

A Tribute to Karen Rothenberg

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A TRIBUTE TO KAREN ROTHENBERG

R. ALTA CHARO, J.D.*

I have been the grateful subject of Karen Rothenberg's mentorship. Her generosity of spirit and wise advice helped set me on a path toward a satisfying career as a law professor and participant in the process of creating public policy. I wish I knew the identities of all the other students and aspiring academics whom she helped this way. We could start a little fan club.

I first became aware of Karen's work during my time in the mid-1980s at the now-defunct congressional Office of Technology Assessment. It was a tumultuous time in the field of assisted reproduction. Artificial insemination, though long practiced, was more openly discussed. In vitro fertilization was still quite new, and was at the center of debates over its technological, theological and political acceptability. Surrogate motherhood was in the news, and increasingly in the courts. The divisions of opinion did not follow predictable fault lines. Social conservatives drawing their views from certain religious traditions that would argue for banning these innovations were often flummoxed because they also tended to favor markets over government regulation. Liberals, whose views on abortion and non-traditional families would support use of these technologies, were often distrustful of the medical establishment's management of women's health needs, and fearful of reifying traditional stereotypes about the centrality of motherhood to the female experience. Congress had requested a report describing the technical and social implications of these technologies, and offering a range of options for federal response. As a legal analyst at this congressional agency, it was my task to untangle and explain this shifting and cross-cutting set of arguments, and spell out the legal status of the current situation in the fifty states.

It was Karen's sensible and sensitive approach to these debates that was the most helpful to me at the time. I had attended many meetings at which diametrically opposing positions were presented, often by the same academics – both men – who had developed a bit of a dog-and-pony road show with their repeated clashes. Karen was different. She would speak about the reality of women's lives. Rejecting the artificially clean analyses built upon a vision of

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individuals as completely autonomous utility maximizers. Karen incorporated a feminist critique that included the emotions and constraints that affect decision making. At the same time, she avoided falling into the trap of beginning her analyses with any assumptions about women's vulnerability or the medical establishment's insensitivity. Listening to her, one could see more nuanced and balanced approaches that would avoid the most frequent or serious risks of exploitation, while also recognizing the moral agency of each person who wished to be a parent.

It was this sensitivity to complexity that made it such a joy a few years later to co-author a piece on genetic testing with Karen. Titled *The Good Mother*, it acknowledged the tension between praying for healthy children and loving the children one had, regardless of disease or disability. It also noted the difference in how one must debate the morality of personal decisions versus the appropriate role of the government in shaping the options that would be available to people. Without ignoring the long history of eugenic abuses in this country and elsewhere, Karen looked at how this increasingly important technology was being used now and might be used in the future, with an eye to identifying a role for public policy that aimed to curb any trend toward abuse and any increasing stigma endured by those with disabilities.

What was remarkable about Karen is that during these early years of my career, she consistently treated me as a colleague and an equal, despite the gulf in expertise and experience between us. Already tenured at the time I first became an untenured assistant professor, Karen could have been parentalistic, dismissive, or inattentive when I ventured to voice my views. Instead, she engaged with me in spirited debate and collaborative writing with no hint that her more senior position entitled her to claim superior wisdom or control of our project. The joint writing effort was a joy, with drafts flying back and forth, and mutual acceptance of proposed changes in tone and substantive argumentation. It became a model of co-authorship to which I aspire today, and I thank her for teaching me how to collaborate with respect and generosity.

If I have any critique of Karen, it is that her generosity was at times too great. When I was coming up for tenure, the rules at my university allowed candidates to see the outside letters. Karen's was not only generous, it was effusive, and I learned later that this actually led a few people to somewhat discount its content. It is not often that one can say that someone's fundamental character flaw is that she is too good. But that was Karen. A good mentor, a good colleague and a good friend.