

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m./~~pm~~ on January 19, 1984 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Feleciano, Gaar, Hein,
Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Beth Bridgeman, Hagar Institute
Dr. Jeanne E. Fish, Hagar Institute
John Brookens, Kansas Bar Association
Robert Runnels, Jr., Kansas Catholic Conference

Senate Bill 485 - Surrogate mothers, restrictions thereon.

The chairman explained this bill is the result of an interim committee study. A bill was introduced during the 1983 session by the Senate Public Health and Welfare Committee that dealt with the subject. Because the matter has a number of social policies in it, he felt a more in depth study of the subject was needed, and requested the interim study of the issue. He explained if the Kansas Parentage Act and this bill would both pass, there would have to be a merging of the two bills to work out the conflicts.

Beth Bridgeman testified in favor of the bill. A copy of her testimony is attached (See Attachment No. 1). A committee member inquired what the cost is for their services? She replied, their cost is \$17,000. The committee member inquired if there is a real problem for couples to adopt an infant? She answered, yes, it is. Agencies have waiting lists, and they tell the couples it could be up to seven years. There is an age limit, and it is very frustrating. The problem is availability of children. A committee member inquired, how many inquiries have you had from prospective parents? She replied, around 200 or 250 so far; as few as six inquiries a month and as many as 25 inquiries a month. A committee member inquired if this bill is designed only for the wealthy. She replied, it is designed for good money managers. They have had people who have trade jobs and many do not have high incomes. A committee member inquired if this is a profit or nonprofit organization? She answered, it is designed to be a for profit organization.

Dr. Jeanne Fish testified in support of the bill. She explained she is a consultant for the Hagar Institute, and they have set up a process that will protect the surrogate and the family. They determine whether the surrogate is psychologically stable enough to make decisions in her life and has the kind of personality to carry the baby nine months and then relinquish it to the father. They elected to do an intelligence test; parents are interested in intelligence background for the child. They also give them the Minnesota Basic personality Inventory. On the basis of results of these two tests, and in-depth interviews, they make the decision whether they are adequate for these services. She explained surrogates are rather independent women, who are not wanting dependent ties. All surrogates have children of their own living with them. They screen women very carefully. They follow up on women after they have delivered, and if they have difficulties after, they help them deal with them. A committee member inquired what the motive is for the women doing this? Dr. Fish replied some see it as a way of making money. Most give a different reason; they say such things as I had a friend who couldn't have a baby, and this is one thing I can do;

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 19, 1984.

Senate Bill 485 continued

I had an abortion and this would make up for it. A committee member inquired, do you see this as advancing the interests of protecting the children? Dr. Fish replied, children certainly need to be parented; children suffer when parental figures change in first three years of their life; a new born infant just needs to be cared for. Research shows that if a child is cared for appropriately by a person, then they attach to that person as a person. Another committee member inquired of Beth Bridgman, of that \$17,000, does that include \$8,000 stipend to the surrogate? She answered, yes. Another committee member inquired how long has the organization been in existence? Beth Bridgman replied, they started in January, 1982, incorporated and placed first ad in April, 1982. They had first couple evaluations that summer, and first contract the summer of 1982. They have had one birth so far.

John Brookens testified this does occur nation-wide and does occur in Kansas. His organization feels there should be legislation on the subject and not left on a case to case basis for the courts to decide. He questioned whether it should be mandated in every contract that if the surrogate mother changes her mind after the 48 hours, that the sperm donor is the lawful father and the surrogate mother the lawful mother. The chairman explained the interim committee came up with the 48 hour waiting period to give the surrogate a chance to think it over, and wanted it to be short enough time so the child could be taken home directly from the hospital by the sperm donor and his wife.

Robert Runnels, Jr., testified in opposition to the bill. A copy of his testimony is attached (See Attachment No. 2). A committee member inquired, is there data we can look at ourselves? Mr. Runnels replied, it is their belief on the basis of research they have done that it is unadvisable. Another committee member inquired, would you concede that there is a sizable body of opinions and individuals within and without Catholicism that takes a different position from the position that the church takes? Mr. Runnels pointed out that a majority of the people who go to church are Catholics, but conceded there are some who do not agree with the Catholic church's views, and he agrees there are other viewpoints. The committee member inquired, do you concede this activity has been going on? Mr. Runnels replied, all types of activity have gone on. The committee member inquired, why not ban by statute? Mr. Runnels replied, they are not prepared to have legislation today; perhaps in the future but not today. The committee member inquired, not prepared to ban, shall we just say it can't go on? Mr. Runnels replied, can't keep people from doing what they want to do. We are saying that recognizing it would set in minds of people it would be all right. The committee member inquired, the statute doesn't condone, it tries to straighten it out if they get into that activity, and they will have to follow the rules? Mr. Runnels replied, I am only taking the moral position .

