just send
8 sperm out to anybody in the country that wants it. We
9 have donors available for people that need it for
10 infertility.

11 The problem is that one of our guidelines,
12 we also used to be part of Pennsylvania Hospital and we
13 are still a part of them but we are now a private
14 corporation, so theoretically we can do what we want. But
15 we've been grappling with this issue for a while. We have
16 had women who I know have come to me, have applied to our
17 program, I don't ask them for a marriage certificate when
18 they come in. You know, 50 percent of the people go by
19 different last names, so I am sure that there are couples
20 in our program that are not married, and I do know of a
21 couple. I did not know that at the time they came in. We
22 do not offer it to women who are coming in, at this
23 moment, we do not offer it to women who are coming in and
24 wanting to have us provide a donor.

25 Q. Not a couple?

1 A. If there's a couple--

2 Q. I'm curious, since you do screening, do
3 you--

4 A. We'll, I'll be honest with you. We have
5 physicians, we have a lot of different views with the
6 eight physicians that are in our program, and what I think
7 they basically do is tell a couple, if they're living
8 together, to tell me that they're married.

9 Q. I asked the question for a different reason.
10 I asked the question for an even more far-out reason. I
11 was curious about women who were involved in relationships
12 with other women who wanted babies.

13 A. I knew that was coming, believe me.

14 Q. I mean, I know two women like that and I'm
15 curious what hospital -- or I guess I'm just curious as to
16 whether that's sanctioned or what?

17 A. The reason, again, you can see I'm
18 hesitating a lot here today, the reason why I'm hesitating
19 on this issue is because we are in discussion on it right
20 now. Basically, a couple of our physicians in their
21 office do insemination of lesbian women and single women.
22 So their issue with some of the rest of us that may feel
23 differently is that if we provide this service, our
24 program should provide this service, too, and we haven't
25 gotten to a decision yet. So at the moment we do not

1 accept single women. However, I know there are women in
2 our program that are with a man that have tried in vitro
3 with us.

4 Q. Okay, thanks.

5 A. You're welcome.

6 Please don't ask me any more questions.

7 REPRESENTATIVE PICCOLA: Aren't you glad you
8 came?

9 BY REPRESENTATIVE REBER: (Of Ms. English)

10 Q. Mary, in your professional opinion, you were
11 here, obviously, when Diane Rothberg testified and you
12 heard the emotion that was fraught in her testimony and
13 you might have heard my question regarding the fact, my
14 statement, I should say, that in my opinion, this is not
15 dissimilar to emotional trauma experienced by biological
16 mothers that have given their children up for adoption.
17 In your professional opinion, would you agree with that?

18 A. My problem with that whole thing was that I
19 could give equally as many stories of a couple such as
20 this one right here that sat in front of me in my office
21 and gave me as much of a tear-jerking story that I went on
22 her side. You know, I mean, I think that it's such an
23 emotional thing on either side.

24 Yes, I do agree with you, and that's one of
25 the reasons why I think what made me come to think that in

1 the case of surrogacy, maybe there should be a period of
2 time where a woman should have the right to keep her child
3 and it would be like adoption, and I really think, I mean,
4 I have a lot of experience in terms of the psychological
5 counseling of our couples, whether it for surrogate or
6 just infertility, mostly infertility, where I think when
7 people are aware of what the circumstances are and when
8 things are well-defined, then they can cope with it. We
9 all have to cope with things on a daily basis, and if they
10 know, just as in adoption, if they know what the potential
11 things are that can come up, then certainly it makes it a
12 little bit easier. But I have spoken with people. I have
13 a woman who adopted a child in our program and fell down
14 the steps one day with the child and the child had a
15 concussion and they took the child away from her for child
16 abuse. I'm just using this as an example of somebody
17 losing, you know, a child. It's a little different, but
18 the stories are heart-wrenching, you know, when you're
19 talking about mothers, children, and, you know, all that
20 kind of thing.

21 Q. Enough said. Thank you.

22 CHAIRMAN CALTAGIRONE: Thank you very much
23 for appearing to testify.

24 We'll next hear from Ms. Barbara Domboski.

25 Is Barbara here?

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

Ann-Marie P. Sweeney

ANN-MARIE P. SWEENEY

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Ann-Marie P. Sweeney
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**STATEMENT BY DELIA W. STROUD, ESQUIRE
CHAIRMAN - THE NATIONAL COMMITTEE FOR ADOPTION**

**Presented At Hearing Of
House Judiciary Committee
Regarding HB 745**

My name is Delia Stroud. I am Chairperson of the National Committee For Adoption (NCFA). Thank you for inviting me to testify today on behalf of the NCFA. We are a national, non-profit, non-sectarian organization that is concerned about quality services to women with crisis pregnancies, about adoption, and about services to infertile couples and others who want to build families through adoption. We have 150 member agencies, including four (4) agencies in Pennsylvania, and several thousand individual supporters and volunteers.

I want to commend you for your efforts to address the surrogacy issue, for holding hearings, and for proposing legislation that you believe will remedy the situation. We agree with HB 745 that enforcement of commercial surrogacy agreements equates with the constitutionally prohibited action of baby selling.

I want to emphasize that NCFA is very sensitive to the plight of infertile couples. It is such couples, now mostly adoptive parents, who make up the core of our individual support. Because we are the only national organization currently collecting the statistics, we also know what the imbalance is between couples seeking to adopt and healthy infants needing adoptive homes. According to the United States Center For Disease Control, the number of infertility consultations with doctors has doubled since 1981. Couples paid more than two million visits to such doctors in 1983 alone. Yet, although there were more than 800,000 babies born in 1986 to young, unmarried women, less than five percent (5%) of those young women made adoption plans for

their babies. For example, in 1986, the last year for which there is data, there were about 48,000 births out of wedlock in Pennsylvania. Of those 985, or approximately two percent (2%), resulted in adoptions of healthy infants.

