Judicial Procedures for a Change-of-Name in The United States

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THE ESSENTIAL FREEDOMS which citizens of the United States enjoy today include one which is often overlooked because, like most of our other rights, it is so frequently taken for granted. Yet we, in America, perhaps possess the freedom, alone of all the peoples of the world, to change the names we were given at birth.

Yet, as shall subsequently be made clear in this paper, it is not an absolute guarantee, any more than the inalienable rights of speech and assembly are to be regarded as without exception. For limitations are placed on all of our freedoms to insure that freedom for one may not deny the equally valid rights of others.

This paper, part of a longer study of the practice of name-changing in the United States, treats of the methods by which a change-of-name may be effected in a court of law. After a brief account of the statutory foundations of common law and judicial procedures and a description of the judicial process itself, attention will be focused on the grounds – legitimate or otherwise – for the approval and denial of court petitions and some of the more memorable legal decisions in the past forty years on the right of assumption of "famous names."*

The Legal Basis for Name-Changing – In most states of the Union, an individual has the common law right to adopt any name he chooses and once he has used and become generally known by it, it "will constitute his legal name just as much as if he had borne it from birth."[1] This may be broadly interpreted to include the right of any individual to change his name without application to the

* The author wishes to acknowledge his indebtedness to Dr. John W. MacDonald of the Cornell University Law School for his critical reading of the manuscript, but takes upon himself all responsibility for any errors in fact and interpretation.

[1] Justice Irving G. Vann of the New York Court of Appeals in Smith v. United States Casualty Company, 90 N.E. 947, 197 N.Y. 420, quoting Archibald H. Throckmorton, "Names," *Cyclopedia of Law and Procedure*, Vol. 29, 1908, P. 271.

courts as long as no criminal or fraudulent intent is served by the change.[2]

To provide for the formal adoption of the new name, however, recourse to the courts of law is usually necessary. The function of such judicial application is to insure the continuity of identity of the individual. The exigencies of modern life frequently demand that the individual furnish ample proof of his change-of-name in the form of a court record for such public record of the change can be referred to "even after the death of contemporaneous witnesses."[3] Thus most states have enacted statutes to provide for the change of names by decree of court. These statutes are designed not to hinder or place restrictions upon man's inherent common law rights but to facilitate his exercise thereof and are, therefore, quite liberal in guiding judicial decisions. A California court once ruled that "until such time as the common law right to change one's name may be abrogated by statute, the courts should encourage rather than discourage the filing of petitions for change of name to the end that such changes may be a matter of public record."[4]

The advantages of judicial name-change are based largely on the awareness of some of the crucial problems accompanying the common law practice. One may cite, for example, the numerous rejections by insurance companies and banks of applications for policies and loans on the grounds of false representation because, as the names given thereon were different from those on birth certificates, applicants could not prove that they were really the persons indicated on their applications. Such a case, in the first decade of the twentieth century, involve one Maurice W. Mansfield whose application for an accident insurance policy was rejected on the grounds that his "real" name, Myron W. Maynard, was his only true and

[2] The judicial precedence for this right is summarized in 38 Am. Jur. 610: "In the absence of a statute to the contrary, a person may ordinarily change his name, at will, without any legal procedings, merely by adopting another name. He may not do so, however, for fraudulent purposes." In another decision, the function of the name as a means of identification was considered as a rationale for change in a New York decision: "A person may assume a new name for honest purposes, since the name of a person, like the name of a thing, serves merely to identify him." (*In re Zanger*, 194 N.E. 72, 266 N.Y. 165, 1935.)