The chairman announced there will be further hearings on the bill.

The meeting adjourned.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Doc Kawasch	Lawrence	WPK
Jim Robertson	Topeka	CSE/SPS
Jeannette Fish PhD	Prairie College	Hagan Institute
Beth Bridgeman MSW	Topeka	" " " "
Steve Paul Richardson	K.C.	KS Catholic Conference
Bob Fumelle	K.C.	✓ ✓ ✓
Joe 3' D'Orsi	Topeka	Atty Gen Office
Jim Brooks	"	KBA
Melissa Ness	Topeka	NARAL
David Martin	Topeka	Student
Tom Fritzy	Lawrence	Sen Vess
Don Hene		AP
Gordon M. Criswell	KANSAS City	Gov's Office
Barb Renert	Topeka	KWP Caucus
Matt Lynch	Topeka	Judicial Council
Henry Kumpstrey	"	Planned Parenthood
Terry Wootch	WICHITA	EAGLE-BCA CON
Ben Keeler	Topeka	Capital-Journal
Beth Wilkin	"	Girl Scout
Sab Wells	Topeka	Div. of Budget
M. Hauwa	"	Capital-Journal
Judy Rinnets	Topeka	State Rep
Al Mohr	Topeka	Sen Stenages
Lance Ross	Topeka	KSN TV
Gay Spack	Topeka	KSN TV
Bob Porter	Topeka	KSN TV

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

William Shuler

Topala

KTCA

Dave Fane

Laurence
1777

UPI

PRESENTATION BY HAGAR INSTITUTE ON SURROGATE MOTHERING

Beth Bridgman, LMSW, Director and President
Dr. Jeanne Fish, Consulting Psychologist

Why Legislation Is Needed

Approximately one out of six couples today is unable to bear children. In the past these couples could adopt children of all ages. Today there are few infants available for adoption because of

- * increased use of birth control
- * increased availability of abortion
- * the increased tendency of unwed mothers to keep their babies

Additionally, more and more women are facing infertility because

- * their decision to postpone childbearing until their thirties
- * because of complications with birth control methods

The discovery that one will not bear a child is a tragedy impossible to comprehend unless one has personally experienced it. The desire to have children is one of the most basic, and society has developed various remedies for childlessness throughout the ages.

Because of the small number of infants available for traditional adoption, new methods addressing infertility are coming to the forefront:

- * in vitro fertilization
- * improved medical procedures to cure infertility
- * foreign adoptions
- * surrogate motherhood

Each of these alternatives addresses the problems of some but not all couples. Most couples choose surrogate motherhood because

- * the wife's infertility problem cannot be medically remedied
- * in vitro fertilization is not an option because the woman has no functioning ovaries, or is unable to pay \$4,500 per month with only a 20% expectation of success
- * the couple has been unable to adopt an infant
- * the couple has been put on long waiting lists for foreign adoption or is wary of some of the difficulties associated with foreign adoption.
- * the couple finds the genetic link to the child appealing

What is Surrogate Motherhood?

- * The process is designed for couples having an infertile wife and a fertile husband
- * A fertile woman (surrogate) carries the couple's baby in pregnancy
- * The husband's sperm is used to artificially inseminate the surrogate mother. The baby is the husband's natural child
- * After birth, the surrogate releases the baby to the natural father, and his wife adopts the baby

Surrogate motherhood is here to stay. These arrangements have been made quietly and informally for thousands of years. With the increasingly desperate adoption situation and increasing infertility, many more people are turning to this alternative, through their friends and their attorneys; there are thus many more opportunities for difficulties for the participants in this process. That is why we at Hagar Institute are involved and that is why we believe the legislature should be involved: to insure that the people participating in this are informed, qualified, legally protected, and assisted by appropriate professionals.

Legislation should:

- 1) Clarify who has parental rights to and responsibility for the newborn baby.
- 2) Clarify which professionals should screen and counsel those desiring to participate in the surrogate process.
- 3) Clarify how the birth shall be registered with the state registrar.