A primary reason for the tremendous disparity between the number of babies born out of wedlock and the number placed for adoption is the lack of adequate maternity services and adequate counseling on the adoption option. Based on our experience with current statistics of our non-profit agency membership, about 40 percent of young women who do use residential maternity services opt for adoption. A federally supported research study in Illinois suggests that at least 30 percent of pregnant teens will choose adoption if quality counseling and maternity services are provided. These statistics indicate that through a comprehensive strategy including provision of residential maternity services and promotion of adoption, babies already being born would increasingly be available for adoption by infertile couples.

Yet in Pennsylvania under HB 836, agencies cannot be reimbursed by adoptive parent fees for such vital services as counseling and housing. This law thus creates needless obstacles to adoption in Pennsylvania and should be amended.

I am an infertile woman and an adoptive parent. I understand fully the desperation felt by those who desire to have a family but are unable to conceive. I can, nonetheless, state unconditionally that my husband and I would never have resorted to surrogacy. In spite of our desperate wish to become parents,

we could not have justified entering into an unethical contract that exploits a child as a commodity and a woman as a baby-maker. The laudable end of parenthood does not justify using whatever means one chooses. Instead, the best route to parenthood for infertile people is adoption, as it legally and ethically meets the needs of all concerned.

Adoption is a service for a child who needs a home; surrogacy is a service for a couple who needs a baby. Adoption is the result of an unplanned pregnancy; surrogacy is the result of a planned pregnancy. We know we cannot approach a young woman and buy her baby and place it for adoption regardless of how wonderful the adoptive parents are and how willing the birth mother is. Yet, commercial surrogacy creates such a "class of . . . baby bearers for money." (Rabbi Marc Gellman, The Jewish Exponent, January 23, 1987) and thus threatens the socially beneficial institution of adoption. For there seems no distinction legally between saying a woman may receive money for the transfer of a child intentionally conceived and saying a woman may receive money for a child accidentally conceived.

Further, commercial surrogacy threatens the stability of families by exploiting, in particular, first the woman who conceives the baby with the expressed intention of selling it; secondly, her children, if any; and thirdly, her spouse, if any. The surrogate industry has theorized that it is more logical to assume that a woman who has already experienced pregnancy and childbirth understands what she is doing when she signs a pre-

conception contract. As a result, most surrogacy brokers recruit women with at least one (1) child. The nature of surrogacy arrangements is such that most children know their mothers are involved "in growing a baby for someone else," and although they may see this as a generous act on one level, on another level the idea creates tremendous insecurity. Siblings see the mother's proposed act of transferring custody (whether for a fee or not) as a threat to their own stability: Will she sell or give me away too? We realize that it is unwise to separate siblings in adoption; it is also unwise to separate siblings for surrogacy. Further, as the months progress, the spouse of a surrogate mother may bond to that child carried by his wife. As any adoptive father could testify, their love for their children is no less even though there is no biological connection.

Finally, contrary to assertions by surrogacy proponents, there is no constitutionally protected right to bear or beget a child through surrogacy. Although consenting adults have a constitutional right to deal with matters of reproduction as they deem appropriate, the effects on innocent third parties must be considered. As a general rule, a person has the right to make decisions affecting his or her own body unless the choice adversely affects others. Surrogacy arrangements do harm others. Moreover, the right to make choices about reproduction does not translate to a right to have custody of a baby. If such a constitutional right to custody of a baby existed, would we not have to allocate babies available for adoption via lottery and

provide governmental subsidies to enable every person to have a baby regardless of his or her marital status or ability to care for a child?

Given that surrogacy arrangements are inherently damaging to all parties, we support prohibiting any form of surrogacy and hope Pennsylvania will focus on providing comprehensive services for those young women confronting unplanned, out of wedlock pregnancies. You would thus address the critical human and financial crisis of teen pregnancy and single parenting and, at the same time, help address ethically the needs of those who are so desperate to become parents.

Again, thank you for inviting me to testify.

Respectfully submitted,

A handwritten signature in cursive script that reads "Delia W. Stroud".

DELIA W. STROUD, ESQUIRE
Chairperson, National Committee
For Adoption

Good morning representatives, senators, and everyone else that has attended this important hearing on surrogacy. My name is Steven Litz and I am an attorney from Indianapolis. I also am the president of the American Organization of Surrogate Parenting Practitioners (AOSPP), and I am the director of Surrogate Mothers, Inc., one of the midwest's only surrogate programs. Thank you for allowing me the opportunity to discuss what has become one of the most provocative issues in recent memory. I have always been fond of the cartoon "Bloom County," by Berke Breathed. In one episode, the cartoon's main character, Opus the penguin, is distraught over what he perceives as the darkening of the human soul. He is attempting to find something in which he can believe, and his first thought is of world peace. Unfortunately, he immediately sees a news update where the anchorman says, "Today, Quadaffi attempted to blow up all of the United States." Despairing, Opus then places his faith in financial security, only to read a headline that "Ivan Boesky has sold all of his stock to Donald Trump." Ready to give up, Opus encounters a pregnant woman, and suddenly believes his troubles are over. Having finally found his answer, having located the last remaining bastion of purity, he gently rests his head on her enlarged belly and sighs, "Ah, motherhood," to which she looks down upon him and replies, "Surrogate."

There can be no doubt that today's technological advances have enabled us to redefine the very notion of family and of motherhood. New technologies unavailable even 10 years ago have brought thousands of children to couples through in vitro fertilization. Hundreds of couples also have created families through surrogacy. Today, we have the ability to combine these two processes, thereby allowing a couple to have a child that is biologically related to both the husband and his wife, though carried to term by another woman.

