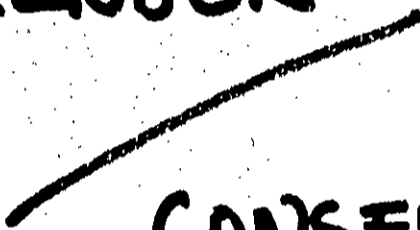


SURRENDER



CONSENT

# Order tot returned to illegal alien mom

By DAVID MEDINA  
and STUART MARQUES

Saying poverty is not a disqualification for successful parenting, a deeply divided state appeals court yesterday ordered a well-to-do Manhattan couple to return a 2-year-old boy to his natural mother—an illegal alien working as a maid.

"There are literally thousands of single working mothers in this city who are raising young children," said Justice Sidney Arch, writing for the majority in the 3 to 2 decision, which upheld a Family Court ruling.

"Certainly her (the natural mother's) financial circumstances should not be held against her," he wrote. "If we resort to the common experience of mankind, it is quite apparent that poverty has rarely been a disqualification for successful parenting."

"IF SHE IS compelled to return to El Salvador without her son, it would mean that she will be permanently separated from him. He would be exiled from his natural family and his cultural heritage. Certainly, even in El Salvador, there are children who flourish. It is even argued by some that New York is a more dangerous place to grow up."

In a dissenting opinion, Justice E. Leo Miltonas said the evidence is "overwhelming that a shift in custody here would almost certainly be severely damaging and possibly catastrophic to the boy."

The ruling came in a case involving the natural mother, Christina Landaverde, the couple, James and Susan Howie, of W. 15th St., and the youngster, now named Nicholas Howie, who will celebrate his third birthday tomorrow.

HOWIE IS AN architect with his own firm and his wife is an editor of

college textbooks. They have had custody of Landaverde's baby since shortly after he was born in San Francisco on July 10, 1980.

Landaverde, who emigrated from El Salvador more than a year before the child was born, signed a decree before and after the birth giving up custody of the child, whom she named Mauricio. But she never signed formal adoption consent papers and has tried to regain custody since her son was 3 weeks old.

She lost her fight in the California courts, but saved up enough money to come to New York in June 1981 and resume the battle. She reported she has worked as a live-in maid since

arriving here, and has had weekly visitation rights since March.

Landaverde could not be reached for comment. Her lawyer, Arlen Yakut, said the decision "upholds the sanctity of the mother-child relationship."

Susan Howie, said she and her husband would appeal.

"I haven't had an opportunity to read the decision," she said while preparing the boy's birthday party. "My husband is bringing it home right now. He told me there were six pages of opinion by the three judges in the majority and 21 pages by the minority. I think it's a very odd"

## Falls to her death on 14th St.

As scores of lunch hour shoppers looked on yesterday, a domestic woman plunged to her death from the top of a 29-story building at 14th St. and Fifth Ave., authorities said.

The woman, identified as Lill Marie Gardner, 24, of 50th Road, Queens, jumped onto 14th St. from the roof of 69 Fifth Ave. about 1:30 p.m.

CUSTODY - LEGAL  
- BIRTHPARENTS AWARDED

## Biological parents renege, adopters get money back

Associated Press

PHILADELPHIA — People who pay medical expenses for a baby they expect to adopt must be reimbursed if the biological parents break the contract and take back the child, a state appeals court ruled.

The unanimous ruling by a three-judge panel reversed a lower court which had dismissed the request of John and Kathleen Gorden of Philadelphia for recovery of \$3,025 in hospital and medical bills.

The Gordens had signed an agreement with Catherine Day, agreeing to pay costs of her pregnancy and for delivery and after-birth care. When Day gave birth to a boy on May 20, 1981, the Gordens took temporary custody pending final action. Six weeks after the birth the natural parents filed a writ of habeas corpus advising they had changed their minds.