[3] Justice Vann, *op.cit.*

[4] District Court of Appeals in California, *In re Useldinger*, 96 Pacific Reporter (2) 958, Ray v. American Photo Player Co. 46 Cal. App. 314.

legal name since it had not been changed in a court of law and, therefore, in signing his assumed name, he was committing a "breach of warranty." The New York court, to which the applicant subsequently presented his case, implied, in its ruling, however, that an assumed name was a legal name and could be used on all documents and applications.[5]

An even earlier decision handed down by the Supreme Court of Pennsylvania in 1892 ruled that the name-change statute (of that state) merely affirms and supports the common law and facilitates its usage. In short, it is just another means by which a name can be changed; it does not supercede the common law, even indirectly.[6]

In some states, however, statutes insist that a change-of-name be achieved only through the action of the courts. Pennsylvania, since 1919, has required a court order, and it is unlawful in that state for a person to use a name other than that by which he is legally known.[7] Under Nebraska law, name-changing is not a right but a privilege granted at the discretion of a judge.[8] Several states even regard as a misdemeanor the unlawful assumption of a name except through formal judicial procedure. Yet many states with such statutory provisions will exercise a leniency in permitting prior common law changes that are finally brought before the courts for validation and registration if such changes were honest and not intended to defraud. Numerous are the cases in point even in such states as Massachusetts and Pennsylvania in which persons, having conducted businesses under an assumed name for most of their adult life, finally obtained a court authorization making the change *de jure* as well as *de facto*.

To change one's name by judicial action, an individual, with the aid of legal counsel, prepares and files a petition before a court of record or other public official as designated by statute. In most cases, this means the Probate, Circuit, District, Chancery, or Superior

[5] Smith v. U.S. Casualty Co., 90 N.E. 947 (1910). In a similar case, with a different conclusion, a New Jersey woman, registering to vote under her assumed name, "Love Faith," was denied the right to do so when she refused to reveal her original name. The court to which she appealed ruled that she be allowed to register only if she gave her true name which was necessary to determine if she was elligible to vote. (22 N.J. Misc. 412, 39 A (2) 638.)

[6] Laflin & Rand Powder Company v. Steytler, 146 Pa. 434.

[7] Act of July 9, 1919, P.L. 822, 54 P.S. Sec. 5.

[8] *In re Taminosian*, 150 N.W. 824 (1915).

Court of the county of the petitioner's residence. Two states, Iowa and North Carolina, require the petition to be submitted to the clerk of a county court;[9] and when Hawaii was a territory, the petition was filed with the governor. In any event, some period of uninterrupted residence in the county in which the petition is presented is nearly always required, the length of such residence varying from state to state.[10]

Any individual is free to apply for a change of his own name or that of his family. In most states, a husband's petition will also change the name of his wife and natural or adopted children under a certain specified age, usually fourteen or sixteen years. This, however, is not an unqualified right for in any jurisdiction in which a court has discretion over the granting of a petition, if the feeling is that the best interests of a family would not be substantially promoted by the desired change-of-name, the petition may be rejected. Such occurred in a case in which a Nebraska judge ruled that one John Taminosian, a convert to Islam, could not change his name to Mohammed Nadir (though such conversion was thought to require the assumption of an Arabic name) on the grounds that this action would have a detrimental effect on the family's position in the community."

In most states, a woman petitioning for a divorce may request of the same court a return to her maiden name, some previous name, or any other name she may choose. (In five states – Arkansas, Michigan, South Dakota, West Virginia, and Wisconsin – an exception is made if she has any minor children by the dissolved marriage.) And the divorce order will include an order allowing her to make the change. (In New Jersey, a divorced woman may even be required, by the terms of the divorce, to terminate the use of her former husband's name.) Of course, at any time after the divorce has been granted, a woman, in most states, is allowed to petition for

[9] In Iowa, to the Clerk of the District Court; in North Carolina, to the Clerk of the Superior Court.

[10] Seven states (Iowa, Michigan, Minnesota, Nebraska, Ohio, Utah, and West Virginia) require the petitioner to reside in the county for at least one year; Wyoming requires two years residence; in Oklahoma the period of residence in the state is three years but only thirty days in the county; Pennsylvania law requires five years residence; while only six months is the minimum period before filing the petition in the two Dakotas. In all other states, no specific minimum length of residence is statutorily required and an individual may submit his petition at any time.

a judicial change of name and, certainly, under the common law, where applicable, any divorced woman may assume another name as freely as anyone else.