Description of the Hagar Institute program:
SEE BROCHURE

Additional Information on Hagar Institute

Services

Evaluating surrogates

- Social Study
- Reference check
- Psychological evaluation
- Thorough physicals

Home Study on couple

- | | |
|---|--|
| <ol style="list-style-type: none"> I. Evaluation <ul style="list-style-type: none"> Motivation to have child Motivation to use surrogate mother process | <ol style="list-style-type: none"> II. Preparation <ul style="list-style-type: none"> Handling questions from friends |
|---|--|

Home Study on couple -- continued

- I. Evaluation - (continued)
 - Dealing with infertility
 - Marital stability and satisfaction
 - Parenting ability
 - Expectations of child
 - Knowledge of child development

- II. Preparation - (continued)
 - Introducing child into the extended family
 - Handling questions from child
 - Helping child with questions he has at future points in his life

- Providing contracts and arranging signing
- Setting up and maintaining escrow account
- Planning for surrogate's fertile day and arranging inseminations each month
- Acting as an intermediary between couple and surrogate; letters, preferences, etc. questions
- Monitoring surrogate's medical care
- Paying all bills
- Making hospital arrangements in advance
- Being at the hospital to facilitate surrogate's room, couple in the delivery room, surrogate getting to see the baby, couple having access to the baby, etc.
- Providing documents to be signed by surrogate and father
- Post-adoption services (indefinite maintenance of records, counseling, providing genetic information, etc.)

October 24, 1983

Dear Legislators:

As the first and only parents of a child of a surrogate mother through the Hagar Institute, my wife and I wanted to share our opinions and experience with you, so that your legislation may be as informed as possible.

We regret that we feel the need to remain anonymous, but concern over the effect of publicity on our professional and personal lives have led to our decision to keep our privacy as much as possible.

Most importantly in all this is the welfare and interest of the child. We would hope that the law emphasizes this. Beyond the happy anticipation we've had this past year, our child has brought to us a joy and peace that I'm sure any of you with children has experienced.

This surrogating process should(and did)take place between fully consenting,adequately informed adults. The basic understanding should be that the surrogate mother will relinquish the infant at birth to the couple.

During our long treatment for infertility,with each decision to commit more of our energy,time and resources to having a child, we became increasingly invested in our child to be. We do beleive that the surrogate mother in committing herself to carry the pregnancy does have rights regarding the child and her body. Given the initial understanding in which the pregnancy was conceived, we think it would only be in the small minority of screened surrogate mothers that there would be any resistance to relinquishment.In these cases we hope the court would decide which party could better raise the child and strongly consider the couple's drive to have their own child.

For the majority of cases,like our own, where the surrogate mother has planned to relinquish from the start and does so at birth, it was very important to us and in the child's best interest that two days after birth, my wife could file her petition for adoption and we could return home with our child within the same time after birth that any other parents could. Our child was much

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more relaxed in the calm atmosphere of our home. There is plentiful research on infant bonding to say that parental attachment to the infant should begin as soon as possible after birth. Until the relinquishment is signed and the court granted us permission to take the child home from the hospital there was an important legal and psychological block to our feeling certain that the child would be ours.. We hope that your legislation will allow rapid relinquishment to the couple in these surrogate cases.

Finally from the deepest part of our hearts we'd like to thank you for having laws that have brought so much joy to our lives and hope that any further legislation you pass will facilitate the process, while respecting the rights of everyone involved.

Sincerely,
Mom and Dad

TESTIMONY
by KANSAS CATHOLIC CONFERENCE

Senate Judiciary Committee
Senator Elwaine Pomeroy, Chairman

January 19, 1983

SENATE BILL 485 - SURROGATE MOTHERHOOD

In addressing the issues raised by Senate Bill 485, the Kansas Catholic Conference wants to state the following.

We are aware that infertility is a growing problem for millions of young couples today. "Infertility seems to be increasing for both men and women in the U.S.. It's estimated that one in six couples of childbearing age experiences a fertility problem". (Margaret Heckler, Secretary of Health and Human Services, L.H.J., Jan. 1984. p.38) Of these couples 60% are infertile due to the wife's inability to conceive or carry a pregnancy to term.

