

Baby M custody battle to set precedent for surrogate law

GOODMAN from Page 4

What is notable about this custody wrangle is its utter predictability. This was, everyone in the field will agree, a case waiting to happen.

When the first stories written about surrogate motherhood made their way into the media, it sounded as if the biological mother suffered nothing more damaging than stretch marks. It sounded as if surrogate mothers were just an easy helpmate for the infertile. But there was always that question hovering in the air: "What if she changed her mind?"

Could the biological mother be held forcibly to a contract for the sale of her egg and use of her womb? If she reneged, could the biological father demand back his money or his genes? If she changed her mind, what would happen to the baby?

The sad human part of this drama is that neither the Whiteheads nor the Sterns predicted her emotions. "I was completely devastated hav-

ing the child taken from my arms," Mary Beth wrote after the fact, "I felt like I was used for one purpose and was no longer needed or wanted."

This was exactly what she had promised: to be no longer needed or wanted. But it is something a person can promise?

I don't know how the courts will deal with this question. There is very little law governing surrogacy so far. The technology of parenthood has run far ahead of the courts.

It is possible, assuming blood tests confirm Mr. Stern's fatherhood, that they deal with it as a contract case, testing whether it is legal to make such a deal and illegal to break it. They may deal with it as a straight custody dispute.

I do not believe that anyone should be able to sign away parental rights before they have even borne the child. A baby is not a piece of goods, and human emotions do not make for neat contracts. But at the very least, a mother should have a matter of days after delivery to change her mind. If she does, she should have an equal right to custody.

Does that muddy any agreement for surrogate motherhood? Does that increase the risks for couples who want a child this way? Absolutely. A biological father could end up without even visitation rights.

But the opposite scenario is more unsettling. If a mother can legally turn over the rights to her womb, then the ethic of marketplace has won. Pregnancy becomes a service industry, and babies are a product for sale.

I do not know what the end of this story will be

for Baby M. I suspect that the M stands for Messy. The Sterns, the Whiteheads, the baby have formed an emotional triangle. But they have also become the stars of a cautionary tale about the surrogate motherhood industry itself. Be wary of people with contracts in their hands who promise a real easy deal on a brand-new baby.

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Goodman is a Pulitzer prize-winning columnist for the Boston Globe.

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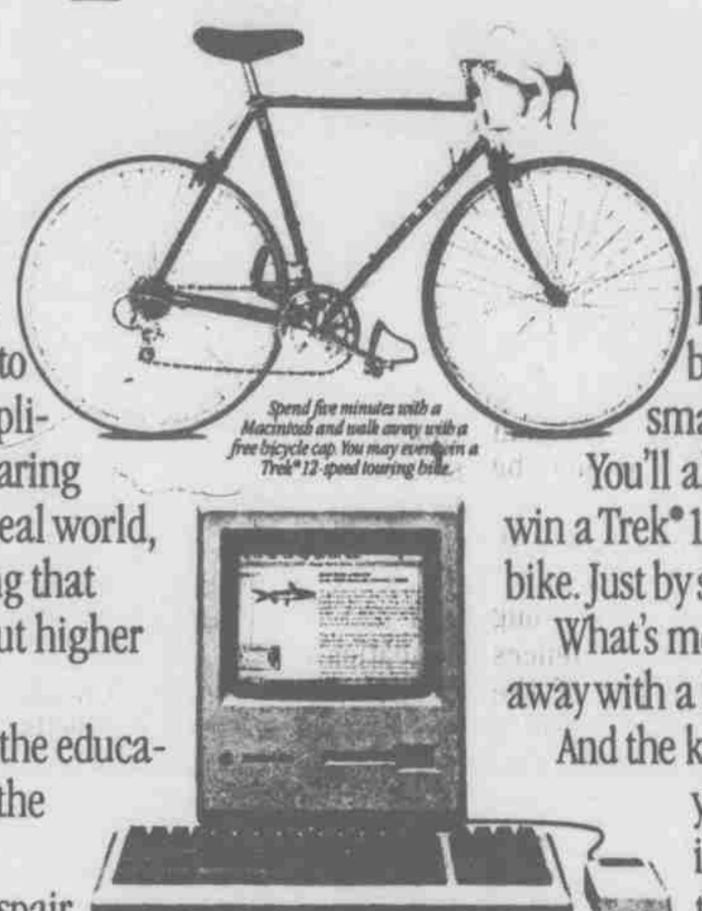
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