

SURROGACY

matic arguments in defense of the surrogate process: (1) half the genes are better than none, especially if they are the husband's, whose patrilineage stops here without a son; (2) applicants can shop around for the other half, and applicants can detail items like blond hair, blue eyes, and a college-educated womb; H;

The racist and sexist assumptions behind their arguments are barely disguised, or, worse, offered as valid reasons to select the surrogate option. As one family lawyer explained: "At first I equated the surrogate process with baby-buying. No court in the country would sanction it, and I agreed... but then I thought, it's damn hard for a sterile couple to adopt a Caucasian baby... Maybe surrogate parenting—mediated by state-regulated contracts and appropriate safeguards—is not such a reprehensible thing." The advertisements in the city and campus newspapers to hire a surrogate don't follow any affirmative action plan. Most leave no doubt about what kind of donor is sought: "English background," "Northern European," "white," "Caucasian."

Race, however, is not the only disqualifier that can render an adoptive child "unsuitable." In another example, a healthy baby girl was delivered to a genetic father who, while pleased, had to save up his money to try again, this time for a boy. He was still a "childless husband," as his ad declared.

In another case, "Bob and Mary" faced slim prospects for adoption, because of Mary's age (45), her three children from a previous marriage, and... Wait a minute. Doesn't that mean Bob already has three children in his life? Certainly, yes, but they are not Bob's. They are that other man's. Surrogate babies, remember, are brought to us by the same professionals who gave us the concept of "illegitimate babies"—that is, a baby is only as real as the father's identity.

If the subject does nothing else, it makes perfectly clear the cultural values assigned to women. A brief filed by the Michigan Attorney General's office speculated that the courts would inevitably become involved in determining "reasonable rates," that prices would fluctuate between a "beautiful or homely" mother, "an intelligent or dim-witted" mother. The brief concludes: "The integrity of the court system and the statutory adoption process demands that the court be absolutely prohibited from deciding which individual has a Saks Fifth Avenue price tag and which individual has a K-Mart price tag."

One can only think that the greatest deceit to these childless couples is the false promise of fruition. Even a surro-

gate baby, carefully gened and legally guaranteed, cannot live up to such fantastic expectations. Babies do many things for a couple, but "saving a marriage" isn't one of them. Bob told Noel, "This baby would be our whole life." And Bob could eventually come to feel like the respondents in an Ann Landers survey, who overwhelmingly reported that parenthood had turned out to be a colossal disappointment.

The most victimized character in the courtroom dramas is unquestionably the surrogate mother. Most of the public censure is directed toward her for accepting a fee, while everyone expects doctors and lawyers to charge for their services. "We want to avoid the money-hungry types," said the attorney who is holding up the book he wrote in every photo I saw. Women who list money as the only motive on their application forms are not selected. They must be able to provide reasons more compatible with public opinion: they truly enjoy pregnancy, they want to "give life"; they want to share their happiness with total strangers.

Dr. Richard Levin, director of a surrogate clinic in Kentucky, expected the standard \$10,000 fee to attract "poor women, unwed mothers"—a problem, since the profiteers are interested in removing the "welfare mother" image attached to the issue. He was elated, however, when the respondents to his ad were "just like the ladies next door." He seems to have assumed that their response was evidence of a natural maternal generosity, not understanding that there are some women of every class who are one man away from welfare, even the ladies next door.

One woman who was clear about her motives—who shared a deep friendship with the adoptive parents, who arranged for the "fee" to be placed in a trust fund for the child—complained that Keane treated her like "an object." His drive for publicity created unpleasant pressures during her pregnancy. He tried to persuade her to appear on talk shows with him and sit outside a bookstore while he autographed copies of his book. Other mothers with whom she had been in contact experienced similar pressures. These women, and the couples they strive to benefit, deserve a more dignified introduction to our consciousness than they are currently receiving from the press and the talk-show hosts who publicize their stories. And they most assuredly deserve a collective apology from the doctors and lawyers who've made a mess of the issue, and a fortune from their misery.

