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Overview: Names and the Law*

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Naming over the years has become more complicated. In the beginning, people had only one name. The first man was simply named Adam, and the first woman was Eve. It was then a simpler, less populated time.

Historically speaking, the surname is a recent development. Prior thereto, in a world without surnames, a new name was thought up for every person in order to distinguish them.

As the influence of the church increased in Europe, names were chosen from the Christian tradition. The Normans adopted the Catholic system of a couple of hundred saints' names as constituting the entire acceptable repertoire of names. One could not complain that another used the same name. As a consequence, after the Catholic system took hold, there were not enough names in the village to distinguish everyone, and so, in the 14th century, surnames — which were usually occupations, places, or descriptions — were adopted.

Still today, apart from questions of unfair competition and use in business, there is no property right in a name. In other words, it is not possible to prevent another from using one's name, unless one can show fraudulent purpose or an intent to invade the rights of another. One court put it this way: "The proudest patronymic in the land is available to the lowest individual and this without anyone's permission."[1]

Traditionally, Anglo-American law has allowed great individual prerogative in both initial attribution or change of name. The courts on numerous occasions have held that parents have a right to give their child any name they wish.[2] That prerogative is rooted in the philosophy that government should play a minimal role in the affairs of the people. Other countries prohibit "ridiculous" or "extravagant" names or those "contrary to good morals." In Argentina, names signifying ideological or political tendencies, ridiculous or extravagant names or those contrary to

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good morals are refused registry, as well as those not corresponding to the sex of the person. In France, until recently, names were restricted to those in the Christian tradition; it now allows parents freedom to name their children "unless the name would hurt the child." In Switzerland, the right to name is tempered by good faith and by the theory of the abuse of rights. In Spain, the civil registrar must refuse "extravagant" or "improper" names. The European interference with the right to name may be best explained by Planiol, a leading French law commentator, when he observed that a name is not an individual right, but is established as a police institution in the interest of society in general, not of the individual.[3]

Some say that the United States and England have gone too far in freedom of choice of names. As a consequence, they recommend legislation that would prohibit giving children shameful or embarrassing names. Dannin has proposed name legislation that would "promote the individual's interest in freedom of self-expression and the state's interest in consistent application and recordkeeping," citing women's increasing interest in retaining their birth name after marriage, parents' increasingly individualistic tendencies in choosing children's names (including the use of a surname other than the father's) and the rising number of divorces to justify the proposal.[4] Eder argues for legislation that would control, in the interest of the child's future welfare, such instances of misplaced humor as prompted a Texan by the name of Hogg, later destined to rise to political eminence, to call his daughter Ima Hogg.[5]

The proposed legislation, like the statutes regulating the use of fictitious or assumed names in business, probably fall within the residual constitutional power reserved to the states. A few prevailing statutes expressly refer to the welfare of the child when a change of name is requested for a minor. For example, in the case of *Application of Wing*, a New York court refused the application of a mother who had adopted the Muslim religion to change the daughter's name (from Cheryl Ann Wing to Hafsah Ashraf), but leave to renew the request upon the child's obtaining the age of 16 was granted. Basing its decision on the New York Civil Rights Law that provides a change will be approved only if "the interest of the infant will be substantially promoted by the change," the court said: "Such change may have an adverse effect . . . [The mother] should not be permitted to adopt, with the Court's approval, a name for her infant daughter that will set her apart and seem strange and foreign to her schoolmates and others with whom she will come in contact as she grows up."[6]

Upon marriage, a woman in the United States is free to choose whether

or not to adopt her husband's surname. In the history of naming, as surnames were basically descriptive or occupational (like John the carpenter becoming John Carpenter), and as women did not pursue an occupation outside the home and inheritance typically passed through sons or other male heirs, women took upon marriage their husband's surname as their own. It was the name that best described and identified women to local officials. Thus, there was the fiction at common law that the husband and wife were one and that one was the husband. But the various states in the United States have allowed a woman at the time of marriage the option of retaining her birth-given name. Six states (Ga., Hawaii, Iowa, Mass., Minn., Ore.) now specifically spell out the right in name-marriage laws. The Massachusetts law, for example, provides: "Every party to a marriage may adopt any surname, including but not limited to the present or birth-given surname of either party, may retain or resume use of a present or birth-given surname, or may adopt any hyphenated combination thereof."[7]

