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11-27-2013

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Recommended Citation

Joanna L. Grossman, *Sperm Donors on the Large and Small Screen* Verdict (2013)

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Verdict

November 27, 2013

Joanna L. Grossman

Sperm Donors on the Large and Small Screen



It has been quite a week for anonymous sperm donors—and their offspring. Vince Vaughn’s new movie, *Deliveryman*, in which he plays a man whose sperm donations were “accidentally” used to conceive 533 children, opened in theaters nationwide. And a new show, *Generation Cryo*, depicting the quest of a teenage girl to meet the fifteen half-siblings and the anonymous sperm donor responsible for all of their conceptions, debuted on MTV.

It is not a coincidence that two such mainstream sources—Hollywood and MTV—converged on this issue. Sperm donation, once heavily cloaked in secrecy, is coming out of the closet, much as adoption did twenty years ago. And what *Deliveryman* and *Generation Cryo* both depict are the yearnings of a generation of donor-conceived offspring to find their roots—against the backdrop of a system that was designed around the principle that donors should remain anonymous.

These media depictions of sperm donors and their offspring—one fictional, one not—raise at least three important questions. First, how courts or legislatures should balance the rights of donor-conceived offspring, many of whom express an interest in learning the identity of their donors, against the rights of the donor, the biological mother, and perhaps the mother’s partner or spouse, most of whom entered into the arrangement with the belief that the anonymity would be permanent. Second, can or should the system of anonymous sperm donation survive in an age when technology has made it increasingly hard to keep secrets and the tolerance for alternatively formed families is greater than ever? Third, does the possibility of dozens or even hundreds of offspring from the same donor raise policy questions that ought to result in greater regulation of gamete donation in the United States?

The Emergence of Sperm Donation as a Method of Conception

Although the first recorded sperm donation dates to the late Nineteenth Century, its routine use as a response to male infertility dates only to the 1950s. Once used almost exclusively by married women whose husbands could

not produce sperm, sperm donation in later decades became the most common method of conception for single women and for lesbian couples. Because there is no formal data collection on sperm donations or sperm-donor conceptions, it is hard to put an exact number on the practice. But estimates hover around 60,000 donor-conceived births per year.

The lack of official data is a byproduct of a largely unregulated industry. Cryobanks are subject to certain guidelines governing the donation of human cells and tissue, including rules designed to ensure the adequate screening of donors and appropriate cryopreservation techniques. And the FDA theoretically, though not effectively, bans in-person donations of sperm (other than through sex) on the grounds that those health and safety regulations are not being honored. But there is no law regulating whether donations are anonymous or non-anonymous, nor one limiting the number of times the same donor's sperm may be used to inseminate women. Neither is there much if any law about the enforceability of contracts and consent forms that routinely form the basis of sperm donations and sperm purchases at cryobanks.

Fictional Sperm Donors: Vince Vaughn as Starbuck

The lack of regulation gives rise to real and fantastical possibilities of sperm donation gone wild—and an array of issues that inevitably result.

In *Deliveryman* (info and trailers [here \(http://www.deliverymanmovie.com/production/\)](http://www.deliverymanmovie.com/production/)), Vince Vaughn portrays a hapless man who is, indeed, a (very bad) delivery man, for his family's meat business. He performs poorly at work, has made a series of bad decisions that have left him with \$100,000 in loan shark debt and a home-based pot growery designed to earn money to pay it back, and has a police-officer girlfriend who is pregnant and seriously thinking about cutting him out of the baby's life because he's never managed to be a success at anything. But she's selling him short. Unbeknownst to her, he spent a good deal of time over a three-year period in his early 20s selling sperm to the local cryobank—693 donations, which later earned him the nickname “El Masturbator.” And not only did he earn enough money to take his parents and siblings on an extended trip to Venice—a lifetime dream for his parents, who couldn't afford to take a honeymoon when they married—but his sperm was powerful stuff. For a time, we learn, the cryobank used his sperm for every single client who darkened their doorstep. Thus, the 533 children carrying his genetic material.

Thanks to a donor sibling website, over one hundred of these children have found each other and banded together on various social media platforms under the appellation “Starbuck Kids,” in honor of Vaughn's donor name. (Vaughn's character has nothing on the real “Starbuck,” a Canadian bull whose semen was so desirable it generated \$25 million over his lifetime and produced hundreds of thousands of cows.) They have also filed a lawsuit against the cryobank demanding that Starbuck's true identity be revealed.

