





Baby mama

After overcoming her own infertility, Melissa Brisman has helped hundreds of couples become parents as a legal entrepreneur in the little-discussed realm of pregnancy for pay. **BY TREY POPP**

If the workplace is a window into the American soul, Melissa Brisman W'93's office is a singular slice of motherhood and apple pie. Like many lawyers, she keeps an array of framed diplomas and honorary certificates on a wall close to her desk. And like many parents, she keeps a collection of Crayola and marker drawings closer. In one that hangs within arm's reach of her chair, a blue baby stroller rolls across the top of a page whose lower half depicts a pint-sized stick figure tucked into a little bed.

Baby pictures teem on the walls of Brisman's firm. A giant collage of birth announcements hangs beside the reception door—perhaps eight square feet crammed with wide-eyed newborns—and more of equal proportions adorn the cubicles extending back toward Brisman's office. The babies are part of a group whose number belies the exceptional nature of their parentage. They are among the roughly 2,000 children Brisman has arranged to bring into the world via paid gestational surrogates.

The stick-figure baby by Brisman's desk has special significance, because it's the work of her genetic daughter, Simmie, who was born to a Pennsylvanian named Barb in 2003.

Simmie has her father's open face and smile, and an easygoing sweetness that's only halfway reminiscent of her mother, who is not really easygoing at all. Brisman (née Melissa Levy) has a way of imbuing even solicitude and heartfelt sympathy with the same hard-charging energy that's marked her pioneering career in commercial surrogacy. Classmate Peter Bayard C'93 remembers her as both an "extremely motivated student" and an "extremely sweet, caring, and loyal friend." The doubled adverb would probably stick to any of Brisman's traits. The moment I stepped into her New Jersey office she began talking at a pace that, sustained over the course of a long afternoon that ended in the casual family den of her home, yielded a transcript measuring 98 pages of single-spaced text. In the 36 hours after we parted company, she followed up with no fewer than 18 emails, containing everything from links to recent TV appearances to an emotional testimonial about Simmie's birth mother, composed on her iPhone.

But before she became the legal entrepreneur behind one of the first and largest

surrogacy agencies in the eastern United States—in a state that prohibits pregnancy for pay—Melissa Brisman was a young woman medically unable to bear children of her own, and that's the place to begin.

JERSEY GIRL

Brisman grew up in Parsippany, New Jersey, the only daughter of an engineer and a schoolteacher who gave up teaching to raise Melissa and her younger brother. Her childhood memories would seem familiar to many middle-class Americans who came of age in the 1970s and '80s, during what now seems like the twilight of middle-class prosperity. She attended a public high school built two years before she was born. Her family lived modestly but securely, supported by a salary man who dreamed of owning a Cadillac for as long as he drove his ageless Chevy, but waited until Melissa graduated from college to buy one.

By that time, Melissa's medical inability to carry a pregnancy, despite functioning ovaries, was a fact deeply woven into the fabric of her life. "I can't remember when I didn't know," she says. "My parents always knew ... but you know, your parents are your parents. They downplay it." The obstetrician-gynecologist she began seeing as a young woman took a slightly different tack. All the way through her college years, he would send her news clippings about babies born to surrogate mothers and advances in fertility medicine.

"He was like my little cheerleader," Brisman recalls. "He would be like, 'This is the first baby, like, born *this* way. This is going to be you.'"

His patient was plainly not an easy person to thwart. As a high-schooler, Brisman had been so fixated on attending Wharton that she barely applied anywhere else, notwithstanding the apparent odds against her. "No one in my neighborhood went to an Ivy League school," she says. "That was just, like, unheard of."

She received a rejection letter—but not, one might say, the message it contained. After enrolling at County College of Morris for the summer, Brisman went to SUNY-Binghamton in the fall, "and then I just kept applying, every semester. I just kept applying to Penn. Finally, after a year, they let me in."

She wasted no time proving she belonged, blazing a straight-A path through an under-

graduate career that included a stint as vice president of the Wharton Finance Club and culminated with a dean's award for academic achievement. Yet she remained, in some ways, a fish out of water.

"She was down-to-earth," says Kelly Spyra W'93, who fondly recalls being a beneficiary of Brisman's knack for coupon cutting and sniffing out two-for-one restaurant deals. Compared to their contemporaries at Wharton, Spyra adds, Brisman was more focused on what she wanted to do with her life and less shy about speaking out when she needed help.

For Peter Bayard, now a managing director of Natixis Global Asset Management in New York, Brisman was the suburban antithesis of the haughty Manhattan prep school clique he'd always run with. "I was so used to being friends with the rich, spoiled, materialistic crowd—which deep down I wasn't fond of," he recalls. "And then there was Melissa—who was the opposite of rich, spoiled, and materialistic.