Statistics are not available, but it appears that many professional women in the United States are keeping their maiden names. When it comes to naming the children, however, feminist determination fades into indecision. More and more couples are deciding their children's legacy will include both a father's surname and a mother's maiden name with a hyphen. This is nothing new as for centuries the Spaniards and Latin-Americans, although patriarchal, have received two last names, one for each parent.

The Massachusetts court in a suit a few years ago by the Secretary of State against a group of city and town clerks said that married parents are free to give their children the father's surname, the mother's maiden name, a hyphenated combination or even an entirely new last name. The clerks had insisted on tradition in listing married women by their husband's surname, legitimate children by their father's, and illegitimate children by their mother's surname. As for illegitimate children, the court said the mother had the right to name the child as she saw fit. But the court did not decide whether a mother could name an illegitimate child after the father without the father's permission, saying only that there was a "possibility of a dishonest purpose to harass the alleged father."[8]

Upon divorce, a mother may wish to change the surname of minor children to that of her second husband. The cases which have considered the question have granted a change of name only when "the substantial welfare" of the child requires that the name be changed. Generally, minor embarrassment or emotional upset has been held not sufficient to require that a change of name be granted. The courts try to maintain and encour-

age continuing parental relationship. "A change of name could further weaken, if not sever, such a bond."[9] In one case, where such name change was sought, a psychologist testified that based upon his observation of the children it was his opinion they were sensitive children who were in need of a stable home situation and identity and it would be detrimental to their personality growth and development for them to be called by a name other than that of the second husband. A psychiatrist testified it would be in the best interests of the children that their legal name be made that of the second husband because the children considered they were a part of this new family, and if they were called by some other name the effect was to suggest they were not a part of the family. The court refused to grant a change of name, considering that the father was paying child support and had exercised his visitation rights.[10] Gone is the day when a household is represented by one name. Nowadays in a household there may be found as many surnames as there are people in the household. The wife may be using her birth-given surname rather than that of her second husband, and the children of her earlier marriage are using their natural father's surname.

A divorced wife, so wishing, may continue using her husband's surname. Divorce has for better or worse become an important current in the mainstream of modern life, and thus has provoked the establishment of its own customs. The courts take judicial notice of the generally acknowledged acceptability of the use of the husband's surname by his former spouse, and find no basis for rejection of such practice.[11] Sometimes a husband may protest his ex-wife continuing to use his name particularly when there are no children. The granting of a restraint order is discretionary with the court. New Jersey has a statute: "The court, upon or after granting a divorce from the bonds of matrimony to the spouse, may allow the wife to resume any name used by her before the marriage, and may also order the wife to refrain from using the surname of the husband as her name."[12] The courts have said that a petition for a change of name will not be denied merely because there are children.[13] Speculation that resumption of the maiden name might be embarrassing to the children is deemed insufficient ground to deny a name change.[14]

The procedure in most states today for changing one's name is usually by application to a court. The judges generally have no clear standard in reaching a decision but are vested with great discretion whether or not to allow the proposed change. Years ago in New York it was a mistake to apply to Judge Peter Schmuck, as he refused all applications, citing his own name. Under prevailing law, applicants usually must swear that the change does not have any illegal motive. They must also include a

statement of why the request is being made. The request is usually granted when the previous legal name is unsuitable as a result of its length or inconvenience,[15] when it denotes the wrong sex,[16] or when there is a change of sexual identity following a surgical procedure.[17]