Rather than deal exclusively with the theoretical debate on surrogacy, as other witnesses may do, I thought I would address surrogacy's practical applications. In so doing, of course, I will be arguing that surrogacy is a viable and valuable alternative (although certainly not a solution) to infertility. In the next few minutes, then, I will provide an overview of how surrogacy works (or should work, in my opinion), what other states' responses to surrogacy have been, and what ought to be done in the future to see that this relatively new technology is used and not abused.

My program began in 1984, and to date we have helped dozens of couples throughout the country. The AOSPP is a grass-roots organization formed in 1988. It is a self-regulating organization comprised of eight of the country's dozen or so surrogate programs. It seeks to provide a uniform set of guidelines for its members to follow, and was formed mainly because of the total absence of regulatory schemes for surrogate programs. To date, not a single state regulates surrogacy; many attempt to regulate the participants, but no state has addressed the issue with sufficient clarity so the public understands what it can and cannot do.

The term "surrogate mother," is of course, a misnomer. I prefer to refer to the "surrogate" as the intended birthmother and will do so in my remarks. Today couples have essentially two options if they choose surrogacy. The embryo transfer option is becoming increasingly popular if couples can afford the program, and are physically capable of participating in it. Couples can make this choice (where doctors combine the husband's sperm with his wife's ovum, and transfer the resulting embryo(s) to a surrogate), or the more traditional surrogacy arrangement, where the birthmother is simply artificially inseminated with sperm from the husband of the couple. In order to be a birthmother in the program, a woman must meet two basic requirements: 1) she must be over 21, and 2) she must already have had at least one child. The reason for this latter

requirement is twofold. First, it is my feeling that a woman can better understand pregnancy having gone through it. This by no means implies that she will know what it is like to give up a child, but at least she will have some idea of the physical and emotional changes she will experience during the pregnancy. Secondly, it would be quite ironic if a woman chose to participate in the program only to discover that she, like the couple that was working with her, also was unable to have children.

Once a woman meets these basic criteria, I send her an application. The applications ask information about the woman's marital and familial histories, her educational background, her employment, and her and her family's medical history. She also lists references, obtains her medical records from her prior pregnancies, explains why she wants to help a couple, and lists what her fee is. After I receive the application, I (or my secretary who also is Indiana's first surrogate) contact the woman for an interview. After the interview with me, assuming everything is acceptable, I then draw up a one page summary, or "profile sheet," of her characteristics. Couples, where infertility is required (defined as at least the wife's inability to successfully carry a child to term without jeopardizing her or the child's life), who have previously submitted their own applications then review these profile sheets and make a selection.

After the woman is selected, she and her husband (if she is married) come to Indianapolis where they are screened psychologically. No one knows, of course, what qualities contribute to one's ability to successfully complete a surrogate arrangement. It is the psychologist's goal, however, to ensure that the women who are eventually accepted are emotionally and mentally mature; that they understand from a psychological standpoint, some of the things they might feel prior to and after the birth, and that they have a support system that will encourage them both during and after the pregnancy. The psychologist prepares a

report after seeing the intended birthmother, submits a copy to me, to her and to the couple. Based on all of the information the couple has about her, the couple then makes a final decision if she is the woman they wish to carry their child. The intended birthmother also is given information about the couple that is interested in selecting her and she too decides if the couple is right for her.

At this point, contracts are prepared. I always represent the couple and never the intended birthmother. She is strongly encouraged to have her own attorney review the contract with her, and the couple pays for his/her fee from the escrow account they have set up with me. The cost of the entire procedure will be about \$18,000 for the artificial insemination program, or about \$25,000 for the embryo transfer program (\$10,000 for the surrogate; \$5,000 as my fee; \$100-\$7,000 in medical expenses depending on which program the couple participates in; \$500-3000 in travel, lodging, and other miscellaneous expenses).

You probably have seen or heard of some of the terms of surrogacy contracts. In my program, the contracts make it clear that the birthmother's fee is for her services of carrying the child and not for the baby itself, or for her consent to the child's adoption (if necessary). So, for example, if she were to miscarry at 4 months, she receives 4/9 of her fee (assuming of course, that she did not intentionally or negligently cause the miscarriage). If the child is stillborn she receives her full fee, since she has done everything the contract called for her to do.

Some of the other significant provisions of the contracts are: the couple agrees to accept the child (or children) no matter what his/her condition is upon birth. The couple takes out a life insurance policy on the intended birthmother. They pay all expenses arising out of the procedure. She has the sole choice relating to terminating the pregnancy.

If the couple requests that she abort and she refuses, they still are obligated to accept the child. Prior to the signing of the contracts, I recommend that the couple and the woman meet to discuss this very sensitive issue. I also feel that the surrogate experience is much more enjoyable for all parties if they meet and get to know each other.

Despite the safeguards we try to provide to both the surrogate and the couple, many people feel that surrogacy in any form should be outlawed. The potential for exploitation is too great, the argument goes. Only poor, uneducated women apply to surrogate programs, opponents argue. Surrogacy is child selling, they cry. People professing these views simply are ignorant of the facts. The average woman selected is a 28 year old mother of two, employed, married for at least 3 years, at least a high school diploma and oftentimes college educated, and solidly middle class. The only difference between intended birthmothers and the typical 28 year old woman in this country is that intended birthmothers have a far greater sense of altruism. True, money is a factor in their decision to become intended birthmothers, but by no means is it the motivating force.

House Bill 745 fails to recognize this, as its premise is that women choose to participate in surrogacy arrangements "for the purpose of receiving financial compensation." All of the women express deep empathy for the infertile couple, and all rejoice in the chance to enable them to have what the intended birthmothers all have--the opportunity to be a parent.

It is also especially frustrating to encounter those who maintain that if the infertile couple wants a child so badly, they could always adopt a handicapped child. To this I respond that no one makes that suggestion to fertile couples; how dare they require it of infertile couples. No couple should be deprived of the chance to nurture a healthy

child, if that is their wish, and if other people are able to assist them in that goal.