The circus continues through circumstances of the adoption laws in every state that outlaws money paid for children. The fees are paid for "services," not babies, they argue. The contracts drafted attempt to resolve complicated legal questions: What if the surrogate mother decides to keep the baby? Can she then sue the genetic father for support? Can adopting parents reject a handicapped child, and who, then, is responsible for it? If the adopting parents are divorced during the pregnancy, who gets custody? Does the contracting couple have any part in the decision to abort?

Does the contract itself have any legal validity? "Probably not," says Keane. It depends, in the end, on good faith. Meanwhile, one California attorney said, "We're having a ball with it."

The lawyers are fond of quoting the Bible for previous examples of surrogate arrangements, referring to the case of Sarah and Abraham, who birthed Ishmael through Hagar when Sarah feared she was too old to bear Abraham a son. What they forget to mention is that Hagar was not only never paid a fee, but she and Ishmael were cast out when Sarah did conceive and brought Isaac into the apple of his father's eye. Hagar's problem, no doubt, was that she didn't have an attorney.

At the end of a lengthy interview about his clinic, Dr. Levin offered a color snapshot of the first surrogate birth he arranged, as testimony to the goodness of the practice. "This is what it's all about. Look at this child. This is beautiful. What more can I say?"

Obviously, nothing. But we could say that the baby costs between \$17,000 and \$20,000 even before its first spoonful of Gerber's. We could say that this baby is available only to a very limited class of parents. We could say changes in the adoption laws could open up black-market baby trading.

The issue of surrogate mothers, as it turns around in my mind, is not the issue at all. Racism is the issue, and why thousands of babies come to be "unsuitable." Ownership is the issue, and the conceit of patriarchal genetics. "Barren women" are the issue, and why some women must come to feel an excruciating sense of failure because they cannot bear a child. "Saving a marriage" is the issue, and why some marriages might not be worth saving for the cost of a child. And guilt and money, and how women earn both, are the issues that need honest attention.

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Ellen Goodman

Lessons From Womb-For-Rent Business



Remember when the real-estate moguls of the 1970s dealt in houses? It appears that their 1980s counterparts are dealing with uteri. While they aren't doing a land-office business yet, sur-

ADMITTEDLY, the economy is in bad shape, but somehow I never expected to see a new breed of entrepreneurs arrive on the scene hanging out shingles that offer wombs for rent.

rogate motherhood is an expanding market.

At the moment the star of the surrogates is Judy Silver of Lansing, Mich., who was set up by a lawyer in her own cottage industry. According to Judy's testimony, surrogate motherhood, pregnancy, and delivery were a little bit like taking in a boarder. She was promised \$10,000 to give womb and board to a fetus for nine months and then deliver the baby to its reputed biological father, Alexander Malahoff of Queens, N.Y.

When asked why she decided to take this moonlighting job, Judy explained that she and her husband wanted some money to take a vacation and maybe fix up the house a bit... that sort of thing.

Would I buy an egg from a lady like that? Frankly, I wouldn't even buy a pair of genes from her.

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But that was just the beginning, or the conception, of this tale. The baby was born last month with microcephaly, a head smaller than normal, which usually means he will be retarded. Suddenly this most wanted child was a pariah. Baby Doe was put in a foster home. The Silvers said he wasn't theirs. Mr. Malahoff said he wasn't his.

Pretty soon there were blood tests and lawsuits all around and a climactic scene on a Phil Donohue show that looked like a parody of a Phil Donohue show. Live and in color from Chicago — Whose baby is Baby Doe? Will the real father stand up please? — we learned the results of the blood test. Hang onto your seats: Mr. Malahoff was not the father, Judy's husband was.

By any standards this was a thriller with more identity crises than H.M.S. Pinafore. The fate of the baby was resolved right there on camera as the Silvers promised to bring him up just as if he were one of their own. So much for their vacation.

But for all its freakishness, I don't want to dismiss the story as just another human sideshow. This one was a long time in the making.

I don't know a soul who can't sympathize with the feelings and desires of an

infertile couple. Over the past several years we have grown used to reading about dramatic help for couples.

We have been, I think, numbed into regarding motherhood-for-hire as just another option. There are now at least eight and perhaps as many as 20 surrogate-parenting services in the country. From 40 to 100 children have been born by surrogate mothers paid between \$5,000 and \$15,000 in states where payment is legal.

