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THE BABY BUST

Why More and More Obstetricians Are Refusing to Deliver

By Aimee Lee Ball

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Why More and More Obstetricians Are Refusing to Deliver

WHEN THE PHONE RANG IN THE MIDDLE OF the night about two years ago, Dr. Zoë Kessler* rose from her warm bed and prepared, as she had so many times before, to leave for Mount Sinai Hospital to deliver a baby. "You realize," said her groggy husband as she was dressing, "you're getting up at two in the morning to go increase your chances of being sued."

Kessler is now sleeping through the night. She and her partner, both in their early forties, have stopped delivering babies, as has one out of every six obstetricians in New York State (up from one out of ten in 1990), according to the state chapter of the American College of Obstetricians and Gynecologists. More than half of the obstetrics residents who train here are leaving to set up practice somewhere else, and more than 70 percent of all family practitioners are no longer delivering babies, creating a near-crisis that ACOG and many in the field call a flight from obstetrics.

Most of these doctors talk about wanting their own lives back, uninterrupted by middle-of-the-night beepers for patients in labor. But overwhelmingly they cite soaring malpractice-insurance rates and an atmosphere of litigation as deterrents to practice. They blame a system that holds them accountable

** Names and other identifying details have been changed.*

BY AIMEE LEE BALL

Models: left to right, Gina Menza, James Young, and Jeff Loader from Bookers, Inc.; hair and makeup by Betsy Lyn; doctor's wardrobe from O.K. Uniform Co.

NEW YORK

ONE OUT OF SIX
OBSTETRICIANS IN
NEW YORK STATE
HAS STOPPED
DELIVERING BABIES.

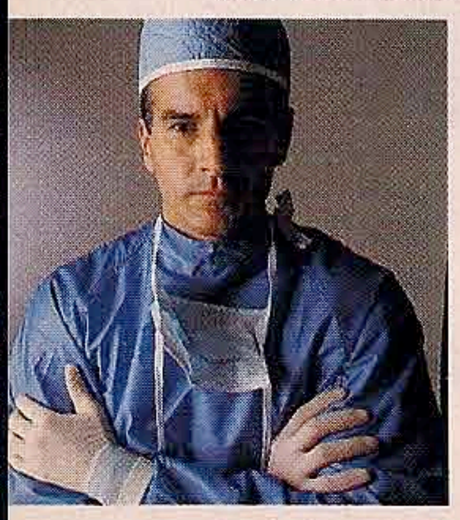
PHOTOGRAPH BY TOHRU NAKAMURA

for delivering a perfect infant even in circumstances beyond their control, and they point out that many physical and mental disabilities in babies, so often the fodder for malpractice claims, result from congenital defects, not physicians' errors during labor and delivery. They criticize the proliferation of 1-800-SUE-DOCS numbers on television and on subway posters as a modern version of ambulance chasing, promoting "contingency" cases for lawyers, in which disgruntled patients risk nothing in bringing suit—sometimes many years after the child's birth. "I know of an office where a woman called asking questions about her forceps delivery," relates one obstetrician, "because her son was going to have his bar mitzvah and couldn't read Hebrew well. This is what we live with."

The flight from obstetrics is a national crisis—during one campaign debate, even George Bush spoke of "crazy lawsuits" and doctors afraid to deliver babies, in between sound bites on the fall of Saddam Hussein and the Berlin wall—but New Yorkers are particularly litigious. One third of all New York obstetricians have been sued four or more times—the highest ratio for any state. "Almost all OBs have been involved in litigation. It's an occupational hazard," says Dr. Frank Chervenak, director of obstetrics at New York Hospital. In the past decade, the number of obstetrical lawsuits in New York has increased almost 400 percent. The size of jury awards here is three times the national average: In 1990, there were fifteen awards in excess of $1 million; the following year, there were twice as many. In the past two years, there have been a $15-million lawsuit against Mount Sinai and one for $90 million against New York Downtown Hospital. These staggering sums are often reduced on appeal, but malpractice-insurance premiums to cover this kind of liability have risen exponentially: In New York, obstetricians' premiums are now second only to those of neurosurgeons. The standard for Manhattan obstetricians is $75,000 a year, and in Suffolk or Nassau County, premiums can top $100,000.

"The money is a red herring," insists one Manhattan OB/GYN, whose premium started at $70,000 because he was "a good driver" and dropped to $50,000 when he stopped delivering babies. "My fee was $5,000, and I delivered about 140 babies a year. The first four made up the difference in premiums. The next 135 went toward my office overhead, not to mention my children's orthodontia." Obstetricians simply don't want to go through the emotional trauma of lawsuits—even if they win, even though their legal costs are paid by their insurance company. One doctor recalled that, upon winning a protracted lawsuit, he first called not his wife but his gastroenterologist.

