

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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