

LANDMARK TRIALS OF MODERN ETHICS

Timeline

1978 – Joseph Kaplan immigrates, along with his family, to the United States from Ukraine.

January 1991 – Susan and Tom Chamberlain have an argument over her smoking in the house, resulting in Tom’s striking her in the face. She then gets a protective order to keep him from living in the house. The couple reconciles, but the history of violence continues, becoming the key issue in the case.

January 1992 – Susan Chamberlain agrees to be the surrogate mother for Joseph Kaplan’s child for the sum of \$25,000. Nothing is put in writing.

October 1992 – Susan Chamberlain hears the unborn child’s heartbeat for the first time and begins to have second thoughts about the surrogate motherhood arrangement.

December 1992 – Susan Chamberlain breaks with the Kaplans.

May 23, 1993 – Susan Chamberlain gives birth the child in dispute. She names it Shane; the Kaplans call it Benjamin.

May 22, 1996 – The judge reaches his verdict in the trial, awarding custody of the baby to the Kaplans.

Important People

Chamberlain, Susan – The surrogate mother who gave birth to a baby for Joseph Kaplan in the expectation of being paid \$25,000. She later changes her mind and wants to keep the child, whom she calls Shane.

Chamberlain, Tom – Susan Chamberlain’s second husband. His history of domestic violence eventually sways the judge not to award custody of the baby to the Chamberlains.

Constant, Anne – Susan Chamberlain’s foster mother. She testifies at the trial that Susan is an excellent mother, contradicting the testimony of Mildred Iris (see below).

Freundlich, David – Judge in the Family Court in Long Island, New York, who presides in *Kaplan v. Chamberlain*.

Gottlieb, Robert – Susan Chamberlain’s attorney.

Iris, Mildred – Susan Chamberlain’s biological mother. She testifies at the trial that Susan is not a good mother.

Kaplan, Jean – Wife of Joseph Kaplan (see below). She has two sons from an earlier marriage. Her distant relationship with those children is used by the Chamberlains’ attorney to suggest that she may not be a fit mother.

Kaplan, Joseph – Ukrainian-born Long Island businessman who enters into the surrogate motherhood agreement with Susan Chamberlain. He names the surrogate baby Benjamin.

Ray, John – Attorney for the Kaplans.

Whitehead, Mary Beth – The woman involved in the “Baby M case,” which was the first high-profile court case concerning the rights of surrogate mothers. William and Elizabeth Stern contracted with Whitehead to be a surrogate mother, but after the birth she refused to turn over the baby. A lower court awarded custody to William Stern, the biological father, and gave Elizabeth Stern the right

New conditions bring new choices. Today, advances in technology and changing social norms force us to confront ethical issues that rarely arose in the past. Sophisticated medical devices can keep a patient alive in ways that were once impossible. But what if a patient—or a patient’s family—doesn’t wish these mechanisms to be used? Another concern involves the end of life—who decides when it occurs? If a terminally ill person chooses to die, does that person deserve medical assistance? Or how far can a child go when he believes his parents are abusive? Very often, such delicate questions must be decided in court. LANDMARK TRIALS OF MODERN ETHICS explores some of these remarkable cases.

KAPLAN V. CHAMBERLAIN: THE BATTLE FOR A SURROGATE BABY

Infertility is defined as the inability of a couple to achieve a pregnancy after repeated intercourse without using birth control for one year. It is estimated that infertility affects about one out of every five couples in the United States. Sometimes the problem is caused by a correctable physical problem, such as difficulties with ovulation, abnormal fallopian tubes (see Vocabulary), cervical mucus, and decreased sperm count. Often, however, a couple cannot have children no matter what medical intervention is attempted. Sometimes that situation leads to adoption, but if one of the partners is normal, that partner can still play a role in the conception of the child. That is, one of the partners can still be the baby’s biological parent. When the father is physically able to produce a child, but his partner is not, one of the most controversial methods used is “surrogate motherhood,” in which a woman is hired (or volunteers) to bear that man’s child and then, after the birth, relinquishes custody of that child to the couple for whom she performs the service. Normally, the conception of the child takes place through artificial insemination, in which a physician in a medical procedure fertilizes the woman’s egg using sperm donated by the father. In the atypical case of *Kaplan v. Chamberlain*, however, fertilization was accomplished through normal sexual intercourse. That was not all that was unusual about this case. Susan Chamberlain changed her mind and decided to keep the child, making it necessary for a judge to decide to whom the baby belonged.



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Internet Resources

<http://www.opts.com/> -- The Web Site of The Organization of Parents Through Surrogacy, which calls itself "a nationally recognized non-profit surrogacy support organization."

<http://www.surromomsonline.com/> -- The Web site of Surrogate Mothers Online, an online resource and virtual meeting ground for surrogates and intended parents."