Most OBs are hoping that this year, the state Legislature will pass a bill supported by Governor Cuomo that would do nothing less than dismantle the current tort system of law. Instead of a plaintiff's having to prove a doctor's negligence in order to be compensated, a government commission would review cases of newborns impaired at birth and compensate their parents from a pool funded by medical professionals—no lawsuit involved. This kind of legislation has already been passed in Texas, Maryland, and Missouri and has powerful advocates in New York, including the March of Dimes and the Children's Aid Society. Unless the new legislation is passed, OBs predict profound changes for women having babies: more trouble finding an obstetrician from a dwindling pool, and diminished care and attention through the pregnancy. But the bill is vehemently opposed by trial lawyers and some patients'-rights groups, who contend that the tort system is the only way medical consumers can be compensated for pain and suffering at the hands of butchers and quacks. With doctors and lawyers calling one another scoundrels, expectant parents are left wondering who will deliver babies in the future if the current trend holds. Midwives? Cabdrivers? Guardian Angels?



Expectant parents are left wondering who will deliver

DR. HARRY MORROW* REMEMBERS EVERY DETAIL OF December 31, 1981: His own daughter was just a few months old, so he and his wife weren't planning a big night out for New Year's Eve, and he offered to cover for one of the partners in his obstetrics practice. The day before, the partner had delivered a healthy baby by cesarean section to a 25-year-old woman, who specifically had wanted the baby born before January 1 so she could have the tax deduction. The baby got flying colors on the ten-point Apgar test administered after every birth, and the mother was resting comfortably when Morrow made rounds in the hospital. "It was her second baby," he remembers, "and everything was fine. Her blood pressure was fine, her temperature was fine, she was starting to take liquids, she was sitting up in bed. So I wrote out our standard postop day-one orders, which are basically to get the patient out of bed, because early ambulation makes for better recovery, and to discontinue her IV later in the day if things were going well. Everything was routine—she was perfectly fine."

A few hours later, while Morrow was assisting in surgery, he got an emergency page: The patient he'd just seen had collapsed on the floor and was turning blue. "I went running over to the maternity floor," he recalls. "She was acting confused, her eyes rolling back, her head rigid. Immediately I called an internist, a neurologist, a respiratory therapist. I wanted a cardiogram and a portable chest X-ray. There were two different diagnoses going on in my head, and while I was treating her for one thing, I was working her up for another. I gave her some Valium to stop the seizure, but I ordered an arterial blood-gas because it became clear that she was having a pulmonary embolus. That's a clot that goes from a vein to the lung. The size of the clot is not significant, but it sets up a whole cascade of events . . . and she died.

"Here's a woman I saw in the morning, who gets out of bed and drops dead. She has a baby that's a day old in the nursery, and her family comes to visit her. It was a horrible thing. There was not a physician or nurse in the hospital who heard about it that was dry-eyed. For months I had nightmares. That's not why I went into obstetrics. You don't lose mothers. With babies, from time to time, we know there are problems. We're not God, we're not perfect. But healthy 25-year-old women do not die."

That's what the woman's family said when they sued Morrow for $5 million. "Originally, everybody in my practice was sued," he says, "the internist, the neurologist, people who just showed up as Good Samaritans. As a gynecologist, I was basically standing there observing what they were doing. But everybody was dropped from the suit except me. They made me look like Jack the Ripper, like I had stood by and watched this woman die. I did extensive research, and in my review I saw again that this is a listed complication of cesarean section. But there are no accepted complications anymore. You can't have a bad result anymore. People expect one result, and that is perfection. You're pregnant, you go to your obstetrician, and nine months later you walk out with a perfect pink, robust, Apgar-ten baby who's going to grow up and become president."

The jury ruled in Morrow's favor, and his life returned to normal, albeit with some changes in office procedures to protect him. "Documentation was a big issue in the case," he says, "although when somebody is dying, you don't say, 'Wait a minute; I want to take notes.' Nurses were writing on the patient's bed sheets. I was writing on my pants leg. But now my charts are significantly thicker. We've basically been told by our insurance company that the burden is on us."