The differences between surrogacy and "black market babies" is equally apparent. In the black market situation, a baby broker attempts to extract as much money as possible from the purchasing couple. The woman relinquishing her child never has legal representation, is always impoverished, has little or no information about the child's father, and little if any education. Contrast that scenario to surrogacy. The couple and the intended birthmother are each represented by different attorneys; all fees are spelled out ahead of time; the intended birthmothers have been screened psychologically; both sides have been screened medically (for AIDS, hepatitis, drug use, etc.); and most importantly, the decision to conceive is the intended birthmother's--made before any pressure could be exerted upon her. Surrogacy simply is not comparable to black marketing, and most states that have addressed the issue have felt similarly.

Of the 12 states that have passed laws in some way relating to surrogacy, only 3 actually prohibit it (Michigan, Arizona, and Washington). 8 states, including the prior 3, say that surrogacy contracts calling for relinquishment of custody prior to birth are unenforceable. Four states have laws that in some fashion, recognize and accept surrogacy. No state has passed legislation equating surrogacy with child selling, nor has anyone ever been prosecuted criminally under such theory. States addressing the area have felt most uncomfortable with the notion that the decision to consent to the child's adoption is one which can be made prior to the birth of the child--a concept with which the AOSPP and I personally agree. Under our contracts, the intended birthmother can only consent to the child's adoption after it is born. If she refuses, then the couple has the option of pursuing a custody fight, similar to any dispute between

biological parents. In the embryo transfer situation, where the intended birthmother is not genetically related to the child, it is unclear whether she could assert any "parental rights," although it is my opinion that, faced with a choice between simple contribution of gametes or 9 months of gestation, courts would give more weight to the latter and at least allow the intended birthmother the opportunity to press her "custody" claim.

House Bill 745, as currently drafted, signals infertile couples that they no longer can go to licensed professionals to help them. Surrogacy would be driven underground where couples would be left on their own to screen, counsel, and select an intended birthmother. It can hardly be doubted that in fact no screening would occur. We would see far more "Baby Ms" than ever before.

Surrogacy is an idea whose time has come. Of the one thousand babies born through surrogacy, only a handful of cases have gone awry, and all of those involve inadequate testing. Not a single case exists where the birthmother received sufficient psychological screening, where the couple received a copy of the psychologist's findings, and where the birthmother then decided to keep the child. The vast majority of arrangements result in four tremendously satisfied people: the couple who has a child it otherwise never could have loved; the child itself which otherwise would not exist; and the intended birthmother who has given the couple a rare and precious gift, one which few women have found themselves capable of giving, one which will literally will be a lifelong treasure, the gift of life.

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le page

DIANE ROTHBERG
SEPTEMBER 7, 1989

Thank you for inviting me here to speak. I hope that each of you will consider carefully this bill. It is difficult for me, because of my own personal experience, to see the difference between commercial contract surrogacy and the act of surrogacy. I believe that they are both wrong. However, I strongly support any legislation that will put an end to "Commercial Contractual surrogacy".

My attorneys request I refrain from answering questions concerning facts related to pending litigation. Even though it has been over 2 years custody has yet to be final, the courts move very slow. Also related matters to the pending tort suit against the agency New England Surrogate Parenting Inc., the director individually, the attorney who was counsel to all parties, and the brother of the director of the agency who was my donor and his wife. I can tell you that my contract was ruled on in the Commonwealth of Massachusetts and was found to be void and unenforceable and contrary to public policy without really going into the constitutional violations which included the right of the father to demand an abortion..

I am not a surrogate mother. I can be referred to as a contract mother, but not really a surrogate mother. The term was coined by a baby broker. It is part of the strategy that is used to distance the mother from her child and it also serves to train your mind away from what is really true. It works sometimes for the mother. At least for a while. I find it wholly interesting that we accept it as a term and use it. Yet when we go home and turn on the news and watch stories about people who are caring for young animals in the zoo's we also accept them as "surrogate mothers", even though we realize that it was impossible for the sometimes charming woman holding the chimp to have conceived and given birth to it. The term surrogate means in replacement of, correctly used for IVF surrogacy and in AID surrogacy the adoptive mother is correctly the surrogate. She replaces the mother, even if it is a life time job she is the replacement.

A few years ago I had more empathy than common sense. More naivety than perception. I saw these desperate people dying of a thirst and instead of helping them, I unknowingly handed them a glass of poison.

I signed a surrogate contract promising to surrender a baby I would conceive, carry and bear. I saw myself as selfish to say no, when I knew I could physically have a child. I now pay the price for the mistake. The price is one of guilt, shame, and self-contempt and an endless sea of loss. The guilt is one of believing I should have known better. The shame is in not being able to keep the promise, no matter how wrong I was to make it. The self-contempt is for myself and what I have done to my family, and my baby. I found I could not direct my love and emotions and I find I now can't control my grief.

For 34 years my entire being was radiant with optimism, innocence and hope. I loved life, even when bad things happened to me or those I loved. But today it's different. I can no longer determine which days I will wake with depression so intense I can not function. The pain of the separation from my child is simply too great. My optimism, innocence and hope left with the contractual surrender of my child. They call this "post traumatic stress disorder", labeling it doesn't make it go away nor lessen its impact on my life, or those in my family.

I can't take you into my heart and allow you to see the empty spot that is left as a result of the loss of my youngest child. But, I can paint a picture in your mind of the many nights I wander down my hall, unable to sleep wishing with all my soul that I could slip into watch my youngest child in his sleep. But I can't because he isn't there.

If you could just see the moments when we are all together as a family, laughing and talking and then my husband looks up to see the sadness in my eyes when I feel that deep pain wash over me as I realize that one of us is gone, now missing.