Much of the movie plot turns on Vaughn's incompetent lawyer, a friend whose license had been revoked and recently reinstated. The lawyer keeps telling Vaughn to plead insanity, which has no relevance to the lawsuit. The best legal advice he offers his client is to “stop masturbating at fertility clinics.”

Meanwhile, Starbuck has been given photos and profiles of the 142 children—mostly now in their early 20s—who have joined the lawsuit. He seeks out several of them under various pretenses and tries out “parenting lite.” He minds the store while one barista goes to an audition. He takes an addict to the ER and, when mistaken for her father, has to grapple with whether to force her into rehab. He beams proudly while watching one offspring who plays for the Knicks. He has an epiphany after these interactions that while he can't be a father to 533 children, he can be their “guardian angel.” (A [review \(http://www.sfgate.com/movies/article/Delivery-Man-review-Infertile-array-of-cliches-4999557.php\)](http://www.sfgate.com/movies/article/Delivery-Man-review-Infertile-array-of-cliches-4999557.php) in the San Francisco Chronicle pegged this part of the movie exactly right in describing it like “watching six seasons of ‘Highway to Heaven’ crammed into one 103-minute sitting.”)

The rest of the movie—no spoilers here—alternates between the lawsuit and montages of the half-siblings bonding over their shared quest to discover their roots. Suffice it to say that law students would do well not to learn their law from Vince Vaughn or his on-screen lawyer.

Real Sperm Donors: Breeanna's Quest

In the first episode of *Generation Cryo* (the only one to have aired so far, which can be watched [here](http://www.mtv.com/videos/generation-cryo-ep-1-whos-your-daddy/1717607/playlist.jhtml#series=2211&seriesId=27039&channelId=1) (<http://www.mtv.com/videos/generation-cryo-ep-1-whos-your-daddy/1717607/playlist.jhtml#series=2211&seriesId=27039&channelId=1>)), a 17-year-old from Reno begins a series of video diaries addressed to her “donor,” whom she hopes to find. Through the Donor Sibling Registry, she has located 15 half-siblings. She was born to a lesbian couple, who bought sperm from the California Cryobank and had it delivered in a frozen canister to their doorstep. Although the couple broke up when Bree was young, and one of the woman began dating men, they continued to co-parent Bree.

Through the episode, cameras follow Bree to Atlanta as she meets the first two—a set of twins born to a married, heterosexual couple in which the husband was sterile. Their first visit is heartwarming, but also tense, as Bree asks the male twin, Jonah, to provide a DNA sample that she believes will help her locate the donor. Jonah’s dad is forced to confront his long-repressed angst over not being able to produce biological children and his fears about the disruption to his family if the donor’s identity is revealed. In an emotional blow to her husband, the wife admits that she is curious and would like to meet the man who helped them become parents.

Teasers for future episodes show Bree video-chatting with, and then visiting, additional half-siblings, including a set of female twins born to a single mother in Massachusetts. But these sibling meet-ups are clearly just a step on a bigger journey for Bree. Her goal is to find her sperm donor using a combination of DNA test results, DNA registries, genealogy websites and whatever else might help her locate him. It is clear even from the first episode that not all the half siblings, nor all their parents, have the same level of interest in or comfort with the possibility that donor #1096 might walk into their lives.

Whether Reality or Fiction, Anonymous Sperm Donation Raises Real Issues

The underlying premise of both *Deliveryman* and *Generation Cryo* is that donor-conceived offspring may not accept or value anonymity the way the adults who participated in the conception did (or still do). This conflict is sensitively portrayed in *Generation Cryo*, which focuses not only on the children’s interests, but also on the interests and reaction of the adults who raised these children—the biological mother and the spouse or partner without a biological tie to the child whose position might feel most threatened by revelation of the donor’s identity. And although the donor may never be found (I think he will), his interests are voiced by one of Bree’s mothers who asks what it might be like for him after all these years to discover he has at least 16 “children.”

Deliveryman, in contrast, never mentions a single adult involved in producing or raising these 533 children, other than Starbuck. This is surprising given that the plot of the movie is about the children’s dissatisfaction with the anonymity on which their parents and the donor relied. But only Vaughn’s interests are voiced. What would his offspring expect from him if they learn his identity? How would his girlfriend, and the mother of his just-born 534th child, handle the news? Would revelation of his frequent donations raise or lower his standing in his family and in the community? Yet, the interests of the children’s mothers, and maybe their mothers’ partners, are clearly relevant to any balancing of rights.

Current law has answers to only some of the questions raised by anonymous sperm donation. In most states, anonymous sperm donors, who donate through a cryobank or a physician, rather than in person, are protected by non-paternity laws. Thus, even if the donor’s identity is revealed, he would not be considered a legal parent and would have no obligations or rights as a parent.

