

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86/2

1377 HHESS HB 492 - HB 498

637

2-10-82

Ken Kirk Student lobbyist

408

Walt Swanson 4:08

ch. of OK P.S. Ed. Com.

① 26 credit hrs / yr.  
av. stud. is 24 / yr  
rec. 24

② rec. & reference - OK

③ Above - P.M. & Co  
valid at one  
in state worse by far

needs - yes - but last alternative

472

Bonnie Lynn, Palmer H S      Curran  
Morie McKenzie, Bartlett ..

need statement:

Propose

Guidelines

educ. who we need to have? \*

Doe -  
You might want  
to switch testimony to  
Fairbanks to give everyone  
an equal chance.

2-11-52

E. B Brown Dir. of fin. and acc:

492

Piccard - vice chm of ir aa 492

492 could be self defering  
of 2-3rd semester

But if e.g. Stanford @ 5 g/yr.

if 1 credit less, then part time

10. Define part time student

e.g. 6 hrs. + "X" @.

Long Smith

- 26 hrs for full time

- time for loan requirement

Q-104 credit hrs. needed for degree

$$26/\text{yr} \times 4 = 104!$$

So on average says

6000 students

1400 / cr. hr. - in state  
108 / cr. hr. - out of state

BROWN.

2-1182



Student loan

Scott Stirling

492 - Part time

0959 Undergrad loan

3/49

Daniel, ERMG

Part time student

Dean. →

SUGAR, PAUL

- Connie Simpson, SITKA Com. Assoc. - TRIBAL

reportant -

1500/yr average funding / other BTA grants

410 Phil Slattery

SITKA

Keep pushing to get students to Consume

yes on PT

416 John Herring

419 Anthony Leonardo - JMS

TUD - loan -

300

250 / yr.

Paula Escal

492 yr

Pro. Counselors Assoc.

Ken KIRK

Atte. (Knd. Assoc.)

Position

683

Wright Team - 5 yrs 070

2/12/82

Larry Smith -

699 - Couage - No!

671 Parrot 15m student Housing - yes

622 - Senate " "

Jeff Kennedy -

Please pass all "doodles"  
To chr. at end of  
meeting for psychic  
analysis.

H B

497

498

COMMITTEE REPORT

HOUSE

4/14/81

FURTHER:

(5)

Date: 3/12/81

Mr. Speaker:

The Committee on HEALTH, EDUCATION & SOCIAL SERVICES has had HB 49

"An Act relating to bearing children and the parent child relationship; and providing for an effective date."

under consideration and reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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CHAIRMAN

COMMITTEE REPORT

HOUSE

3/20/82

FURTHER:

(5)

3/19/82

Date: \_\_\_\_\_

(Taken from Rules & returned)

Mr. Speaker:

HEALTH, EDUCATION &  
SOCIAL SERVICES

The Committee on \_\_\_\_\_

has had \_\_\_\_\_

HB 498

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title
- and recommends \_\_\_\_\_  new title
- AND attaches a "Letter of Intent"  <sup>3 new</sup> NEW Fiscal Note
- reports it back without recommendation *attached*
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

*[Signature]*  
 \_\_\_\_\_  
*[Signature]*  
 \_\_\_\_\_  
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 \_\_\_\_\_  
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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

*[Signature]*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*[Signature]*  
 \_\_\_\_\_  
 CHAIRMAN



COMMITTEE REPORT

HOUSE

3/20/82

(5)

FURTHER:

(Taken from Rules & returned) Date: 3/23/82  
3/19/82

Mr. Speaker: HEALTH, EDUCATION &  
SOCIAL SERVICES

The Committee on \_\_\_\_\_ has had HB 497

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title
- and recommends \_\_\_\_\_  new title
- AND attaches a "Letter of Intent"  <sup>3000</sup> Fiscal Note
- reports it back without recommendation *attached*
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

\_\_\_\_\_

\_\_\_\_\_

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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

*Malone - No Rec.*

\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

CHAIRMAN

# ALASKA STATE LEGISLATURE - HOUSE OF REPRESENTATIVES

IN SESSION:

POUCH V  
JUNEAU, ALASKA 99811  
TELEPHONE: (907) 465-4948

SUITE 1, 1020 "I" STREET  
ANCHORAGE, ALASKA 99501  
TELEPHONE: (907) 277-6219

REP. M. F. "MIKE" BEIRNE  
DISTRICT 7, ANCHORAGE

MEMBER OF:  
FIFTH STATE LEGISLATURE  
NINTH STATE LEGISLATURE  
TENTH STATE LEGISLATURE  
ELEVENTH STATE LEGISLATURE

April 13, 1981

COMMITTEES:  
HEALTH  
EDUCATION AND  
SOCIAL SERVICES  
COMMITTEE FOR REVIEW  
OF REGULATIONS

## PRESS RELEASE

Today I introduced 2 bills relating to the bearing and adoption of children and surrogate parenting.

The first piece of legislation, House Bill 497, would amend Alaska's adoption statutes and change the present section on relinquishment and termination of parental rights.

Ever since the 1973 Supreme Court decision which legalized abortion, the annual number of abortions performed in the United States has risen from 744,600 to 1.5 million. In fact, abortions last year terminated one-third of all pregnancies in the nation. While I am not against abortion in all cases, I am definitely opposed to it becoming just another method of birth control.

One of the major effects of this rise in abortion has been the steep decline in the number of children available for adoption. In our state, the average waiting period for adopting a child is now about 8 years.

It is for this reason that I have introduced HB 497. The bill would give the woman an alternative to abortion, thereby deterring them and encouraging the birth of wanted children.

The bill itself, addresses the issue of compensation to the mother of the child being adopted. Presently, there is nothing in the law which covers this point.

HB 497 states that relinquishment and termination of parental rights may be conditioned upon payment of agreed-upon compensation for the mother's time and services in carrying the child to term.

For example, you have a woman who is pregnant and does not want the child. She can either give birth to the child and keep it, give it up for adoption or have an abortion. In each case, she must pay for all the costs involved in the pregnancy or termination. Assuming she has no religious or moral conviction against abortion, she would most likely terminate the pregnancy because it involves the least expense and responsibility.

With this bill you give the woman another alternative. By working with her doctor or appropriate agency they could find a childless couple wanting to adopt a child. A contract is drawn up which stipulates that the couple will pay the mother an agreed-upon sum to cover all costs associated with the pregnancy. In return, the mother will upon birth, give up all rights to the child. From there, regular adoption proceedings take place and both parties are satisfied. Of special importance is the fact that the child is placed in a home where it will be both loved and wanted.

The second piece of legislation, House Bill 498, amends the present chapter on "Children Conceived by Artificial Insemination" by the addition of a new section which would legalize the concept known as surrogate parenting.

It is contingent upon passage of HB 497 and has somewhat the same intent. Again, it seeks to ease the shortage of children available for adoption in Alaska which has deprived many couples from the joys of raising children.

While this situation is especially hard for the married couple in which the woman is sterile, the bill would allow any single male who wants to raise a child on his own the same right.

Any woman could enter into a contract with another man other than her husband, for the purposes of bearing him a child. Upon birth of the child, the woman relinquishes and terminates all parental rights to the child. The man is considered for all purposes the natural and legitimate father of the child.

The contract would include the requirement that the child be conceived by artificial insemination. In addition, it would stipulate the amount of compensation the surrogate mother is to receive for her time and services. As is the case with all legal contracts, any other conditions agreed to by both parties would be clearly spelled out in the agreement.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 25, 1982

SUBJECT: Adoption and other issues  
(HCS CSSB 399)

TO: Representative Michael F. Beirne  
Chairman, House Health, Education  
and Social Services Committee

FROM: Richard A. Bradley   
Legislative Counsel

I have combined the bill as requested.

The revisor has suggested that the bill has no single subject and that the single subject is not expressed in the title. Article II, Sec. 13, Alaska Constitution.

The suggestion may be valid. The Supreme Court has been relatively generous on the question of the disparity of topics that may be included in a bill without violating the rule. In my view, the bill is clearly on the outer edges of the rule.

RAB:ljb

Enclosure

11-19-81

2:30 - 3:30 MAJOR LEGAL ISSUES

William W. Handel, Attorney at Law, was born in Sao Paulo, Brazil. He immigrated to the United States in 1957. He attended Simon Fraser University in Vancouver, British Columbia and received his Bachelor of Arts degree from California State University Northridge. He received his Juris Doctor from Whittier College School of Law. He is a partner in the law firm of Sherwyn, Handel & Associates.

Bernard A. Sherwyn, Attorney at Law, was born in Los Angeles, California. He received his Bachelor of Arts degree from California State University Northridge and his Juris Doctor from Glendale University College of Law. He served on the editorial staff of the Glendale Law Review and authored a published case note on psycho/legal issues. He is a partner in the law firm of Sherwyn, Handel & Associates.

Both William W. Handel and Bernard A. Sherwyn have investigated and reported on legal aspects of surrogate parenting at the request of the California State Bar, Committee on Adoptions. They are currently authoring an article on bioethics for the American Trial Lawyers Association's magazine "Trial." They are testifying as expert witnesses on surrogate parenting before the Alaska State House of Representatives Legislative Committee this November 19.

NOTES:



Official Business

# Alaska State Legislature

## House of Representatives

### Committee on

### Health, Education & Social Services

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### SECTIONAL ANALYSIS

HOUSE BILL 497: An Act relating to bearing and adoption of children

#### Section 1 PURPOSE

To provide the financial resources to allow a pregnant woman to carry a child through pregnancy, thereby encouraging the birth of wanted children and deterring abortions.

#### Section 2 AS 20.15.090 Adoption Statutes

In all adoption cases, the person(s) initiating the adoption must report to the court, a full accounting of all expenses he and/or she incurred in the proceeding. This bill would add to that section, "any compensation or expenses paid to the mother".

#### Section 3 AS 20.15.180 Relinquishment and termination of parent and child relationships.

This is the key section of the bill. It addresses the issue of compensation to the natural mother of the child which is being adopted. Presently, there is nothing in the law which covers this point.

The bill provides that relinquishment and termination of parental rights may be conditioned upon payment of agreed-upon compensation for the mother's time and services in carrying the child to term. Therefore, a woman who is currently pregnant may contract with another party for a mutually agreeable sum which will be paid to her upon birth of the child and her relinquishment of all parental rights to that child.

Unlike the companion piece of legislation, House Bill 498, this bill is primarily for the benefit of those women who are already pregnant yet do not want to have the baby. Current social and economic realities would indicate that the woman would probably have an abortion rather than carry the child to term. HB 497 would provide another alternative, allowing the natural mother to receive compensation for her time, services and related medical expenses. In exchange she would have to give up all rights to the child upon birth thereby allowing the other contracting party to adopt the child.



Official Business

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## House of Representatives

Committee on

Health, Education & Social Services

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# Alaska State Legislature

## House of Representatives

### Committee on

### Health, Education & Social Services

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### SECTIONAL ANALYSIS

HOUSE BILL 498: An act relating to bearing children and the parent child relationship.

#### Section 1 AS 20.20.020 Conception by Agreement

The present chapter on "Children Conceived by Artificial Insemination" is amended by the addition of a new section which would legalize the concept known as surrogate parenting.

Under the provisions of this bill, any woman could enter into a contract with another man other than her husband, for the purposes of bearing him a child. Upon birth of the child, the woman relinquishes and terminates all parental rights to the child. The man is recognized by law as the natural and legitimate father of the child.

The contract would include the requirement that the child be conceived by artificial insemination. In addition, it would stipulate the amount of compensation the surrogate mother is to receive for her time and services. As is the case with all legal contracts, any other conditions agreed to by both parties would be clearly spelled out in the agreement.

#### Section 2

This act is dependent upon passage of House Bill 497 which provides the enabling language.



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#### Section 2

This act is dependent upon passage of House Bill 497 which provides the enabling language.

## Sectional Analysis

House Bill 497: An Act relating to bearing and adoption of children

### Section 1 Purpose

With the increasing number of abortions, it has become in some cases, just another method of birth control. The widespread availability of abortion has also resulted in a shortage of children available for adoption. This act addresses both those issues by deterring abortions and encouraging the birth of wanted children.

### Section 2 AS 20.15.090 Adoption statutes

In all adoption cases, the person initiating the adoption must report to the court, a full accounting of all expenses he or she incurred in the proceeding. This bill would add to that section, "any compensation or expenses paid to the mother."

### Section 3 AS 20.15.180- Relinquishment and termination of parent and child relationships.

This is the key section of the bill. It addresses the issue of compensation to the mother of the child that is being adopted. Presently, there is nothing in the law which covers this point.

The bill provides that relinquishment and termination of parental rights may be conditioned upon payment of agreed-upon compensation for the mother's time and services in carrying the child to term.

For example, you have a woman who is pregnant and does not want the child. She can either give birth to the child and keep it, give it up for adoption or have an abortion. In each case, she must pay for all the costs involved in the pregnancy or termination. Assuming she has no religious or moral conviction against abortion, she would most likely terminate the pregnancy because it involves the least expense and responsibility.

With this bill you give the woman a other alternative. By working with her doctor or appropriate agency they could find a childless couple wanting to adopt a child. A contract is drawn up which stipulates that the couple will pay the mother an agreed-upon sum to cover all costs associated with the pregnancy. In return the mother will upon birth, give up all rights to the child. From there, regular adoption proceedings take place and both parties have what they want. Of special importance is that the child is placed in a home where it will be both loved and wanted.

## Sectional Analysis

House Bill 498: An Act relating to bearing children and the parent child relationship; and providing for an effective date

### Section 1 AS 20.20.020- Conception by Agreement

The present chapter on "Children Conceived by Artificial Insemination" is amended by the addition of a new section which would legalize the concept known as surrogate parenting.

There currently exists a nationwide shortage of children available for adoption. This deprives many people who are unable to conceive a child from the joys of raising children. While the situation is especially hard for the married couple in which the woman is sterile, the bill would allow any single male who wants to raise a child on his own, the same right.

Under the provisions of this bill, any woman could enter into a contract with another man other than her husband, for the purposes of bearing him a child. Upon birth of the child, the woman relinquishes and terminates all parental rights to the child. The man is considered for all purposes the natural and legitimate father of the child.

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### Section 2

This act is dependent upon passage of House Bill 497 which provides the enabling language.

Dear Rep. Beirne

Regarding House Bill 497, first off, I thank you for the compliment of being asked what I thought about it. There is a Right to Life meeting tonight (4/29) to which I shall take the copy you sent me for other members to look at.

I suppose I should start this by telling you where I stand in reference to the rest of the pro-life movement. I am extremely left/liberal as well as pro-life. The movement itself is no more conservative than society as a whole. I just wanted to tell you that I think I am in a minority of society as a whole, thus of pro-life also.

I would not oppose this bill. I didn't say I would support it. Translated, I had the choice of either doing this or something else, I'd do something else. If the choice were (as it is) doing this or nothing, I'd do this. Someone might choose adoption over abortion if paid and for that one child I'd support this.

First off, the bill has a large loophole. It does not prohibit a pregnancy from being started for pay. Your ideal situation is a woman who is already pregnant. Theoretically, I could arrange to bear someone else a child (with or without the adoptive father's genetic contribution) for pay. You have there surrogate motherhood, a different issue altogether. You might include in this bill a provision that any contract not predate the time of conception.

Secondly, the idea of encouraging the birth of wanted children sets my teeth on edge. Any mention of wantedness in children sets my teeth on edge. It lends credence to the idea that a "Wanted" child is somehow a better quality child than one "unwanted". The children are no different and defining the worth of children in terms of how much some other person wants them is how we got into this mess. I would very much suggest that the purpose read "The purpose of this act is to provide" and so on, striking the entire clause dealing with "wanted" children. The concept is an obscenity.

Thirdly, abortion is not "just another method of birth control" in only some cases. It seems from reading only this that you have the common view of abortion as a last resort when actually abortion is usually just another

method of birth control. In fact it's called a contraceptive back-up meaning that it is used as a birth control method that supplements ~~xxxx~~ other birth control methods. (Like the standard contraceptive method that combines a condom with a spermicidal foam, the foam being the condom back-up) I believe <sup>Dep.</sup> Terry Martin will confirm that the typical Alaskan abortion is not a teen-age or an ailing woman, but is a healthy young woman (white) in her 20's aborting first child. The typical abortion patient is one who dials the o.b. as soon as she finds out she's pregnant. She not only does not want the child she does not want the pregnancy either. ~~XXXXXXXXXXXX~~ You are dealing with people who don't want inconvenience (by and large) and the pregnancy will be no less inconvenient whether she keeps her baby after birth or adopts it out. I'm just saying you should not expect many women to take advantage of your bill.