I only wish for the chance to bathe him and dress him and watch his eyes drift closed as I read him a good-night story. As I go through the everyday paces of parenthood I am acutely aware of the endless pain of being separated from my youngest child. I knew what it was like to give birth to a child, but I lacked the knowledge of what it was like to surrender a child.

I can predict for you, years of the same kind of potential regret for any woman who enters into a surrogate contract, or your regret if you have the chance to stop this now and you simply don't.

It is not too late for you to realize that the loss for the couple is imaginary. A child they dreamed of. One they have pictured in their minds. It is not a loss they have touched or that they will give birth to. It is a vision. Yes, the pain is real but the child is not.

Unlike the infertile couple, I know what my child's eyes are like; I have seen his face and touched him and he has touched me. I know he looks like me, and when we stand in the sun the color of our hair is exactly the same. My loss is real. It is a real part of me. I don't imagine it. My loss is human. His birth was not imaginary, it was physical not mental, not a dream and not a vision.

The pain that came with the contractual surrender of my baby is not the same pain that accompanies the loss of a vision, but the loss of a real human being, the loss of the mother to the child and the child to the mother.

I was encouraged by the contracting couple to grow close to the baby. The biological father wanted the baby to receive love, nurturing and comfort not only from me, but from my family as well. I have memories of my children placing their hands on my stomach and talking to the baby. The smiles and the awe they showed when the baby moved beneath their small hands. They were loving and gentle, they welcomed him into their daily lives without any reservation. While he was within me this was encouraged only to be severed at birth. The couple wanted to ensure the best possible product, but the feelings of our children were of no importance. I worry my youngest child will suffer the same lack of compassion from this couple. They might some day look on his pain and tell him what they told me "It's the price you paid for our happiness." This knowledge didn't limit my overwhelming pain and I doubt it will limit my child's pain and confusion when he faces the circumstances of his conception and birth.

I worry about the women who recount positive stories about being a surrogate. They refuse to admit the baby is theirs. One I never forget I quote; "That child will never be out of my mind, I loved that child for nine months, but I didn't fool myself into thinking it was mine". I worry about these kind of statements and these women. When the reality hits as it surely will one day. I worry they will suffer what I suffer now, combined with the added pain of living the lie.

Baby brokers will set the perspective mothers focus on the pain the infertile couple feels. Perspective mothers are told that those who criticize surrogacy just don't understand the pain of the couple; they don't understand how it takes a special kind of woman to be a "surrogate mother".

Don't be taken in by their borrowed motto, "E Pluribus Unum" , or "Out of Many, One". If you are 18, preferred white, breathing and can sign your name you qualify to be a contract mother.

They don't practice full disclosure, they tell you that it will be a nine month commitment. It is a life time commitment. Records show that the highest trauma is the loss of a child. Not the loss of not getting a child. The loss of a child.

Studies show that 39% of the woman who have lost a breast a year later experience anxiety, depression and sexual difficulties severe enough to warrant psychiatric help. This is a breast, one can only weigh this information against the loss of a child for a woman.

It is a life time of giving, and can easily be a lifetime of grief.

What the Surrogate Industry wants us to see is a sharing, humane, straight, clean and honest approach to infertility. But it is none of those things, nor is it part of the "New Technology". Saying "New Technology" leads you to believe that highly trained individuals are in charge. I see images of white lab coats and sterile procedures dancing in your minds. But this industry has not one aligning role in the "New Technology of Reproduction". This is a new social arrangement, not new technology.

I know now, it is not in a child's best interest for society to accept the change of the promise exchanged between two adults, prior to conception, from a promise to "love honor and cherish in sickness and in health, till death do us part, keeping only unto you so long as we both shall live" and replace it with a profane promise that states "the surrogate mother understands that as a surrogate mother she will attempt to become pregnant via artificial insemination of the sperm donor (herein after referred as father). the surrogate mother promises not to form any mother child bond with the child she carries". These promises do bear closer viewing. What do we do with this man who later changes his mind about the promises he made in his vows of marriage, "To love honor and cherish, keeping only unto you so long as we both shall live".. unless I find you are infertile.

I agree with the right to procreate, but I believe it should also be tempered with how one goes about exercising that right. Doesn't the quazi-adulterous act of surrogacy make him as sick as it made me? Where is our sense of moral value? How many values will we leave by the side of the road over the right to procreate?

This industry has taken the conception of a child out of the confines of an intimate act between a couple and placed it between two strangers, a sterile jam jar, and a plastic syringe, often times without medical supervision of any kind. Future medical participation is questionable. The American Medical Association has denounced its practice with this statement.

"Surrogate Motherhood does not represent a satisfactory reproductive alternative for people who wish to become parents, because of legal, ethical, psychological, sociological, and financial concerns."

These concerns are some of the very reasons that prostitution and drugs are illegal. Because the long term ramifications out weigh any arguments that they simply "work for some people".

Commercial Surrogacy is presently capable of reducing an altruistic intent and human plight into a profitable business that renders the victim helpless in what becomes a shattering experience that lasts a lifetime. This Industry uses their legal and psychological expertise to guide them in their cruel destruction that only begins with the young mother and her baby. Surrogate Agencies tell us that their purpose is to assist in the very basis of our strength as a society, the growth of the family unit. Agencies say that their motives are pure, but under the smoke screen, the only motive is based on pure profit.

The professionals presently involved in this industry are con-artists. They seek complaisant females, like I was, then practice skillful manipulations to get them to sign a contract. Once signed, should our voluntariness become an issue we are subjected to massive doses of guilt, coercion and emotional blackmail. I was phoned everyday for the remaining month of my pregnancy. It was like being held captive emotionally as well as physically. If these techniques fail we are simply reminded of the \$25,000. plus penalty for our lack of voluntary action.