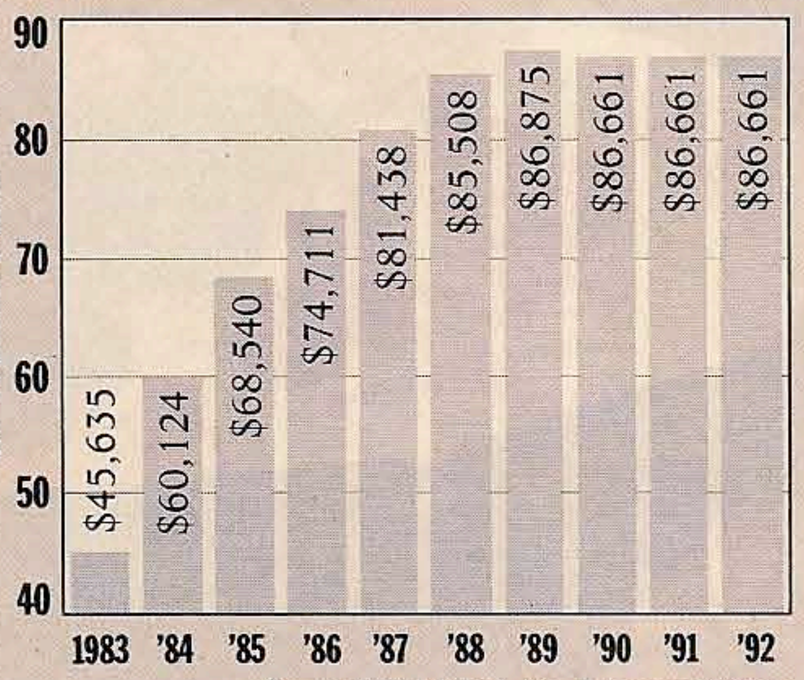
Two years ago, Morrow's lawyer notified him that the case was being appealed. That appeal is still pending, eleven years after the incident. "If you're on the verge of leaving obstetrics, this is the type of case to do it," says Morrow, who at 43 is nevertheless still in practice—and who has seen his insurance premiums rise from

Photograph by Tohru Nakamura.

DR. JOAN BERMAN NO LONGER DELIVERS BABIES AT MOUNT SINAI HOSPITAL.

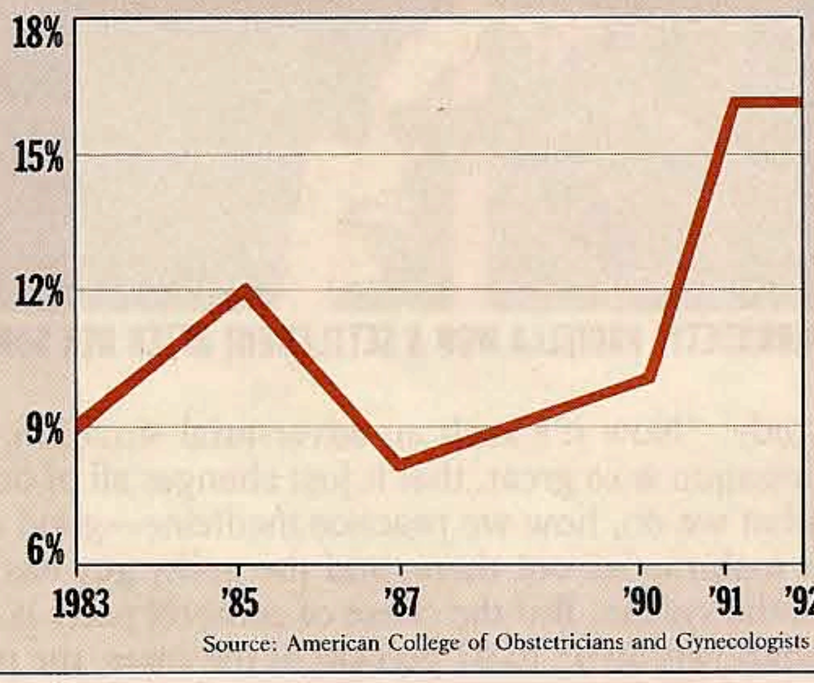
LABOR PAINS

Average annual occurrence-malpractice-insurance premiums for obstetrician/gynecologists in New York, Bronx, Kings, Queens, Richmond, Nassau, Suffolk, Westchester, Orange, Ulster, Rockland, and Sullivan counties



Source: Medical Liability Mutual Insurance Company

Percentage of obstetrician/gynecologists leaving the practice of obstetrics in New York State because of risk of malpractice



Source: American College of Obstetricians and Gynecologists

$10,000 when he began twenty years ago to more than $100,000. "We have this overwhelming burden of malpractice, faced with a declining financial reward and declining satisfaction in what we do," he says. "So there are a lot of depressed doctors walking around. We are currently looking for a new associate, and it's difficult to attract new talent to the area because of all these pressures. The birth rate still is rising here, but we can't attract new OBs. People want to go where they perceive there is less pressure."

child's life expectancy—plus an additional $11 million for medical expenses and estimated lost earnings. The child was born in 1978, but the case came to trial last year; it is being appealed.

"I can tell you that it turned that hospital upside down," says Bruder. "I'd talk to the attending physicians, how they're afraid they're going to get sued. They're pretty much worried every day, and it doesn't make you want to run out there and help people. These are doctors who love what they do. To put so

babies in the future if the current trend holds. Midwives? Cabbies?

Dr. Karen Bruder is one of those people. Bruder recently completed an OB/GYN residency at New York Downtown Hospital but has set up her practice in Virginia. As a member of ACOG's board of junior fellows, Bruder did a study that found that, like herself, half of all obstetrics residents in New York relocate outside the state. "The malpractice situation in other states is so much better that it's worth leaving," she says. "It's cheaper, a lot cheaper. The insurance my first year out will be $8,000, and as long as I practice in Virginia, the most I'll pay is $35,000."