We emphathize with the anguish of couples who wish to have children but are unable to conceive. It is with a great sense of compassion toward them that we encourage and support many of today's efforts of medical technology to help couples conceive. Some of today's medical research in this area seems to have futuristic qualities: such as laser surgery and microsurgery to repair the reproductive organs and to remove obstructions in the fallopian tubes or muscle tumors of the uterus. Medical technology, however, is already beginning to become a reality in helping couples conceive. In some parts of the Country a procedure called Low Tubal Ovum Transfer* is utilized at this time with some success to help couples who could not otherwise conceive.

*Low Tubal Ovum Transfer (LTOT) is the removal of an ovum from the lower fallopian tube above an area of obstruction with reinsertion below in the lower portion of the tube just above the uterus. The ovum may then be fertilized in the natural fashion. The procedure is practiced with success at St. Elizabeth's Medical Center in Dayton, Ohio.

Modern technology and medical practice have a positive role to play in making "human life on earth 'more human', more 'worthy of man'." (Redemptor Hominis #15). However, we believe that medical technology as used in the practice of surrogate motherhood does not make human life "more human". Although it is used to bring about new human life, it depersonalizes and dehumanizes the procreative process.

Because of our desire to promote the quality of human life, and because of our desire to strengthen family life we support legislation that fosters stability in marriage, and upholds the dignity of human life. We do so to carry out the Church's "special mission of guarding and protecting the lofty dignity of marriage and the most serious responsibility of the transmission of human life." (Familiaris Consortio #29)

We consider the practice of surrogate motherhood as a means to resolve the problems created by infertility an unwise practice, a threat to the stability of the family, and a use of modern technology that renders the procreative process "less human", violating God's design for human procreation.

Therefore we oppose any legislative act that condones this practice. Specifically, we believe that Senate Bill 485 is not sound social policy because it condones and encourages a practice that is morally unjustifiable and is a threat to the stability of the family.

A) SURROGATE MOTHERHOOD IS MORALLY UNJUSTIFIABLE.

1) It Violates the Marriage Covenant.

According to God's plan, procreation must be confined to the context of the marital relationship and of conjugal love. "The institution of marriage and conjugal love is ordained for the procreation and education of children." (Familiaris Consortio #14) The introduction of a third party, the surrogate mother, into the marital relationship for the specific purpose of taking over the procreative role of the wife, violates the marriage covenant that excludes generation from an outside source.

2) Heterologous artificial insemination dehumanizes the procreative process.

Although we believe that technology has a place in helping couples overcome their difficulties with infertility, at times in our technological age we lose perspective of the role technology needs to play in our lives. We often allow technology to dictate what is right on the basis of what is possible. The two are not necessarily coequal. The practice of surrogate motherhood is an example of technological knowledge that has outstripped our social wisdom on how to use it.

In surrogate motherhood the procedure of heterologous artificial insemination is used to bring about conception. By substituting conjugal love with a procedure that brings the egg and the sperm into the proximity necessary to undergo fusion, human procreation is dehumanized and depersonalized. Surrogate motherhood is the product of a mentality that considers marital intercourse simply as a physiological function which when it fails to bring about conception it can easily be substituted by some medical procedure that is more effective.

Sexual intercourse is more than a physiological act. It is the union of two persons who by consent and loving commitment cooperate with God in generating another human being. The subtle but powerful communication which accompanies sexual intercourse and its relationship to the generation of the child is not to be dismissed as secondary and nonessential. On the contrary, we want to clearly proclaim that marital intercourse is the only condition worthy of generating human life.

3) The Practice of Surrogate Motherhood Promotes Injustice, and Disregard for Social Responsibility.

Children are a gift from God. They are never to be considered a product we can produce to suit our needs and to treat as a commodity. We cannot accept a "mentality which considers human beings not as a person but as a thing, as an object of trade." (Familiaris Consortio #24).

Surrogate parenting exploits women as "baby makers", and children as a commodity. Furthermore, it encourages a lack of social responsibility toward those children who are homeless but because of race or special needs no one wants to adopt.

a) The exploitation of women.

The surrogate mother can be considered to be using her womb for commercial use. When her task is accomplished, her contract is over, she is expected to surrender an integral part of her life, her child, and to relinquish any natural claim or bond to him/her. In this practice she is treated like an object to be used, a "baby maker", and she allows herself to be used for financial gain. Although the proponents of surrogate parenting emphasize that women who list money as a reason for wanting to be surrogates are not chosen, the case studies of surrogate mothers dispel the myth. In a study published in the American Journal of Psychiatry, Jan. 1983, Philip Parker, M.D., reported his findings on the motivation of surrogate mothers. Although his study is not complete it seems that the most important motivating factor was money. The practice of surrogate parenting would very likely not exist today if money was not involved as a gain for the mother, the clinic, and the lawyers.

b) Treating the child as a commodity

The practice of surrogate motherhood is an insult to the personal dignity of the child. A child is a gift from God, not a commodity to be produced as a "service rendered" in exchange for a "service fee". The entire process of surrogate mothering reduces the creation of a child, a human being, to the level of a product. The womb is leased to produce a child, not to love a child into existence. The natural mother surrenders her child for financial remuneration, thus exploiting her own child.