But other cases are not so clear, and have resulted in costly and burdensome litigation. At times the prefix "von" has been refused on the grounds that the Constitution precludes titles of nobility. The various courts have split on an individual's wish to "Americanize" his name when relatives intervene alleging that the petition is an affront to their heritage. Thus, in a Massachusetts case, a petitioner, an adult, sought to change his surname from Rucsoni to Bryan; a reason for the petition was the wife's distaste of the Italian heritage. The lower court upheld the objection of petitioner's relatives that the petition was an "un-American" affront to persons of Italian origin. The appellate court, however, reversed the lower court, saying that the right to change one's name is very broad; the objections of "un-Americanism" and the alleged affront to Italian people did not constitute legal cause for denial of the petition.[18]

About five percent of 142,000 people who become U.S. citizens each year, some 7,000 in number, change their name. The most common reason is that they simply want to adopt a name that is easier to pronounce. In a not uncommon case, a schoolteacher in Detroit told a Polish student with a long name that she could not pronounce it and she requested the boy to tell his father to change it. Many immigrants cut their name in half. Former Vice-President Spiro T. Agnew's father was a Greek immigrant that changed the family name from Anagnostopoulos to Agnew after coming to the U.S.; the Greek name Spirodoupolas became Spiro. Some even cut their name shorter. A Los Angeles advertising executive Grumburgher has as his last name merely the letter G; that is the way immigration officials listed the name. In the United States, informality, nicknames, and short names are fashionable — including that of the President (e.g., Harry, Ike, Dick, Jack, Gerry, Jimmy, Ron).

Today, the controversy over which name one may bear (or give another to bear) has assumed special prominence in legal circles largely as a result of the women's liberation movement but also as a result of other feelings encouraging self-expression. The courts, however, have often limited freedom of expression by change of name in case where the judge regards the change as "ridiculous," as in the recent case where Ellen Donna Cooperman petitioned to change her name to Cooperperson in order to express her militant feminism. The judge called the petition "truly in the realm of nonsense," and ridiculed the petitioner by reciting a number of possible changes which he regarded as "inane": Jackson to Jackchild,

Manning to Peopling, Carmen to Carperson. The judge said that if he granted this request "it would have serious repercussions perhaps throughout the entire country." (Indeed, one woman upon divorce recently sought to change her married name from "Friedman" to "Freedwoman.") In the Cooperman case, the appellate court reversed and allowed the requested name. Ms. Cooperperson initiated the court proceeding because banks and credit-card companies refused to list her under the new name.[19]

A modern consideration limiting initial attribution or change of name is the keeping of records. Each age, apparently, has its own special nostrums. Should names be restricted so as to facilitate record keeping? Some purported names would play havoc with the Bureau of Vital Statistics, telephone directories, and other listings. A file clerk (or for that matter, a computer) may not be able to handle a name like Woody Allen's "Joey 5¢" or a long name like "Jessica the Heavenly Beauty who loves England and was born the year of the Queen's jubilee." The usual form in the Bureau of Vital Statistics has only two lines. There is only so much space. That limitation particularly irks many Latins who like to use many names. Registrars are often heard to say, "Do you *really* need all those names? It doesn't make a neat record."

Recently a North Dakota court had to answer the question, What (in law) *is* a name? A petitioner sought to change his name, Michael Herbert Dengler to the number "1069"[20] In support of his request, the petitioner stated that he was adopted but as an adult "his personal philosophy had expanded," and that the only way that his identity would be expressed, he felt, was by 1069. The court said that a verbalized number or symbol, "One Zero Six Nine," might qualify as a name, but it balked at the use of numerals. The Romans, it may be recalled, used numbers but written: Octavius, Quintus. The petitioner moved to Minnesota where he tried again to change his name to a number. The court there also refused, saying it would be "an offense to basic human dignity . . . To allow the use of a number instead of a name would only provide additional nourishment upon which the illness of dehumanization is able to feed and grow to the point where it is totally incurable."[21]

We seem now to be at a crossroad. Registrars balk at long names, which are not dehumanizing, and courts balk at numbers, which are, they say. But is a common name any different from a number? Samuel Goldwyn once scolded an acquaintance for the name he gave his son: "Why did you name him John? Every Tom, Dick and Harry is named John."[22]

Notes

[1]In re Green, 54 Misc. 2d 606, 283, N.Y.S.2d 242 (1967).