The tale out of Michigan was a jarring reminder that surrogate mothering is something qualitatively different, with hazards that we are just beginning to imagine.

Being a surrogate mother is not, as has been suggested, the "flip side" of artificial insemination. The infertile couple has contracted for more from a woman than an infusion of sperm. The pregnant woman has a stronger relationship with a fetus than a man has with a vial. The law governing this business is far murkier.

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If the Silver story has a bizarre twist, there are other and equally mind-boggling risks. What if the biological mother decides, as at least two have, to keep the baby herself? Would a court of law hold that the contract was more sacred than the mother's rights?

What impact is there on a couple when the man seeks another woman to bear his child? The Malahoffs, it should be noted, separated when the child he believed was his was conceived.

What do you tell a child when he or she asks, "Where did I come from?" And what if the baby isn't perfect? Who holds the final responsibility for a child conceived through a contract?

In the Silvers home the boarder is now a son. They've learned something about chance.

We've learned something about a business and an idea that encourages people to regard parents as customers rather than caretakers. We've learned something about people who look upon motherhood as biological work on a reproduction line.

FERTILIZATION - SURROGATES

Man To Get \$10,000 Back

Baby Not Child Of Sperm Donor, Tests Show

CHICAGO (AP) — The child born to a Lansing, Mich., woman hired to be a surrogate mother is not the son of the man whose sperm she received, attorneys said Wednesday.

"There were no winners," Alexander Malahoff, 46, said. "Everybody suffered." He had entered into a \$10,000 contract with Judy Stiver to have her bear a child for him through artificial insemination.

Blood tests performed Monday on Mr. Malahoff, of Middle Village, N.Y., Mrs. Stiver, and the baby established that Mr. Malahoff could not be the father, doctors at Sparrow Hospital in Lansing said.

The results were announced during a taping here of the Phil Donahue television show on which Mr. Malahoff and Mrs. Stiver appeared.

Mrs. Stiver, 26, said she and her husband, Ray, 41, will now move to gain permanent custody of the boy she delivered Jan. 10 at Lansing General Hospital. A custody hearing is scheduled for next Monday in Ingham County, Michigan, Probate Court.

Dispute Over Medical Care

At birth, the child known only as "Baby Doe," had a strep infection and a head smaller than normal. The Michigan department of social services gained temporary custody of the child after a dispute between the parties arose over administering medical procedures doctors deemed necessary to safeguard the baby's health.

Mr. Malahoff had agreed to assume "legal and moral responsibility" for the baby if he was proven to be the father. But he also had indicated he would put the child up for adoption.

Mrs. Stiver contended throughout the dis-

pute that she felt "some affection" for the child, but had not established a "maternal bond because I haven't held him."

"I'm surprised, but not disappointed," she said moments after learning of the test results.

Mrs. Stiver said she apparently became pregnant by her husband before the artificial insemination.

The Stivers said they obeyed the contract strictly and could have conceived the child only because they were not properly instructed to abstain from sex in the days immediately before insemination.

Lawsuit Pending

Noel Keane, a Dearborn, Mich., lawyer who represented Mr. Malahoff in the contractual arrangement, said he would return the money paid by Mr. Malahoff and held in escrow.

William Leininger of New York, another

of Mr. Malahoff's attorneys, refused to say whether Mr. Malahoff would drop a \$50 million suit against the Stivers for breach of contract and loss of a child's love.

On the television program, Mr. Malahoff said he and his wife had separated during the pregnancy. Mr. Malahoff's attorney had said that the couple had hoped having a child would strengthen their marriage.

Doctor Says Test Results

Exclude Malahoff '100 Per Cent'

LANSING, Mich. (AP) — "We are thoroughly satisfied with the results of our testing that Mr. Malahoff is not the father of Baby Doe," Dr. W.E. Maldonado, director of the department of laboratories at Sparrow Hospital, said in announcing the results.

"Our exclusion of Mr. Malahoff is 100 per cent," he said.