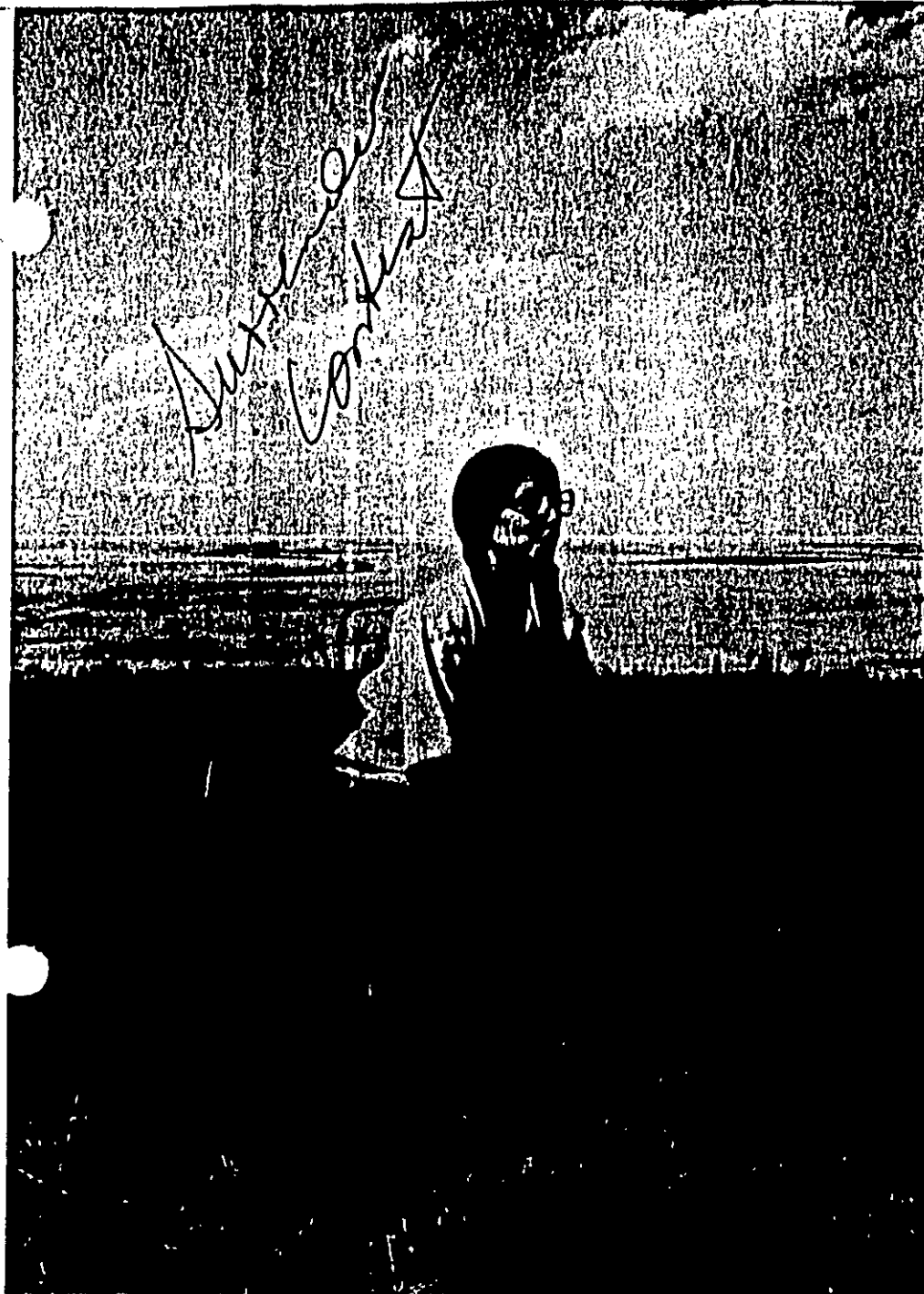
After a hearing, custody was awarded to the natural parents.

MEDICAL EXPENSES

1/4/84  
Times Union  
Albany, NY

*Good*  
*Survival*  
*Conduct*

# TROUBLE



On the Sioux reservation where she was born, Bernadine Brokenleg waits for daughter Tiffany (inset), still living with her grandparents in Texas. "Until this is settled," she says, "my life is at a standstill."