<http://www.everythingsurrogacy.com/> -- The Web site of "Everything Surrogacy.com." Contains links to many other useful sites.

http://news.mpr.org/features/199711/20_smiths_fertility/part4/ -- From Minnesota Public Radio, a page containing information on surrogate motherhood, including its legality in various locales.

<http://johnrayandassociates.lawoffice.com/main.htm> -- The Web site of John Ray, the Kaplans' attorney.

<http://www.aap.org/policy/178.html> -- From the American Academy of Pediatrics, an interesting "Policy Statement" on "Ethical Issues in Surrogate Motherhood."

<http://academic.udayton.edu/health/05bioethics/98qurais.htm> -- A comprehensive bibliography of articles on surrogate motherhood compiled in 1998 by a second-year law student at the University of Dayton School of Law.

Other Resources

Chelsler, Phyllis. *Sacred Bond: The Legacy of Baby M*. Vintage Books, 1998.

Dutton, Gail. *A Matter of Trust: The Guide to Gestational Surrogacy*. Clouds Publishing, 1997.

Field, Martha A. *Surrogate Motherhood: The Legal and Human Issues*. Harvard University Press, 1998.

Gostin, Larry, ed. *Surrogate Motherhood: Politics and Privacy*. Indiana University Press, 1990.

Macklin, Ruth. *Surrogates and Other Mothers*. Temple University Press, 1994.

Pretorius, Diederika. *Surrogate Motherhood: A Worldwide View of the Issues*. Charles C Thomas, 1996.

Ragone, Helena. *Surrogate Motherhood: Conception in the Heart*. Westview Press, 1994.

Shanley, Mary Lyndon. *Making Babies, Making Families: What Matters Most in an Age of Reproductive Technologies, Surrogacy, Adoption, and Same Sex and Unwed Parents*. Beacon Press, 2002.

Shannon, Thomas A. *Surrogate Motherhood: The Ethics of Using Human Beings*. Crossroad, 1988.

Vocabulary

fallopian tubes -- The pair of tubes that conduct eggs from the ovaries to the uterus (the organ that contains and nourishes the unborn baby). Susan Chamberlain had hers untied in order to conceive the surrogate child.

hysterectomy -- The surgical removal of the uterus. Jean Kaplan was unable to have a baby because she had had a hysterectomy.

surrogate mother -- A woman who becomes pregnant for the purpose of carrying a child to term for another woman. In most cases, the pregnancy is caused by artificial insemination or surgical implantation of a fertilized egg, but in Susan Chamberlain's case the pregnancy was caused by normal sexual intercourse. The term dates from 1978.

Things to Think About

Some critics of custody proceedings charge that judges too often award custody of a child to the couple who has the most money, thus implementing a kind of discrimination against people who, although they may not be well off, can be fine parents nevertheless. Do you think that was a factor in *Kaplan v. Chamberlain*? If the Chamberlains had been wealthy, do you think they would have been more likely to win custody?

Joseph Kaplan, when asked about the fact that he and his wife had sought marital therapy, says that nothing is perfect, including relationships. Do you think that seeking marital therapy is a sign that a couple may not be fully qualified for parenthood? Or would you say that it only shows that they are committed to making their marriage work? How "normal" is it to go for marriage counseling?

Surrogate motherhood is now illegal in 11 states. Do you think it should be legal (or illegal) everywhere?



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Other Resources

- Barbell, Kathy and Wright, Lois, eds. *Family Foster Care in the Next Century*. Transaction, 2001.
- Curtis, Patrick A., et.al., eds. *The Foster Care Crisis : Translating Research into Policy and Practice*. University of Nebraska Press, 1999.
- Desetta, Al. *The Heart Knows Something Different: Teenage Voices from the Foster Care System*. Persea Books, 1996.
- Edmonds, Beverly C. and Fernekes, William R. *Children's Rights : a Reference Handbook*. ABC-CLIO, 1996.
- Evans, Bonita. *Youth in Foster Care : The Shortcomings of Child Protection Services*. Garland, 1997.
- Hawes, Joseph M. *The Children's Rights Movement : A History of Advocacy and Protection*. Twayne Publishers, 1991.
- Hempelman, Kathleen A. *Teen Legal Rights*. Greenwood Press, 2000.
- Jacobs, Thomas A. *What Are My Rights? 95 Questions and Answers About Teens and the Law*. Free Spirit, 1997.
- Martin, Judith A. *Foster Family Care: Theory and Practice*. Allyn & Bacon, 2000.
- Walker, Nancy E. *Children's Rights in the United States: In Search of a National Policy*. Sage Publications, 1998.

Two TV movies based on Gregory Kingsley's case aired in 1993. "Gregory K" starred Joseph Gordon-Levitt as Gregory Kingsley, and "A Place to Be Loved" starred Richard Crenna as George Russ and Rhea Pearlman as Jerri Blair.



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