FERTILIZATION- SURROGATE

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In the second case, the people involved have received wide publicity, but the issues are somewhat more obscure. About fifteen months ago, Keane arranged for Corinne Appleyard, a nineteen-year-old Detroit housewife, to be artificially inseminated by George Syrkowski, a Dearborn Heights autoworker whose wife Sheila is infertile. Appleyard, with her husband's agreement, accepted \$10,000 to have Syrkowski's baby.

Three days before last Thanksgiving, Corinne Appleyard gave birth to a baby girl and on Thanksgiving Day she handed the child over to the Syrkowskis. Keane then went to court to have George Syrkowski's name placed on the infant's birth certificate as the father. But the Wayne County Circuit Court ruled that the name on the birth certificate should be Roger Appleyard, Corinne's husband, not George Syrkowski.

The court was upholding a statute which says a child conceived by artificial insemination is presumed to be the legitimate child of its mother and her husband, so long as the husband consented to the artificial insemination. So, for the present, the little girl, Theresa Mary, is living with the Syrkowskis, but the Appleyards are legally her parents. Keane is continuing his legal maneuvers to have George Syrkowski declared the baby's father, and in late February the state appeals court agreed to hear the case on an emergency basis.

With the courts ruling, so far, that surrogate mothering doesn't square with the law, a move is now being made in the state Legislature to change the law. In January, Richard Fitzpatrick, a state representative from Battle Creek, introduced a bill that would legalize the whole process of paying a woman to bear a child.

Fitzpatrick is something of a maverick in the state House. He recently resigned from the Democratic Party, and he has a history of backing somewhat flamboyant, unrelated causes. (He traveled to North Vietnam to personally investigate the problem of MIAs, and he recently sponsored a cattle-branding bill to fight cattle rustling.) Fitzpatrick's surrogate motherhood bill apparently was born in January 1981, when he wrote to Keane offering to sponsor such a law. The bill, in fact, incorporates many of the points in Keane's standard surrogate contract.

The bill would legalize payments to a woman to bear a child and would authorize the state government to set a maximum fee that would be not less than \$10,000.

Under Keane's surrogate contract, women may sign away the right to make medical decisions affecting their pregnancy from its fifth month; as drafted, the legislation would give the semen donor and his wife — not the mother — the

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right to approve any medical treatment of the child. The bill assumes that the father will get custody of the child unless the natural mother can prove that would not serve the child's best interests. The bill also removes the mother's constitutional right to an abortion, except in cases where her life is endangered.

The bill would give courts the novel authority to decide whether a particular set of people are fit to conceive a child. The bill also states: "The surrogate agrees not to form or attempt to form a parent-child relationship" with her baby after the sixth month of pregnancy.

"Obviously, passage will be controversial," Representative Fitzpatrick wrote to Keane, and he was right.

The state Department of Social Services, which oversees adoptions and adoption agencies in Michigan, points out that a generally recognized requirement in normal adoption cases is that a mother's decision to give up her baby must be truly voluntary. Courts have ruled that payment of money to a mother casts serious doubt on the voluntary nature of her decision.

According to David Chambers, a professor of family law at the University of Michigan Law School, events unforeseen at the signing of a contract — even a mother's growing attachment to her fetus — may be enough to void an agreement, no matter what the proposed legislation says. But Chambers is troubled by other, less technical problems posed by the legislation.

Chambers puts it this way: "We ought to feel uncomfortable every time we treat a child like a piece of real estate. . . . There's something so bloodlessly businesslike about all of this."

JIMMY JR., THREE-AND-A-HALF, is standing on the sofa, kicking his little leg out Rockette-fashion and making small bup-bup noises while the adults in the room converse. He knows they are talking about him, and so he hams it up a little. But the subject — the circumstances of his birth and his getting — is beyond his comprehension.

Jimmy is plainly used to plenty of attention from the doting couple seated in their New Baltimore family room, surrounded by full-color studio portraits of the baby. Jim and Betty are salt-of-the-earth, good, kind, hard-working folks.

Their little child is "all boy," Betty says, smiling fondly as he punches his inflatable Woody Woodpecker. He's a little angel.