While Bruder was a resident, New York Downtown found itself on the business end of a $90-million lawsuit. A baby had been born six weeks prematurely with cerebral palsy, and a jury ruled that there had been a failure to diagnose fetal distress. It awarded $79 million for pain and suffering—$1 million for each year of the

much time and energy into it and then have to give it up is sad. It hurts everybody. It would break my heart if I couldn't do it."

IN 1986, HARVARD UNIVERSITY CONDUCTED A LANDMARK study to determine how much negligence occurred in New York hospitals and how much compensation was provided through the tort system. The study found that only one out of fifteen injured infants ever receives an award in New York, that claims take an average of eight to ten years from start to finish, and that the victims get only about 30 cents on the dollar—the rest is absorbed by lawyers' fees, "expert" witnesses, and court costs. "Listen, I went into OB/GYN because I enjoy delivering babies," says Dr. Albert M. Ellman, who assisted with the

Photograph by Ted Hardin.

BERNADETTE PACIELLA WON A SETTLEMENT AFTER HER SON T.J. WAS BORN WITH CEREBRAL PALSY.

RISKY BUSINESS

Number of suits filed in New York, Bronx, Kings, Queens, Richmond, Nassau, Suffolk, Westchester, Orange, Ulster, Rockland, and Sullivan counties in 1992

SPECIALTY	
Obstetrics/Gynecology	*264*
Internal Medicine *(excluding cardiac catheterization)*	*176*
Orthopedic Surgery	*125*
Family Practice *(excluding surgery)*	*72*
Neurosurgery	*35*

Source: Medical Liability Mutual Insurance Company

study. "Now it's such an adversarial situation, and the fear of litigation is so great, that it just changes all of our feelings about what we do, how we practice medicine—good medicine. There is malpractice out there, and the guilty guy has to be taken out of the system. But the cause of cerebral palsy is overwhelmingly unknown. In 93 to 97 percent of the cases, the physician did not cause that CP baby, regardless of what we do in labor and delivery, so why should we be exposed to this lottery system?"

Almost one third of those who give up OB do so before the age of 45, well before the normal time for burnout in medicine. "You get to a certain age, and you don't need this crap anymore," says Dr. Richard Blum, chairman of a committee that reviews malpractice issues at the New York Medical Society. "We teach doctors about the legal process. We don't teach them how to avoid malpractice anymore—you can't, especially if you're an obstetrician. Now we teach them what to do when it comes. In Nassau County, where I am, if you don't get a suit every three years it means they don't love you."

Proceeding on the assumption that there is comfort in numbers, Blum started a support group for doctors who are sued. "I try to calm them down," he says. "They feel that their families and their houses are going to be taken away, that everything they've worked for is going down the tubes. When they get sued, it's a personal affront and they really take it to heart, to the extent that one doctor killed himself. The other day I had an OB on the phone who was going to give up, leave medicine. I asked her, 'Looking back on the case, would you have done anything differently?' and she said no. But it's a tremendous stigma. You've done everything you can for this patient, and you're being sued because it was a bad outcome."

One local insurance company, Medical Professional Liability Agency in Bedford Hills, has prepared a videotape for clients facing lawsuits. Called "Dealing With Malpractice: You Are Not Alone," it stars doctors, lawyers, and Edward Reading, a Catholic priest who runs the Litigation Stress Support Group for the Medical Society of New Jersey. The message Reading hears over and over makes it understandable why OBs are bailing out, especially if they face the prospect of four or five lawsuits over the course of their career, as their insurers now expect. From the day the process server walks into the doctor's waiting room to the day the verdict comes in, there is anger, pain, panic, depression, embarrassment, helplessness, and guilt.

Dr. Leo Cooper* knows this litany of distress. In November, Cooper, an OB/GYN at one of Manhattan's most prestigious hospitals, sat in a downtown courtroom as a jury heard about a child he had delivered eight years before who was normal at birth but was diagnosed eight months later with a muscular weakness on one side of his body. Cooper was accused of having missed the symptoms of fetal distress—which he claims were not present—and therefore not having performed a cesarean section. After a three-week trial—with the young boy sitting in the courtroom, one arm hanging at his side—Cooper was found negligent. On the advice of counsel, he will not reveal his real name or the amount of the monetary award, because the verdict will be appealed.

"I'm 46," he says, "and I'm very cynical. Nobody wants to deliver babies, because they feel that regardless of what they do and how they do it, they are judged by the outcome, and the judgment is by show: Who puts on the best show? At my trial, they had an OB for their side who's testified as a witness at least 200 times. I'd never been in a courtroom before, other than seeing *L.A. Law*. You're not sure who to dislike more, the lawyers for putting on this show or the doctors who come and lie on the stand. Jeffrey Dahmer killed seventeen people and ate them and was on trial less than I was. Unbelievable. But that's the system."