There are no tests, no psychological evaluation, simply put, no screening that can determine if a woman can relinquish a child. If we had such a test that could measure success based on sheer desire and determination we would never have another college dropout and we could give out the Nobel Prize for Medicine today for who will conquer AIDS. The possibilites are endless. But there is simply no such test. There is no prior way to determine if a woman will be able to relinquish her baby. You must understand that without this knowledge you are using these unaware women like laboratory animals. If we can't determine how the mother will emotionally cope, or how strong she will unknowly bond to her baby, how can we ask her to sigh a contract? A contract is only used to insure "performance". Since we don't know how she will perform, how can we in all honesty consider her signature valid?

When a woman signs a contract she is not exercising her rights to do with her body what she wants, she is giving another the right to do with her body what they want. It is the removal of her rights. I knew months into my pregnancy I couldn't part with my baby. I just couldn't satisfy the agreement that I had foolishly signed. If I were a famous baseball player who signed a contract, I could say "I don't want to fulfill my contract" and I wouldn't play ball. That is Baseball. A business, a game, a sport. But I was a contract mother who wanted out of my contract, I couldn't simply refuse to play ball. These contracts are nothing short of automatic weapons that ensure the couple ultimate control and brokers a steady business. They can and they do take the children through court orders because we don't have any rights to "change our minds", because we signed a contract. I say by virtue of how much more important a child is, we should have that right to change our minds, to keep the child.

Without a contract the couple may only be asked to risk their participation in joint custody, this requires a skill no more demanding than one taught to kindergardeners "to share"!!!! If they simply can't tolerate the risk they are not worth the sacrifice of the woman, nor are they the kind of person a child deserves as a parent. If we allow Commercial Contract Surrogacy, I don't think there will come a time in the future we will look back on this as one of society's sterling advances.

Surrogacy assist the couple's who need to be accountable for their personal choices. It is a silent biological clock we hear the tick of. When this clock is ignored, couples must face the rising chance that their pleas will go unheard by adoption agencies because of age limits. We accept that we cannot plan for retirement in mid-life, and we must also accept that we cannot plan for a family past the tick of the biological clock. Maybe they just need to be told that we can't always get everything in life we want.

No one thinks of the siblings left in the after math. My fears extend past the natural ones, of how the production and purchase of human life will eventually take its toll on our world. How can mothers explain to their children that some of the children she gives birth to are keepers and some are not? We could tell them that children make the most elegant gifts, but I don't believe we want to and I don't believe they will swallow our dip in values.

Had I known the negative effects of surrogacy I never would have even considered it. My 6 year old son, Dak, tells everyone about his brother, Ezra. He talks of him to women in the grocery line at the store. Each time I hear him speak of his brother I see the weight of surrogacy balanced on his narrow shoulders and wonder what changes it will make as he grows taller and into manhood. He is a bright, cheerful child with a quick grin that melts hearts. I see the person he is now and a glimpse of the man he may someday become. I worry that the burdens he carries now regarding surrogacy will change that man. His sisters are older and at 14 and 11 they too are tarnished, they wonder if the future will allow for children to be ordered by phone like pizza and how long will the delivery take and if takes longer than predicted will they get money back? Or will we decide it was a bad idea like nuclear weapons. Will anyone ask the question "We know we can but should we?" Who will be brave enough to stand up and say NO.

Robert Fulgham wrote a wonderful book; All I really need to know I learned in Kindergarten. He had some wonderful advice in this book aside from the story I will tell you. Surrogacy ignores the Kindergarten rules: Play fair, Don't hit people, Put things back where you found them, Clean up your own mess, Don't take things that are not yours, Say you are sorry when you hurt someone, and the first word we learned in the Dick and Jane books LOOK. Robert describes a wonderful story about an afternoon he was left with 80 children ages 7 - 10. They were to play a version of the child's game "Rock, Paper, and Scissors", this game was named "Giants, Wizards and Dwarfs. The purpose of the game is to make a lot of noise and run around chasing people, not caring who won. The excitement of the chase had reached a critical mass and Robert yelled out: You have to decide now which you are - a Giant, a Wizard or a Dwarf. While the groups were deciding there came a tug on Robert's pant leg and when he looked down he saw a small girl looking up and she asked in a concerned voice, "Where do the Mermaids stand?"

After a long pause he asked back "Where do the Mermaids stand?"

The little girl answered Yes, You see, I am a Mermaid.

There are no such thing as Mermaids was his response.

"Oh, Yes, I am one!" She just didn't relate to being a Giant, Wizard or Dwarf. She knew her category. "Mermaid". And was not about to leave the game and go over and stand against the wall where a loser would stand. Without giving up dignity or identity, she intended to play the game. She took it for granted that there was a place for Mermaids.

Like the little girl, I know my identity too. You can't fool little Mermaids and you can't fool me. I am a mother, not a surrogate mother. I am a mother to each child I conceive and bear. It takes real strength to hang on to one's own identity especially in surrogacy and particularly in the legal system. My identity blends into my love for my child and is simply overpowered by any promise or contract. My instincts to nurture, protect and mother him are an integrated part of my being that cannot be amputated by my own signature or by court rulings, regulation or any legislation.

I know now there is no ON-OFF switch for maternal love and I need you to learn that too.

4 pages

Carmina Y. D'Aversa, Esquire
Perlberger & Haft, P.C.

My name is Carmina Y. D'Aversa. I am an attorney who presently co-chairs the Surrogate Motherhood Committee of the PBA Family Law Section. I also chaired the Section's Surrogate Motherhood Task Force. My interest in the surrogacy issue began in law school where I wrote an article entitled "The Right of Abortion in Surrogate Motherhood Arrangements." This article is currently published in the Northern Illinois University Law Review. Today, I am testifying in my individual capacity, and not as a representative of the Pennsylvania Bar Association.