Fourthly, you might conduct some surveys of attitudes toward adopting out. I have seen evidence that the same women who would abort a child before birth would never adopt it out after; in fact one of their prime reasons for wanting an abortion is that they would want to keep the child if it were born, so since they don't want a baby they get rid of it before then.

In sum, I don't have much hope the bill will do what you expect of it, but it might in some cases so I won't oppose it. Thank you again for asking.

*Pam Stegfried*  
Pam Stegfried  
1200 W. Dimond sq 603  
Anchorage AK 99502  
tel 349-2645

*almost always*

**I. REQUEST**

Bill/Resolution No. HOUSE BILL NO. 497  
 Title "An Act relating to bearing and adoption of children."  
 Requested by \_\_\_\_\_ Date \_\_\_\_\_

**II. FISCAL DETAIL**

Agency Affected Department of Health and Social Services  
 Program Category Affected \_\_\_\_\_  
 BRU, Program, or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

**III. ANALYSIS** (See Fiscal Note Preparation Instructions, Section III)

House Bill No. 497 has no Fiscal impact on the Department of Health and Social Services.

**IV. DATE**

4/24/81

PREPARED BY J. R. Pugh John R. Pugh, Director  
 AGENCY Division of Family and Youth Services  
 PHONE 465-7170

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

M&B Approval

[Signature] Date 4/24/81

**I. REQUEST**

Bill/Resolution No. HOUSE BILL NO. 498  
 Title "An Act relating to bearing children & the parent child relationship; & providing..."  
 Requested by \_\_\_\_\_ Date \_\_\_\_\_

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100 PERSONAL SERVICES						
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300 CONTRACTUAL						
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500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

**III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)**

House Bill No. 498 has no Fiscal impact on the Department of Health and Social Services.

IV. DATE 4/24/81 PREPARED BY John R. Pugh John R. Pugh, Director  
 AGENCY Division of Family and Youth Services  
 PHONE 465-6770

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named) M&B Approval U.S. ... Date 4/24/81



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

February 20, 1981

TO: Representative Mike Beirne  
FROM: Christine Johnson  
Research Staff *Johnson*  
SUBJECT: Research Request No. 81-45  
Adoptions

Attached please find the statistics you requested regarding adoptions. You also asked that we identify 1) the agencies which handle adoptions; and 2) the qualifications of adoptive parents.

Adoption Agencies

There are currently five groups in Alaska who place children with adoptive parents:

State Department of Health and Social Services: The Department of Health and Social Services arranges adoptions of abused and neglected children whose parents have relinquished custody of them. These are usually older children. The Department estimates that approximately 30 children are placed each year;

Catholic Social Services (Anchorage);

Fairbanks Counseling and Adoptive Parents;

Washington Association of Christian Adoptive Parents: WACAP places children from other states and countries with Alaskan parents;

Private attorneys and doctors.

State law requires that all placement agencies and individuals who arrange adoptions on a regular basis be regulated by the Department of Health and Social Services. The Department has only recently begun developing any regulations, however. John Pugh of the Department explained that there has been no need for regulations as Catholic Social Services has been the only placement agency operating in the state until very recently, and the Department has had an informal agreement with them regarding adoption standards.

Representative Mike Beirne  
February 20, 1981  
Page 2

Qualifications of Adoptive Parents

AS 25.15.20 (attached) specifies who may adopt children. As you'll note, however, these are very general provisions. The regulations being prepared by the Department of Health and Social Services will include more specific requirements regarding adoptive parents' qualifications.

We have enclosed a copy of standards for parents currently being used by the Department when placing abused or neglected children. According to the Department, each of the agencies listed above has its own requirements for qualification. We will request a copy of these, and forward them to you when they arrive.

If we can provide further information, please let us know.

CJ/cj

TABLE 1  
Number of Adoptions  
1975 -1979

1700/yr.

1975	1976	1977	1978	1979	All Years
649	702	727	671	631	3,380

Source: Alaska Department of Health and Social Services

TABLE 2  
Adoptions By Race of Child  
1977 - 1979

	1977		1978		1979		All Years	
White	482	66%	433	65%	381	60%	1296	64%
Native	145	20%	141	21%	144	23%	430	21%
Black	12	2%	18	3%	29	5%	59	3%
Other	22	3%	16	2%	22	3%	60	3%
Not Stated	66	9%	63	9%	55	9%	184	9%
Total	727	100%	671	100%	631	100%	2029	100%

Source: Alaska Department of Health and Social Services

TABLE 3  
Adoptions By Age of Child  
1977 - 1979

	1977		1978		1979		All Years	
Under 1 Year	92	13%	119	18%	90	14%	301	15%
1 - 4 Years	160	22%	149	22%	144	23%	453	22%
5 - 9 Years	240	33%	207	31%	192	31%	645	32%
10 - 14 Years	157	21%	139	21%	133	21%	429	21%
15 - 19 Years	62	9%	47	7%	50	8%	159	8%
20 - 24 Years	11	2%	3	.5%	9	2%	23	1%
25 - 29 Years	1	-	2	-	1	-	4	.2%
29+ Years	3	-	3	.5%	4	1%	10	.5%
Not Stated	1	-	2	-	2	-	5	.3%
<b>Total</b>	<b>727</b>	<b>100%</b>	<b>671</b>	<b>100%</b>	<b>631</b>	<b>100%</b>	<b>2029</b>	<b>100%</b>

Source: Alaska Department of Health and Social Services



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-1991

March 24, 1981

MEMORANDUM

TO: Representative Michael Beirne

FROM: Betty Barton **BB**  
Research Staff

RE: Surrogate Parenting  
Research Request No. 81-56

You have asked for information regarding surrogate parenting, specifically the nature of programs in other states and the experiences these states have had in assessing the legality of this new concept. In the course of our research, we have learned that although arrangements for surrogate parenting presumably are being made throughout the nation, it is only in Kentucky and Michigan that the procedure is being conducted openly through legal contracts on a fee-for-service basis. Consequently, to obtain our findings, we have contacted the staff and counsel for Surrogate Parenting Associates, Inc. in Louisville, Kentucky and Surrogate Family Services, in Dearborn, Michigan.

Approximately 15 percent of the nation's general population encounters fertility problems. In recent years, the practice of artificial insemination has emerged as an alternative for couples where the male is infertile. The concept of surrogate parenting responds to the infertility problems of the female member of the couple. In surrogate parenting, a childless couple where the woman is infertile is matched with a woman who agrees to carry and give birth to a child for the infertile couple. The surrogate is artificially inseminated by the sperm of the infertile woman's husband, who thereby becomes the biological father of the child.

SURROGATE PARENTING IN KENTUCKY

Dr. Richard Levin, a reproductive endocrinologist in Louisville, Kentucky, has been involved with the concept of surrogate parenting since Mar. 1979, when a couple purportedly approached him asking whether or not someone could be found to bear the husband's child. Attorneys researched Kentucky law for Dr. Levin and determined that the procedure would be lawful under existing statutes. An advertisement for a surrogate mother was placed in the personal

Representative Michael Beirne

March 24, 1981

Page 2

column of a local newspaper; it generated a wave of publicity and, in turn, resulted in a number of additional interested clients for Dr. Levin. In August 1979, Dr. Levin and Katie Brophy, a local attorney who had undertaken the original legal research on the concept, formed Surrogate Parenting Associates, Inc.

The operation of the program is based on a carefully drafted model that establishes physical standards for both the surrogate mother and the father.<sup>1</sup> A contract is written between the surrogate and the natural father. The non-biological mother's name does not appear in the contract or in any other documentation regarding the procedure; the significance of this is addressed later. Further, the surrogate is required to undergo a series of psychiatric and psychological tests to determine her motivations for becoming a surrogate. A computerized system is employed for the preliminary selection of the surrogate who is matched with the non-biological mother for hair coloring, eye color, and complexion. Paternity is determined by a series of blood tests given to the surrogate mother's child and father. Fees are negotiable, beginning at a base level of \$15,000 which includes attorneys' fees and pregnancy-related expenses (including the surrogate's travel to Kentucky for the purpose of insemination, psychiatric and medical examination, and delivery). Additionally, the fee covers the cost of life insurance for the mother and the child and indemnification for any amount of child support the natural father may be required to pay in the event of future custody litigation between the father and the surrogate.

Additional contractual provisions are designed to alleviate the potential for legal complications. These include a provision whereby the surrogate program provides a second surrogate for the father in the event that the surrogate fails to conceive after twelve monthly inseminations. In an effort to further safeguard the process, the surrogate's fee is placed in escrow until the child is released to the couple.

Since 1979, several hundred persons have reportedly contacted Surrogate Parenting Associates, Inc. Of these, most are from out-of-state and a number are foreigners. There are currently thirteen couples attending the monthly meetings of the organization. According to Karen Vena, an assistant to Dr. Levin, participation in the program is experiencing a moderate upswing because interested parties are

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<sup>1</sup> The model program is outlined in Attachment A: "Emerging Legal Issues - Legal and Personal Problems of Surrogate Parenting," Brandeis Brief Series, Katie Brophy.

apprehensive that the practice will be ruled unlawful in the near future. The legality of the practice depends on how existing Kentucky statutes are interpreted.

Kentucky law (KRS 199.620, see Attachment B) provides for the voluntary termination of parental rights. Conceivably, under the law, a surrogate mother could terminate her rights to her child. Through the court hearing process, the judge would terminate the surrogate's rights and also would presumably charge the natural father with the custody of the child. At a later date, the step-mother of the child could initiate formal adoption proceedings.

Kentucky law also (KRS 199.590) prohibits the charging of fees "for the procurement of any child for adoption purposes." Dr. Levin and his associates regard themselves to be operating under the purview of this law. They argue that: 1) No money changes hands until the termination of the surrogate's parental rights; 2) The exchange of money occurs between the surrogate and the father; 3) It is the step-mother who initiates formal adoption measures and she has exchanged child-related money with no one. Consequently, because the natural father is not compensating the surrogate mother for adoption purposes, Surrogate Parenting Associates, Inc. regards its program to be in conformance with the law.

Steven L. Beshear, the Kentucky Attorney General, disagrees. In a January 26, 1981 opinion, Mr. Beshear wrote:

It is the opinion of this office that this statute precludes not only the surrogate mother from receiving payments for giving up her child for adoption but also includes all who are involved in the surrogate transaction, since each of them is 'involved in the procurement of a child for adoption purposes.' As pointed out in Petrilli, Section 29.6, 'It is...clear legislative policy that no one shall profit economically from the adoption process..' Even though there is not a statutory equivalent to KRS 199.590(2) for termination of parental rights, there is the same public policy issue.<sup>2</sup> (See Attachment C - Attorney General's Opinion Regarding Surrogate Parenting in Kentucky.)

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<sup>2</sup> Ralph Petrilli, a professor in family law who was cited in the Attorney General's Opinion, commented on the Kentucky law's ambiguity in a January 1981 article in the Courier-Journal, a Louisville newspaper. "I think it's quite possible to interpret those statutes as not being surrogate mothering. They're aimed at an evil, but I'm not sure that evil they're aimed at is a surrogate mothering kind of thing," Mr. Petrilli stated.

Representative Michael Beirne

March 24, 1981

Page 4

Mr. Beshear, on behalf of the state, has filed a civil suit on the question. No date has been set for the case. As Kentucky operates with a biennial legislature, no legislation regarding this subject would be introduced until January 1982.

#### SURROGATE PARENTING IN MICHIGAN

Noel Keane, a private attorney in Dearborn, Michigan, has been arranging formal agreements for surrogate parenting since 1976. According to the attorney's clerk, Herb Brail, Mr. Keane has completed twelve such agreements within the past five years, and an additional twelve cases are currently in progress. In 1979, Katie Brophy left her work with Surrogate Parenting Associates, Inc. to assist Noel Keane in the formation of Surrogate Family Services.

Under Mr. Keane's program surrogate mothers are selected solely from the Detroit-area so that they may be in close proximity to the medical facilities utilized by the program. All surrogates are screened in advance, which includes psychological testing. Initially, surrogate mothers engaged by the office received no fees for their services. According to Herb Brail, voluntary surrogates commonly were motivated by a general sense of altruism or by a personal friendship with the childless couple. Mr. Brail described the profile of the voluntary surrogate as a single woman in her mid-thirties desirous of experiencing childbirth but not wanting the economic and/or social ties of motherhood.

Today, surrogate mothers in Detroit expect a fee, a fact which Mr. Brail attributes to increased publicity on the subject. The current rate is \$10,000 plus maternity expenses, such as medical expenses and clothing; this results in a total cost of between \$15,000 and \$17,000. Mr. Brail has noted that the characteristics of the surrogate mother are changing. Unlike the voluntary surrogate, today's paid surrogate routinely is married, has between 2 and 3 children, and professes to enjoy pregnancy but recognizes the economic impact of rearing another child. Additionally, the fee-for-service surrogate seems somewhat motivated by finding a new way of obtaining additional income for her family.

As is the case in Kentucky, a formal contract is drawn up between the surrogate mother and the natural father. (A copy of their standard contract is being mailed to our office and will be transmitted to you as soon as it arrives.) In general, however, Mr. Keane's services are provided in a less structured manner than those of Dr. Levin in Kentucky. Where Dr. Levin relies on computerized data processing

for matching couples with the surrogate mother and prohibits contact between the surrogate and the couple, Mr. Keane selects a surrogate without a computer and encourages meetings among the three persons.<sup>3</sup>

Of his twelve completed cases, Mr. Keane has encountered no legal complications among the contractual parties. However, a case is currently being litigated in the California Superior Courts. A surrogate mother, Denise Lucy Thrane, in the final days of pregnancy, no longer wishes to relinquish the child to the couple. At this time, there are no known legal precedents on the subject. According to Mr. Brail, any surrogate parenting agreement may have the potential for contractual disagreements of this nature. Because of this, he believes that state regulation could act as an important stabilizing force. According to Mr. Brail, Representative Richard Fitzpatrick, of the Michigan House of Representatives, has approached Keane's office for suggestions regarding state regulation of surrogates.<sup>4</sup> Among other considerations, Mr. Keane will be advocating the development of legislation that would authorize the practice of surrogate parenting.

Under existing Michigan child custody and adoption law, surrogate parenting is unlawful because of a prohibition against the payment of fees for child procurement (See Attachment D: Michigan Compiled Laws Annotated 710.54.). Michigan law requires that an adoption procedure include a report of any income or expenditures made in relationship to the adoption. This provision is standard in state adoption codes as a protective measure to prevent child procurement. However, according to Mr. Brail, eight states (including Alaska) have exemptions where a report of expenditures is not required where the petitioner is a step-parent whose spouse is a natural parent of the child.<sup>5</sup> Mr. Keane's office believes that this provision allows for the fee structure implicit in current surrogate parenting arrangements. Consequently, Mr. Keane would like to see similar exemptions from reporting requirements enacted in Michigan.

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<sup>3</sup> As the surrogate's name will appear on the child's birth certificate, Mr. Keane views any attempts to insure anonymity to be pointless. Further, he feels that a basic familiarity may satisfy an individual's fundamental curiosity and thus, may safeguard the agreement by allaying apprehensions regarding the appearance and personality make-up of the other contractual participants.

<sup>4</sup> Mr. Brail is mailing us a copy of the materials submitted to Representative Fitzpatrick.

<sup>5</sup> Alaska's statutory exemption is found in AS 20.15.090(b) (see Attachment E). Other states with similar provisions include Arizona, California, Florida, Iowa, Nevada, and North Dakota.