[2]Annotation, 92 ALR3d 1091 (1979).

[3]M. Planiol, *Traite Elementaire de Droit Civil I*, no. 397 Dalloz, Paris, 1899.

[4]E.J. Dannin, "Proposal for a Model Name Act," *U. Mich. J. Law Reform* 10:153, 1976.

[5]P.J. Eder, "The Right to Choose a Name," *Am. J. Comp. Law* 8:502, 1950.

[6]Application of Earl Green for leave to assume the name of: Merwon Abdul Salaam, 54 Misc. 2d 606, 283 N.Y.S.2d 242 (1967).

[7]Mass. Laws 42:1D.

[8]AP news release, Aug. 6, 1977.

[9]Robinson v. Hansel, 302 Minn. 34, 223 N.W.2d 138 (1974).

[10]Matter of Spatz, 258 N.W.2d 814 (Neb. 1977).

[11]Welcker v. Welcker, 342 So.2d 251 (La. App. 1977). Many judges construe statutory change-of-name procedures as granting them broad discretion. Application of Lawrence, 128 N.J. Super. 312, 319 A.2d 793 (1974). One notable case denying petitions for resumption of maiden names is In re Mohlman, 26 N.C. App. 220, 216 S.E.2d 147 (1975), where four women petitioned to resume their maiden names "for personal and professional reasons." The judge denied the petitions because the women failed to show evidence of "good cause and sufficient reason" for the name change, as required by the North Carolina statute. The court observed: "With the increasing mobility of our society, and the growing dependence upon credit cards, automated check cashers, charge accounts, computerized recordkeeping both in commerce and in government, numerous name changes can lead to chaotic confusion." In contrast, another court held there is statutorily sufficient evidence of "good cause" to grant a name change if a woman "for her own proper reasons conscientiously feels the necessity of being known and referred to by her previous name." To deny her this right, the court said, would be "a violation of equal protection under the law by creating an invalid classification based on sex." In re Erickson, 547 S.W.2d 357 (Tex. Civ. App. 1977).

[12]N.J.S.A. 2A: 34–21.

[13]In re Lawrence, 133 N.J. Super. 408, 337 A.2d 49 (1975).

[14]Moskowitz v. Moskowitz, 118 N.H. 199, 385 A.2d 120 (N.H. 1978).

[15]In re Knight, 537 P.2d 1085 (Colo. 1975).

[16]In re Anonymous, 64 Misc.2d 309, 314 N.Y.S.2d 688 (1970).

[17]E.S. David, "The Law and Transsexualism: A Faltering Response to a Conceptual Dilemma," *Conn. L. Rev.* 7:288, 1975.

[18]In re Rusconi's Petition, 167 N.W.2d 847 (Mass. 1960).

[19]*New York Times,* Oct. 19, 1976, p. 37.

[20]Petition of Michael Herbert Dengler, 246 N.W.2d 758 (No. Dak. 1976).

[21]J. Campbell, "Hello! My Name is 1069," *The Futurist,* Oct. 1980, p. 45; T.M. Lockney and K. Ames, "Is *1069* a Name?" *Names* 29:1, 1981.

[22]R. Slovenko, "Americans Are Now Playing the Name Game," *Wall Street Journal,* August 3, 1978. A new Swedish law offers relief to those who think their last name is too common. One Swede in ten is named Johansson or Andersson. The two names alone take up 100 pages in the Stockholm telephone directory. Now a just-married couple can choose his name, her name, or their mother's maiden name. Or, the Bureau of Names has 20,000 others in a computer. *Detroit News,* Jan. 10, 1983, p. 1.