"Knowing and being friends with Melissa made me a better person," he adds.

Her "sweet disposition" just happened to coexist with a level of drive that could be fearsome or comical, depending on where it was focused. Dan Brisman came into Melissa's life on a blind date in the wake of a Harvard Law School mixer where she had met his brother. He remembers how, after they'd dated for a few months, she went about moving their relationship to the next level.

"She decided that we should be engaged before Passover, so she could tell her family," he laughs after joining us in Melissa's office, during a slack half-hour between the end of his rounds as a rehabilitation physician and ferrying Simmie from school to Hebrew class. "So she put her ring size on my refrigerator, so that I would have a clue."

It would become a familiar dynamic. A few years later, desperate to escape the pit of an apartment they'd been renting, Melissa got her sights set on a house with a big yard in Bergen County.

"I wanted to buy this house," she recalls. "But, you know what? He had a basketball game."

"No, we had playoffs!" objects Dan, who remains an avid recreational player.

"So he would not come to see the house." "It was *playoffs!*"

“So I just put a deposit on it and bought it.” Dan saw the house three days later. “I was fine with it.” They still live there.

MOTHERHOOD

Melissa was barely out of Harvard Law, working as a tax attorney at Goodwin Procter in Boston, when she set about trying to find a woman to have her children. Had she been able to bear them herself, she doubts she would have started thinking about babies in her early 20s. But in-vitro fertilization was an even longer road in the mid-1990s than it is now. And finding a fertility clinic willing to implant embryos created by her eggs and Dan’s sperm into the womb of a paid surrogate proved a tall task. Brisman says five doctors turned her away before Merle Berger, of Boston IVF, agreed to take her on as a patient.

Berger had done some training on the West Coast, where more liberal attitudes prevailed around gestational surrogacy. But things were much different in the northeast, and Brisman’s case represented new territory for Berger—so much so that, as Melissa remembers it, he kept it under wraps from his practice partners. Berger doesn’t recall concealing anything, but affirms that he’d never been involved with commercial gestational surrogacy before Brisman sought him out.

“This is somewhat of a Puritan society,” he says. “And carrying a baby for somebody else is not something that was considered an acceptable form of treatment—because of the ethical issues involved. And which still are involved. Is it okay to pay a woman to do this? Or is it usurping only poor women who need the money? It’s a controversial issue, and back then, even more so.”

In 1987 Massachusetts had become one of the first states to mandate the coverage of fertility treatment by health insurers. When Brisman attempted to exercise her right to covered IVF procedures, including harvesting her healthy eggs, her insurer denied payment. Since her eggs wouldn’t be going back into her own uterus, the company argued, she fell outside of the state’s mandate. Brisman filed suit. The insurer capitulated, covering the IVF process but requiring her to pay the (much more modest) cost of transferring the embryo into her surrogate’s womb.

(Nearly 20 years later, coverage of fertility procedures and surrogacy-related maternity care still varies widely. According to the Henry J. Kaiser Family foundation, 15 states mandate infertility coverage, although many permit exceptions based on religious objections or the size of an employer offering a group insurance plan. Some employer-based insurance plans explicitly exclude maternity care for surrogate pregnancies; others cover it. The Affordable Care Act mandates that plans offered through the ACA marketplace cover maternity care for all pregnancies, but does not mandate infertility treatment.)

Finding a surrogate was a challenge of a different sort. Classified ads in *The Boston Globe* and the *Phoenix*—an alternative newsweekly—set Brisman’s phone ringing off the hook.

“Every crazy person on the face of this earth was calling my home,” Brisman remembers—from apparent “cocaine addicts” to people who’d say, “I don’t have a home. Can I live in your house?” Crank callers had a field day. One candidate seemed promising—until the Brismans discovered that the car she’d claimed to own was actually a series of borrowed ones she’d driven to their meetings, raising a red flag about the stability of her living situation.

After expanding the scope of their advertisements to smaller publications with circulations outside the big metropolitan market, they finally found someone who inspired their confidence. Linda was a college-educated resident of a small town in Maine with three kids of her own, who’d seen an ad in a local paper that had struck a chord.

Though she had “never had a burning desire to be a mother,” Linda now says, filling a phone line with frankness and warmth, she had conceived twins the first time she and her husband began trying. “I had a very dear friend who couldn’t have kids, and I felt guilty that God gave me two. I actually agonized over giving her one of the twins, but of course I couldn’t do that.” Pregnancy and labor turned out to be smooth sailing, both for the twins and the singleton she had next—a 10-pound boy she delivered without pain medication.

“In the meantime I found another friend who couldn’t have kids, and it just broke my heart,” she says. A couple years later, she stumbled across an unexpect-

ed salve. “Lo and behold, there was an ad in the local free paper, and it said: *Wanted, Mom to be Gestational Carrier.*”

She answered it and eventually decided to arrange a meeting.