Representative Michael Beirne  
March 24, 1981  
Page 6

Mr. Keane has challenged Michigan's payment-of-fees prohibition as a violation of constitutional rights of privacy. The Wayne County Circuit Court upheld the state statute in the case, known as Doe v. Kelley.<sup>6</sup> Mr. Keane appealed the case to the Michigan Court of Appeals and a decision is anticipated within the next 3 to 6 months. According to Mr. Brail, the denial of the challenge at the trial court level was anticipated by Mr. Keane. Mr. Brail commented that: "It's too big an issue. It's presumable that the question won't be examined until it reaches the Michigan Supreme Court, which would mean we are still several years away from a decision." Because of this, Mr. Keane prefers the development of legislation. Mr. Brail has offered to keep us apprised of any bills introduced along these lines in the Michigan legislature.

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We will be happy to perform additional research on this topic. If we can be of any further assistance, please do not hesitate to call on us.

B/bf

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<sup>6</sup> Mr. Brail is mailing a copy of the circuit court opinion to our office. We will forward it to your office on arrival.



Official Business

# Alaska State Legislature

## House of Representatives

Committee on

Health, Education & Social Services

Pouch V  
State Capitol  
Juneau, Alaska 99811

February 26, 1982

TO: MIKE

FROM: JODY

SUBJECT: Michigan surrogate mother's legislation (Bill introduced in the House (#5184) and currently in Committee)

This bill was introduced October 26, 1981, and is currently in the Michigan House Judiciary Committee. It amends the adoption section of the Michigan Statutes to legalize surrogate parenting. A male, at least 18, may contract with a female, who has also attained the age of 18, for artificial insemination with the semen of the natural father. If she conceives and bears a child, she agrees to voluntarily relinquish her parental rights. A "petition for surrogate adoption" is provided for, whereby the natural father and his spouse may adopt the child. A full investigation then proceeds determining the fitness of the couple to adopt. The Probate Court then reviews the report and makes the final determination.

Other relevant features:

1. Upon verification of the surrogate's pregnancy, the natural father and surrogate mother shall file an acknowledgement in court that the child to be born to the surrogate is the natural father's.

2. Before the child's birth, consent to the relinquishment of the parental rights by the surrogate mother shall be executed by the surrogate and her spouse, if any.

3. After the 6th month of pregnancy, the judge issues an interim order granting custody of the child to the natural father (effective on birth). Fourteen days after birth, Probate court shall enter an order terminating parental rights of the surrogate mother.

4. Mandatory terms for the surrogate mother contract are laid out quite explicitly in this bill.

5. Surrogate mother is paid by depositing the \$ in escrow upon execution of the surrogate parenting agreement. Expenses incurred during pregnancy are to be compensated. The maximum fee to a surrogate mother shall be \$10,000.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

February 9, 1979

MEMORANDUM

SUBJECT: Contractual Procreation Bill

TO: Bill Berrier  
Director of Legal Services

FROM: Sharman Haley and Deborah Behr *DB SH*  
Policy Analysts

Issues Surrounding Contractual Procreation

I. Considerations prior to Contract or Conception

A. Contractual Mother

1. genetic screening of mother for hereditary disease or defects?
2. discrimination on basis of race, religion, handicap, age, sexual orientation?
3. married women's right to contract? (adultery?)
  - (a) husband assumed to be father of child born to wife--paternity rights?
4. can a woman legally give up rights to a child that is not born or conceived yet?
5. mental health counseling/screening?

B. Purchaser of Service

1. fitness as a parent?
  - (a) moral character, mental or physical health
  - (b) couples or singles' straight or gay?
  - (c) any limit on number of outstanding contracts?

- C. Sperm Donor (whether or not the same as purchaser)
  - 1. genetic screening for hereditary disease or defects?
  - 2. discrimination on basis of race, religion, handicap, age, sexual orientation?
  - 3. married man's right to donate? (adultery?)
  - 4. maternity rights?

D. Intercourse or Artificial Insemination?

- 1. is there a legal difference in status? prostitution?
- 2. may be emotional implications
- 3. may be cost implications

II. Considerations During Pregnancy

- 1. can a woman give up her right to abortion?
  - a) is this desirable?
  - b) under what circumstances?
- 2. negligence with respect to fetus
  - a) restrictions on activity, diet, drugs, etc?
  - b) monitoring? enforcement?
- 3. who chooses gynecologist or obstetrician?

III. Considerations at and following Birth

- 1. who chooses birth procedure?
  - a) does purchaser have the right to be present or participate?
- 2. can woman cancel contract and keep the child?
- 3. could contract include nursing or other infant care?
- 4. post-natal care of mother?
- 5. must purchaser accept defective goods?
  - a) congenital pathologies
  - b) what if due to negligence of mother?

6. what if the child does not live?
7. who is recorded mother and father on birth certificate?  
("illegitimate"?)
8. must purchaser adopt the child?
  - a) court determination of fitness of parent?
  - b) what if determined to be unfit?
9. who retains what parental rights--inheritance, survivor's benefits, visitation rights, support obligations?
  - a) mother?
  - b) mother's spouse?
  - c) purchaser?
  - d) purchaser's spouse?
  - e) donor?
  - f) donor's spouse?
10. what if the purchaser doesn't want the child?

#### IV. Compensation

1. how do you define pregnancy related costs? (dental care? all medical care? maternity clothes?)
2. is there any compensation for an uncompleted contract which does not result in a live child?
3. who pays for abortion?
4. is the mother entitled to
  - a) worker's compensation?
  - b) unemployment insurance?
  - c) social security?
5. is there up front money to cover costs of maternity clothes, etc.?
6. what if the purchaser dies or skips out? adoption; welfare

#### V. Social and Legal Implications

1. is any state regulation desirable?
  - a) screening of parents
  - b) regulating or monitoring contracts

2. physician's right to refuse service
3. privacy and anonymity of donor & mother
4. article XIV, U.S. Constitution "right to life, liberty and pursuit of happiness" certain rights may not be abridged even by contract
5. potential for baby brokerage, "white slavery"
6. implications for Medicaid? Welfare?
7. each donor used only once to maintain genetic diversity?
8. desirable social policy? Cooperation of courts?

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE BILL NO. 497  
 Title "An Act relating to hearing and adoption of children."  
 Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services  
 Program Category Affected \_\_\_\_\_  
 BRU, Program, or Subprogram(s) Affected \_\_\_\_\_

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

House Bill No. 497 has no fiscal impact on the Department of Health and Social Services.

IV. DATE 4/24/81 PREPARED BY JR Pugh John R. Pugh, Director  
 AGENCY Division of Family and Youth Services  
 PHONE 465-1170

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

M&B Approval [Signature] Date 4/24/81

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE BILL NO. 498  
 Title "An Act relating to bearing children & the parent child relationship; & providing..."  
 Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services  
 Program Category Affected \_\_\_\_\_  
 BRU, Program, or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)  
EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

House Bill No. 498 has no Fiscal impact on the Department of Health and Social Services.

IV. DATE

4/24/81

PREPARED BY John R. Pugh, Director  
 AGENCY Division of Family and Youth Services  
 PHONE 465-6770

Original: Legislative Finance  
 cc: Budget and Management

Prime Sponsor (List Legislator Name) M&B Approval 11.3.81 Date 4/24/81

STATE OF ALASKA  
THE LEGISLATURE

POUCH • STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 25, 1982

SUBJECT: Adoption and other issues  
(HCS CSSB 399)

TO: Representative Michael F. Beirne  
Chairman, House Health, Education  
and Social Services Committee

FROM: Richard A. Bradley   
Legislative Counsel

I have combined the bill as requested.

The revisor has suggested that the bill has no single subject and that the single subject is not expressed in the title. Article II, Sec. 13, Alaska Constitution.

The suggestion may be valid. The Supreme Court has been relatively generous on the question of the disparity of topics that may be included in a bill without violating the rule. In my view, the bill is clearly on the outer edges of the rule.

RAB:ljb

Enclosure

**The Surrogate Parent Foundation, Inc.**, a California non-profit organization, has been established to gather and disseminate current and accurate information on the many aspects of surrogate parenting. These include sociological, moral, religious, ethical, psychological, medical, and legal considerations. The Foundation also advises legislators and establishes ethical and procedural guidelines regarding new laws, protecting those involved.

### **Foundation Officers and Directors**

---

**William C. Gentry**  
President

**William W. Handel**  
Attorney at Law, Secretary

**Bernard A. Sherwyn**  
Attorney at Law, Treasurer

**William G. Karow, M.D., F.A.C.S.**

**John A. FitzRandolph, J.D.**  
Professor of Law

**Nina F. Kellog, Ph.D.**  
Psychologist

**June M. Reinisch, Ph.D.**  
Developmental Psycho Endocrinologist

Further information about surrogate parenting can be obtained by contacting:

**Surrogate Parent Foundation, Inc.**  
12435 Oxnard Street  
North Hollywood, CA 91606  
(213) 506-1804

# Surrogate Parenting

**An Alternate Method Of Child Bearing**

## "We can't cure infertility, but we can cure childlessness"

Nina Kellogg, Ph.D.

**A**pproximately one out of six couples has an infertility problem. In cases when the male is infertile, artificial insemination by a donor provides a widely acceptable alternative. But even more females are infertile, and until recently there was no similar procedure.

There are no longer enough children available through adoption. The largest public adoption agencies have a five to seven year waiting list, and private adoption likewise cannot meet the need. The shortage of adoptable children has become critical for various reasons.

- The wide use of contraceptives
- Abortions—close to 2 million are performed each year
- Unwed mothers keeping their babies

**W**hen all medical and adoption sources have been exhausted, these desperate couples now have another alternative. There are women (surrogates) willing to bring the gift of life to childless couples, but this alternative is not without its problems.

Presently there are no laws that apply to surrogate parenting. Many legal issues need to be resolved to protect the child, the parents, the surrogate, and others involved. Additionally, the psychological, moral, and ethical aspects must be considered along with their long term effects on the individuals and society.

Lawmakers are realizing the need to address this matter, due to increased awareness and acceptance by the public and professionals. Legislative measures are being taken to support this procedure and to establish and maintain professional and ethical standards.

**T**hroughout history, man's ingenuity has kept up with his desire to rear children even when nature failed, and Surrogate Parenting is the next logical step in that process.



### What is Surrogate Parenting?

Surrogate parenting is an alternative method of child bearing for an infertile couple when the wife is unable to bear a child. In this procedure, a woman known as the surrogate agrees to be artificially inseminated with the husband's sperm and carry the baby for the couple. The surrogate further agrees to relinquish all parental rights. The husband, being the natural father, assumes custody with his wife who then legally adopts the child.

This method of childbearing is best accomplished by teamwork of the parents, surrogate, physician, psychologist, and attorneys, each making an important contribution toward their common goal of creating a family.

**T**he notion of surrogate parenting dates back almost 4000 years. According to the Bible, Genesis chapter 16, Abraham's wife Sarah could not conceive, so she sent her husband to sleep with her Egyptian maid, Hagar, who bore Abraham's son, Ishmael for them.

**A**rtificial insemination was developed and successfully used in 1850 by Eustachius (physician to the Pope). The freezing of sperm (which can maintain its life for about 10 years) dates back to 1776, developed by an Italian priest, Lazzaro Spallanzani. Since then, over a million children have been born through artificial insemination.

11-19-81

2:30 - 3:30 MAJOR LEGAL ISSUES

William W. Handel, Attorney at Law, was born in Sao Paulo, Brazil, He immigrated to the United States in 1957. He attended Simon Fraser University in Vancouver, British Columbia and received his Bachelor of Arts degree from California State University Northridge. He received his Juris Doctor from Whittier College School of Law. He is a partner in the law firm of Sherwyn, Handel & Associates.

Bernard A. Sherwyn, Attorney at Law, was born in Los Angeles, California. He received his Bachelor of Arts degree from California State University Northridge and his Juris Doctor from Glendale University College of Law. He served on the editorial staff of the Glendale Law Review and authored a published case note on psycho/legal issues. He is a partner in the law firm of Sherwyn, Handel & Associates.

Both William W. Handel and Bernard A. Sherwyn have investigated and reported on legal aspects of surrogate parenting at the request of the California State Bar, Committee on Adoptions. They are currently authoring an article on bioethics for the American Trial Lawyers Association's magazine "Trial." They are testifying as expert witnesses on surrogate parenting before the Alaska State House of Representatives Legislative Committee this November 19.

NOTES:

# ARTIFICIAL INSEMINATION

## an accepted medical technique

Distributed by  
The American Fertility Society  
1608 Thirteenth Avenue South, Suite 101  
Birmingham, Alabama 3520



Artificial insemination is a well accepted method of treatment for the infertile couple in the U.S. and other parts of the world. This method of treatment is well known by the medical profession, however, there is very little information available to the public. This booklet has the purpose of disseminating this information to people who are interested in this procedure, nevertheless, this information should not be taken as a guide in every single case.

### Types of Artificial Insemination:

- I. Artificial insemination by a donor (another man's sperm)
  - A. Artificial insemination by a donor (another man's sperm)
  - B. Artificial insemination with the use of the sperm from the husband
- II. Use of frozen specimen
  - A. From a donor
  - B. From the husband
- III. Mixture of sperm from a donor and the husband

Strong motivation for parenthood is the prerequisite of the barren couple seeking this type of treatment, however, maturity and harmonious relationship of the couple is of utmost importance since moral, ethical and religious considerations are involved in this procedure. Therefore, a sound and thorough discussion should be carried on between the couple before deciding to take this treatment.

This procedure is a strictly confidential one between the couple and the doctor. Minimal or no records are kept by the physician and are always kept in places of no access to other people. The secrecy of artificial insemination is of extreme importance since multiple legal and psychological problems could be derived if this secrecy is not maintained. The legal aspects involved in this procedure are important to consider since there has never been a decision on the legality of artificial insemination by an appellate court, and lower court rulings lack

uniformity. However, The American Fertility Society has stated that it accepts artificial insemination as a recognized procedure.

Usually, a written agreement, which fully explains the possibilities of complications and other problems that could be related to this procedure should be signed by the couple and the doctor. This agreement should be read and fully understood by the couple before signing this document.

The moral aspects involved in artificial insemination are of course important to consider by the couple and the doctor when this treatment is entertained and of course, has multiple ramifications depending upon the moral practice of the couple considering individually both partners.

The religious aspects are also always to be weighed and should be thoroughly evaluated within the couple especially if the faith of one or both partners is clearly against artificial insemination, because this could create feelings of guilt, anxiety or depression.

#### The Donor:

Donors are carefully selected by the physician. He carefully searches the donor's background, taking a careful history to rule out hereditary diseases, constitutional diseases, chronic or current infections and any venereal diseases.

The quality and quantity of the semen is examined to be sure that it meets present standards considered in a fertile male (adequate number, motility, normal forms, etc.). Donors are selected to have an average or better than average intelligence and must match the physical characteristics of the husband.

The arrangements with the donors are kept in strict secret and extreme precautions are taken so there will be no way that the donor will be physically present or close to the office. Every precaution is taken to be sure the donor will not have any chance of meeting or relating to the patients who are being treated. No agreement is signed with the donor since it is better not to have any records which would establish relationship of paternity.

#### Medical Indications for Artificial Insemination

Medical indications for insemination are mostly associated with the husband's condition. The most common problem that affects the male partner is a very low sperm count, in which the very small cells swimming in the spermatic fluid which comes out with the ejaculation, are not enough to fecundate the ovum which is put out by the ovaries once a month. The quality of the sperm is based on several conditions, mainly dealing with:

- a) Volume: the average volume of spermatic fluid is 2 to 5 milliliters (1 milliliter equals approximately 20 drops). Sometimes very small or very large volumes of seminal fluid is related to infertility.
- b) Concentration or number of spermatozoa: the average number is 60 to 120 million per milliliter of sperm. Counts lower than 60 million could be related to infertility, however, most authorities consider that less than 20 million spermatozoa per milliliter is commonly related to infertility. Obviously, the absence of sperm is directly related to infertility.
- c) Motility: the capacity of the spermatozoa to move and to displace itself is also very important. These sperm cells have to travel from the vagina (where they are deposited through the uterine cavity (womb where the egg will grow) to the end of the fallopian tube (these tubes pick up the egg and transport it to the uterine cavity) where they meet the egg and fertilize it.
- d) Morphology (shape): this is another important condition which is to be examined in the sperm. The normal form of the sperm is usually oval. Abnormal forms, more than 40% could be related to infertility.
- e) There are other abnormalities of the sperm like increase viscosity (too thick), agglutination (clumped together), etc.