Cooper is still delivering babies—at least for now. "The people I work with all happen to enjoy doing obstetrics," he says. "You have the ability to do something positive and constructive, and it makes you feel very good about yourself. This stuff doesn't make you feel less good about yourself, but it makes you look at all your patients as potential adversaries. You come back to the office and see people sitting there smiling at you, and all you can see is the other people in the courtroom with daggers. It sours you."

"Jeffrey Dahmer killed seventeen people and ate them and was on

Photograph by Ted Hardin.

THERE IS ANOTHER SIDE TO THESE LAWSUITS, OF COURSE, and Laura Wittkin knows it well: the patient's side—or the victim's side, as she would put it. Wittkin is executive director of the Center for Patients' Rights, an advocacy group she co-founded almost two years ago. In her office on lower Broadway, Wittkin speaks with a quiet rage about doctors who do irreparable harm and the monitors and regulators of the profession who are supposed to keep the public out of harm's way. She is angry at the State Education Department, which licenses doctors on the basis of education and "good moral character" but doesn't consider their professional track record. "The parameters are so wide that they're letting bad doctors in," she says. "This is a can of worms. We need the same language that's in the regulations for other states, which look at a whole laundry list of issues that give them some sense of what kind of person they're letting into the state."

Wittkin also takes issue with the Office of Professional Medical Conduct, a division of the State Health Department that's responsible for disciplining doctors when complaints are filed. "When the OPMC undertakes an investigation," she charges, "the doctor has enormous rights. Victims and families have no voice—we're totally locked out. And 85 percent of the doctors that sit on the board of the OPMC must be nominees from the State Medical Society and other medical groups. It's a real stronghold, a very insulated process, and the victim is not privy to the investigation or the evidence. You cannot find out if there have been other complaints—unless the state decides to formally charge a doctor with medical misconduct and proceed with a hearing. Up to that point, it remains secret, even if there are a number of complaints against an individual doctor."

Wouldn't it be in the best interest of doctors themselves to have the strictest possible criteria for professional conduct, in order to reduce malpractice and the onus on the whole profession? "That's the million-dollar question," says Wittkin. "It defies logic. I suppose it has to do with the way they are trained, the way they are socialized. There's a feeling of being untouchable, a notion that the license to practice medicine is a right that should be protected. What we're saying is that it's a privilege, and you have to be held accountable, just as any other licensed profession does. The doctors don't see it that way."

Just last week, the watchdog group Public Citizen released a report ranking New York forty-eighth out of 50 states in its disciplining of physicians. But Kathleen Tanner, director of the OPMC, denies that there is a conspiracy of silence around the investigation of doctors. "I've heard it a million times, so none of this is a complete shock to me," she says. "But if you look around the country, our public-disclosure policy is certainly more open than most. Just because the doctors appointed to our board are originally nominated by medical groups, I don't think you can conclude they are necessarily protecting doctors and not protecting the public. You have to look at what they do, what their actual record is." What is that record? "We get many, many complaints," says Tanner. "And if we look at 100, 150, 200, that's still a small number compared to the thousands we get. But a lot of the complaints simply don't reveal misconduct. The mere fact that a complaint has been filed doesn't mean a whole lot. For the most part, that information is not available for good reason: It's not all that useful and can lead to a lot of erroneous conclusions. Anyone can make a complaint."

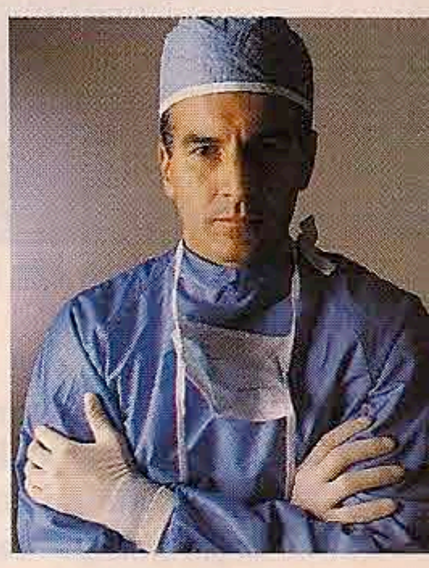
Last summer, the state Legislature called for the creation of a seven-person advisory panel to review the way physicians are disciplined and report back to the governor. "I'm looking forward to it," says Tanner. "As a state-agency official, I want to know how we can do things better, and to what degree the process serves to minimize or deter misconduct. We're not insensitive to the questions. This panel will have enormous authority to address some of the issues that consumers complain about. And they will issue a report with recommendations within about two years."