“Because of where my heart was, it could have been any couple sitting there and I would have done it,” she says. In fact, she would go on to be a surrogate four more times. “As long as I knew they were sincere, I would help anyone.”

At the time, she was the office manager at an assisted living community. She and her husband also had a building in which they rented out several apartments. “The first time I did it,” she maintains, “the money wasn’t the factor at all. It was just a nice benefit of it. I don’t like being pregnant. I wasn’t doing it for that. Truly, it was because of my passion, and the ache that my heart felt for my friend.

“And I knew for a fact that I wouldn’t want a baby back if it wasn’t mine genetically,” she adds. “God, no! I really didn’t want any more kids. So I was the perfect candidate.”

The pregnancy was bumpy.

It began with the implantation of three embryos in Linda’s uterus—over the initial objections of both Linda and Dan.

“I was the one who overruled them,” Melissa says candidly, “because I was such a pain. [Linda] didn’t want to carry triplets. And my husband was like, ‘What are you, bananas, having three babies at one time?’” But implanting three embryos was fairly common at a time when the odds were less than 50 percent that any one of them would produce a viable pregnancy. “And my physician was telling me that we were on the five-year plan—don’t expect it to work the first time.”

As it turned out, two of them took right off the bat. The Brismans started making visits to Maine.

“Dan and Melissa were involved with [my] kids,” Linda recalls. “They even came up, it was during the Beanie Baby craze—when they were metered out, or however they were rationed—and Dan and Melissa came and got in line with me so I could get Beanie Babies for the kids. It was so funny. They came up and brought them Christmas gifts. That’s something that I think is common. It’s not about the gifts. They were part of the family for those nine months.”

Yet by both women’s accounts, Melissa’s anxiety introduced a lot of friction into the relationship. To overcome the distance

between them, they scheduled weekly phone conversations—on Thursday nights, right after *Seinfeld* (which they all watched) gave way to *Veronica's Closet*, (which they all hated). But their shared verdict on NBC's "Must See TV" lineup wasn't enough to bridge every divide.

"I was so nervous about the pregnancy," Melissa recalls, quickly bringing an example to mind. "She used to be a big coffee drinker. And she used to always drink those really large Dunkin' Donut coffees. And that used to drive me insane. I don't know why it drove me insane. But it drove me insane. And the doctor would have to tell me, 'Melissa, you need to calm down. It's a cup of coffee. She's six feet tall. The babies are doing fine. She's a really good person. You need to leave her alone.'"

"I was pregnant, so of course I had the hormones raging also," Linda remembers. "And it got so bad that when she called, I didn't want to talk to her ... Dan and I actually bonded more than Melissa and I did—during the pregnancy, anyway.

"I went through this with all my couples, really, on different levels," she adds. "When you cannot be in control of something that is so critical—something that is so near and dear to you, and you have zero control over it—that's a terrible feeling. And it's a hopeless, helpless feeling, and that's how she dealt with it."

For Brisman, it was a dynamic that would rear up constantly in the years ahead, after she quit tax law to build a career around surrogacy. Because of the cost, which can surpass \$100,000—since medical expenses can easily outstrip the \$25,000-\$30,000 typically paid to carriers—it is by and large a service available only to a very affluent minority.

"The more educated and well-off that you are, the more you're in control of your life," Brisman remarks. "But you're not in control of your surrogate. She's a person. And that loss of control is horrible. The more educated you are, the worse that it is, because the more you [usually] have the ability to control things. And you cannot control a pregnancy.

"It kind of prepares you for kids," she adds after a pause, breaking into a classic parental laugh. "Because you cannot control your child."

Andrew and Benjamin Brisman were born in a Maine hospital before a throng of medical residents who'd crowded into

the room to witness the hospital's first delivery by a gestational surrogate.

"Oh yeah, I had so many people watching my drug-free, vaginal delivery," Linda cracks—riffing on a bit that she's incorporated into a late-blooming career in standup comedy (and adding that declining drugs was entirely her choice). "It was quite amazing."

Melissa cut Andrew's umbilical cord. Benjamin, who came out breech and lost oxygen momentarily (to no lasting detriment), was handled by the medical team. Then Melissa did something that Linda remembers more vividly than anything from the previous nine months.

"She bent down and kissed my forehead. And everything that happened during that pregnancy was nothing, compared to that moment. It was all about that moment. Everything else was just hormones and fears—it wasn't who we were as people or why we did what we did ... It was all about that delivery. And truly, she bent down and kissed my forehead. And then Melissa stayed in my room with me, and I helped them with the twins. They had never diapered a baby before, so I showed them how to do that. She stayed in the room with me, and everything was just fine."