I have reviewed House Bill No. 745 and find it lacking in many respects. First, I note that the bill makes use of the Commonwealth's policy against babyselling as a means to outlaw commercial surrogacy. This approach is faulty in part because it fails to acknowledge the distinction between surrogates who serve as gestational carriers and those surrogates who are genetically related to the babies which they carry. When a woman carries an embryo which is not genetically related to her, any financial compensation she receives as a result of engaging in the surrogacy process cannot be considered payment for a child. As a gestational carrier, she is not the mother of the child, but instead serves as a vessel to carry the embryo to term. Any compensation to the surrogate, therefore, is compensation for services rendered to a party or parties who cannot conceive a child in the customary manner.

Moreover, denial of compensation to a gestational carrier is patently unfair in light of the specific services rendered. These services obviously entail complete bodily commitment and potential risk to physical and mental health. If we pay skydivers, police officers and other individuals for

engaging in risky activities, there is no reason why a gestational carrier should not be compensated. In addition, the General Assembly need not prohibit compensation to a gestational carrier to protect societal values of personal autonomy and bodily integrity. Instead, these values can be protected by legislation that requires voluntary and informed consent by women engaged in the surrogacy process. By requiring (1) psychological and medical counseling for the surrogate; (2) independent legal counsel for the surrogate; and (3) a court determination that the surrogate has the capacity to enter into a surrogacy agreement and her decision is voluntary and informed, the Commonwealth can be assured that a woman's dignity as an adult individual is maintained.

Finally, I find House Bill No. 745 ignores the advances of medical technology, and ignores the welfare of children born as the result of the use of this technology. Despite criminal penalties or other prohibitions that may be imposed by the Pennsylvania legislature, the world of reproductive technology will continue to advance, and couples will continue to seek and, in fact, use these new alternatives. Given these circumstances, it is essential that the General Assembly enact legislation that regulates the use of reproductive technologies and specifies the rights and responsibilities of the parties engaged in the process. In this way, (1) parties will not be faced with the uncertainty of adjudications, and will know in advance their rights and responsibilities; and (2) a child born in fulfillment of a surrogacy agreement will be ensured "a permanent home and settled rights to inheritance." Simply prohibiting compensation will not achieve these objectives.

I recommend a regulatory statute that incorporates, at the bare minimum,

the following provisions:

- (1) Except where the intended parent provides the ovum, the woman who gives birth to the child is the mother;
- (2) The intended parent who provides the sperm is the father of the child;
- (3) A donor who is not an intended parent is not the parent of the child;
- (4) A surrogate agreement is not binding and enforceable until approved by a court of competent jurisdiction;
- (5) A surrogate agreement shall specify that:
 - (a) The surrogate agrees to be artificially inseminated with the sperm of the intended parent or the sperm of a donor or agrees to be implanted with an embryo created from any combination of sperm and ovum from the intended parents or donors; carry the child to term and relinquish the child to the intended parents upon birth.
 - (b) If the surrogate provides the ovum, she shall consent to the termination of her parental rights and responsibilities and relinquish custody of the child immediately after the child's birth. The surrogate may not withdraw her consent after birth of the child.
 - (c) Regardless of the child's physical or mental state, the couple shall be required to take custody and responsibility of the child immediately upon birth. This provision shall not prevent the intended parents from exercising the option of placing the child for adoption.

I strongly recommend court approval of the surrogacy agreement. The court, can, therefore, make a determination of each party's capacity to enter into the agreement; determine whether the surrogate has voluntarily entered into the agreement; and determine whether each party understands his respective rights and responsibilities. In addition, the court can assess the "fitness" of the intended parents as parents and verify whether each party has been counseled regarding the potential risks of engaging in the surrogacy process.

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I stress that these recommendations are what may be minimally required to achieve the objectives I discussed earlier. Other regulatory mechanisms may be implemented, making House Bill No. 745 unnecessary at least when the surrogate is a gestational carrier.

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5
pages

Mary E. English, RNC, MSN
Clinical Director at
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Our services at Pennsylvania Reproductive Associates (PRA) include an In Vitro Fertilization program (IVF) and other methods of assisted reproduction which have arisen from this accepted technology. Some examples of this are: Gamete Intra-Fallopian Tube transfer (GIFT), donor egg program, and the gestational carrier program.

Ladies and Gentlemen, as I testify today, a woman who was born without a uterus is having eggs removed from her ovaries which will be fertilized by her husbands' sperm. Once embryo development has occurred, these embryos will be replaced into her carrier, who will hopefully become pregnant and carry this baby to term for her.

Our gestational carrier program was initiated about a year ago, and on March 2, 1989 our first baby conceived in this fashion was born. You will be hearing from this mother and her carrier today.

My main purpose today is to distinguish for you the difference between surrogacy and gestational carrier.

In the instance of a woman who is serving as a surrogate, that woman agrees to be inseminated with the semen from the husband of an infertile woman. The surrogate not only carries the pregnancy and delivers the child, but also has a genetic input into the pregnancy.

On the other hand, a gestational carrier is a woman in whom an embryo is implanted in order to complete a pregnancy. That embryo has the genetic make-up of its biologic parents. Thus, the gestational carrier who voluntarily becomes pregnant does so with an embryo derived from the egg and sperm of an infertile couple.

The principle indication for a gestational carrier program is to provide a treatment option for women who can not otherwise carry a pregnancy and wish to have a biologic child. Medical indications include:

1. The absence of the uterus from surgical or genetic causes. Such examples include women who have been severely DES exposed, those born with either an absent uterus, or a severely deformed uterus, and women who may have had their uterus removed for disease at a young age.
2. Medical conditions which make the occurrence of pregnancy unacceptably hazardous to the mother. Examples of this include previous eclampsia, uncontrolled or brittle diabetes, chronic renal disease, congenital or acquired heart disease, or Sustemic Lupus Erythematosis (SLE) with renal involvement.

The carrier agrees to provide these services for the infertile couple on a contractual basis completely defined before treatment is begun, psychology screening of all parties is mandatory in our program.