## A SIOUX MOTHER BATTLES WHITE IN-LAWS FOR HER CHILD IN THE BITTER CASE OF BROKENLEG V. BUTTS

The slim, soft-spoken young woman stares grimly across the stark reaches of South Dakota's Rosebud Sioux Indian Reservation, which is her home. "They talked in court as if we lived in a tepee and wore feathers," Bernadine Brokenleg, 29, recalls bitterly of the District Court which awarded custody of her 9-year-old daughter, Tiffany, to her white in-laws. "I kept thinking, 'My God, what if Tiffany has to live in a community like that? What

Photographs by Dale Wittner

if she marries and has little brown babies in a place like that?"

For the past six years—since she was 3 years old—Tiffany has lived with her grandparents, Marle and Bernard Butts, in a comfortable ranch house in Kermit, Texas. Marle Butts, 58, who works as circulation manager for the *Winkler County News*, is determined to keep it that way. "When we picked Tiffany up [from the reservation], she had ticks and was bathed in dirty wa-

ter," she says indignantly. "I want her raised like a little girl should be."

Ironically, Bernadine herself was in rebellion against her heritage when, at 17, she left the Sioux reservation to go to California and enroll in Long Beach City College. Two years later she wed Bernard "Skip" Butts Jr., white and a machinist. The marriage was troubled. Bernadine's mother says that Skip beat his wife often. When Bernadine discovered that Skip's earlier

CONTINUED

71

CUSTODY  
INDIAN



































ASE

"It was only a few times," she replied and added, "It has opened up all kinds of sharing and closeness with my family. I'm closer to my sister. The miracle of this is not that I'm giving birth but that someone else's egg has grown in my body."

The D-3 team had told the Bradfords that their donor and her parents were perfectly healthy. True, the donor's grandparents had had the typical maladies that afflict the aged: cancer and high blood pressure, but there were no unusual circumstances. "We figured that if the donor was screened a fourth as carefully as we were," Mrs. Bradford said, "then it would be a thousand times better than not knowing the parents of a baby we'd hoped to adopt." She admitted she would have liked to meet her donor. "We just wanted to know who the woman was to thank her, to hug her," she said.

But the woman who gave Mrs. Bradford the ovum does not know she is the donor. Eleven women, including Deborah L., were donating at the same time, and the D-3 team is preserving anonymity. After the birth, the Bradfords are planning to write a letter of appreciation that will be distributed to all the donors by the D-3 team.

Last October, members of the Ovum Transfer Project spoke before a scientific group gathered near Palm Springs, Calif., and made the only presentation, so far, of its work. Dr. Bustillo reported: "In 25 lavage sequences, 11 ova were recovered on the first lavage. That is a recovery rate of 44 percent. One donor from whom an ova was not recovered had a retained pregnancy which she spontaneously aborted" without complications nine days after her expected menstrual flow.

The researchers had recovered one apparently undivided, unfertilized ovum. Seven fertilized ova were found in stages of development ranging only from six to 14 cells. Another fertilized ovum appeared to be more advanced but had a degenerate appearance. All of them, however, were behind schedule in development. Not one had shaped itself into the hollow, fluid-filled sphere of cells known as a blastocyst. And none of these nine had triggered a pregnancy when transferred. But: "Two well-formed blastocysts were recovered," Dr. Bustillo said,

"and led to two ongoing pregnancies."

Questions have been raised about the ethics and legality of all of this. Particularly troubling to some is F.G.R.'s move to secure a group of patents for the transfer procedure. Other uncertainties involve the success rate and the economic viability of the technique.

At the Palm Springs presentation, a British clinician rose to ask whether the donors and recipients were informed of the risks involved. "The English feeling about this as a treatment," he said, "is that we are terrified by the ethical problems."

Dr. Buster responded by explaining that prior to the inception of the Ovum Transfer Project, the researchers commissioned a legal analysis at U.C.L.A. Law School. It showed, the doctor said, "the entire body of law that deals with artificial insemination also deals with the relationships of the participants" in embryo transfer.

Full disclosure of the risks of pregnancy to the donor and genetic uncertainty to the recipient are outlined in the consent forms. "There is an informed consent for all parties of the risks involved," Dr. Buster said.