Minor offspring who desire a change-of-name may also apply to the courts but, in most states, their petitions must be signed and presented by both parents if they are alive and are their legal guardians. If one parent of a child is deceased, the signature of the surviving parent alone must be affixed to the petition. If both are deceased, the child's legal guardian(s) must sign. Some states, like New York, allow exceptions for incompetency, the serving of a prison sentence, and absence from the country to the requirement that both parents approve the child's petition. In Michigan, if one parent has been adjudged mentally incompetent, the other alone may sign, and the legal guardian of the incompetent parent must also given written consent. Parents who may be legally separated are often both required to endorse the child's petition.

The laws of most states vary in their definition of „minor" with reference to name-changing. The conventional "under 21" is not found in all states. Indeed, in Arizona, any person over sixteen years of age may file his own petition, whereas in Wisconsin and New Mexico legal minimums are placed at fourteen and fifteen respectively. In California, Idaho, and Montana, parents or legal guardians must file for all male children under 21 and female children under 18.

In three states, Delaware, Michigan, and Vermont, a child over a certain age[12] must give his own written endorsement to the family's petition. This requirement is justified in that by adolescence an individual should be old enough to decide for himself whether he wants to change or retain his name and if he chooses the latter alternative he knows that he is free, either under the common law (where allowed) or through the courts, to adopt later the new name of his parents or even an entirely different name of his own.[13] In short, at either 14 or 16 years of age, his parents' name-changing action is not binding upon him.

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[11] *In re Taminosian, op.cit.*

[12] In Delaware and Vermont the age is 14 and in Michigan it is 16.

[13] Dean L. Berry, "A Rose By Any Other Name ... The Michigan Name-Change Statute" *Michigan Probate Guide for the General Practitioner* (Published by the Institute of Continuing Education, University of Michigan Law School, Ann Arbor, Michigan, 1962, Pp. 342–51.

That the right of "change-of-name" is not an absolute guarantee is particularly apparent in the case of petitions to change the surname of the offspring of a divorced union. Often the mother (who generally receives custody of the children) seeks to change their name to her own when she returns to her maiden name or to that of their new step-father in the event of her remarriage. Here we find frequent and not always unjustified objections to the change by the natural father on the grounds that the child is a rightfully his as the mother's. And, as according to numerous state statutes, the written consent of both parents is necessary for a child's change-of-name to take place, the father's objection will meet with a sympathetic response and the petition will be denied as not being in the best interests of the child. In one such case, when a remarried mother sought by judicial action to have her children awarded the surname of her new husband, a New York court declared that the father was within his legal rights to demand that his name continue to be borne by them.[14] The best interests of the children would not necessarily be met by having them adopt the name of their mother's new husband for this might have succeeded in destroying their little remaining and tenuous ties with their natural father.[15]

On the other hand, in cases where the natural father has shown an indifference to the well-being of his children and has made no attempt to visit them or maintain an affective relationship with them, his objections will usually be denied and the change will be allowed.

Finally, while in some states it is necessary for a child to secure the court's permission in order to legally adopt another name, he may be free to do so in other states under the common law without going through the courts as affirmed by a New Jersey court's decision a few years ago overruling the objections of a father to his

[14] 57 N.Y.S. (2) 283.

[15] Lawrence G. Greene, *How To Change Your Name and The Law of Names*, New York: Oceana Publications, 1954, P. 17.

As recently as 1954, also in New York state, a decision was handed down in one of the frequent "Board of Education" cases to the effect that a mother who, without having obtained the consent of her children's father, had sought to have them registered in school under the name of her new husband, was invading the rights of their father who was justified in securing an order "requiring the mother to continue to use (his) surname for the children until she had properly obtained the court's approval for a change of name." (Galanter v. Galanter, 133 N.Y.S. (2d) 266.)

teenage daughter's free adoption of the name of her mother's second husband.[16]

Aliens legally permitted residence in the United States are also free to change their names by both common law and statutory procedures. Since it is to the advantage of the changer that this act be made a matter of public record, however, court procedure is highly recommended. Also, in naturalization procedings, the Federal Court may grant the new citizen a change-of-name which will appear on his certificate of naturalization[17] and he may then be free to change again if he should so choose, at least in some states.