In some instances, there is even a total absence of these spermatozoa cells. This condition could be the result of congenital (at birth), or acquired (during life) problems and infections, radiation exposure, tumors, etc.

#### Description of the Type of Artificial Insemination

##### I. Use of fresh sample

This sample could be from the donor or from the husband.

##### A. Artificial Insemination by a donor

This mode of treatment is used when the husband cannot impregnate his wife because of absence of spermatozoa, or very low count, or should not because of the strong possibility of transmitting certain hereditary diseases when both partners match the genetic arrangement for that specific disease, or when there is a problem of incompatibility between the blood group of the husband and wife, for example Rh or ABO incompatibility. Another indication to use this type of artificial

insemination is when ejaculation occurs into the man's bladder (which is a backwards ejaculation called retrograde ejaculation).

B. Artificial insemination with the use of the sperm from the husband:

The husband's sperm is used for artificial insemination when it is an impossibility of the husband to deposit the semen in his wife's vagina. This impossibility could be due to impotency or inability to ejaculate during sexual relations. Sometimes, in order to improve the number or concentration of the sperm, it is necessary to obtain a fractionated (split) sample of the husband's sperm which is collected by masturbation into two small, clean containers, labeled # 1 and # 2. The first collection or sample # 1 which should contain the first few drops is the one which has the most concentration of spermatozooids and this is the part which is inseminated. The sample # 2 is usually discarded, since it has low concentration and motility. Both are examined under the microscope before the insemination.

II. Use of Frozen Sperm

- A. From a donor: the use of frozen sperm for artificial insemination by donor is also used, however, the motility which is one of the important aspects of the spermatozoa, usually is diminished after freezing and thawing. For this reason only the best sperm specimens will stand freezing and thawing.
- B. From the husband: Husbands undergoing permanent methods of sterilization (vasectomy) can go to sperm banks and leave their sperm to be frozen and use it in the future if they change their minds and want to have another child. This frozen sperm can be kept for 5 to 10 years or more in that frozen state.

III. Use of Mixture of Sperm from a Donor and the Husband

Sometimes the physician offers this alternative to the couple of mixing the donor's sperm with the one obtained from the husband. This procedure offers the couple the possibility that the spermatozooids from the husband could be the ones to fecundate the egg. To bypass this situation, especially when one or both partners are concerned about the psychological, moral or ethical considerations, another suggestion can be made, this is to have the couple engage in sexual relations the night before or after each insemination treatment.

The Technique of Artificial Insemination

The usual plan is to carry out one or more inseminations per cycle on alternate days because the spermatozoid usually lives approximately 48 hours. The patient should keep a basal body temperature chart which is a sheet that has the date and the day of the patient's menstrual cycle. This is recorded every day by taking the oral temperature in the morning before the patient gets out of bed. The thermometer is kept in the mouth under the tongue for approximately 3 minutes. The readings are recorded daily. In every case, the way to record this basal body temperature is explained by the physician's assistant. The basal body temperature chart is of great help to the physician since he will make the judgment to inseminate every cycle according to the elevation of the temperature which could differ sometimes from cycle to cycle. It is believed that ovulation occurs sometime before the rise of the temperature at the low point.

In the initial work up of the infertile couple, it is best to determine the presence of ovulation and to check on the patency of the tubes. If these are found to be normal, insemination may then be started.

There are several techniques for insemination treatments, however, most of them have the purpose of depositing semen in the vagina and/or in the cervical canal of the uterus. The procedure is not painful. Once the semen is deposited in the vagina, the patient usually remains on the examining table on her back for some period of time (approximately 20 minutes). Some doctors do nothing more than deposit the sperm in the vagina. Others may use a cervical cap which is a device which is left to keep the semen in close contact with the cervix, or may use a non-absorbant pack in the vagina for the same purpose which is easily removed by the patient in a few hours after the procedure.

Results of Artificial Insemination by Donor

When a fresh semen specimen is used, the success accomplished with this procedure is approximately between 65% and 75%. Most of the patients who get pregnant do so in the first 6 months of treatment. However, some patients require a year or even more to accomplish pregnancy. Sometime, at the physician's judgment, after 6 months of consecutive treatment, further tests to evaluate the normality of the internal genital organs might be performed.

The results using donor insemination with frozen semen seem to be lower than with a fresh semen specimen with about a 50% success rate, and takes about the same number of months of exposure as with fresh semen. The results for artificial insemination using the husband's semen is dependent upon

the type of problem with which the physician deals. If the husband's sperm was frozen to be used later on if the couple changed their minds and wanted to have another child, the rule is generally the same as with using frozen donor semen. In other words, the success rate is about 50%, and several treatments may be required. If other conditions are involved, it depends on the quality of the husband's sperm to achieve pregnancy.

Miscarriages are not usually higher in artificial insemination than in a normal population. It seems that there is a slightly higher predominance of males to females born by artificial insemination. It also appears that the success rate is not too different between women from ages 20 to 40. Birth defects are somewhat less than a controlled population. This is due perhaps because artificial insemination is usually done with highly fertile sperm as compared to the average sperm count and takes place at the optimum time before aging of the egg. This might be an explanation for this situation.

In a random population consisting of couples using no birth control, and deciding on pregnancy, approximately 80% of the women will get pregnant in the first year. An additional 10% might get pregnant within two years.

Looking at the results of artificial insemination in these conditions, it seems that they are not that far in comparison with the random population, since exposure to semen is only done once or twice a month. Of course, more insemination treatments per cycle could be done, but this is up to the physician and the patient.

#### Fee for Artificial Insemination

There is no established fee for artificial insemination. The physician's fee is an agreement between the couple and the physician. This includes expenses to pay the donor or to obtain the frozen sample in the case of artificial insemination by donor. To give a very rough estimate of the cost involved for artificial insemination by donor in one cycle using two treatments, it could vary between \$100 to \$200 per cycle. Again, this is mostly up to the physician. Physician's services would be the only fees when artificial insemination by husband is carried out.

The success with artificial insemination are many times a result of the patience and persistence of the patient. Many infertile couples are usually extremely

anxious and tense over not becoming pregnant. This anxiety could be a problem which in certain cases, could alter the delicate mechanism of reproduction.

Patience is a very important ingredient to be kept in mind because pregnancy in an individual case could take longer than in another case. Therefore, the failure to become pregnant in the first 6 months or so should not disturb or frustrate the patient since an adequate trial should always be assessed and advised by the physician. To the best of his judgment, the physician will be the one to advise the patient whether to continue or to stop. He may advise them to stop trying or to put in for adoption.

Like any other emotionally charged subject, artificial insemination is to be considered thoroughly by the couple. No doubts should exist in their minds since the child which is to be born should in every way be considered their child.

Artificial insemination has been practiced in this country for many years. Several thousand children are born each year by this procedure. Its acceptance and use has increased in the last few years. This increase can perhaps be explained by a decrease in the influence in legal, moral, ethical and theological considerations on the procedure and especially by the decrease in availability of children for adoption. If approximately 17% of couples are involuntarily childless and if we assume that the husband is the factor in approximately 40% of infertile couples, it is not surprising that there will be a large number of candidates for therapeutic donor insemination, if parenthood is a strong enough goal.



Information concerning physicians who practice artificial insemination may be obtained by contacting:

Administrative Office  
The American Fertility Society  
1605 13th Avenue, South, Suite 101  
Birmingham, Alabama 35205  
(205) 933-7222



Official Business

# Alaska State Legislature

## House of Representatives

Committee on

Health, Education & Social Services

Pouch V  
State Capitol  
Juneau, Alaska 99811

### SECTIONAL ANALYSIS

HOUSE BILL 497: An Act relating to bearing and adoption of children

#### Section 1 PURPOSE

To provide the financial resources to allow a pregnant woman to carry a child through pregnancy, thereby encouraging the birth of wanted children and deterring abortions.

#### Section 2 AS 20.15.090 Adoption Statutes

In all adoption cases, the person(s) initiating the adoption must report to the court, a full accounting of all expenses he and/or she incurred in the proceeding. This bill would add to that section, "any compensation or expenses paid to the mother".

#### Section 3 AS 20.15.180 Relinquishment and termination of parent and child relationships.

This is the key section of the bill. It addresses the issue of compensation to the natural mother of the child which is being adopted. Presently, there is nothing in the law which covers this point.

The bill provides that relinquishment and termination of parental rights may be conditioned upon payment of agreed-upon compensation for the mother's time and services in carrying the child to term. Therefore, a woman who is currently pregnant may contract with another party for a mutually agreeable sum which will be paid to her upon birth of the child and her relinquishment of all parental rights to that child.

Unlike the companion piece of legislation, House Bill 498, this bill is primarily for the benefit of those women who are already pregnant yet do not want to have the baby. Current social and economic realities would indicate that the woman would probably have an abortion rather than carry the child to term. HB 497 would provide another alternative, allowing the natural mother to receive compensation for her time, services and related medical expenses. In exchange she would have to give up all rights to the child upon birth thereby allowing the other contracting party to adopt the child.

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SURROGATE MOTHERHOOD LEGISLATION

Monday, October 26, 1981

As a result of both the recent increased demand for newborn children along with the decreased supply, more infertile married couples have turned to surrogate motherhood. Being a psychiatrist in private practice and a Clinical Instructor in the Department of Psychiatry of the Wayne State University School of Medicine, I recognize that there are both potential advantages and disadvantages to participation in every phase of the surrogate mother procedure. I think that all prospective participants have the right to be informed about the consequences of their actions, and it should be the duty of all professionals to help facilitate a competent, voluntary, informed consent. In order to do so, scientific evidence is needed to help assess the probabilities of the various outcomes. Therefore, I am presently heading a research team to study the psychological effects of the surrogate mother procedure. With a grant from the Wayne State University School of Medicine, we hope to make a significant contribution to our body of knowledge about the surrogate mother procedure, so that reasonable policy decisions can be made.

I personally believe that our individual freedom and autonomy should only be interfered with to the extent necessary to achieve some societal (state) interest. The results from my research will further help elucidate the nature and extent of governmental intrusion necessary to achieve these state interests. For example,

... MORE ...

-----

because there is potential abuse by an unscrupulous businessman going to a welfare office with a stack of \$100 bills and unduly influencing a woman to be a surrogate mother, I think that the regulatory legislation of the surrogate mother procedure is necessary and indicated. This legislation would require and insure psychiatric and other necessary medical input for all parties to help achieve a competent, voluntary, informed consent.

It is time for society to rationally regulate the surrogate mother procedure. Many thousands of childless couples are desperately awaiting our response.

\*\*\*

HOUSE OF REPRESENTATIVES  
LANSING, MICHIGAN



48TH DISTRICT  
RICHARD FITZPATRICK  
STATE CAPTOL  
LANSING, MICHIGAN 48207  
617-373-0884  
BATTLE CREEK HOT LINE TO LANSING  
988-4823

COMMITTEES  
INSURANCE - VICE-CHAIRPERSON  
MILITARY & VETERANS AFFAIRS - VICE-CHAIRPERSON  
STATE AFFAIRS  
JUDICIARY  
CONSTITUTIONAL REVISION & WOMEN'S RIGHTS

October 26, 1981

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\*The following statement was made upon the introduction of House Bill No. 5184,  
a bill to regulate surrogate parenting.\*  
-----

The legislation I am introducing today will not introduce surrogate parenting to Michigan, it will simply regulate it.

Surrogate mothering is already a reality in Michigan - and has been since at least 1976. Every month contracts are signed and inseminations are made. Every month infertile couples are seeking one final chance to have a child that is biologically linked to them.

There are no references to surrogate parenting in the laws of the United States, Michigan, or any other state in the Union. Thus it has been assumed by some that surrogate parenting is illegal; clearly there is a need for legal guidelines and structure for the process:

- \* Surrogate parenting without this legislation does not protect a surrogate from being misled as to the full consequences of her contract as a surrogate;
- \* Surrogate parenting without this legislation does not protect the right of an adopting couple to be certain that the child will be theirs;
- \* Surrogate parenting without this legislation does not guarantee that the child will have a secure and certain family structure from the moment of birth;

The possible illegality of surrogate motherhood does not reflect any conscious public policy decision to outlaw the practice; instead it is the unintended consequence of laws regulating altogether different situations.

... MORE ...

Surrogate mothering is growing in popularity because it meets the urgently felt needs of those who resort to it better than any other alternative they see. Subject to reasonable regulation, it deserves to take a place among the growing array of methods available to individuals for the control of their own marital and reproductive lives.

I am not asking the Michigan Legislature to take a position in favor of surrogate parenting. I ask only to prevent laws created for other circumstances from eliminating this option. There is no rational reason the state should prevent a couple and a willing surrogate from participating in a legal contract. This bill, HB 5184, in addition to House Bill 4906 that I have already introduced, will simply make the law deal with the reality that is already existing across the state.

###

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Monday, October 26, 1981

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It is time for society to rationally regulate the surrogate mother procedure. Many thousands of childless couples are desperately awaiting our response.

# # #

The Southern California Fertility Institute  
Fertility, Gynecology & Endocrinology  
Medical Clinic, Inc.

WILLIAM G. KAROW, M.D., F.A.C.S.  
REPRODUCTIVE ENDOCRINOLOGY  
AMERICAN BOARD OF OBSTETRICS AND GYNECOLOGY  
ADOLESCENT GYNECOLOGY

WILLIAM C. GENTRY  
RESEARCH DIRECTOR

SURROGATE PARENTING  
MEDICAL ASPECTS

I. THE PROBLEM.

15-20% of all married couples have significant difficulty in conceiving.  
No pregnancy has been achieved after one year of regular coital exposure.

II. SOLUTIONS.

A. Infertility Treatment.

B. Adoption.

1. Agency.

2. Private.

C. A Childless Home.

D. Donor Insemination.

E. Surrogate Parenting.

F. In Vitro Fertilization and Ovum Transfer.

1. Indications.

a. Non-Functional Fallopian Tubes.

b. Severe Oligospermic Males.

c. Idiopathic or Unexplained Infertility.

*in those cases  
60% female  
40% male*

*50 million are infertile*

2. Candidates.

- a. Be in good health.
- b. Have ovaries that are accessible by laparoscopy so that follicles may be aspirated.
- c. Partner with a sperm source of 1 million good, active motile sperm.
- d. Be young enough so that reproduction will not create a hazard associated with age.

3. Success.

a.	<u>Births</u>	<u>Pregnancies</u>
England	2	-
U.S.A.	-	2
Europe	-	14
Australia	11	16

- b. 13 children normal health infants.
- c. Overall success rate of any given program is 2-8%.
- d. Australians.

1980	103 Patients	9 Pregnancies	2 Twins
1981	200 Patients	8% Pregnant	

- e. For Attempts.

4. Cost.

### III. THE SURROGATE PARENT FOUNDATION.

#### A. How it Started.

#### B. Selection of Patients.

At present the patient needs to be evaluated and treated by an infertility specialist or have confirmed evidence of a very guarded prognosis for pregnancy.

#### C. Donor Insemination as a Predecessor.

### IV. EVALUATION OF A DONOR.

#### A. Sperm Count.

1.  $> 60$  million/CC.

2.  $> 60\%$  AB Activity.

3. Free of Infection, including Gonorrhea (Culture).

#### B. Of Good Moral Character, Mentally Stable.

1. Good Education and Good Student.

2. No Drugs.

3. Knowledge of his Obligation to the Patient.

#### C. Physically Well.

#### D. Negative History for Significant Illness.

#### E. Negative Family History for Diabetes, Heart Disease, Hypertension, Cancer, Genetic Disease, Mental Illness, Epilepsy and Arthritis.

#### F. Screen for Tay-Sachs, if Jewish.

#### G. Normal Liver and Kidney Function, Cholesterol, Triglyceride, Serology, Uric Acid, Blood Sugar and Drug Screen.

#### H. Limited Number of Pregnancies.

V. EVALUATION OF DONOR HUSBAND. (Obligation to Surrogate).

- A. History and Physical.
- B. Sperm Count and Activity
- C. What do we do if Low Sperm Count?
  - 1. Time.
  - 2. Cost.
- D. What Should we do if Prostatitis?