Dr. Buster then announced that with regard to the risk of a retained pregnancy in the donor when the lavage failed to wash out the embryo, the D-3 group has applied for Food and Drug Administration approval to test several types of drugs which, animal studies have shown, block the development of young embryos. These "safety net" drugs could end persistent but unwanted donor pregnancies in the future.

Lori B. Andrews, a research lawyer for the American Bar Foundation in Chicago, disagrees that the law is clear on matters arising from embryo transfer or other infertility therapies involving donors and recipients. There is need for new laws, she says, in the areas of maternity, paternity, custody and malpractice.

The patents F.G.R. seeks are to protect the catheters used in embryo transfer — and, much more unusual, the method of employing them. Designed to thwart competitors, these patents, if issued and enforced, will strengthen F.G.R.'s hand in attracting prospective business partners. The matter is causing concern at large public and private medical centers, especially those with women's hospitals. At these places, childlessness — as diagnosed and treated by surgery and fertility drugs — is a big business.

Although not the first medical process to be patented, embryo transfer may turn out to be a historical one because of its corporate backing. "I think it is going to become one of the key landmark patents that will allow a corporate structure to build a whole health care system surrounding infertility," said Dr. Buster.

Some see all medical-process patents as a bad thing. According to Betty Jane Anderson, associate general counsel at the American Medical Association, any such patent com-

mercializes medical procedure to the detriment of the public interest. "It's always been the view of the medical profession that you should have as widespread dissemination as possible of anything that would be beneficial to patients."

Furthermore, she explained, the safety and effectiveness of medical procedures should be closely studied by the profession at large. Its findings, criticisms and recommendations, published in scientific journals, establish the procedure's worth. Human embryo transfer's worth, however, will, if the patents are granted, remain proprietary information in the hands of F.G.R. and John Buster.

Dr. Buster is highly regarded among colleagues as a smart researcher and clinician. His team, he says, putting his unit's achievement in context, has simply qualified humans as the 15th mammalian species in which embryo transfer is expected to produce normal young. "We in D-3 really didn't invent the concept."

He is right. The mass production of championship breeding cattle relies solely on embryo transfer combined with artificial insemination. In the last year, the freezing, storage and shipment of embryos has considerably streamlined the bovine breeding industry. Embryo transfer in cattle produces yearly revenues of \$32 million for various privately and publicly held breeding corporations. The application of the technique to humans was the brainchild of Richard G. Seed, Ph.D., the founder of a cattle breeding company who is now associated with F.G.R. It is under Mr. Seed's name that the patent for the human embryo transfer process is being sought. Dr. Buster's team refined the process and, with an engineering consultant, developed the catheters.

According to Dr. Ervin E. Nichols, director of practice activities at the American College of Obstetricians and Gynecologists, there is no reason to think embryo transfer cannot be adapted to humans. In fact, he said, it is surprising that it has taken so long. But Dr. Nichols is among those critical of the attempt to patent human embryo transfer. "I have to tell you that I was astounded when I heard a patent was being sought on the process. It's an almost unheard-of precedent in medicine. It would mean that any time anybody develops a new and different technique, that it would be patented, and then nobody else could do it unless they had a license to. I just do not believe that the patent will be granted, or that it would hold up."

F.G.R.'s chairman, Lawrence G. Sucusy, a Chicago investment banker and one of several dozen investors in the firm, disagrees: "The idea of patenting a medical procedure is not astounding at all." To prove it, Mr. Sucusy has sent to colleagues copies of patents granted on medical procedures ranging from surgery on the eye, brain and stomach to a non-surgical method of reversible female sterilization.

F.G.R.'s strategic plan for the embryo transfer business is to engage primarily in joint ventures. In addition, it would grant licenses to a few outstanding groups of reproductive specialists. The special catheters would be either leased or sold. Regardless of the business arrangement, the F.G.R. units would be linked by a nationwide computer service which would, for a fee, match recipients and donors.

The success rate is vital information for F.G.R.'s prospective business partners. Investors will not be satisfied knowing only that human embryo transfer works from time to time. They will ask how well it works. How many pregnancies will an embryo transfer center make each month? What are the chances that a woman entering the pool of eligible recipients will be matched to a donor, receive an embryo and wind up pregnant? How big does the donor pool have to be, and how much will it cost?