The Brisman family's return home a few days later left Linda with an unexpected feeling. "After the birth, you feel lost," she reflects. "Because you've been such an important part of these people's lives, for nine months—longer, because of the planning and the transfer. And all this time, you're so important to them, and they treat you like you're so important. And after the pregnancy you kind of mourn the loss of that relationship."

Her voice wavers a little on the phone. "So, sitting there—I'm going to cry—that first Thursday night after I'd given birth, Dan called me," she remembers. "He didn't keep doing it. But I can't even begin to tell you how much that meant to me. It just—oh my God, I love them so much. They're just really good people. Not all couples are good. But they were."

LEGAL EAGLE

What the Brismans and their paid gestational carrier did was legal in the state of Maine. Or, to put it a slightly different way, it wasn't illegal. As of 2015, there are no statutes in Maine law that

expressly permit or prohibit commercial surrogacy. Maine is nevertheless considered a relatively permissive state, by dint of favorable court rulings. For instance, in 2012 the Supreme Court of Maine overturned a district court's refusal to declare Robert and Celia Nolan the legal parents of a child, created by his sperm and her egg, born to another woman who had carried it according to a contract to which all parties had agreed. (In that case, the carrier and her husband had joined the Nolans in their legal complaint; they did not want to be listed as the legal parents of what they considered the Nolans' child.)

Other states treat surrogacy differently. Nevada explicitly permits compensation to be paid to gestational carriers, provided that the child is genetically unrelated to the carrier. In the District of Columbia, surrogacy contracts of all kinds are void, and punishable with a fine of up to \$10,000 and a year in jail. New Jersey and New York—whose border lies less than a mile to the northeast of Brisman's agency, Reproductive Possibilities—ban commercial surrogacy.

Most state codes do not address surrogacy at all, partly because discussions about pregnancy have a way of leading to discussions about abortion, which are toxic for the average American legislator. That leaves case law to serve as an imperfect guide. New Jersey's prohibition of surrogacy dates to the sensational *Baby M* case. In 1984, a woman named Mary Beth Whitehead entered into a surrogacy contract with William and Becky Stern. It stipulated that Whitehead would carry a baby created by William's sperm and one of her own eggs, and would then relinquish her parental rights to the Sterns. Less than one day after transferring custody of the newborn, Whitehead decided that she wanted the baby back. The case made its way to the Supreme Court of New Jersey, whose 1988 decision invalidated surrogacy contracts as being contrary to public policy. (The Court remanded the specific matter of *Baby M* to a family court to determine custody according to the "best interest of the child"; the lower court awarded custody to the Sterns and visitation rights to Whitehead.)

Although the *Baby M* case was emblematic of the main concern around traditional surrogacy, the rise of gestational surrogacy has flipped the dynamic. Custody disputes in gestational surrogacy

mostly arise when intentional parents (as the commissioning parties are typically called) try to back out of an agreement. Earlier this year, former *View* co-host Sherri Shepherd attempted to evade legal custody for a child whose birth to a surrogate, using an egg from an anonymous donor, she had arranged with her then-husband John Sally. Shepherd and Sally filed for divorce during the pregnancy. In April a Pennsylvania judge declared her to be the legal mother of the 8-month-old, and liable for child support.

Anything can happen during a pregnancy's nine months to complicate surrogacy arrangements, from an apparent change of heart like Shepherd's to the death of one of the involved parties. Uncertainty is a feature of all sorts of long-term contracts, but the intimate nature of procreation and family law makes surrogacy contracts particularly challenging from a public-policy perspective.

Many states are effectively legal vacuums when it comes to surrogacy. Intentional parents must request a legal order for their names to be placed on a child's birth certificate, instead of the carrier's name. Depending on conditions like marital status and sexual orientation, the odds that these petitions will be granted can vary from county to county—either on account of particular judges, or the proclivities of bureaucratic agencies responsible for registering births.

The denial of a legal birth order can put intentional parents in the strange position of having to adopt their genetic child—a process that frequently takes months and requires them to submit to criminal background checks, FBI clearance, and in-home supervision by a social worker. Meanwhile the carrier is at risk of being legally responsible for the child.

Shortly after the birth of her twins, Brisman abandoned tax law to build a legal practice focusing on surrogacy. She cold-called fertility doctors, offering to give them seminars on the legal aspects of gestational surrogacy that doubled as advertisements for her burgeoning agency.

"I was one of the first lawyers to join the American Society of Reproductive Medicine," Brisman says. "Every year I would petition them to get me to give a lecture. And in the beginning no one showed up to my lectures. But now, like, 500 people might show up."

"She was a pioneer," Merle Berger says, "in setting up, as an attorney, organizations which would both search out and find surrogates and do the legal work. There weren't many choices. In fact, there still aren't."