VI. EVALUATION OF SURROGATE.

- A. After Evaluation of Surrogate by Dr. Kellogg and Signing of Contract.
- B. History and Physical.
- C. Pelvic, PAP Smear, Culture of Cervix.
- D. Chemistry Panel.
- E. Negative Family History (Cancer, Diabetes, Heart Disease, Hypertension, Genetic Disease, Mental Illness, Epilepsy, Arthritis.
- F. Negative Drug History.
- G. Obstetrical History.
- H. Gynecological History.
- I. Specific Evaluation.
  - 1. Cervical Mucous and Sperm Transfer (Kramer Test).
  - 2. Tubal Patency - Salpingogram. (Could activate old pelvic infection).
  - 3. Ovulation (BBT, Serum Progesterone, Biopsy).

VII. INFORMED CONSENT.

- A. We are actually the Surrogate's physician much more than the adopting couple, so thus we have a major obligation to her and her well-being.
- B. Risks of Insemination and Pregnancy (Infection, Abortion, Ectopic Pregnancy) Loss of Reproductive Ability, Hemorrhage, Hepatitis and Death.

## VIII. HOW IS IT DONE?

- A. In the 1st month the Surrogate's work-up is completed.
- B. In the second cycle, pregnancy is attempted.
  1. Cervical mucous is evaluated several days before the expected ovulation.
  2. The Father is notified as to the date of the first insemination and both are coordinated as to time.
  3. Insemination.
    - a. Look at mucous.
    - b. How done.
    - c. How often.
  4. Seen at end of each cycle in order to plan the next cycle.

## IX. PROBLEMS. (Each step costs time and money).

### A. History.

1. Disease.
2. Past History of IUD.
3. Rapid or Early Labor.
4. Previous C-Section.
5. Age 35 - or Older (Amniocentesis).
6. PID or Other Febrile Illness.
7. Repeated Pregnancy Losses.
8. Excessive Dysmenorrhea.

### B. Physical.

1. Medical Illness.
2. Already Pregnant.
3. Fibroids.
4. Incompetent Cervix.
5. Tubal Occlusion or Possible Adhesions.

6. Cervicitis.

7. Pelvic Size.

C. Cooperation (Appointments, BTT, Readily Available).

1. Out-of-Town Couples.

a. Freezing Sperm (decreased activity takes longer).

b. Should Surrogate be paid?

X. PREGNANCY.

A. Once conception occurs, the patient is followed for 3 months (until fetal heart tones are heard); then transferred to obstetrician of their choice).

B. What information do we tell the obstetrician?

C. Birth certificate, how to register in the hospital?

D. Adopting Mother present as coach for LAMAZE.

E. Departure from the hospital.

F. Responsibility if

1. Abortion.

2. Prematurely.

3. Anomaly.

4. Twins.

G. Whom to Tell?

1. Child?

2. Parents?

XI. PSYCHOLOGICAL ASPECTS.

A. Screening.

B. Meeting.

C. Group Sessions Every Two Weeks.

D. Psychological Help Afterward.

XII. CONTRACT.

XIII. COST. (How Paid).

A. Surrogate.

B. Legal.

C. Psychological.

D. Medical.

XIV. INSURANCE.

XV. LEGAL.

A. Old Law.

B. New Law.

C. Adoption Procedure.

Confirmed testimony for HB 497 and 498

William Handel

both of the Surrogate Parenting Foundation

Bernard Sherwyn

Mary Wheelock

Sheralee Howe Alaska Right to Life

S.T.A.R. (Stand Together Against Rape) ins sending somebody over

Moral Majority was notified and I believe they will send someone

Paul Morris

the Fairbanks couple that is looking for a surrogate

Brenda Morris

House Bill 113-Marriages of Limited Duration

Herb Berkowitz ✓

John Reese

Mary Wheelock

Brian Caldwell

*Katie Hurling*

# Pregnancy for a fee

By Cecelia Goodnow  
P-I Reporter

Jacquelyn Burkart, mother of two, wants to hire out her womb.

It's a pragmatic matter, she explains candidly.

"My priority is the money," she said. "I need money to get through school. I just don't have time to work. I have easy pregnancies and deliveries, so I decided it would be a fairly easy way to make money."

Burkart, 27, considered the matter for a year before advertising her proposition in the classified section of the Post-Intelligencer. Healthy woman wants to carry pregnancy for infertile couple.

Four couples already have responded, but, looking over their hand-written letters, Burkart somehow doubts they will be able to meet her price: \$15,000 plus medical and legal expenses.

"The going rate is closer to \$2,000 to \$10,000," she said, "but I don't feel it's worth my time for that. At first, I

wanted \$15,000 to \$20,000, but I don't think anyone could pay that much. It would be nice to have as much as I can, of course."

## A free mind

The woman making these casual observations is warm, self-assured and as wholesome looking as a Nebraska farm girl. She speaks her mind freely and doesn't equivocate.

She lives in a middle-class subdivision in Vancouver, Wash. An Oregonian at heart, she lives in Vancouver because that is where her grandparents bought the house she is renting with two other women. She attends college and works part-time as a nurse's aide in Portland. Officially, she says, she is an Oregon resident.

Burkart rests her 5-foot-9 frame on the Herrick sofa, her slender legs stretched out on the coffee table. Her brown, shoulder-length hair is parted in the middle and held back by a green barrette behind each ear. Her large brown eyes make her face ap-

pear young and rather innocent.

After a moment's hesitation she switches off "Days of Our Lives," a soap opera she has watched since high school. Coincidentally, the current cast of characters includes a surrogate mother.

Burkart speaks freely about her life. Married at 17, she separated from her husband shortly after the birth of her first child, Heidi, now 9. After her divorce, she decided she wanted another child, so she performed artificial insemination on herself, using sperm donated by a friend. The result, after the first attempt, was Jeffrey, now 2.

## Nursing student

Burkart worked as a pregnancy and abortion counselor for five years before becoming a full-time student at Portland State University, where she is working toward a nursing degree. The problem, she said, is that her part-time job does not cover her expenses.

"Right now, I'm probably making about \$500 a month at the most," she said.

She pays nearly \$200 a month in child care and has tuition payments of about \$325 a quarter. Her share of the rent is covered by a stipend her grandparents pay her to take care of their house.

Burkart plans to keep working, regardless of the outcome of her ad. The idea, she said, is for the \$15,000 to carry her through three more years of college.

"What I'd planned on using it for was just tuition and extras — taking the kids to a movie or out to dinner once in a while," she said.

Jeffrey, who is chewing fretfully on a baby bottle after his afternoon nap, is too young to understand the complexities of surrogate motherhood. But Burkart has discussed the matter with Heidi.

"Heidi is very worldly as a child. I have never shed a tear," Burkart said. See PREGNANCY, Page A-2.

# Pregnancy for a fee is part of her plan

From Page A-1

said. "Her first reaction was, 'Oh, good. If it's a girl we can keep it and give Jeffrey away.'"

Heidi understands, however, that the family won't keep the new baby. "She understands that we're doing it for someone else," Burkart said. "It will make someone else very happy."

But Burkart doesn't know yet who that someone will be. The first rush of mail brought four responses in a single day. A Mountlake Terrace woman wrote, "After five years with no luck of having a second child, it would be wonderful if the surrogate mothers program was something we could do. We have considered adoption but are discouraged by the four to five year waiting time."

A Seattle man explained, "We have no children and I would like an heir."

A Seattle woman who is unable to conceive after 10 years of marriage wrote that she and her husband, both in their early 30s, "would be able to provide a stable and loving home P.S. In case this doesn't work out with us, I think what your was doing is wonderful."

Another letter came from a Seattle couple in their late 30s who have

been unable to produce a child, even though each has a child from a previous marriage. "I really don't expect to see many ads like this in the paper, so you may be my last chance," the woman wrote.

If more than one suitable family comes forward, Burkart will have to choose who the lucky winner will be.

"Obviously, I would feel that the people who would be most needy would be someone who's never had a child," she said. But she added, "I don't think there's that many people who can come up with the money."

Burkart said she would decline to offer her services to anyone holding "fanatical Moral Majority" views.

"I believe in the right to have an abortion. I believe in women's rights. I believe in gay rights. I obviously do not want anybody raising a child who might kill me someday for my beliefs. Their ideas are real scary as far as I'm concerned."

Burkart has selected two lawyers and a physician to help her through the procedure.

"I talked to the district attorney's office in Portland and made sure they could not arrest me for selling a baby," she said. "What I'm doing is legal."

Both parties in the agreement will sign a contract spelling out the terms

"If for some reason I miscarry, they will have to pay me a percentage and cover the medical costs," Burkart said. "They have to take the child no matter what condition he or she is in. If there are twins they have to take both of them."

Nevertheless, lawyers have advised her that there is no legal precedent in Oregon for what she is attempting to do.

"The lawyers I have talked to say there's no way they can hold either party to it, which is threatening to me because there's no way I want any more children."

Over the past few years, a state law has reduced the number of infants available for adoption. Surrogate motherhood has become an option for a small number of couples unable to have their own children. The usual procedure involves hospital and medical consultations about the psychological ramifications for the couple and the surrogate mother.

Dr. Richard Levin of Louisville, Ky., is one of the pioneers in the field. In November 1980 a 27-year-old mother of three gave birth to a baby boy after Levin impregnated her with the sperm of a husband whose wife was infertile. The surrogate mother, an African woman, received \$10,000 for her services.

Burkart says she is psychologically prepared to give up the baby.

"I have being pregnant, and it's probably going to be different for me when it comes to having another one, but when I know that they love the baby and will give it a good home that will make me feel better," she said. "That's one reason I want to meet the people I don't even have to have their names, but if the mother wants to be there at the time of delivery and have the husband, it might make her feel more part of it. I don't want it if they're both there at the delivery."

Her only great worry is the cost. "There's no way to get it less than \$10,000."

Burkart realizes that what she is doing is open to criticism. In fact, she says the Oregonian in Portland disclosed her newspaper ad as a matter of fact in the newspaper. But Burkart said she doesn't believe there's anything wrong in what she's doing.

"In essence, I am selling a baby," she said. "But I don't feel bad about it. I'm doing someone a service. I know that the baby is a baby, it's not my own child. I'm just providing a service, making out for a high fee for my service."



# MOTHERING : Safeguards are needed in surrogate parent arrangements

THE "SURROGATE mother" bill now before the state House is a long overdue attempt by the law to catch up with medical advances and social reality.

The proposed legislation, sponsored by Rep. Richard Fitzpatrick, D-Battle Creek, would provide much-needed protection for both the mother carrying the child and the couple contracting her services. Prospective parents would be required to obtain certification for surrogate adoption from a probate court before proceeding with the artificial insemination of the surrogate mother.

The surrogate and father would be required to undergo psychiatric examination and both she and the natural father would receive complete physical and genetic evaluations. The surrogate would agree to relinquish all parental rights to the child at birth. The bill would permit the adoptive parents to pay up to \$10,000 to the surrogate mother in addition to medical expenses.

The plan has already been criticized as an invitation to "baby selling" and a temptation for poor women to become pregnant just for the money.

But those possibilities have been with us for at least six years, greatly complicated by a legal system that does not recognize the medical alternatives being taken by couples who cannot have children by conventional means.

That was discovered last year by Mr.

and Mrs. James Noyes of New York. The California woman who was carrying Mr. Noyes' child decided not to turn it over. The Noyeses found out that California law acknowledges the parental rights of unwed natural fathers but not of sperm donors. The law was written to protect a married man whose wife was pregnant through artificial insemination by an unknown donor. It did not anticipate surrogate mothering.

Similar reasoning influenced the recent Wayne County Circuit Court decision not to name George Syrkowski the legal father of the child born to a surrogate mother. Because the woman Mr. and Mrs. Syrkowski paid to carry his child was married, the case came under the Michigan paternity law that makes the woman's husband the legal father of her baby, even if it was fathered by another man. Not only could Mr. Syrkowski not be awarded legal custody of the child's natural father, he was denied the right to adopt it because state law forbids paying a mother to adopt her child.

Many will find the subject of surrogate motherhood offensive or unethical and condemn any attempts to regulate it as an unwarranted government intrusion or even an endorsement. But the practice will go on as long as there are couples who desperately want children that are at least partly biologically theirs. Far better that the state provide medical and legal safeguards so that the individuals know beforehand exactly what they're getting into.

Detroit Free Press - 1/30/82

## Legal questions surround surrogate parenting

Many couples' dreams of raising a family are crushed when they learn that, because of the woman's infertility, they are unable to have children of their own. While some seek adoption, waiting periods of up to eight years dissuade all but the most persistent. Surrogate motherhood, whereby a woman carries a baby for another woman who is unable to conceive, provides an alternative for these couples who might otherwise remain childless.

In this procedure, the surrogate mother is artificially inseminated with the husband's sperm, making him the natural father. Upon birth of the child, the surrogate mother relinquishes all parental rights; the natural father assumes custody and his wife files for adoption.

Sound easy? Take a second look.

Many legal obstacles stand in the way of this arrangement, most significantly the prohibition by most, if not all, states against paying a woman to place her child for adoption. While these laws were not drafted with surrogate motherhood in mind, the effect is to prohibit paying for the service. Although some surrogates will perform the service for or., the cost of medical expenses, most expect additional monetary compensation.

In Michigan, where such a prohibition against paying a woman to place her child for adoption exists, State Representative Richard Fitzpatrick introduced legislation this year to allow compensation of up to \$10,000 to a surrogate mother in cases where one of the adopting parents is also the natural parent. According to Fitzpatrick, at least eight other states permit such an arrangement. "He feels compensation should be allowed because, in his view, "it is a great irony and highly discriminatory" that a man can be paid for donating sperm while a woman can not be paid for similarly donating the use of her sexual organs.

In Kentucky, where there is also a payment prohibition, Surrogate Parenting Associates in Louisville has been

matching couples with fee-paid surrogates since August 1979. To do this, the organization developed a way, at least temporarily, around the law. Instead of paying the surrogate to place her baby for adoption, the natural father and the surrogate mother sign a contract stating that the surrogate will be paid for terminating her parental rights. The natural father then assumes custody and his wife files for adoption.

The Kentucky Attorney General's opinion issued last January, however, concluded that "because of the existence of at least three Kentucky statutes and a strong public policy against 'baby-buying', . . . any such contract is illegal and unenforceable in Kentucky." The opinion also found that paying to terminate parental rights does not significantly change the situation because of its "conscious intent to circumvent" the adoption statutes. The Kentucky Attorney General filed suit against Surrogate Parenting Associates, but while it awaits the outcome of the suit, business continues as usual.

Other legal questions, however, are raised by surrogate motherhood, and Michigan's Fitzpatrick plans to address those in another piece of legislation to be introduced later this year. Legislation governing the contractual relationship between the adoptive parents and the surrogate is needed, Fitzpatrick contends, because "surrogate parenthood just slips through the cracks. It does not exist anywhere in the statutes and if it's going to be happening, then it needs to be regulated." For instance, what happens if the baby is born with a disorder? What if the surrogate decides to abort rather than carry the baby to term, or what if she miscarries? What if she decides she wants to keep the baby?

Fitzpatrick's bill provides for those and other possible circumstances. Under the bill, adoptive parents, when contracting with the surrogate, assume responsibility for any baby that is born just as they would if it were their own child. In turn, the surrogate agrees to follow all medical instructions given to her by her physician to help ensure a healthy baby. Also, as part of the contract, the surrogate agrees not to abort the baby unless, in the opinion of her doctor, it is necessary for her physical health. If the surrogate miscarries prior to the fifth month of pregnancy, no compensation other than medical expenses will be paid. If she miscarries after this time, 10 percent of the fee plus medical expenses will be awarded.

Also, while allowing for the situation where the surrogate decides she wants to keep the baby, the bill provides greater protection to the adoptive parents than would otherwise be available. A hearing would be held to determine custody, but while the question is being decided, all rights to the child would remain with the adoptive parents. As it stands now, the surrogate mother would probably be able to keep the baby until a decision is made.



Fitzpatrick's legislation applies only to married couples, "a conscious decision (made) for political purposes." This is because, he notes, "it is a highly sensitive and controversial issue enough as it is without getting into any other aspects. Even those who strongly support it understand that the most important thing right now is to get the concept of surrogate parenting into the law."