Working on these questions, Drs. Bustillo and Buster have computed a mathematical model based on the results of the D-3 project and the efficiency of embryo transfer in cattle, monkeys and baboons. The model, which they plan to publish in the American Journal of Obstetrics and Gynecology, suggests that when the donor pool is large enough to assure an entering recipient she'll be matched every time she ovulates, her chances of getting pregnant range from one in 29 to as high as one in three.

"Basically what we're saying," John Buster explained, "is that in a best case situation, it's possible for an infertile woman to enter our pool, ovulate, and end up pregnant 35 percent of the time. A little more than one-third of the time she enters the pool, she'll walk out pregnant."

The cost of recruiting, screening and maintaining a pool of donors will be compounded by the necessity of stocking it with women of varying physiological characteristics. "I hope that by operating multiple clinics in the country, we can have a thousand donors available all the time," Dr. Buster said. "That means a recipient woman walking into any clinic in the nation will not only know there's a good chance she'll get an egg that month, but that it will come from a lady who looks just like her and has good genetics."

*This study is done by whole thing to make sure (which is what we want)*

*can be*

*should like to see the results of the study*













# BRAVE NEW WORLD

Motherhood in  
the eighties.

"These," he waved his hand, "are the incubators." And opening an insulated door he showed them racks upon racks of numbered test tubes. "The week's supply of ova. Kept," he explained, "at blood heat; whereas the male gametes," and here he opened another door, "they have to be kept at 35 instead of 37. Full blood heat sterilizes." Rams wrapped in thermogene beget no lambs.

—ALDOUS HUXLEY  
*BRAVE NEW WORLD*, 1932

**D**EVELOPING EMBRYOS in bottles is something we cannot yet do. No scientist has kept a fetus alive, outside a woman's body, during its first few months of development.

But the rest scientists can do. They can freeze sperm, and classify it according to its genetic make-up. They can withdraw an egg from a woman's ovary and fertilize it in a laboratory, and they can freeze human embryos—fertilized eggs—in the hope of implanting them later. And this summer, doctors at Torrance's Harbor-UCLA Medical Center extracted two women's fertilized eggs, implanted the embryos in the wombs of two infertile women, and reported that for the first time in medical history, women appeared to be carrying to term babies who belonged biologically to someone else.

The mind-boggling field of "new reproductive technology" (the partial title of an evening class that surrogate broker William Handel teaches at the Whittier College School of Law) is littered with so many questions and disturbing possibilities that neither law nor social policy has begun to catch up with it. If you grew up learning about ordinary mothers and fathers and the ordinary babies they make together, try contemplating the following scenarios:

■ A successful model wants a baby, but not enough to risk stretch marks. She gets pregnant and has the embryo implanted in a paid surrogate. The surrogate decides in her eighth month of pregnancy that she cannot give up the baby in her womb. Who is the legal mother? Tradition dictates that a

child's biological mother is the woman who gave birth, but the surrogate has no genetic ties to this child. Under what law can a woman bring action to prove maternity?

■ Two homosexual men have their sperm mixed and then used to inseminate a surrogate, so that the men, never knowing whose sperm did the fertilizing, can think of the child as biologically connected to both of them. If homosexual couples are able to adopt children, does it follow that they should be able to pay to have them made?

■ A sperm bank expands its business and begins buying and selling female eggs. Donating and selling sperm are legally sanctioned—should eggs be as readily available? What if the bank were to pair its products and begin selling fertilized eggs? How much should a human embryo cost?

Surrogate brokers have already confronted some of these questions. William Handel, who so far has accepted as adoptive parents only couples who can medically prove the wife's infertility, says he turned down two homosexual men "because of political reasons—we're trying to pass laws, okay?" Noel Keane, the Michigan lawyer whose work has generated considerable controversy and publicity, accepted as adoptive mothers a woman who had undergone a sex-change operation, and one fertile woman with Hodgkin's disease. Keane himself is not above a little Huxleyesque speculation. In his book, *The Surrogate Mother* (Everest House, 1981), he posits an era of "people shopping at frozen embryo banks for children of certain qualities, depositing the chosen embryo in an artificial womb, and eight and a half months later, presto, a baby!"