In 2001, the first year she went out on her own, she took a case filed by a married couple who sought a "pre-birth order"—a request, in advance of the birth of their genetic child to a surrogate carrier, for their names to be placed on the birth certificate. Their request was opposed by the state Department of Public Health. The case went to the Massachusetts Supreme Judicial Court. Brisman was 28 years old.

"It was funny," she remembers, "because I had my backpack from law school still. It was burgundy. I still remember. And I was wearing my sneakers, and I was the youngest person there because there were all these, like, 50-year-old men."

She won the case, and then successfully argued before courts in other states to win parentage orders either before birth or on the same day. In Maine, where she wasn't licensed to practice, she was permitted to act in a *pro hac vice* capacity to do birth orders for her own twins. "Then I did it in Pennsylvania, and then I did it in New York, and then in New Jersey."

The New Jersey action involved two cases. In one, a woman was carrying a child created by an egg belonging to her cancer-stricken sister, which had been frozen prior to a bone-marrow transplant and cancer treatment, and implanted after her sister had been cancer-free for five years. In the other, a woman was carrying the genetic child of her brother and his wife. The idea that the child's birth certificate would list the blood siblings as parents was "repulsive" to the altruistic carrier, recalls Brisman, who overcame resistance from the attorney general to obtain a pre-birth order that would become effective 72 hours after the birth, in keeping with a mandatory waiting period the state imposes before custody of any child can be transferred from its birth mother. (Waiting periods are a common feature of adoption law, which, along with sperm and egg donation, is a part of Brisman's practice.)

Brisman has also successfully advocated on behalf of gay parents seeking to grow their families through surrogacy. In 2005 she filed an action in Pennsylvania

seeking a declaration of legal paternity for two men, so that they would be recognized as the legal parents of a child upon its birth to a surrogate. In 2008, she helped two New York women gain a legal declaration of maternity in a similar case.

More recently, she has helped draft a bill for the New Jersey legislature that would recognize gestational surrogacy contracts and regulate some of their provisions (such as guaranteeing a carrier's access to independent counsel, and requiring both parties to pass a psychological evaluation). It has been passed twice by the legislature, but vetoed by Governor Chris Christie each time, including this June, the day before he officially announced his campaign for the presidency.

MATCHMAKER

Though New Jersey and New York prohibit their citizens from receiving financial compensation for pregnancy, residents can legally enter surrogacy contracts with carriers residing in more permissive states. So finding carriers is the most important piece of Brisman's business.

She targets "working to middle-class" women whose husbands or partners are the primary breadwinners. "We don't want to see that all their income is coming from support or welfare," Brisman says. "They have to be stable and be able to feed themselves." Surrogacy, she adds, "could be about the money" for these women, "but it can't be 100 percent about the money."

When she started out, Brisman would use advertising clearinghouses to target regional publications toward the end of their publication schedules, when their ad rates dropped. "You could buy every *Penny-Saver* in all of New England," she explains. She'd take out ads in whichever ones had unsold space going for about half-price. She would also buy space on paper placemats in small-town diners. She showed me a recent one from Flapjack's Restaurant and Pub in Dillsburg, Pennsylvania.

"You might pay a few hundred dollars [for this ad], and no one calls all year. But next year we might get two people. So these things we still try."

Increasingly, the search for surrogates has moved to the internet. So if you Google "gestational surrogacy Rhode Island," for example, an ad for Brisman's firm pops up

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visit, I'd say, 'This is the Dan and Melissa family room.' We joked about it."

Yet the last of her five surrogate pregnancies, which happened to be the only one arranged by an agency other than Brisman's, culminated in "the worst thing I've ever endured in my life." She miscarried at 22 weeks. The loss of the child, a devastating blow, was compounded by the intended parents' refusal to cover \$300 of lost wages due to the miscarriage—despite the fact that their contract stipulated an allowance for up to \$3,000. "They turned their back on me, saying I was being selfish," she remem-

on the first page of search results. Another way you might find out about Reproductive Possibilities is on the back of a cash-register receipt from a place like Walmart or Dollar General. "That's really expensive, like thousands per month," Brisman says. "The cost of my advertising is insane."

But it's effective. "Normally, on a Monday, we get, like, 60 applications to be a surrogate," she says. The firm looks for women between 21 and 40 years old who've already had children—which is partially an ethical precaution, to ensure that any risk a surrogate pregnancy might pose to a carrier's ability to bear future children will not deprive her of having any offspring whatsoever. There are other basic criteria. Surrogates must have body-mass indexes within a certain range, and can't be taking mental-health medications. They have to pass driving, credit, and criminal-background checks.

The firm inspects Facebook profiles—"a royal pain in the ass," Brisman says, that can raise important red flags. They've discovered applicants who have had their children taken away by state children's-welfare agencies. Or "somebody who says they had no tattoos, and there's, like, five of them on their arm in their Facebook picture."