The child's rights are also violated. The child has a right to true parents. Surrogate mothering confuses the relationship by introducing a second mother. Any technology that perturbates the essential child-parent bond is an injustice to the child.

c) A Disregard for social responsibility.

The state's primary interest in legalized adoption is the provision of homes for children who are unwanted or whose

parent(s) are unable to provide for their rearing and education. We find ourselves at a time in history when there are many children who are often overlooked by adoptive parents because of their special needs or their racial backgrounds. Surrogate parenting becomes a quick solution for couples who want "caucasian" babies. It seems contrary to sound policy for the state to institute laws that would encourage couples to utilize surrogate parenthood rather than encourage them to open their hearts and homes to the children who are most disadvantaged. Furthermore, such policy in its actuality takes on racial overtones. Surrogate motherhood would make available in a consumer oriented society a product for which there is a shortage: infants of "caucasian" background.

To couples afflicted by infertility the words of Pope John Paul II should be a guide for responsible action, "It must not be forgotten however that, even when procreation is not possible, conjugal life does not for this reason lose its value. Physical sterility in fact, can be for spouses the occasion for other important services to the life of the human person, for example, adoption, various forms of educational work, and assistance to other families and to poor or handicapped children." (Familiaris Consortio #14)

B) SURROGATE MOTHERHOOD IS A PRACTICE THAT THREATENS THE STABILITY OF THE FAMILY.

Pope John Paul II writes, "Children are a living reflection of (the couple's) love, a permanent sign of conjugal unity and a living and inseparable synthesis of their being father and mother." (Familiaris Consortio #14)

The child in a marriage should be and generally is a new bond of union between husband and wife. He or she is a product of their love, and in the child they can in a very real sense see themselves as "Two in one flesh". In no way can the product of donor insemination be a bond between spouses in this sense.

In the practice of surrogate parenthood the child rather than a source of unity tends to become a divisive element in the

marriage. When a woman agrees to be artificially inseminated and to release her child to the family of the sperm donor, divisive elements are introduced in two families: the surrogate mother's, who, if married, has conceived and borne a child with no participation on the part of her husband, and the adoptive mother's who will raise a child conceived by her husband and another woman.

Surrogate mothering prevents the natural bonding between mother and child, and father and child. This pre-natal bonding of the family members with one another has a great impact on the future of the child.

We are concerned about the psychological impact that the practice of surrogate parenting can have on all persons involved, and how this can affect the stability of the marriage.

Although at present there are not longitudinal studies to prove or disprove our concerns, we believe that this practice introduces a series of significant and important events in the life of two families: conception, pregnancy, delivery, relinquishment of the child, and acceptance of the child by the new mother. These events have a stressful and traumatic impact on the two families and are potentially divisive in the marital relationships.

The impact of such stress cannot be dismissed or taken lightly by comparing it to the events that accompany the regular adoption process. There is a major difference between adoption and surrogate motherhood. In adoption a mother gives up her child because of her inability to provide a proper home. In surrogate motherhood a mother plans to have a child for the purpose of giving it up to others.

The threats to the stability of the family that come from the emotional and psychological impact of surrogate motherhood are merely speculative at this time. The real threats to the family that come from this practice arise from the values that are promulgated in our society with the acceptance of surrogate motherhood.

For all of the above reasons we believe that it would not be appropriate for the legislature of the State of Kansas to adopt legislation codifying and regulating surrogate motherhood contracts.

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Such laws would weaken that protection and guarantee that is society's right and duty to provide for marriage and the family, the basic cell of society. Surrogate mothering does not serve the well-being of the individual, marriage and family, or society. Such laws, in our view would be the opposite of sound policy.

The practice of surrogate motherhood despite its seemingly altruistic quality is a pragmatic solution to a pressing moral issue. the words of T. S. Eliot apply here:

"The last temptation is the greatest treason.

To do the right deed for the wrong reason."