For Vicky and Albert Manning*, that will be too late. After four years of marriage, the Mannings decided to have a baby, and, says Vicky, "I had a wonderful pregnancy. Diabetes runs in my family, so they tested me and found I had gestational diabetes, which is something that only comes up when you're pregnant. But I controlled it through diet." She was three weeks past her due date—a fairly common occurrence with gestational diabetes—when she went into labor and went to the hospital. She was given a drug called Pitocin to induce contractions, but the baby just wasn't coming. "They tried forceps, they tried a vacuum, they even had a nurse on the table pushing down on my abdomen every time I had a contraction. Finally, the doctor called for a delivery room to do a cesarean—they saw on the monitor that the baby was in distress.

"When I woke up in the recovery room, I asked about the baby, and they told me he was fine. But I heard my husband and the doctor talk about transferring the baby to another hospital, and they wanted to baptize him before he left, so I knew something was wrong." Something was very wrong. Baby Jake* was blind and brain-damaged. He will be in a wheelchair, requiring 24-hour care, for the rest of his life, unable to feed himself, unable to speak.

It took the Mannings several years to bring suit. "We're not the type of people that are quick to do something like this," says Vicky. "But as time went on and my son had to go through all these therapies, it was getting more difficult. We decided that something had to be done, and we wanted to find out exactly what had happened in the delivery room."

WHAT ENSUED SOUNDS LIKE *The Verdict,* COMplete with roles for Lindsay Crouse and Paul Newman. "Well, I would prefer to be played by Kevin Costner," says the Mannings' lawyer, Edward Milstein. "The whole theory of this case is that the delivery should have been done hours earlier by cesarean section, which would have spared this child hours of oxygen deprivation. The doctor claimed he had given instructions to get the delivery room ready for a C-section and that the hospital was negligent in delaying to get the room ready. But waiting in the wings to testify on the day of the settlement was a nurse who was going to say that was not true, that there was no delay, that the delay was in fact on his part in making the decision. There's also an element in this case of altering hospital records," Milstein says. "Pitocin has to be given under close medical supervision and in dosages that are not going to cause strong contractions, because that has its own harmful effect on the fetus. On the fetal-heart-monitoring strips it's written 25 drops per minute. On the hospital record it's crossed out to show 15 drops per minute. It's very rare that hospital personnel would testify against a doctor. But I spoke to the nurse after the case was settled, and she told me she would never forget this delivery for the rest of her life. She was going to be asked, 'Do you remember it?' and she was going to say, 'Remember it? I have nightmares about it.' "



trial less than I was," says an OB/GYN. "Unbelievable."

When the case was settled, the Mannings had to swear in court not to reveal their own names, the doctor's, the hospital's, or the amount of the settlement, and that angers them. "Everybody makes mistakes," says Vicky, "and I'm not out to ruin anybody's reputation. We've tried to keep this quiet for our son's sake. But a friend of ours was a patient of this doctor, and she got pregnant. It was very aggravating not to be able to say, 'Just think about it,' or 'Don't be afraid to ask questions, because we had a bad experience.' " Albert Manning is angry that doctors receive special protection under the law. "I'm in

Photograph by Tohru Nakamura.

business myself," he says, "and if you want to find out about my record, you can call the attorney general's office. It's public information. You can't do that for a doctor."

The National Practitioner Data Bank, operating since 1991, provides information—though not to private citizens—on all malpractice claims against doctors and any disciplinary action taken. But the state is not required to check this data base in licensing doctors. Hospitals must check it before hiring a doctor—but they're protecting themselves from taking on a financial liability as much as they're protecting patients. "There is information out there," says John Powers, president of the New York State Trial Lawyers Association, "but a lot of it is confidential. It's incomprehensible to me that a hospital can find out there's malpractice and not tell its patients, or that the Health Department can discipline a doctor and not tell the taxpayers. Who's running this? Government is supposed to protect people, not corporations and doctors."

Powers cites the Harvard study, which found 27,000 cases of

BURT FEILICH AND DARYL ALTMAN DIDN'T SUE WHEN THEIR NEWBORN BABY DIED.

negligence out of 2.8 million patients in New York hospitals during one year but only 96 cases that were reported—a report now required by law—and only sixteen physicians who were reprimanded in any way by the Health Department. "That's frightening," says Powers. "Is 27,000 people killed or seriously injured during one year an acceptable number? You're safer in Central Park at midnight than you are in a New York hospital." And Powers disputes the idea that disreputable negligence lawyers cash in on frivolous cases brought against obstetricians. "One of the things that the Medical Society managed to get through the state Legislature was a reduction in attorneys' fees," he says, "and that's probably had some impact. I think the legislation is aimed at discouraging some of the better attorneys from continuing to do medical-malpractice cases. But the problem with malpractice is that some doctors practice mal.