The firm doesn't actually care about tattoos, she explains, "but you can't have a tattoo within six months of an embryo transfer unless you have documentation from the tattoo parlor that it was hepatitis-free."

After that screening comes a series of three interviews. "Then we send someone to their home to, like, look in their refrigerator, test their water, interview the family, make sure that they have a safe place to live," Brisman says.

"So, out of those initial 60 applicants, we might get two."

If there's a typical profile, it's "someone

With nearly every surrogacy arrangement she makes, Brisman has to bridge a deep social and economic divide—a challenge that casts contemporary inequality in a fascinating light.

who married their high-school sweetheart. They make \$50,000 combined. They have three kids. This is a good way for them to make some extra money. Pregnancy is easy for them. And they are just all excited to be on a plane.

"Or sometimes they're petrified," Brisman adds. "We did once have a carrier who was so scared to go on a plane, we had to walk her through it. She'd delivered three babies, but getting on a plane... The clinic was in California, so we had to buy her tickets to a Beverly Hills rich-and-famous tour to convince her to get on the plane, she was so scared."

I spoke with four carriers. One used the money to pay off student loans from nursing school. Another was able to move her family to a better home in another state. "It helped my family tremendously," she told me. "I don't know when I would have been able to come up with a chunk of money to use on a down payment for a house."

Linda, who carried Brisman's twins, maintains that altruism remained an important motive in her subsequent surrogate pregnancies, but adds that she became savvier about negotiating the contractual terms with each one. "Definitely, the money was a piece of it," she says. "After you get a taste of getting that money, it becomes a piece of it." Carrying the Brisman's twins allowed her to remodel some of her home. "I would tease Dan and Melissa—when they came to

bers, with pain that still seems fresh. "So I also had to grieve the loss of the parents, and I had never experienced that before."

Barb, who carried Simmie, is a devout churchgoer who had initially tried to decline payment. She relented in the face of Melissa's insistence. After spending some of it on a family trip to Disneyland, she says she gave a lot of the money away. "I'm not money-driven, and I didn't want it," she remarks. "Or I shouldn't say I didn't want it—but I felt that that was taking away from the gift of helping other people. So we donated to the church, we sponsored kids at camp, that kind of stuff."

The intentional parents on the other end of surrogacy transactions are a diverse group. They are women born with uterine abnormalities, survivors of cancer treatments that have impaired their ability to reproduce, and women who have endured miscarriage after miscarriage. Some are high-powered professionals who have put off procreation until an age, when, for many, it is too late. In recent years, the rise of gay-marriage equality has dramatically expanded the number of gay men who turn to gestational surrogacy to have children.

Foreign nationals are another growing segment of the marketplace. The United States (depending on the state) is one of a very small handful of countries where commercial surrogacy is permitted. Many

countries prohibit altruistic surrogacy as well. Laws vary. In Israel, a state-appointed committee reviews contracts on a case-by-case basis—but has heretofore declined to approve any arrangement involving homosexual or inter-religious couples. Gay Israelis have been a substantial part of Brisman's client mix. Chinese nationals form another significant segment; using an American gestational surrogate enables them to select the sex of a child, and to endow that child with US citizenship, by dint of his or her (usually his) birth on American soil.

The unifying characteristic of all these people is wealth. Even in cases when Brisman provides her services free of charge (either through charity organizations like the Gay Parenting Assistance Program, or for people whose hardship has pulled her heartstrings), medical costs and the carrier's compensation make gestational surrogacy available to a small, very affluent minority. And therein lies one of the trickiest aspects of the surrogacy business. The economic and social gulf separating intentional parents from the surrogates bearing their children is so wide, it effectively defines entirely different worlds.

With nearly every arrangement she makes, Brisman has to bridge that divide—a challenge that casts contemporary inequality in a fascinating light.

When Brisman mentioned testing the water in the homes of prospective carriers, I couldn't help wonder why. American tap water is abundantly regulated and hasn't been a serious public health issue in decades—though natural-gas fracking has made it a concern in some areas, including parts of Pennsylvania where some of Brisman's carriers live.

"Are people drinking unsafe water?" I ask.

"No, but it's an obsession of our clients," she replies. Some clients arrange to have bottled water shipped to their carrier's homes during the duration of the pregnancy. Others fixate on their carrier's diet. Or her cookware.

"So they do things like, they want organic food, so they ship it," Brisman says. "We had a client who shipped food, got her a chef in the house, and got her all new pots because she didn't like the idea that she had pots that were Teflon."

She recalls one couple who insisted on restricting their carrier from taking her

kids to archery practice, and another that insisted on flying their carrier to doctor appointments in a private jet—despite how unnerving it was for her to be the only person aboard a flight whose cost she could barely stand to think about.