Mindy Gaynes

State Legislatures/July/August 1981

\*Alaska, Arizona, California, Florida, Iowa, Nevada, North Dakota and Oklahoma

FEB 8 1982



## EDITORIAL

WXYZ-TV regularly presents editorials on topics of vital interest to its viewers. Clearly labeled as opinion, these television editorials are delivered by the Vice President and General Manager of WXYZ-TV, Joanne Findlater. Your comments concerning this editorial will be greatly appreciated.  
Lowell Newton,  
Editorial Director

### SURROGATE PARENTING

The legislature is about to examine the first bill in the nation to deal with surrogate parenting. Surrogate means substitute.

Representative Richard Fitzpatrick's House Bill 5184 would legalize and control the process of paying a woman to have a baby. This woman would be artificially inseminated with the sperm of a man whose wife cannot bear children. The surrogate mother would agree to give up the child to the couple for adoption. The surrogate mother's medical expenses would be paid and she could receive up to ten-thousand dollars as a fee.

This bill is complicated, as it should be for such an important undertaking. It answers many questions, but it raises many more. The questions will be dealt with at a public hearing at the State Capitol, Monday, February 8th. The hearing will be in Room 420 at the Capitol Building beginning at 6:00 P.M.

This legislation is necessary and we support it. It's not a question of whether surrogate parenting should be done — it's already being done — but whether it should be controlled. The concept of surrogate parenting must be brought into law. As Representative Fitzpatrick says "....ever" month infertile couples are seeking one final chance to have a child that is biologically linked to them". We believe those couples should be given that chance under a system where everyone's rights — the couple's....the surrogate mother's.... and the child's....are full protected.

That's Channel 7's opinion. We'd like to hear yours.

It's Lowell Newton.

Telecast — February 3, 4, 1982

No. 2626

# Fitzpatrick bill would have brightened this day

Combined News Sources

Legislation sponsored by state Rep. Richard Fitzpatrick, D-Battle Creek, would have spared George and Sheila Syrkowski the legal uncertainty surrounding a joyous occasion Thursday — a special Thanksgiving with their baby girl, conceived through surrogate parenting.

The girl, conceived using Syrkowski's sperm, came home to the family's Dearborn Heights home Thursday, one day after a judge refused to declare her Syrkowski's legal offspring.

Wayne County Circuit Court Judge Roman S. Gribbs said state law declares a man the legal father of any child borne by his wife. Gribbs said the remedy to the Syrkowski's problem lies in the state legislature.

Fitzpatrick said his bill would set up legal procedures — similar to an adoption procedure — for infertile couples to follow when they want to enter surrogate parenting agreements.

As part of that procedure, a judge would rule the parentage issue.

"Before the baby's even born, the

judge issues an order saying (the baby is) going to be in the custody of the biological father and his wife," Fitzpatrick said. "There would be no questions about the parentage of the child."

The Syrkowski's situation underscores the need for new legislation, Fitzpatrick said. "This shows the kind of problem I was trying to address in the first place" in introducing the bill, he said.

Fitzpatrick's bill has not yet been considered by either the House or the Senate. Before that can happen, a

public hearing must be held, and that will not be scheduled before early January, he said.

Seated around a traditional holiday meal Thursday in their suburban Detroit home, the Syrkowski's said a special prayer for Corine Appleyard, 20, who gave birth to the 5-pound, 3-ounce girl on Sunday.

"We're very appreciative to Mrs. Appleyard for what she did for us," said Mrs. Syrkowski, 39, who has been unable to bear children. "This is See BILL, A-2

## Bill

Continued from A-1

a great gift of love she has given us."

The Syrkowski's, married since 1969, have placed \$10,000 in an escrow account for Mrs. Appleyard pending an appeal of Judge Gribbs' opinion he had no jurisdiction to rule the baby be considered the legal offspring of her biological father.

Complicating the issue is a Michigan law that prohibits a mother from being paid for the adoption of her child.

"They say they have to change the paternity law so I'm the father," Syrkowski said. "I know I'm the father. We all know I'm the father. But that's the law in Michigan. We have to be guinea pigs on this."

Through an agreement signed by Mrs. Appleyard, the Syrkowski's have custody of the child for six months. After that time, under current law, Mrs. Appleyard could demand the child be returned to her.

The baby's last name is entered as Syrkowski on the birth certificate, although no father's name is listed and Mrs. Appleyard is listed as the mother.

Although not the first surrogate parenting case in the nation, it drew public attention when Noel Keane, the attorney handling the case, asked Judge Gribbs to declare Syrkowski the legal father of a child conceived by a woman married to another man.

After Gribbs refused the request,

Mrs. Appleyard and her husband, Roger, live within a few miles of the Syrkowski's, and so agreed it would be best they and the Syrkowski's not meet.

"I think she looks like my husband," Mrs. Syrkowski said. "She's beautiful, just beautiful."

"She's got my nose, my chin," her husband agreed. "But she's still young. It's too early to tell."

Mrs. Appleyard sat in another room of Keane's law office when the Syrkowski's held the baby for the first time.

The Syrkowski's have refused to disclose the child's name and have tried to maintain their privacy.

"We have to try to start living our lives normally," Syrkowski said. "I know that's going to be difficult. The important thing is that we've got the baby, and we're happy. They can't come and take the baby away from us."

But they say they will tell their daughter the truth when she is old enough.

"We figure that's the only way," Syrkowski said. "We don't want her to reject us because we didn't tell her and (she found) out from somebody else. We're going to save all of her newspaper clippings and let her read all about herself. Then she can take it from there."

"The important thing is that she knows that we love her. And we're

Enquirer and News, Fri., Nov. 27, 1981

# Surrogate mom case still in air

*Gribbs says issue  
should be decided  
by legislators*

By Robert Ankony  
News Staff Writer

State lawmakers, not judges, should decide the future of surrogate motherhood in Michigan, Wayne Circuit Judge Roman S. Gribbs ruled yesterday.

Gribbs dismissed a lawsuit in which a Dearborn Heights man sought to gain custody of a child borne for him by a surrogate mother, ruling that the court has no jurisdiction to use the state's 1966 Paternity Act in such cases.

Attorney Noel P. Keane said the ruling would be appealed.

**THE FATHER**, George Syrkowski — whose wife is not able to conceive — last March donated sperm for the artificial insemination of Mrs. Corinne Appleyard.

The Syrkowski agreed to pay Mrs. Appleyard \$10,000 plus medical costs to carry and deliver the

However, Michigan law prohibits paying a mother to give up her child for adoption, so Syrkowski filed a lawsuit last June — hoping to use the Paternity Act to be declared the legal father of his biological child.

The baby girl was born last Monday in Sinai Hospital in Detroit.



Judge Gribbs

She was to leave the hospital today with Mrs. Appleyard, who is 20 and has two children. She will give the infant to the Syrkowski, both 39, under a six-month power of attorney agreement allowed under the Michigan Probate Code, said Herb Braille, an aide to Keane.

**BRAILLE SAID** the baby's birth certificate will designate her surname as Syrkowski, since all parents have an option to choose surnames as well as first names for their children. Mrs. Appleyard will be named as the child's mother and the father's name will be left blank, said Braille.

The Syrkowski, who have been married since 1959, declined to comment on the judge's ruling. But Braille said they were "disappointed, but not surprised."

Late last month, at Gribbs' request, the Michigan attorney general's office intervened in the suit, claiming that the court had no jurisdiction.

**ALTHOUGH GRIBBS** agreed with the attorney general on that point, he called "untenable" the attorney general's argument that Michigan law presumes any child born to a marriage to be automatically the legitimate child of the husband.

## Surrogate mom case left hanging by ruling

Continued from Page 3A

"Neither the law nor the facts in this particular case support this proposition," Gribbs wrote.

In his nine-page opinion released late yesterday, Gribbs said the court "cannot circumvent by judicial fiat the legislative process."

"The Paternity Act was not intended and cannot be used as a mechanism to establish the paternal rights of a semen donor in the surrogate parent arrangement," he added.

"Neither the laws nor the public policy of the state of Michigan permit the direct or indirect judicial recognition and enforcement of 'surrogate mother' contracts."

**IT WAS A 1980** ruling by Gribbs in another surrogate case which established the illegality of paying for an adoption. Keane has asked for a Supreme Court review of that decision.

Gribbs said yesterday that legislation now pending in Lansing (House Bill 5184) on the surrogate issue is "rather thorough" and appears to deal with medical, psychological and contractual issues.

The Detroit News

**D**o people have a legal right to children

if they can't bear their own? Is it legally and morally acceptable for one woman to carry a baby for another? Here is the extraordinary story of two women and a man who have already answered these questions for themselves. Their story may shock you, even bewilder you, but it can't fail to move you. By JUDITH K. LAMSEY



## The Gift Child



IT COULD BE lunchtime in any American household. Betsy, a beautiful 14-month-old baby, fidgets in her high chair as her mother, Debbie, 26, spoons puréed fruit into her mouth. Her father, George, still groggy from working the nightshift at the local newspaper plant, beams sleepily at his daughter across the table. Betsy smiles back at him. Then, with a sweep of her small pudgy fist, she knocks her favorite rubber duck onto the floor.

Reaching down to retrieve the toy, their good friend Susan, 25, returns it to the high-chair tray. Everyone laughs.

All normal and routine. Debbie and George behave like any doting parents with a much-wanted baby. Sue, obviously treated like a member of the family, pitches in to help.

But nothing is usual or ordinary about the birth of this particular child. In reality, Debbie is Betsy's adoptive mother. Sue is the child's natural mother. She conceived Betsy by means of artificial insemination with George's sperm to give her friends the child they couldn't have themselves. Even though Sue lives with them as a boarder, she has relinquished all parental responsibility.

In March of 1979, Betsy made history by becoming the first known baby conceived by a surrogate mother to be legally adopted. The Wayne County (Michigan) Juvenile Court decision—which made Debbie and George the child's adoptive parents—has far-reaching implications outside the state of Michigan. It means that for the first time, surrogate moth-

erhood has been recognized as a legitimate though unorthodox way of coping with a common problem, infertility, which afflicts an estimated 6½ million American couples. It now means that other American couples may be encouraged to have babies by proxy.

The precedent for surrogate motherhood goes back to the Old Testament, when Rachel, who was sterile, persuaded Jacob to take their maid in order to give them a child. But today, the circumstances under which Betsy was conceived have caused shockwaves across the nation, creating public controversy as well as heated discussions among doctors, lawyers and theologians.

In 1976, after three years of marriage, Debbie wanted a baby more than anything else in the world. She had known for some time that her chances weren't good. When she was 16, she had undergone emergency surgery for a ruptured appendix, which led to a chronic pelvic infection.

Debbie had met George, a good-looking, likable young man who had just returned home after two years of military service, at a high school graduation party. He was easygoing and relaxed. Debbie was spirited, a computer worker and organizer who liked to take charge. Within a few weeks, they knew they were in love. Both had been raised as Catholics, and both wanted a large family. They were soon married.

George held a job as an apprentice pressman, while Debbie worked as a secretary from the very beginning.

# The Gift Child

they used no birth control, assuming that nature would take its course. But slowly, the months turned into years, and still there was no baby. Debbie saw gynecologists and underwent numerous tests. All the doctors who examined her were noncommittal and encouraged her to keep trying. Eventually she saw an infertility expert who, after putting her through another battery of tests, told her bluntly that because her Fallopian tubes were so badly damaged by repeated pelvic infections, her chances of conceiving were no better than 50-50.

By 1976 Debbie was employed in the insurance department of a mortgage company, where she soon made many friends. Indeed, that was fortunate because she was on her own most evenings and weekends, since George worked the early nightshift at the newspaper plant. In her free time, Debbie decorated their two-bedroom home and kept busy bowling with the local women's league, baking, cooking and playing cards. She maintained close ties not only with her parents and sisters who lived nearby, but also with her in-laws, including George's eight brothers and sisters.

One day at work, Debbie was introduced to a young woman named Susan, who was new on the job. "Sue was skinny, sad-looking and very unsure of herself," Debbie recalls. "Her hair was straggly and much too long for her, and her clothes were old and all wrong."

Not long afterward, the arrangements Debbie had made with another woman



Elizabeth Anne, known as Betsy, has a big grin for her father, George, and adoptive mother Debbie (above, left). Debbie spoons puréed fruit into her baby's mouth (left). Sue, the child's natural mother, and Debbie in a piano duel (above, right). This charming little girl is the result of an extraordinary arrangement. With George as the donor, Sue conceived Betsy by means of artificial insemination in order to give her close friend, Debbie, the child that Debbie was unable to bear herself. And while Sue lives with the family as a boarder, she has relinquished any kind of parental responsibility.

to drive to work fell through. Impulsively she invited Sue to drive with her. Suspecting that Sue was hard up for money, she offered to take her for nothing. But Sue insisted on giving her what she would have otherwise paid as bus fare.

As they were driving to and from work, the two women would talk. Debbie was outgoing and open about herself. Her frustration at not being able to get pregnant was a frequent topic of conversation. Sue seemed inter-

ested in these discussions, but she was shy and very reticent. She did say that she had no immediate interest in getting married, nor was she sure that she ever wanted children.

It didn't take Debbie long to figure out that Sue was in deep financial trouble. She lived in a run-down section of Detroit in a shabby apartment she shared with her two brothers. The only clothes she owned were three outfits that were hopelessly out of style.

Moved by Sue's meager circumstances, Debbie contacted her sisters, who were closer to Sue in size than she was. Generously, they provided a collection of hand-me-down dresses, pants and blouses—all attractive and in good condition. Sue was shy about accepting them, but she wore them with obvious pleasure and acted as though Debbie had done her an incredible favor.

One Saturday during the summer, Debbie invited Sue to drive to a To page 71

nearby lake to have a picnic and go fishing. However, instead of fishing, they sprawled on the grass and talked for five hours. For the first time, stories about Sue's past came pouring out.

Her childhood had been stunted by deprivation and abuse. Her father was a heavy drinker who had repeatedly beaten her mother, often in the presence of Sue and her two younger brothers. Her mother also had a drinking problem that kept her from taking adequate care of the children. Once her father had come at her mother with a kitchen knife, Sue stood between them, trying to intervene, and was badly cut. When she was 10, her parents separated, and after staying briefly with their mother, the children went to live with their grandmother. Sue made few friends at school because most of the other children shied away from her on account of her ragged clothes and obvious poverty. After graduation he moved to De-

troit, where she found a job and lived with her two brothers.

To Debbie, who had grown up in a large, boisterous, warm family, "It was one of the saddest stories I'd ever heard. Sue had none of the things that most kids take for granted: not a birthday party nor a new confirmation dress, not even money for ice cream."

Sue confided to Debbie that she was over her head in debt. Her troubles had started when she was let go from her former job along with a dozen other employees. As her expenses mounted, she became confused and overwhelmed, ignoring bills and charging cards. Now she was besieged by threatening letters and calls from creditors.

Debbie was appalled. Unless something was done fast to help Sue, she was headed for serious legal trouble. She convinced Sue to hand over her weekly paycheck to her so that together they could devise a budget and draw up a schedule of payments.

From that time on, the two women started spending more time together. Despite the differences in their backgrounds, their personalities meshed nicely. Sue was quiet, passive, impressionable. She enjoyed Debbie's peppy, take-charge manner. Debbie found Sue bright and stimulating. She was amazed at how quickly she could learn a new card game or sport. She helped Sue fix herself up: to use flattering makeup, set her hair and coordinate her clothes and accessories. And besides providing practical assistance, Debbie lavished encouragement and support on her friend.

Looking back now, Sue says of Debbie: "She gave me kindness, warmth and laughter. She drew me out and helped me talk about my past, something I could never do. I was able to express emotions. Strange as it sounds, I had never even cried before. Debbie became my best friend."

As Sue grew more confident she became considerably more attractive and outgoing. Gradually her relationship with Debbie changed from that of "another daughter" to one resem-

bling sisters. George liked Sue and began to take her presence for granted. Whenever they thought it was appropriate, Debbie and George took her with them to parties, outings and church functions.

At 23, Sue was still a virgin and unsophisticated about men. She was interested for a while in a man named Bob. Like Sue, he came from an unstable background, which seemed to be their only common bond. While Sue was scrupulously honest, Bob was evasive about many things, including what he did for a living. Debbie didn't trust him and was concerned for her friend. Soon, however, Sue stopped seeing Bob because she said she didn't like his values. Other men took her out occasionally, but she saw no one in particular.