The scene at Jimmy's delivery, however, reads like a night in hell, or at least like something from Andy Warhol's low-life comedy, *Trash*.

Because Betty could not have children, Jim went searching for a woman who would volunteer to be artificially inseminated and have his baby. In 1977, with Noel Keane's help, they found and signed an agreement with an unmarried woman in Tennessee. It was agreed that the woman would be paid for all the expenses of her pregnancy, but there would be no fee.

But by the time Jimmy Jr. was born, the woman had managed, through threats and extortion, to pry some \$12,000 out of Jim and Betty, they say. And the down-to-earth Michigan couple had discovered that the mother of their baby was a drug addict and an alcoholic, as well as a lesbian.

When the child was due to be delivered, Jim and Betty traveled to Tennessee to help out. The day of the boy's birth, Jim had to physically intercede to stop a fight between the pregnant surrogate, her current lover and her angry ex-girlfriend. The loud argument between the new lover and the former lover continued at the hospital. The ruckus did have a silver lining: It alerted the hospital staff to signs that the newborn infant was suffering from drug withdrawal, and Jimmy Jr. was promptly detoxified.

"Do you have a little time?" Jim, a strapping six-foot-four meat cutter, asks shyly. Then this giant man proudly pulls out his tape recorder to show off his little son's singing and talking. In a child's slightly garbled chirrups, "Now I Lay Me" sounds from the small machine. Then, after his father's happy, husky voice, the baby repeats the words, line by line, of "Bill Bailey Won't You Please Come Home."

"Well, you can see the result," Betty says with a smile, and a shudder at those terrible days. "It's all worth it."

The whereabouts of Jimmy's mother are not known to them, and they still fear that the phone calls will begin again, and that she may assert her legal claim to the child. Her troubled history, Betty thinks, may be a blessing in disguise, if it ever comes to a custody battle. In this case, the worst surrogate may be the best kind.

Still, Jim and Betty vividly recall bailing their child's mother out of jail (she was charged with drunk driving) on two occasions; they remember paying up whenever the woman pressed, fearing that she might refuse to give up the baby. And they wonder how bad it might get if the woman ever showed up again, threatening to try to take Jimmy Jr. away.

inserting that. After 24 hours it's removed."

But a few weeks later Carol had to make the hardest phone call of her life. On April 26, she called the Palmers to tell them it hadn't worked. She had had her period on time. She wasn't pregnant.

Undaunted, the Paveks and the Palmers decided to try again. This time Carol and Rick traveled to California and stayed with Mary and Joe. This time it worked. By the end of June, Carol knew she was pregnant. She also knew the baby she was carrying was Joe's, not Rick's, because the Paveks, not knowing how soon prospective parents would show up, had abstained from sex ever since Carol had written Keane in March.

Carol has a hard time finding words to express her gratitude to Rick for his support during her pregnancy. It was not only that he never complained about his own frustrations (the couple also abstained from sex during the first three months of pregnancy because of the slim—almost nonexistent—chance that intercourse might cause a miscarriage). It was also what he did to make her comfortable during the long nine months. "Whenever I was under the weather, he would come home and cook dinner and give me a back rub. And he never once batted an eye when people made cracks about what we were doing." (Carol had told her friends, largely midwives, and they had told their friends, and eventually the media

learned of the story and publicized it all over Amarillo.)

"We'd agreed when we went into it that we'd have to go as a team or else we couldn't go through with it, but Rick's understanding and patience was like nothing I've ever seen. He gave the Palmers their baby as much as I did."

A week before Carol's due date, the Palmers drove their camper to Amarillo to wait for their baby to be born. It was a good thing they arrived ahead of time, because the baby did too. Carol, however, who had long since completed her preparations, was ready. When two midwives turned up to assist her, they found her relaxed, confident and happy. Soon after, at Carol's invitation, a camera crew also turned up to record and, presumably, legitimize her home delivery.

Everything went smoothly at first, but then toward the end trouble developed. Carol, undrugged and calm, was equal to the emergency. When she was told she was dilated 10 centimeters, she could feel that the baby's head, which was very large, had not entirely cleared the cervix. She began to bear down, but then it seemed to her that the cervix itself was being ejected. If something weren't done—and fast—the cervix might rupture and cause a major hemorrhage.