"We once had a client who wanted the carrier to have organic makeup, which I had never heard of," Brisman goes on. "Health and beauty products that were completely, like, free of chemicals. So she offered to get her an account at some fancy department store where she could buy all her health and beauty products.

"And I was pretty afraid, actually, to call her up and ask her." Maligning a woman's makeup is, to put it mildly, a delicate business. "But the carrier loved it. She was so happy...buying all kinds of fancy shampoos."

"Some of the carriers won't have it," Brisman says. "They will say, 'No, I'm not doing that, get somebody else. This is crazy.'"

In practice, it often falls to a carrier to decide whom she's willing to carry a baby for. A surrogate unwilling to abort a fetus with a congenital anomaly, for example, would obviously be a bad match for intended parents who want to keep the option of abortion open. (Conversely, a surrogate's right to terminate a pregnancy is constitutionally protected, though a carrier who chose to could expect a tussle over her financial compensation, which is paid out over the course of the pregnancy.)

Sometimes surrogates simply get a bad feeling about how committed a couple is to a potential child, or how committed they are to one another. A surrogate might also refuse to carry a baby for a gay couple, or a Jewish one, or a couple she deems too old to parent new children. The 50 or so fertility clinics Brisman works with have their own requirements for intended parents, which may include psychological evaluations and age cutoffs. But as long as clinics don't turn up any red flags, Brisman mostly tries to reserve judgment.

"When I started doing this, the only people that I helped were 100 percent in need of a carrier—they'd lost their uterus, had cancer, had six miscarriages. Now sometimes it blurs the line," she says.

"Fifteen years ago, you were gay, or a heterosexual and couldn't carry the baby. You weren't 42 years old and didn't want to carry the baby, which I find to be much harder of a call. Sometimes it's hard to keep your personal view out of it. We might

have somebody who has perfectly healthy twins, but only wants one baby, and they might reduce. And I have to reserve judgment. So that's hard ... I have twins, you know. So sometimes it's been hard to see things that I don't think, personally, should be done. But as a lawyer, you can't judge people. And I've had to really come to terms with being able to see all the sides."

The intended parents and carriers I spoke with mostly described positive relationships. But any number of things can sour the rapport. "I had a carrier who covered her face in the delivery because she didn't want to see the intended parents," Brisman recalls. "She was just so pissed at them."

Brisman credits one of her employees with helping intended parents and carriers see more eye-to-eye. But her own upbringing has undoubtedly played an important role too.

"I think it would be harder if I didn't have all sorts of people in my neighborhood, growing up," she says. "People who are well-off and well-educated often come from people who are well-off and well-educated. And a lot of times, they just don't know how to treat somebody else who isn't. And it's not necessarily vindictive or conceited. It's just the inability to relate to somebody who grew up differently, because they haven't been around it.

"There are other intended parents who feel like it's almost a right," she continues. "Like they're paying this woman \$25,000, so she has to do whatever they say. And they don't recognize that it's not *that* much money, and [what she's doing is] a huge gift, and you have to treat her like a person.

"More than a lawyer, sometimes I'm a personality coach," she concludes. "Like, you have to treat people like you would want to be treated. You would think that you wouldn't have to tell somebody that, but you really do."

By the time the Brismans embarked on their own second surrogate pregnancy, Melissa had internalized at least some of the advice she gives her clients. "Barb knew that I was a nervous person," she recalls. "And so she would email or text me every morning: 'I'm awake, I'm alive, I'm fine.'"

Barb characterizes their relationship as sisterly, despite a pregnancy marked by a worrisome buildup of excess amniotic fluid. She also has a vivid memory from immediately after her delivery, as

Simmie was being evaluated and cleaned by the obstetric team.

“Dan went over to Simmie, and Melissa was still by my side,” she recalls. “And I said, ‘Melissa, go to your baby!’ And she said, ‘I don’t want to leave you alone.’”

“Here’s this person who can’t have kids, who went to this expense to have kids,” Barb marvels. “And I think that goes to show the bond that we had. I think it speaks volumes of the relationship you can have, if both parties want it.”

“It’s one of those things I’ll never forget, because it was one of the most defining acts of kindness that I’ve experienced.”

POSTMODERN PARENTHOOD

Carrying a child for a woman who can’t carry her own is a profoundly humane act. It is also a deeply controversial one. Periodically Brisman debates bioethicist Art Caplan, the founding director of Penn’s Center For Bioethics (who departed in 2012 after 18 years), on TV. Caplan opposes commercial surrogacy on the grounds that it exploits women, whose “only motive for being a paid surrogate is poverty,” as he wrote last year in *The New York Times*. Like many critics (and some proponents) of surrogacy, he is especially wary of “reproductive tourism” in developing nations like India, where surrogates come cheap and exploitation has been documented.