What this means is that we must redefine the term mother. Is the mother the woman who delivers the child, or could the term mother also be applied to the genetic source of the child? Please let me remind you that the American Fertility Society has enthusiastically endorsed the egg donor program which is reserved for women who have a uterus but non-functioning ovaries. In other words, these women may have premature menopause which occurs naturally, they may have been born without ovaries, or they may not have ovaries due to a surgically induced menopause as a result of treatment for various diseases. The egg donor program is parallel to the use of donor sperm which has been done in this country for over a hundred years.

I might mention at this time that my concern is that the bill, in its present format, would most probably prohibit infertile couples from exercising the option of using a gestational carrier, should the bill be passed. The bill is very broad in the way it is written and does not allow those women for whom it is medically necessary to use a gestational carrier to have their genetic child. I might also mention at this time that the gestational carrier program is only utilized when it is medically necessary for a couple to utilize this means to achieve a pregnancy. Indications for inclusion into the gestational carrier program are strictly medical and it can not be utilized for social reasons or convenience. Therefore, I am asking you to compromise on the language of this bill so that it may address our concerns.

Thus, you can see it becomes increasingly difficult to legislate these definitions and therefore I suggest to you that doctors and patients work this out without the complications of legislation, particularly in the area where technology changes so quickly and for which there is no legal precedent.

At Pennsylvania Hospital, we have elected not to become involved in surrogate parenting, and I wish to reemphasize that you word the bill to exclude carriers from possible legislation prohibiting surrogacy, since the two are vastly different in respect to genetics, ethics, and psychological and emotional implications.

Finally please note that the reason why some couples may pursue a gestational carrier to have a biologic child versus adopting a child, is because adoption is a very arduous process in which only one out of ten couples ever receive a child. Lists are often over subscribed by the time our patients reach us their age prohibits them from being eligible candidates for adoptive parents. Therefore, adoption is not a viable alternative.

Gestational carrier and egg donor programs of assisted reproduction are not without legal, ethical, moral and psychological overtones. We certainly are very aware of this, and know we are sailing on uncharted waters. These programs are under the constant scrutiny of the American Fertility Society and local hospital boards who demand, as in our program, extensive psychological testing prior to initiation of treatment. With proper screening and selection criteria, we are able to offer a very special service to our infertile couples and that is the gift of life.

1 page

ARGUMENT SUPPORTING GESTATIONAL CARRIERS AND SURROGATES

I'm Nancy, Nathan's gestational carrier and primary caretaker for the first nine months of his life and development. Our decision for me to become a carrier was not taken lightly. My husband and I discussed the issues at great lengths between ourselves and with our children. Our decision to proceed with the program was unanimous.

My part in the decision to carry Myree and David's baby was so that they may experience the same joy and love I have for our children. The little arms that give the big hugs and little lips that give sweet kisses, the wide eyes looks of awe and wonder, are only part of parentage. Wiping away tears and running noses, the sound of laughter of a small child, the endless curiosity and fascination for life bring us much happiness and pleasure. Our love grows daily thru the love for our children.

The miracle of motherhood is a very special gift, and to give that gift freely to a women who is unable to bear her own child is one of the greatest pleasures of life. The look on Myree's face as a new mother as she held her baby for the first time gave me the final assurance that I have made the right decision to carry their baby.

Infertility results from many problems. Couples with fertility problems should have the same right as couples without fertility problems. The right to have their own child. The decision to have a child whether by surrogate mother, gestational carrier or the ability to carry ones own child should be each individual's decision. The few women who have had unpleasant experiences as surrogate mothers due to inadequate screening, poor self mental preparation or whatever problem, would not be the cause for ruining other people's dreams of having children. The means by which a couple has a baby should be a personal decision, not one made by the state.

Nancy Randall

Myree App

Gentlemen,

My very dear friend has given to my husband and me what I consider to be the most precious gift in this world; on March 2nd of this year she delivered for us a beautiful baby boy.

You see - I am infertile. I have what is diagnosed as infertility secondary to DES exposure. My mother, threatened with a spontaneous abortion in the first trimester of her pregnancy was put on bed rest and given DES daily for the duration of her pregnancy. The end result was that I was born with a severely deformed cervix and abnormal uterus causing my inability to become pregnant and sustain a pregnancy. The only reproductive organ not affected were my ovaries. My fallopian tubes were blocked as well.

After three years of trying to get pregnant by such things as artificial insemination, a diagnostic laparoscopy was performed. This procedure determined the severity of my deformity and confirmed the dreaded diagnosis of no possible pregnancy in my future. After months of feeling inadequate, incomplete and crying buckets of tears, I turned to my dear friend Nancy. Nancy was aware of our attempts to get pregnant, trips to the doctor, and endless testing and temperature taking. She expressed a thought that maybe she could help us achieve our goal which was to have a baby.

In my continued pursuit of finding a doctor to perform a miracle, I came upon Pennsylvania Reproductive Associates at Pennsylvania Hospital in February of 1988. They had just started a new program as part of the In Vitro Fertilization program. It is called the gestational carrier program. It is basically the same as IVF - whereby a woman is stimulated with hormone injections, and has daily sonograms and hormonal levels to monitor follicular development. Once she approaches the time of ovulation, she is given a hormone to stimulate the maturation of her eggs and ovulation.

The eggs are retrieved and placed in a Petri dish with the husbands' sperm for fertilization. On the third day the embryos are replaced into the woman. This is the point at which the difference takes place. Instead of replacing the embryos into the woman from which the eggs are retrieved, the embryos are replaced into another woman who becomes the gestational carrier.

This is the simplified, watered down explanation of IVF. There is much preliminary blood work for all involved, physical exams, semen analyses and extensive psychological evaluation for both the genetic parents and the carrier parents. This is only to name a few of the things we had to go through before being accepted into this program.

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