But whether a court would force a cryobank to reveal the identity of an anonymous donor based on the rights of the offspring is anyone’s guess. There were lawsuits of this sort challenging adoption secrecy laws and practices in the 1970s. Secrecy in that context was facilitated, if not mandated, by state law. Adoptions were brokered by intermediaries so that neither the adoptive parents nor the birth parents would know each other’s identity. The fact of the adoption was kept secret from the outside world, through sealed court records and the issuance of a new (fake) birth certificate making no mention of the adoption. In several states, adult adoptees sued, claiming that they had a right to know the identity of their birth parents. But courts were reluctant to override the wishes of the adults involved in the adoption, who had relied on the secrecy. The courts were less sympathetic to the harm of not knowing one’s roots than to the fear by the adoptive parents that they would be displaced or the damage to the birth mother by having a stigmatizing out-of-wedlock birth from her past revealed.

Decades later, Oregon passed a law granting adult adoptees the right to obtain their original birth certificates. A few other states passed laws to make it easier for adult adoptees to find their birth parents. But in most states children adopted from the 1950s to the 1990s had to rely on voluntary registries to find their birth parents. The real change in adoption did not come through law. As unwed pregnancy became commonplace and infertility became less shameful, the urge to cloak adoptions in secrecy became less powerful. Moreover, in an age in which demand greatly outstrips supply of adoptable babies, birth mothers call the shots and they, in large numbers, have begun to insist on open adoptions. They pick the adoptive parents personally and may even contract for post-adoption contact or visitation. The vast majority of domestic adoptions in the U.S. now fit this mold.

Should we expect the same change for sperm donation? Will the experiences of this generation dictate greater openness for the next? In some countries, anonymous gamete donation is illegal at least in part because it is believed that children have a right to know their origins. Sperm donation in these regimes has continued despite predictions that the market would dry up completely.

In the United States, sperm donation presents perhaps a stronger case for openness than adoption did. Part of the fiction of adoption in the twentieth century was that adoptive parents could pretend the child they raised was their biological child. Agencies were careful to place children with parents who were appropriate in age and with consistent physical features to make this possible. And the birth mother was presumed to value secrecy, since non-marital sex and pregnancy were both taboo. But with sperm donation, this passing off is often not possible. As Breeanna explains in the opening narrative of her show, her two mothers wanted to have a child but couldn't because "neither of them has a penis." There is no question when a lesbian woman gives birth to a child that a man was involved in some way in the conception—so the fact of sperm donation is already in the open. The real threat with non-anonymous sperm donors is the threat to exclusive parenthood. Will the sperm donor disrupt the functional family unit or try to assume a parental role? The law can fix this problem with strong rules of non-paternity, and greater enforcement of the agreements that typically accompany sperm donations. (Vince Vaughn's character mentions that he signed an anonymity agreement with each and every one of his nearly 700 donations.)

Even if the adults involved in donor conceptions continue to prefer anonymous donations, technology may simply make permanent secrecy impossible. Breeanna is hopeful she will find her sperm donor, and she may well succeed. Others have. Almost ten years ago, a teenage boy identified his own sperm donor beginning with nothing more than a swab of his own cheek. His detective work was impressive, and led him to the right man. (A recent book, *Finding Our Families* (http://www.amazon.com/Finding-Families-First---Its-Kind-Donor-Conceived/dp/1583335269/ref=sr_1_1?s=books&ie=UTF8&qid=1385494887&sr=1-1&keywords=finding+our+families), by Wendy Kramer, founder of the Donor Sibling Registry, and Naomi Cahn, a leading academic expert in these issues, provides a guide for donor-conceived children seeking to find their donors.) Technology is only moving in one direction. And the greater the acceptance of alternatively formed families, the less sympathy there is likely to be for the adults who insist on secrecy.

As to the question whether there should be limits on the number of children conceived with one donor's sperm? The answer can only be yes. Concerns about accidental incest—imagine the possibilities with 533 good-looking twenty-somethings all living in the same metropolitan area—are real. Experts recommend various limits, but all agree there should be a limit. But the law would have to undertake regulation of an area it has previously left alone.

Conclusion

The coincidence of sperm donation hitting the big and small screen the same week tells us something about its cultural pervasiveness. A new era of openness about reproductive technology—its promise and its complications—is upon us. Although very different, these two portrayals raise important questions and offer a reminder that the law has yet to take responsibility for regulating this important social and medical practice.



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