

Attorney Points to Consequences of Confusing Surrogate Partners With Prostitutes

Coleman: Sex Therapy Has 'Cloud of Criminality Hanging Over It'

ANAHEIM—Classifying surrogate partners used in sex therapy as prostitutes could make both surrogates and therapists who employ them subject to prosecution, a Glendale attorney told a group of psychologists.

Thomas F. Coleman, a criminal defense attorney and part-time legal writer for the Metropolitan News, addressed potential legal considerations surrounding surrogate partner sex therapy during a panel discussion at the American Psychological Assn. convention.

Distinguishing surrogate partners used in sex therapy from prostitutes is "the basic gut problem" that permeates all other potential legal dilemmas raised by this relatively new form of psychological treatment, Coleman said.

Therapists who use surrogates might be viewed in the role of "pimps" and their offices considered "a house of ill fame."

He said the historically perceived "indiscriminate and promiscuous" nature of prostitution separates it from surrogate sex therapy, which is clinical and closely supervised.

Barbara M. Roberts, a licensed clinical social worker and director of the Center for Social & Sensory Learning in Encino, said the use of surrogates allows single persons to have the same type of sex therapy available to married couples.

The center has been specializing in the use of surrogate partners in sex therapy for single men and women since 1972.

"Adultery, infidelity and threats to marriage are really not major issues here because we are talking about single people," she said.

However, Coleman remarked, "Sex therapy—even without the use of surrogates—has a cloud of criminality hanging over it."

Although half of the states have decriminalized all forms of private sex between consenting adults, the other 25 states prohibit certain types of sexual conduct, even if it is between consenting adults, Coleman noted.

The attorney, who is director of the Glendale-based Center for Privacy Rights Education and Advocacy, said such laws make illegal some of the treatment methods prescribed in sex therapy, forcing therapists to practice subrosa.

The U.S. Supreme Court has yet to rule on the constitutionality of prohibiting private sexual conduct between consenting adults. The high court will announce in the fall whether it will grant certiorari to hear a New York case challenging the state's ban on "loitering for the purpose of soliciting deviate sexual conduct," Coleman pointed out.

"Our society is still sex-negative," Hannah Lerman, a Los Angeles psychologist in private practice, opined.

"The APA does not escape, either," she added, noting that the association has not addressed the issue of sex surrogate therapy in its ethics code.

In June, 1982, however, the Massachusetts Psychological Assn. became the first state psychological association to prohibit its members from using sexual surrogates.

Currently, there is no legal sanction or permission for the use of sex surrogates in California.

Coleman said there have been no known prosecutions or visible lawsuits in this state resulting from the use of sex surrogates.

But, he added, on a nationwide basis, there are plenty of "gray areas" in potential civil and criminal liabilities involved in the use of sex surrogates.

In addition to being subject to criminal prosecution for violating state laws governing sexual conduct and facing disciplinary proceedings for ethical violations, therapists who use sex surrogates could be liable for malpractice if they do not exercise proper control over the surrogates or if clients contract a sexually transmitted disease, Coleman remarked.

Roberts said therapists at her clinic closely supervise the relationship between surrogates and clients. Surrogates are trained and work on the premises.

But, she added, some sex therapists hire surrogates by referral and don't necessarily become fully involved in monitoring the client-surrogate relationship.

A problem arises as to whether surrogates should be considered employees or independent contractors, Coleman points out.

If they are labeled employees, then therapists are legally responsible for the surrogates' actions. But if therapists hire surrogates on an independent contract basis, they would be putting distance between themselves and the surrogates, thereby exercising less control.

Coleman commented:

"When you try to avoid problems in one area, you're stepping into quicksand in another. This has to be handled in its entirety."

He added, "The greatest risk should be placed on the shoulders of the therapist."

Roberts agreed, saying that "the therapist must take responsibility for the total therapy, including the services of the surrogate."

She also remarked that currently, there is no form of "legal apprenticeship" for surrogates in California.

Coleman advocated creation of a licensing agency or establishment of training requirements.

There is also a need for therapists to insure themselves against civil liability and establish guidelines in their employer-employee relationship with surrogates, the attorney said.

Another of his recommendations is formation of a statewide task force composed of therapists, surrogates, prosecutors, insurance companies and licensing agencies, to forge administrative solutions to the legal and ethical problems posed by sex surrogate therapy.