Infertility specialists tend to dismiss this kind of talk as science fiction nonsense. "My experience tells me that women love to be pregnant," says Dr. Jaroslav Marik, a gynecologist who works at the Tyler Medical Clinic in Westwood. The clinic serves only infertile couples, whose numbers are now astonishingly high—nationwide, one couple in six is believed to be unable to conceive—and Marik uses any technique he can, including surrogate parenting, to try to help his patients have children. "I'm sure that some people see a factory of artificial wombs turning out Adolf Hitlers... and that's ridiculous," Marik says. Then he laughs. "I hope I'm right." —C.G.

In one case, a thrice-divorced Los Angeles woman who had had four children contracted to bear an East Coast couple's baby and then decided midway into the pregnancy that she wanted to keep the child; the ensuing lawsuit was settled out of court in the surrogate's favor when it was learned that the adoptive mother had undergone a sex-change operation. In another instance, a Los Angeles man announced on national television that he wished to hire a surrogate and then have the X and Y chromosomes in his sperm separated to ensure as nearly as possible his receiving a boy.

"I didn't realize the complexity to which all of the legal ramifications could go," Simmonds says. Three years ago,

the formerly childless newspaperman reappeared at his office. "He came back to see me and asked if I'd do it again," Simmonds says, sounding a little incredulous. "And I said, 'Absolutely not.'"

**J**ANET McLEAN, WHO IS AS SLENDER AND SLIM-HIPPED as an adolescent fashion model, loved being pregnant. She loved it the first time, when she carried her daughter, and she loved it the second time, when she was married to another man and carried her son. She liked walking down the street with her rounded belly and swelling breasts. She liked the benevolent, almost protective way people looked at her. She liked staring at herself











can't be Michael," so that was that. Alexander lived for a while in the intensive care unit, learning how to breathe, and the first time Susan Edmonson held him she looked at his slowly moving hands, and the tube still connected to his stomach, and the red marks on his feet where the nurses had taken blood, and his small chest, nearly concave with the effort of inhaling. It seemed to her that she had bought nothing warm enough or fine enough in which to carry him home. She sat, very close to weeping, and eased a small nipple-tipped syringe into Alexander's mouth so he could begin to suck. She was not in the room when Janet McLean came to see him.

Janet's husband waited outside, half braced for a cry or a sudden change of heart, while she rolled her wheelchair into the intensive care unit. She remembers thinking the baby looked a little like her first son.

"I sat there and I looked at him, and I wished him a happy life," she says. "And I told him he had the greatest parents in the world, and to be good to them." She touched his feet and let him grip her finger. "It was just, like, a baby, and his mommy and daddy were waiting for him. And I was part of him, but not as far as the mother instinct. It wasn't that, even when I saw him there. We went home, and I never gave it a thought. . . . I even tried, and it didn't work. I sat down and thought, okay, he was part of me, and I gave him up. Now how do I feel? And I didn't feel any different."

Ten days later, Janet McLean, her new husband, and her two children packed up their belongings and moved to Puget Sound.

SUSAN AND JERRY EDMONSON bought Janet McLean a strand of cultured pearls in a black velvet box. She keeps the box on her dresser, with the pearls in a velvet pocket inside. She has never worn them, but she thinks that if Alexander ever comes to visit, she might take out the pearls as she tells him the story. She says she is not waiting for that to happen—that she does not want to hear, as the years go by, how Alexander is doing and whether he, too, has a natural feel for the piano. "It's their life, their baby," she says, draping the pearls back into their box. "I wouldn't want them to know how my kids are doing."

She thinks altogether too much is made of the payment—hers ended up paying mostly for the move to Washington and her husband's adoption of her children—and that in retrospect she might well have carried Alexander without pay. "These are the eighties," Janet McLean says lightly. "The money helped us. . . . Why is money

such a dirty thing?" She smiles, flinging her arms wide. "You're having this baby inside of you, which is great, it's wonderful, but it's not that big of a deal."