In December of 1976 Debbie's old pelvic disorder began to bother her and she was briefly hospitalized. One January day, she began to suffer again from pelvic pains which became worse with the onset of her period. That evening, after George had left for work, the bleeding became heavier and the cramps were unbearable.

Frightened, Debbie telephoned their family doctor, who told her to see a new gynecologist whose office was 40 miles away. It was snowing, and the forecast threatened a storm. In despair, she called Sue, who rushed over in a taxi. They piled into Debbie's car, Sue at the wheel and Debbie, pale and shaking, wrapped in a blanket beside her. The snow became so dense that it was impossible to see more than 10 feet ahead, and the car skidded badly several times.

Debbie was examined and wound up in the hospital. After days of tests, the doctors decided that exploratory surgery was necessary. As she was taken into the operating room, Debbie had a sudden premonition that something terrible was going to happen.

When she came to, her mother was sitting beside her. "What did they do? Did they take out everything?" Debbie asked.

"Everything," said her mother. "They had to. But you'll be all right now." Debbie turned away and began to cry. Her mother took her hand.

When George arrived at the hospital, he found his wife lugged and silent. Attempting to comfort her, he said, "The hysterectomy doesn't matter. We've still got each other—that's what's really important. We can get along without a baby."

Debbie shook her head. "Maybe you don't need a baby, but I do! I'll never get over it." She burst into hysterical wailing.

After she came home, George did his best to cheer her up, but she was inconsolable. At first she cried incessantly. Then she became snide and moody. "She let into me every time I opened my mouth," recalls George. "I missed my humorously sunny wife."

Even though Debbie knew that her despair was causing a rift between them, she couldn't get hold of herself. She sank deeper and deeper into de-

pression. When her sister gave birth to a baby boy, Debbie was pleased for her, but it was also a painful reminder of her own childless future.

The birth of their nephew triggered Debbie and George's decision to consider adoption. But the Catholic Social Services, whom they approached first, told them there would be at least a five-year wait for a white, newborn baby; then all the other agencies in their area turned them down. There simply were no babies available.

Among her friends and relatives, Sue was the only person Debbie felt like seeing. One afternoon she broke down. "All of my dreams are destroyed," she sobbed. "They'll be no baby, ever. It's not fair."

"If only I could do something for you."

"Oh, Susan, there's nothing you can do. There's nothing anyone can do."

Later that week, when Debbie and George were watching the evening news after dinner, the phone rang. It was Sue.

"I've been thinking a lot about you," she said very seriously. "No one, not a relative or anyone else I've ever known, has ever been so good to me. Now, just listen carefully to what I'm about to propose. I want to give you something. Something you can't have yourself. I want to give you a baby."

Debbie was taken aback. "What do you mean?"

"I would have a baby and then give it to you."

"Sue, that's unthinkable. I couldn't accept your offer."

"Don't say no yet," Sue urged. "Think about it and discuss it with George." Debbie promised she would.

George's initial response was, "Whose baby would she be giving us? Why would she want to do it? Think of the problems it would cause."

Debbie said, "I don't think Sue has thought it through that clearly. She simply made the suggestion out of love for us."

George thought for a moment. "If we allowed her to have a baby for us, it would have to be by artificial insemination because I'd want to be the father."

Suddenly the idea of surrogate motherhood, which had seemed so preposterous, became a real possibility.

The following afternoon, Sue came over to discuss her offer. When Debbie told her George's suggestion, Sue agreed to it.

"Then you would really have George's baby—through me," Sue said.

"You know, Sue, you might change your mind and decide you want to keep the baby. That would be all right with George and me."

"No, the baby would be for you and George. I don't want to be a mother—certainly not now."

Over the following week, the three of them discussed Sue's offer, trying to consider all the implications. Sue was, after all, still a virgin. They knew they might meet with opposition from their Church, from members of their families and from the world at large. But Debbie and George's desire to

have a child was so great, and Sue's desire to help her friends so sincere, that they decided to go ahead with their daring plan, but not to tell anyone except the gynecologist who would be needed to perform the insemination. They spoke to three gynecologists, all of whom turned them down.

Impatient and fearful of more rejections, the threesome then decided to try it on their own. They read a family medical guide describing how artificial insemination was done in a doctor's office. When Sue calculated she was fertile, George went to a local pharmacy and purchased a syringe. In the privacy of her bedroom, Debbie helped Sue insert the tube from the syringe. George stayed in the living room.

Shortly after, the building in which Sue had been living was sold and she was forced to leave. She moved into the small extra bedroom in Debbie and George's home and paid for her room and board. The three friends settled easily into a companionable and uncomplicated life-style.

When Sue missed her first period, the three of them were cautiously hopeful. When the second month passed and still no period, they were excited. An appointment was made with a gynecologist for a pregnancy test—but when Sue involuntarily blurted out the circumstances, he refused to examine her. So she went to a nearby hospital, gave out minimal information, and no questions were asked.

When the test came back positive, the three were elated. "Incredible though it seems, we succeeded on the first try," exclaims Debbie. "All three of us went out and celebrated." Within a few weeks the trio managed to find a sympathetic obstetrician, Dr. Keith Curtis, who treated Sue's pregnancy as a routine matter.

Once Sue's pregnancy was confirmed, a dramatic change came over Debbie. She grew happier and more relaxed, with the kind of radiance often found in expectant mothers. It was almost as though she were vicariously going through the pregnancy and awaiting experience.

One Saturday morning Debbie and Sue were watching a local TV show. They heard a lawyer named Neal Keane discussing a childless couple he represented who was searching for a surrogate mother. He wanted a test case to take to court in order to try to make the adoption of babies born to surrogate mothers legal in the state of Michigan.

So, they were not alone! They were not the only couple who had chosen to have a baby by proxy. They joined the TV station and left their number and a note saying, "Call us. We're already done."

After meeting with them and hearing their story, Keane agreed to handle the adoption proceedings when the time came. But he cautioned that the courts might turn them down. Reminded that there has never been a legal adoption of a child known to be born of a surrogate mother. If we win, we'll

make legal history. If we lose . . . A child who wasn't legally adopted could be removed from their home.

For as long as possible, Sue had said nothing to her brothers or to her friends and co-workers at the bank. Now her pregnancy started to show, and she was confronted by quizzical stares every day at work. Sue simply mumbled to a colleague that the man she'd been dating had moved away. "Let them draw whatever conclusions they want," she thought.

Just when the three of them had started wondering whether they should tell their families the whole story—it would relieve the strain and growing suspicions about Sue's pregnancy—Keane made a startling suggestion. Would they consider going on a major national TV show to publicize the need for surrogate mothers? Though they might get some negative reactions, he believed that the response, on the whole, would be favorable because he felt that public interest in new methods of combating infertility was reaching a new high.

### Called Sin by Priest

After considerable deliberation, Debbie, George and Sue agreed to be guests on the Phil Donahue show before an audience of millions. But before they made their appearance, they told their priest and families. The priest declared that what they had done was a sin in the eyes of the Catholic Church. Debbie's parents took the news in stride and offered their support, but George's parents were extremely upset.

"I never heard of such a thing," George's mother said. "I know how badly you wanted a child. But how on earth are you going to explain this to other people? What will I tell my friends?"

"Whatever you wish," Debbie replied without hesitation. "We're going to tell the truth because we're not ashamed of what we've done."

George's father was furious, lashing his son straight in the eye, he demanded, "Son, did you have intercourse with Sue?"

George told him patiently how the artificial insemination had been done.

"Frankly, I don't believe you. And even if it's true, your sperm entered her body. That's a sin."

Whenever they did get together with George's parents, the talk was strained. His mother stopped telephoning Debbie regularly. Their other relatives were more accepting. Debbie's elderly grandmother was actually on vacation about the baby.

Reacting angrily, Sue's father told her they didn't want to see her again.

When the Phil Donahue show was aired, it was followed by a flood of calls and letters to the station and to Keane's office. Naturally some people were critical of what Debbie, George and Sue had done, but the overwhelming response was supportive. In fact, a few days' calls and letters came from couples who were looking for surrogate mothers for themselves. Because of the positive response to the show and the demand of all whom contacted the sta-

tion, the threesome appeared on other TV programs. The more shows they did, the more comfortable they became in fielding difficult questions.

The weeks slipped by quickly. On the morning of January 26th, Sue awakened with contractions. Hastily she packed an overnight bag and roused Debbie and George, who drove her to the hospital.

In the labor room, Sue was in intense pain. Only one person at a time was permitted to be with her, so George and Debbie took turns wiping her brow and trying to distract her. The hours passed slowly.

At 3:50 P.M.—more than 10 hours after Sue had started having contractions—Dr. Curtis became concerned because the baby's heartbeat had grown too rapid, and decided to deliver the baby by caesarean section.

When Sue was in the operating room, Debbie and George waited outside anxiously. At 8 P.M. the doors opened, and a nurse emerged.

"Is Sue all right?"

"Just fine."

Then Sue was wheeled out on a stretcher. Still groggy from the anesthesia, she smiled at Debbie and George and asked, "How do you like your new daughter?"

"A girl . . ." exclaimed Debbie, radiant. She kissed Sue.

Dr. Curtis brought the bassinet over to them. Debbie looked down at the baby and burst into tears. Greeting his daughter by the name they had chosen for her, George cried, "Hello, Elizabeth Ann!"

(Later Dr. Curtis would comment that this was one of those rare medical cases where the mother was still a virgin after bearing a child.)

A few days later, Sue and Elizabeth Ann (whose name was quickly shortened to Betty) were brought home. Now Debbie could finally do all those maternal things so many women take for granted—feeding, washing and holding her new baby—which she had yearned to do for so long. Sue was hired a job at a local bank. It had been agreed before the baby was born that Sue would not be involved in her upbringing. Her role would be that of a favorite aunt. But Debbie and George, this was the culmination of years of hoping and praying for a child. Sue was shielded for them, and declared the had no maternal feelings toward Betty.

When the time came, Betty was baptized in Debbie and George's Catholic church. Several months later, an application for her adoption was filed with the Wayne County Juvenile Court and an agency representative was sent to their home to study the living conditions. The representative had certainly never encountered a case like this one.

Here was a couple promising to abandon who openly admitted that the child was conceived by a surrogate mother through artificial insemination—a surrogate mother who was living in the couple's household. Yet the baby was obviously healthy and well taken care of. The investigator could not find fault where the child was conceived.

As the next step in the adoption proceedings, Debbie and George had to appear for a hearing in the judge's chambers. For the next month Debbie and George waited for a decision.

Even though George was legally recognized as the child's natural father he was ordered to undergo a blood test to prove beyond doubt that he was indeed the father. The judge also called upon a noted infertility expert to testify. The doctor stated that a child could indeed have been conceived through one attempt at artificial insemination by an untrained person.

In March of 1979, almost a year after the papers had been filed, Debbie and George were notified that the adoption had been approved, and they were to appear at the judge's chambers to sign the necessary forms. Keane had thought one condition of the adoption might be that Sue would have to move out of their home; to his surprise, the judge did not even mention it.

### Another Case

Spurred on by this victory, Keane and his staff have now turned their attention to actively championing another case in which a childless couple is petitioning to allow a surrogate to accept a fee for her services.

"It is our legal opinion that a woman has a constitutional right to bear and to have children," declares Keane.

Yet, according to the laws governing private placement adoption in most states, only the natural mother's normal medical and legal fees may be reimbursed. In a few states, private placement adoption isn't even legal. There is no law on the books regarding surrogates. We intend to challenge the adoption laws, in the hope that we can guarantee the right of a childless couple to pay another woman to bear a child for them.

"Of course, we're not suggesting that other couples do what Debbie, George and Sue did on their own. We believe that surrogate motherhood should be regulated by law in the interests of the child, the prospective parents and the surrogate. The reason that Debbie, George and Sue went outside the medical profession was because they received no help from the gynecologists they contacted.

Now that the necessary surrounding Betty's status is over, the three women have settled down to a satisfying, tranquil existence. Betty is thriving. Her considerable charms have won over Debbie's mother and father, who love her just like any grandchild.

There lives are not as ordinary as they seem, however. Sue is now expecting a second child, conceived in the same manner. Still claiming that she has no maternal feelings, she says she's doing it again for Debbie and George. When George's parents heard of the second pregnancy, they reacted with anger, and for the same reason, at least, they have severed relations with their son and daughter-in-law. Debbie is thankful for her own parents' acceptance.

Several psychiatrists posit that the three young people may face problems later on. Will Sue experience a delayed

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sense of loss in years to come? When and how should Het be told that Sue is her natural mother? How will she feel about it? How successfully will she cope with the questions and curiosity of other children concerning her unusual birth?

As far as can be determined, Debbie, George and Sue don't seem particularly concerned about the future. Perhaps that's because they are so wrapped up in the present. Surely anyone meeting them cannot doubt that Debbie and George are devoted parents, that Hetty is a happy, well-adjusted little girl, and that Sue is proud of the way she has changed their lives.

"Is there any other woman who's had a gift like this from a friend?" asks Debbie.

**FAMILY CIRCLE** would like to know what you think of this unusual story. Do you feel that Debbie's desperate desire to have a child and Sue's desire to help her justify what they did, or do you disapprove of surrogate motherhood? If you care to comment, write us. We will print a sampling of our readers' letters in a future issue.

Dear Ann Landers: May I reply to "Deeply Concerned in Boston," the woman who was afraid the test tube baby might reduce child bearing to a cold scientific procedure "void of caring or love?"

My husband and I chose artificial insemination as the last resort. We had been trying for several years, without success, to have a baby the natural way. I can tell you from first hand experience that very few babies would be born if they all had to be conceived in this manner.

Furthermore, not many marriages could endure the tension and deep disappointments connected with artificial insemination. It takes the dedication and a tremendous desire on the part of both parties to have a child with the help of physicians, nurses and technicians. On the other hand, no love or caring is needed to produce a baby through sexual intercourse. All it takes is our lawful husband.

So, please tell "Deeply Concerned" that her fears are unfounded even though science has figured out a way to make babies in test tubes, the world is in no danger of being populated by "biological machines." And THAT many people want children badly enough to go through the anxiety "Been There."

Dear BT: Thanks for the words of reassurance. Many other "Been There's" echoed your sentiments and gave me new respect for those who do it "the other way."

ON THE

# MOVE



## A DETROIT LAWYER FINDS PROXY MOTHERS FOR CHILDLESS COUPLES WHO DESPERATELY WANT TO BE PARENTS

**D**etroit lawyer Noel Keane, 79, is no stranger to fatherhood. He and his wife, Kathy, have two young sons of their own. Still, bouncing other people's babies has become a startling new dimension of his law practice. Those infants are unique because they are the product of surrogate mothering—a

Photographs by Dale Willner

CONTINUED



Surrogate mother Sue watches as Dobbie feeds Elizabeth Ann on the *Donahue* show. At right is husband George.

Keane advises Jim and Kathy Brown of Bowling Green, Ohio on the potential legal problems of parenthood by proxy.



## Move CONTINUED

term that America is going to hear a lot more about. It works this way in the case of a couple who are childless because the wife is barren. The surrogate agrees to be artificially inseminated with the husband's sperm and carry it from conception to birth.

Keane's first clients were an Oakland County (Mich.) couple whom Keane will identify only as "Al and Betty." When they first came to him two years ago, Keane admits, "I didn't know what the hell they were talking about." His research, however, uncovered two similar cases, in Michigan and California. At Al and Betty's request, Keane ran advertisements in three Michigan college newspapers to find a female of "Caucasian background" willing to be artificially fertilized.

As it turns out, the bizarre episode has had a happy ending. On April 26 Al and Betty were presented by the surrogate mother with a son, Albert Jr., weighing 10 lbs. 11 oz. at birth. The couple was then able to claim the baby as their own through a family-related adoption.

"It really sounds weird," Keane admits, "until you meet the people involved, and then you realize that it is a logical solution to a problem. People want babies, and if they can't have them or adopt them, they'll find a way to get them."

Keane's want ad generated considerable publicity. While appearing on a local radio show with Al and Betty, who explained their plight and openly solicited a surrogate mother, Keane had a caller who announced, "We've ready done it!"