“He makes the case that we shouldn’t be able to sell a part of our body,” says Brisman, who has limited her business to American carriers. “But in my mind, you do that in almost every laboring profession, right? So he says there’s a risk you’re going to die giving birth. Well, should we not have people work in coalmines? More people die in coalmines, digging coal, than they do giving birth. Should we tell people they can’t play football for a profit, because they might get a head injury? Somehow, when you get a woman involved, all of a sudden they can’t consent. But men can consent to all these dangerous activities.”

“I think the real problem is that there needs to be education,” Brisman continues. “When a surrogate comes to me, I educate her: *You could die giving birth; this many people die giving birth. You know, we’re going to get you life insurance. You could have a stroke. This is why we don’t want you to carry triplets, because it is dangerous. And even though most of the danger*

is to the babies, the danger is to you, too. So a lot of it is in the education. When you don’t regulate it, that’s a big problem.”

Some legal scholars have leveled a different objection to commercial surrogacy: that the parental privacy rights pertaining to a child in a woman’s womb are inalienable. In the wake of the *Baby M* case, Anita Allen, the Henry R. Silverman Professor of Law and a current member of the Presidential Bioethics Commission, argued that “freedom of contract should not include the freedom to bargain away certain constitutional rights,” and that “constitutional privacy prohibits the validation and enforcement of irrevocable surrogacy agreements.”

“[C]hildless men and couples do not have privacy rights that entitle them to state enforcement of surrogacy agreements,” she concluded, whereas “would-be surrogate mothers have constitutional privacy rights so strong as to limit their own capacities for alienating their procreative and traditional parental prerogatives.”

Yet the rise of gestational surrogacy has at the very least complicated that line of reasoning. Couples who use their own gametes to create an embryo can be seen to have some parental privacy rights inherent in it, even if the embryo is nurtured in another woman’s womb.

It also bears noting that all of the carriers with whom I spoke emphasized a certain feeling of disconnection from the fetuses they carried, arising from the knowledge that they were genetically unrelated. “It’s like if you babysit someone’s child,” Barb remarks. “You don’t think of keeping it. I knew, going into it, this was their baby, 100 percent biologically. So I went into it with a different state of mind.”

But even that notion—that a genetic relationship outweighs the biological connection forged through the womb—is heavily influenced by culture. Indeed, the Brisman family discovered as much for themselves when they went to arrange a bris for their twins.

“The rabbi was so excited by how we had the kids,” Dan recalls. “He thought it was such a wonderful, great thing, and it was why he was going to call his elders, his people in Israel, to discuss it.”

“So he calls us back, and he tells us he spoke to his elders, and this is wonderful. We’re going to have the bris, and we’ll also be doing the conversion. I said, ‘What are you talking about, the conver-

sion?’ Well, in his mind—and in the elders’ minds, I guess—the boys, since they were born from someone that was not Jewish, had to be converted.”

“The oven was unkosher,” Melissa chimes in. “That’s what he told us.”

They found another rabbi. But there’s clearly more than one way to evaluate the relative importance of nature and nurture when it comes to gestational surrogacy. And though there is no disputing the powerful role of genes, the intrauterine environment’s influence on a child’s future health and well-being is also well-established—and may well be increasingly appreciated as the science of epigenetics advances. Its importance surely accounts for many of the anxieties intended parents have about their carriers’ diets and lifestyles.

Whatever your view, gestational surrogacy has become a far more accepted practice over the past 15 years, and Brisman has played a big role in its expansion on the East Coast. “This is a big business now,” she reflects. “But when I did this, I didn’t do this to make a big business. I mean, it grew, and I’m happy about it. But I think in some sense if you do what you love, it will grow. And I loved helping other people do what I did.”

Debates about what, if any, limits should be placed on it will probably continue to reflect the mores of a society that doesn’t restrict ordinary parenthood at all. You may need a license to drive, as the old observation goes, but all it takes to create a child is the biological capacity to do so. In one sense, gestational surrogacy simply extends that weighty liberty to a wider circle.

The universal hope is that that every newborn child will extend blessings further still.

After she bore Simmie Brisman, Barb went on to carry once more, for a different couple. The memory that stuck with her in the wake of that surrogacy was of encountering the intended mother’s own mom.

“She came up to me and said, ‘I just want to thank you. You know, when Amy had her diagnosis as a teenager, I never thought I’d be a grandmom.’ And it was at that point that I thought, ‘Man, this isn’t just about Melissa and Dan, or Amy and Matt. This is aunts, uncles, cousins, grandparents.’ And that just made me fall in love with the idea all the more. It’s not just a nuclear unit. It’s about the entire family.” ♦