"I don't believe that juries give randomly large amounts of money based on emotion," Powers continues. "Most of these cases are determined on cold, hard numbers of what it's going to cost for the rest of that child's life. This has been set up as a fight between the doctors and the lawyers. It's not. It's between the doctors and their patients, whom we represent because no one else does, and that's the Health Department's fault. And it's between the doctors and their insurance carriers. I've always thought the lawyers should get together with the doctors and go after the insurance companies. It would probably do society a lot of good." Powers disputes the need for such high premiums, and criticizes an insurance structure that charges the same premium no matter how many babies a doctor delivers, so that it no longer makes sense for a "family physician" to have a small OB practice. "How do you charge a doctor who delivers 2 babies a year the same insurance as a doctor who delivers 100? The risks have to be different. But that's the insurance companies, and they tend to manipulate the system for everyone." The largest local insurer of physicians is Medical Liability Mutual, with offices in Manhattan, East Meadow, and Syracuse. "It's got a $4-billion reserve," claims Powers, "which even at today's interest rates has got to be generating more than they pay out."

"Four billion dollars is pure poppycock," says Donald Fager, a vice-president of MLMIC. The company is doctor-owned, founded by the State Medical Society in 1975, when commercial insurance companies decided not to underwrite the volatile medical-malpractice field anymore. "This company is not in business to make a profit," says Fager. MLMIC is actually worth about $2.8 billion, he says, but has liabilities of more than $3.7 billion for 1992. "There are claims that we already know about, and there are incidents that have happened but have not yet become claims," he explains. "There's a ten-year statute of limitations on the worst cases—the infant-neurological-deficit cases—so we still see them coming in. In 1975, the first year the company existed, our total premium collected was $68 million. We've already paid out $150 million for that policy year, but beyond that there are still about 70 open cases for that year. Premiums for 1992 were about $260 million, but we're going to pay out well in excess of $300 million in claims."

"The lawyers and the doctors are never going to agree about this," concedes Peter Millock, chief counsel for the State Health Department and one of the architects of the governor's bill for litigation reform.

"You're safer in Central Park

"For trial lawyers, this is their bread and butter. Some feel we're depriving people of the right to sue. It's not meant to deprive them of rights but to give them faster, more complete access to compensation. We would be focused on medical or maintenance costs, and we don't anticipate anybody suffering injuries that would cost $90 million. We expect this bill would compensate ten times more newborns than the tort system, but the potential benefit to any one of them will be less. They won't be able to get a lot of money through a pain-and-suffering award. We think that's an appropriate trade-off."

"WHEN I HEAR THESE DOCTORS AND LAWYERS talk about putting a limit on pain and suffering, I think they should try to live one of these children's lives, one of these families' lives, and see if they can put a limit on that," says Bernadette Paciella. In September 1980, when Paciella was seven months pregnant, she started to bleed, and her husband rushed her to the hospital. "I had to lie down on the backseat the whole time," she remembers, "because I wasn't supposed to be sitting up. They did an amniocentesis, and there was a certain amount of blood in the water, but they just kept me in the room. I could see a stream of blood

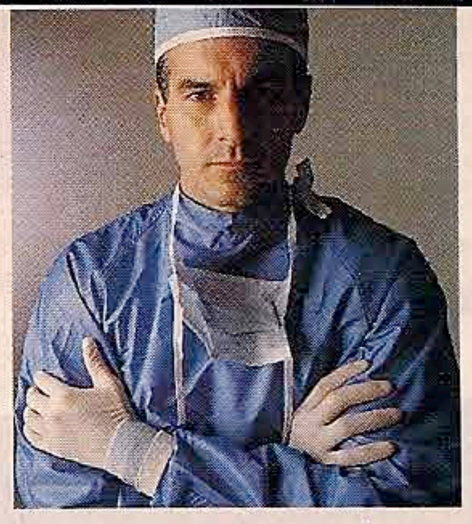
Photograph by Ted Hardin.

coming out of me, and I felt like I was fading off. I was actually bleeding to death. The placenta dislodged from the uterine wall and was hanging on by only 20 percent, so the baby wasn't getting enough oxygen."

Paciella's son T.J. was diagnosed as mentally retarded with cerebral palsy. She sued and eventually settled for an undisclosed sum. "He gets a certain amount every month," she says, "and I have to account for every penny—the family doesn't get mink coats or anything. But it helped in getting equipment for therapy and a van with a lift. When I just had a car, I'd have to strap him in a regular seat with pillows and blankets and sometimes other kids in between so he wouldn't fall over. The first time I had to strap my son down was one of the most horrible experiences of my life—you think of straitjackets."

Paciella's marriage to T.J.'s father broke up, and when she remarried, she wanted to have another baby. "But I was afraid I was going to die. A week before my due date I was saying, 'I have seven more days to live, I have six more days. . . .' I wrote out a will and everything. When Justin was born, I had all the doctors in the hospital look at him and tell me he was okay." She still fumes about the confidentiality agreement she had to sign when her lawsuit was settled. "They did something wrong. Why should I have to protect them? You trust these doctors. They're supposed to take care of you, save your life and your baby's life. But you have to be almost as educated as the doctors. They're not gods, and I've learned to speak up. If they get angry at a lot of questions, that's tough. But I wish there was a way that you could check out your doctor and see if there was any malpractice. You would know that much if you were taking your car into a gas station."