"We" turned out to be George, 29, and Debbie, 24, a Detroit-area couple who became parents with the help of their best friend, Sue, 29. (The three have never disclosed their last name. The women worked in the same bank and Sue, who had been neglected as a child, says, "Debbie was my best friend." When Debbie was taken to the hospital for a hysterectomy, Sue was beside her. She knew the couple had been trying for four years to have a baby, now Debbie's operation permanently ruled out a child. Keane recalls, "There were no white babies available locally for adoption." Sue made up her mind. "I want to have a child for you," she told them.

For days the three of them talked it over, and the couple finally accepted the idea as long as George, not a fertility party, was the father. But Michigan doctors, fearing a malpractice suit, re-

COVERS

**Move** CONTINUED

fused to artificially inseminate Sue. Undaunted, Debbie found instructions in the Reader's Digest *Family Health Guide*. She injected George's sperm into Sue with a syringe. "It was a bull's-eye the first time," Debbie says proudly.

Sue went on maternity leave and stayed in the house with Debbie and George. "Come here and feel your baby," Sue told them excitedly the first time it stirred in her womb. Last January Debbie accompanied Sue to the delivery room where, after 12 hours of labor, a 6 lb. 10½ oz. baby, named Elizabeth Ann, was delivered by cesarean section.

"It was a great experience," said Sue, who agreed to appear on Phil Donahue's TV talk show with Debbie, George and the baby less than a month later. But, Sue added, "I don't have any maternal feelings. I always thought of it as their child." Said Debbie, "I have a lot of respect and admiration for Sue. I don't have any jealousy at all." Some

day George and Debbie will tell Elizabeth Ann that she is adopted. "It will be up to Sue," said George, "to say that she is the mother." (Sue, who is still a virgin, admits "I'm not ready for marriage or motherhood.")

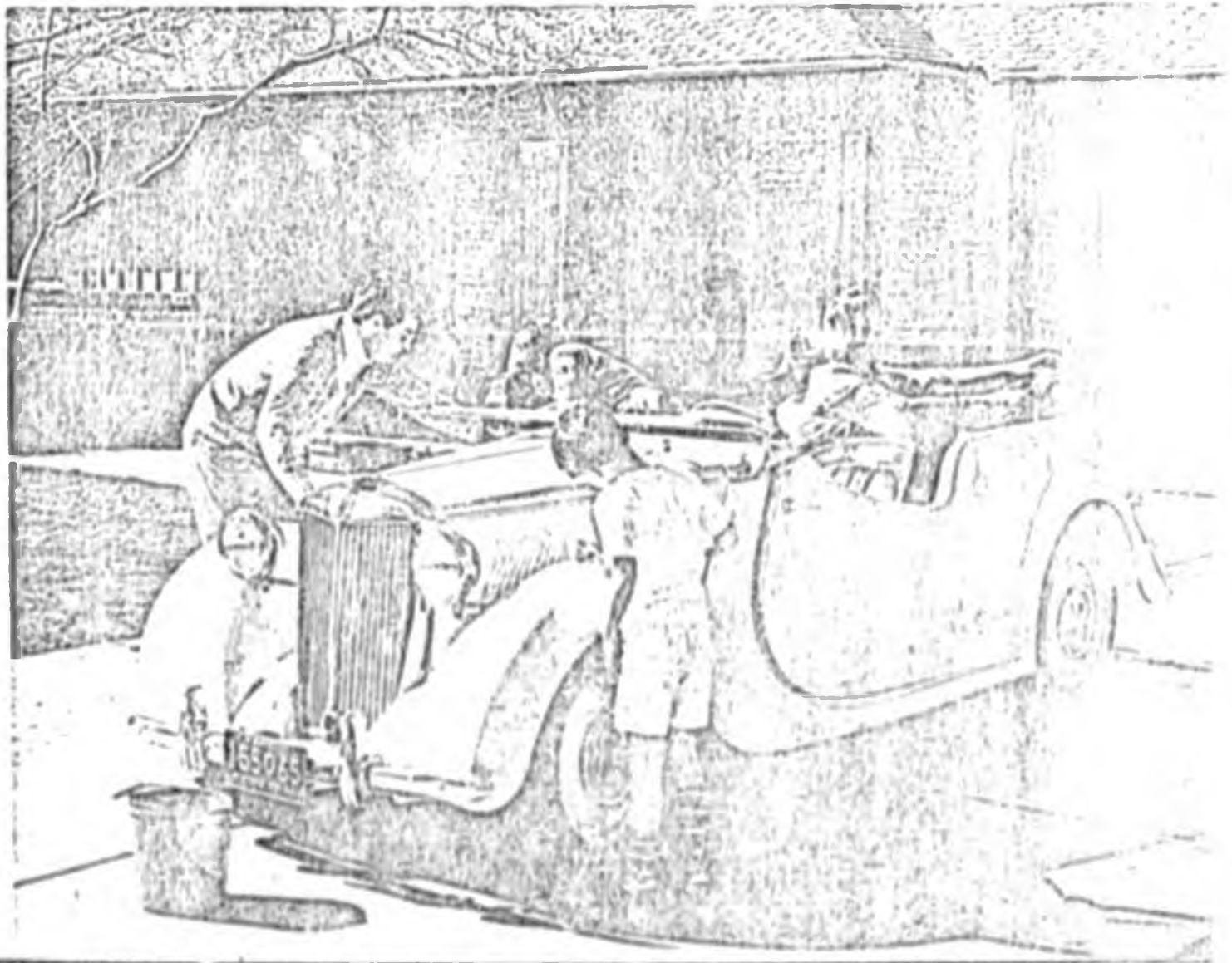
Keane concedes that surrogate motherhood raises serious legal, medical and moral dilemmas. What is the liability of the contracting couple if the substitute mother suffers medical complications? Probably none, Keane thinks, since she volunteered willingly to have the baby. If the surrogate mother decides to keep the child? Keane says the court would probably uphold her claim, and the father could be responsible for child support.

Precedents are few, although proxy motherhood goes back at least to the Old Testament, when Sarah arranged to have a maidservant bear a child for her husband Abraham. In modern times the situation that seems most comparable is artificial insemination of a woman by donor sperm. "Medical students have been getting paid for years for their semen," Keane says, noting that several universities have set up sperm banks.

Nonetheless, because Michigan law forbids payment to the mother of a child placed for adoption, Keane worried about the fees (ranging from \$200 to \$10,000) asked by the more than 200 women who answered his ad. From Juvenile Court Judge James Lincoln, he obtained an out-of-court opinion that a surrogate mother could not be paid, except for nominal expenses. Suddenly the supply of surrogates evaporated. (In the case of Al and Betty, Keane says no fee was paid: Sue bore George's child for Debbie out of "love and friendship.") Meanwhile the demand for surrogates is rising. "I'm for the state controlling this," says Keane, who with a fellow attorney has gone to court for a new interpretation of the law governing surrogate fees.

Keane himself is the offspring of Irish Catholic parents in Dearborn. A former schoolteacher, he put himself through the University of Detroit Law School at night. Supposing he and his wife had not been able to have a family—would he use a surrogate? "I never would have thought of it on my own," he says. "But now I'd do it in a minute." LINDA WITT

**Sons Chris, 11, and Doug, 7, help Keane and wife Kathy shine up a family treasure: a rare 1950-vintage MGTY roadster.**



# THE BABY MAKER



Carol and Rick Pavak with their son, Chris, at home in Amarillo, Texas.

**T**he story you are about to read may well be the most bizarre in the history of childbirth.

It is the story of a Texas woman, a midwife by trade, happily married and the mother of a three-year-old son, who not only volunteered to bear a baby for another woman (and did so), but who inseminated herself artificially with sperm provided by that woman's husband. Carol Pavak of Amarillo, Tex., is certainly not the only woman to have served as a surrogate mother in recent years, but she is the only one to have publicized what she has done under her own name. She is apparently also the only one to have acted out of deeply held principles, rather than for reasons of friendship or financial gain.

But first a cautionary note: This account of Carol Pavak's baby-making may disturb you, it may puzzle or shock you, it may even inspire you. But whatever your reaction, you should know that—save only the names of the baby Carol gave away and of his adoptive parents—every word of what follows is true.

If CAROL PAVAK had not been watching TV on June 16, 1978, the adopted son of a couple we'll call Mary and Joe Palmer might never have arrived in this world. For on that day, a Michigan attorney named Noel

Keane appeared on the *Good Morning America* show to talk about surrogate motherhood. Carol, then 25 and married to her high-school sweetheart, Rick Pavak, was fascinated by what Keane had to say—not only because she is a woman who actively searches for ways to help others, but because as a practicing midwife she'd always been keenly interested in everything to do with childbearing.

Like other midwives, Carol believes strongly in having babies "the natural way"—at home, assisted by a midwife who really cares, and with a minimum of medication. To her great disappointment, that had not been possible when her own baby, Chris, had been born in April 1975. Although her pregnancy had been easy, even pleasurable, complications had developed at the onset of labor, and she had to be rushed to the hospital at the last minute to be delivered by an obstetrician.

"We're going to have to keep on having babies until we can have one at home," she'd said to her husband, half-jokingly at the time. "If we do, we're just going to have to give them away," Rick had answered. He knew—and so did she—that it would be many years, if ever, before they would be able to afford more children.

Carol Pavak conceived, carried and delivered a baby boy—and then gave him away to a woman she scarcely knew. Was hers an act of questionable morality or a gesture of supreme generosity?

They'd both always had to work hard—Rick is a computer operator—to keep afloat. And both were studying in their spare time (he, computer sciences, she, child psychology) to further their careers. Also, they both wanted Chris to have all the good things in life that they had missed out on. "I know that a lot of good people were raised on beans and cornbread and hand-me-downs, the way I was," says Carol. "But I don't want Chris to have to go through it. I want him to have a good education and clothes the other kids don't laugh at."

And so the Pavaks filed away their dreams of having more children and concentrated on the present.

As the months passed, Carol found her thoughts returning more and more to what Keane had said about surrogate mothers. She still had no intention of joining their ranks, but it did strike her as a pity that her reproductive system was not being used while there were so many infertile women who were desperate to have a baby. She had already arranged to donate her kidneys, corneas and other vital organs for use after her death, but she knew "the only way my vacant uterus could be used is while I'm alive."

At the same time, the morality question bothered her. Did bearing a child for another woman amount to dangerous tampering with nature's laws, or was it an act of supreme generosity? She read up on the subject of artificial insemination and learned that each year upward of 20,000 babies are born to the wives of sterile husbands by a process known as Artificial Insemination by Donor, which is widely accepted as a way to bypass infertility when it's the To page 16

# feeling was water retention.

Now I don't have to live with it anymore. Thanks, Aqua-Ban."

Bridget Hooper wrote us all the way from her farm in Banford, England. She wanted us to know how grateful she was to have discovered Aqua-Ban.

Like millions of women, Bridget suffers from the temporary weight gain that is frequently associated with menstruation. This problem is called "cyclical edema." It can affect women in many disturbing ways: swollen, sensitive breasts, headaches, backaches, tension—and, to quote Bridget, "the simple depression that comes from jeans that won't zip!"

Aqua-Ban is a mild diuretic (water pill) that has been scientifically formulated to eliminate weight gain due to water retention. Clinical tests prove that Aqua-Ban not only reduces weight due to water retention, but also reduces the irritability and aches and pains women suffer as a result of cyclical edema. And, Aqua-Ban is available without a prescription.

Now you can feel slim and comfortable all month long. Like Bridget, sometimes we think that pre-menstrual water weight problems are the inevitable price we have to pay for the pleasures of being a woman. Fortunately that's not the case! Aqua-Ban offers quick relief from at least a few problems you can live without—very comfortably indeed.



Clinically proven water pill helps eliminate pre-menstrual water weight gain.



the husband who is sterile. But what can be done when a wife is the one who can't have a baby? So far science has come up with only two possible, but "iffy," solutions: growing a baby in a test tube, or using a (surrogate) mother and sperm—not from an unknown donor, but from the would-be father.

While Carol was pondering these questions, she came upon a statement by Joseph Fletcher, a retired Episcopalian minister and professor of medical ethics. "Why shouldn't we share our reproductive resources," Fletcher asked, "just as we share our educational and economic ones? We are now able to give help of a far more intimate and personal sort." Surrogate mothering, he said, is essentially "an act of tenderness." This struck Carol as very good sense.

Finally, in March 1980 she came to a decision. With Rick's full knowledge and support, she wrote a long letter to Noel Keane volunteering to serve as a surrogate mother and outlining her conditions. They were:

- She wanted no pay for her services, other than reimbursement for necessary expenses. (Except in states where the law will not permit adoption if money has changed hands, surrogates customarily command fees ranging from \$5,000 to \$10,000—plus expenses.)
- She insisted on delivering her baby at home. To that end, she wanted the father to be no more than six feet tall—something she felt would increase the chances of a baby small enough for home birth.
- She preferred a man with red or reddish hair. As a redhead herself, she knew she'd be likely to have a red-headed baby and she wanted him (or her) to look like at least one of his adoptive parents.
- She wanted to meet and approve of the couple who would be getting her baby before she confirmed her offer. Since, to her mind, she was making a gift of supreme love, she didn't feel she could make it unless she liked and respected the recipients.
- For her part, she agreed to abide by the advice that she, as a midwife, routinely gave her patients: no smoking during pregnancy, no use of drugs, alcohol or aspirin or anything containing caffeine, regular sugar or white flour.

A few weeks before Carol's letter reached Noel Keane, the lawyer had received another unusual letter, this one from a California woman named Mary Palmer—which, of course, is not her real name—who, like Carol, had seen Keane on TV. Mary, again like Carol, had been vastly impressed by what she'd heard—but for different reasons. Mary and her husband of three years—a red-headed man we'll call Joe—were desperately eager to have children, but long before they met, Mary had been diagnosed as a cervical stenosis and had had to have a hysterectomy. Children, therefore, were out of the question for her. Since it's impossible for us to have a baby together," she wrote Keane, "I want my husband's baby—

even if it means I have to carry it." Keane was scheduled to go to California for another TV show in a few weeks and he invited the Palmers to appear with him and tell their story. Over coffee after the show the lawyer told them about Carol Pavek's offer. "They said it sounded to them like 'the hand of fate,'" Keane reports. When he got back to his office he phoned the Palmers and read them Carol's letter.

After that, things happened quickly. That same evening the Palmers called the Paveks in Texas. Tearfully, because she could scarcely believe "someone was willing to do this wonderful thing for us," Mary promised Carol that she would fulfill all of her conditions, including home birth.

Before Carol went to bed that night she consulted her calendar and discovered that she'd be menstruating in two weeks and therefore, she would be ovulating in a few days. Since it had been agreed that the Palmers would come to Amarillo during her next fertile period, she promptly called them back and told them the time to come was now. Without hesitating, Joe said he and Mary would catch a bus the next day. Carol said she'd meet them at the station.

The bus was early. Carol had just found a seat in the waiting room when she noticed a pretty young woman and a tall man with a reddish beard headed for the phone booths. "I knew right away that they were the Palmers," she says. "And I knew we were going to hit it off." Similarly, Mary reports, "It was love at first sight for us all."

They had a lot of talking to do before getting on with the business at hand. Joe Palmer, who is a gentle, almost diffident man, wanted to give Carol every opportunity to back out if she were so inclined. "No," Carol said. "I want to do it. I have no qualms at all." But might she change her mind later on and decide, as other surrogate mothers have been known to do, to keep her baby? Here again Carol was firm. "This will be your baby," she told the Palmers. "I'm simply lending you my uterus for nine months." And Rick Pavek added, "If she should begin to change her mind, I'd change it back for her. I'd just slap her on the wrist and tell her to give the baby over."

They also discussed the mechanics of what they were about to do. As a midwife, Carol wanted to perform the insemination herself at home, instead of having a doctor do it in an impersonal office. She suggested Mary could play an active part in the conception, in order to establish it as "a loving act between Mary and Joe."

And so it was arranged. That night and for the next week the Palmers stayed in the Paveks' guest room. Every evening Mary would collect semen from Joe in a paper cup and bring it to Carol. Carol would then transfer it to a syringe and insert it into her vagina. "It's a very simple procedure," Carol says. "So is the other method of artificial insemination: putting the semen in a cervical cap (a small sheath) that fits over the cervix and