Carol, still very much in charge, told the midwives to gently push the baby's head back inside the womb; she told Rick to call a friend who was also an obstetrician; and she told the rest of the assemblage to prepare to move.

Five minutes later a strange caravan pulled away from the Paveks' front door. First, a car driven by Rick. Second, a van laden with equipment of photographers and reporters. Third, a station wagon with Carol, the midwives and the Palmers. Still another car, carrying friends and neighbors, brought up the rear.

The obstetrician met them at the hospital's emergency entrance. Within an hour he had performed an episiotomy on Carol, released the baby's head from the swollen cervix, and then, at 11:59 on the night of Feb. 5, 1981, delivered Carol of an astonishingly beautiful nine-pound, 14-ounce baby boy. The fuzz on his head was red.

Elated at having borne such a baby, but disappointed at again not having been able to deliver at home, Carol spent only one day at the hospital. During that day, her presence created a record amount of confusion and whispering. The nurses, thinking hers was a typical adoption case, thought she shouldn't be allowed to see either the Palmers or the baby—much less to nurse him. After the doctor and Mary informed the staff of the actual facts, there was less confusion, but no less whispering. Carol could hear the comments of people outside her door ("How weird!" . . . "Why would anyone do a thing like that?") and she would call out to them, "Come on in and look at me." She wanted, she says, "to show them I didn't have two heads." But she also says she was "glad they had the surrogate business to

gossip about. It took attention away from the fact that a midwife had had to end up delivering in a hospital. That would have been a lot worse for me to bear."

But worst of all would have been a falling out between the Paveks and the Palmers. That didn't happen because they all knew each other so well and trusted each other so completely. When Rick took Carol home from the hospital, the Palmers took their baby, Patrick—they'd long since chosen his name—to their camper. For the next week, Carol nursed him, either in the camper or in her home. Then Mary flew to California with Patrick while Joe drove home in the camper.

"This baby's so rich in parenthood," Mary told *FAMILY CIRCLE* before she left. "I hope one day he'll understand all the extra love it took to get him here. We'll never stop thanking the Paveks for making our dream come true."

As for Carol, she's now back in the swing of daily life—working as a midwife, mother, wife and student. People still ask her why she did what she did. "Because I couldn't think of any reason *not* to do it," she explains patiently. "There are always excuses in life for not doing things and there are so many things I'm really too lazy to commit myself to. But this was something I could do to make somebody really happy—something big that didn't interfere with my life too much and that didn't cost me money."

But, she hastens to add, it didn't make her any money either. The Palmers paid her expenses and medical bills. They paid her no fee—not would she have accepted a fee.

Would she do it again for another couple? "Oh, I don't know," she grins. "I'm not going to try to answer that one yet."

And what about the Palmers and Patrick? Will she ever see them again? "I'd like to hear from them once in a while . . . maybe see a picture of Patrick every year or so . . . maybe a card at Christmas. But I don't want to interfere in their lives. I've known all along that the baby was theirs, not mine. I was only the caretaker." ■

SURROGATE MOTHERHOOD AND THE LAW

ANY COUPLE hoping to make use of a surrogate mother should know that the practice is legal, provided that local laws have been complied with, but that the overall law is still largely undeveloped.

Three sets of laws—those governing artificial insemination, payment of fees and right of adoption—may be involved. Since they differ widely from state to state, prospective parents would do well to become familiar with local law and/or retain an attorney to draw up a consent agreement before any action is taken. However, there is no absolutely sure way to guard against the surrogate changing her mind. Should she decide to keep the baby—as in the case of a New York surrogate and a California couple now in litigation—the legal picture becomes murky.

Adoption law in some states prohibits the payment of fees except necessary expenses. In some states self-insemination is permitted; in others only if a doctor is present. In Texas, the law presumes that the surrogate's husband is the father of the child, even if the birth certificate states otherwise.

Most important surrogates and the prospective parents should know and trust one another wholeheartedly. Otherwise they may find themselves trapped in a most complicated and painful legal quagmire. □