She worries about operations like Handel's—they have turned surrogate parenting into a business, Janet says, and have nearly lost touch with people's feelings. "They've got to come back down to earth and realize what they're doing, what they're playing with. . . . before it gets any more out of hand than it already is," she says.

And she cannot imagine, fifteen or twenty years from now, that she or the boy she carried will think about this with pain. "Everything was so strong and so positive," she says. She is sitting now at her kitchen table, fingering a glass of Pepsi. Her two children, a dark-haired six-year-old girl and a four-year-old boy half hidden under blond bangs, clump in off the porch; behind them, bordering the boxy naval housing where Janet McLean now lives, stretches a thick stand of pine trees and a glimpse of Puget Sound. "And just, like, when that child does come to me—I loved you. I loved you when you were inside of me, and growing. . . . There was not a time when you weren't loved. Not a time that I was going through the feeling of, Oh, my God, I don't want this baby, and here I am pregnant, what should I do, should I have an abortion, I have to give the baby up for adoption. The baby was going to its mom and dad, with open arms."

Janet McLean offers Pepsi to her visitor, who is gazing at the four year old and fighting off a sudden urge to call Oakland to make sure Aaron is all right. Aaron is my baby, now fifteen months old. He arrived the usual way, amid violent pain and parental weeping and a surge of some unfamiliar love so full and dangerous that it might have been a she-wolf there in the hospital room, cradling this baby away from harm. It took a full day to gather itself, this raging love; it was not part of an otherwise pleasant pregnancy, and who knows whether it came from some postpartum chemistry of hormones or the first sight and touch of a baby that grows quiet at the breast. Would it have been possible to sidestep this feeling, or talk it away, or accept in its place the long-distance gratitude of people who kept secret their last name?

Maybe. Maybe not. Making a baby for money seems unfathomable, in the afternoon light at Janet McLean's table. But for all its appalling pitfalls, it is not so very hard to imagine the other part: making a baby for love, for charity, so that someone else in the world can know that midnight she-wolf feeling with a baby two days old.

There is a brief flurry of mother-daughter fussing, with pigtails tousled and more Pepsi poured and permission granted to go to the park, and then Janet McLean shoos her children back outside. "Being pregnant, or a man making a woman pregnant, doesn't make them a mother or a father," she says. "I wasn't the mommy."

"WE ARE GOING TO RAISE Alexander as an adopted child," Susan Edmonson says. "When he gets old enough to understand the concept, yes, then he may find out that there are different kinds of adoption. But at this point in his life, he is going to know that he didn't grow in my stomach, that he was adopted."

There is a gurgle from the vicinity of Susan Edmonson's lap, where Alexander Edmonson is cheerfully worrying a zwieback and throwing up apple juice. He has big ears, long eyelashes, and large brown eyes, and as his parents talk in the conference room at the Sherwyn & Handel law offices, Alexander has been belly-humping eagerly across the carpet to chase a green plastic propeller plane and examine the legs of chairs.

The money issue does not distress the Edmonsons any more than it does Janet McLean. They had the money; they spent it on what they wanted most. "My God, people spend more on a Mercedes than we spent on Alexander," Susan Edmonson says. "It's an alternative for people who want infants. And how dare this idiot—she is thinking of one particularly vocal surrogate-parenting opponent—"try to take away my right to have a normal newborn infant?"

Jerry Edmonson's family says the baby looks very much like his father. The baby's hair is turning light, like Janet McLean's. The Edmonsons know where Janet lives, and Jerry Edmonson says he is a little sorry that they cannot go on being friendly. "She's cut off from this experience," he says. "She's married again. She has to have her own life."

Susan Edmonson nods; she cannot imagine Janet McLean calling to find out how the boy is. "I wouldn't feel so much as if he was mine," she says.

Alexander is beginning to need his nap: a small complaint, then a louder one, and then a multidecibel wail. With the baby in her arms, Susan Edmonson stands up. She rocks slowly from side to side, and with his long legs dangling and his face pressed against the white cotton of her dress, Alexander Edmonson falls asleep.

Susan Edmonson, Jerry Edmonson, and Janet McLean are pseudonyms.