Sometimes doctors and lawyers do find themselves on the same side of this issue. When Burt Feilich, a negligence lawyer in Manhattan, and his wife, Daryl Altman, an allergist, were expecting their first child in 1988, Altman sought out one of her medical-school classmates, who practiced with a large obstetrical group that was highly regarded. About two months before the baby was due, the friend left to start her own practice, but Altman decided to continue with the group. "Literally every time she went in she would see another doctor," says Feilich, "and they didn't guarantee that any one doctor would be there for the delivery. But theoretically, all of them would be familiar with her care."



"I guess some doctors don't care if a woman is nine months pregnant and doesn't show up," says a rueful Feilich. "Nobody called. Somebody suggested that we let them know what happened. I got the receptionist and didn't even know who to talk to." Altman called her med-school friend who had left the practice, and that finally produced a response from one of the group. "There was never any suggestion to come in and talk," says Feilich, "never anything about how it was handled, just 'We're sorry to hear what happened.' "

The baby was a double footling breech—both feet pointing down the birth canal—which might have been anticipated if an ultrasound had been done. The couple subsequently learned that friends of theirs had sued this group of OBs—and lost—after the birth of a baby with cerebral palsy. Feilich and Altman have since had two healthy children with another obstetrician, who hinted strongly that there were grounds for malpractice in the death of their first baby. But New York law allows little compensation for the death of a newborn. "I never had any real intention of suing," says Feilich. "My wife's a doctor—I'm not suing doctors. If we were Mr. and Mrs. Joe Average, we would have sued. Ninety percent of the couples in that situation would have sued. But let's say the doctor admits he screwed up—there's still almost no compensation. It's cheaper to kill than to maim. When I first met my wife and she knew I was a negligence lawyer, we'd have arguments about this. I know from my end that lots and lots of cases probably should not be brought. But what do you tell a family left with a baby that's never going to grow to become a person?"

FOR NOW, DOCTORS AND LAWYERS REMAIN FIRMLY ENtrenched on opposite sides of the malpractice debate but agree on one thing: If the pending governor's bill is defeated, more and more OB/GYNs will be out of the baby business. It's a crisis that makes patients fighting mad. "I've literally been stopped on the street," says Dr. Douglas Jamison,* who recently gave up his OB practice at New York Downtown Hospital, where many of his patients were women who worked in the Wall Street area. "On Broadway a woman accosted me: 'How can you do this?' " And it makes obstetricians sad. "I have someone who's been my patient since she was eighteen," says Dr. Joan Berman, who is no longer delivering babies at Mount Sinai Hospital. "She was a really wild teenager, and I went through all kinds of boyfriends and venereal diseases with her. Now she's married and pregnant, and I told her I couldn't deliver her baby. It was very emotional. The bond goes both ways."

at midnight than you are in a New York hospital," says a lawyer.

During a routine office visit, one of the OBs told Altman that the baby was in a breech position. Altman knew that might involve a cesarean, but there was no suggestion about scheduling such a procedure—or an ultrasound or any special tests. Thirty-six hours later, Altman got up from bed around midnight to go to the bathroom, and her husband heard her scream. "I thought maybe something good was happening," he remembers. "And she said her water broke. And then within fifteen seconds, she could see the umbilical cord coming down. It was as though somebody took a gun, put it to her head, and pulled the trigger. She knew the blood and air supply to the fetus was being compromised, and it was choking to death. I said, 'Should I call the doctor? We'll go to the hospital and have a baby.' She said, 'You'd better call an ambulance.' "

A half-hour later, at the local community hospital, a baby girl was delivered by emergency C-section. "It was very Felliniesque," says Feilich. "They wouldn't let me in the operating room, so I was waiting in a room with music videos playing in the background. An obstetrician came out and said, 'The baby's still alive, but. . . .' " She had devastating neurological problems and was transported to a larger hospital, where she was expected to live only 24 hours. Altman, still recuperating from her surgery, insisted on being discharged from the hospital so she could go see her baby before it died. That happened three days later, on the day Altman was scheduled for her next regular OB appointment.

Nobody in obstetrics wants to be Chicken Little, but many agree that pregnant women are facing a harder time finding an OB; some have already discovered that the doctor who delivered their firstborn isn't around for the sibling. For those doctors who remain in practice, the trend will be to large, multipartnered offices—baby factories, as one OB calls them—where the sheer volume of business covers the cost of insurance but where there is no one doctor monitoring the care of mother and child through the course of the pregnancy (not to mention providing a personal relationship during an emotional nine months) and no assurance about who will be in the delivery room. The kind of care women have come to expect as—well, as their birthright in a city with the best medical facilities in the world, simply won't be available on demand anymore. There are not enough midwives to take over—only 452 in the whole state—and no reason to think we'd be any less litigious with them if they did.

Perhaps we'll soon be training storks. ■

Photograph by Tohru Nakamura.