In New York State the right of a naturalized citizen to change his name again under the common law was once affirmed in the case of Johannes Steel.[18]. Steel, whose "real" given name was Herbert – having changed only his surname, at his naturalization, from Stahl – sought public office under the name "Johannes Steel" which he had earlier assumed for professional and social purposes, only to have a political rival protest that a naturalized citizen had no right to use a name other than that which he had been authorized to use at his final naturalization hearings. The court, however, ruled that:[19]

> "When the respondent became a naturalized citizen he acquired all the civil rights and privileges of a citizen save elligibility to the presidency... Included in these rights was his common law prerogative of changing his name without resorting to a judicial proceding..."

Even if, under New York State law, one who has obtained a new name through judicial decree may not change it again without going through the courts,

> "no such (requirement) appears in the federal statutes pertaining to a change of name effected on naturalization."[20]

Also, under 8 U.S.C.A. Sec. 1454, a naturalized citizen who subsequently changes his name by petition to a court of law may later apply for a change in his naturalization papers, which act is greatly facilitated by a prior *judicial* change with its formal order of authorization.

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[16] 12 N.J. Super. 350, 79 A (2) 497.

[17] Title 8 U.S. Code Sec. 734 (e).

[18] 60 N.Y.S. (2) 323. [19] *Ibid.*

[20] Similarly, in Pierce v. Brushart, 92 N.E. (2) 4 (1950), an Ohio court ruled that a person could campaign for public office under either his original name or an assumed name.

The petition which the name-change applicant presents to the court must be filled out in a standard fashion, usually stating the name to be changed, the name to be adopted, and the reasons for the change, in addition to such identifiable data as the sex of the petitioner, his marital status, the number of his minor offspring, the date and place of his birth, his residence, and his occupation. In some states, his ethnic origin is also required although, where otherwise not explicitly indicated, it can often be inferred from his original name or, if foreign born, from his place of birth.

In at least 35 states, the petitioner must report the reasons for the desired change, the vague, improper, or perjurious statement of which is often grounds for the denial of the petition. The reasons most often given in support of the petition are: (1) difficulties in the spelling and/or pronunciation of the original name, (2) confirmation of a name previously adopted under the common law, (3) the desire of a divorced woman for her children to return with her to her maiden name or to adopt the name of her new husband, (4) the desire to assume a name borne by relatives to insure conformity in family identity, (5) the correction of an error in the birth certificate or passport, and (6) the promotion of business and social interests by the assumption of an ethnically neutral name. This last reason is more by implication than by manifestation. The motive of identity concealment seldom appears on a formal petition for, while often accepting it as legitimate grounds for change, most judges take a dim view of it, and besides its public acknowledgement might be quite embarrassing to the petitioner himself. Rather, this motive is concealed in such innocuous statements as: "the new name will be an advantage in business or social life," "business and professional interests will be promoted by the change," or "the old name is not one to inspire respect in one's chosen profession."

Some legal authorities have often wondered why many states require a statement of the reasons for the change in view of the fact that, under the common law, a person can take another name without giving anybody a reason. Therefore, some attorneys, like Dean L. Berry, advocate the elimination of this requirement as unnecessary under these circumstances for all the "sufficient reason" that need be acknowledged should be simply the desire to change the name.[21] Yet, as we shall see, Berry's view is not shared by many others in the legal profession.

(Footnote 21: See next page)

Many states also require the petition to show whether or not the applicant has ever been convicted of a crime, declared in bankruptcy, or had judgements or liens of record pending against him. Failure to submit a full bill of particulars on such matters generally constitutes fraud and may be grounds for the denial of the petition.[22] In some states like New York, moreover, a copy of the petitioner's birth certificate (or certification that it is unavailable) must also be presented.

If the submitted request for a change of name is acceptable to the court, an order will be signed scheduling a judicial hearing on the application for several weeks hence and directing the petitioner (in at least 28 states and the District of Columbia) to give public notice of his intent to change and the time and place of the hearing. This notice, usually published in a local newspaper over a specified period of time, is designed to advise any interested party of the change so that objections to it may be prepared and raised at the hearing. Here the petitioner's right to his requested change of name may be challenged – either by objecting to the adoption of the new name or by taking exception to the divestment of the old name. The court, upon further study, may then overrule the objection and permit the change or accept the objection and deny the petitioner's request. The court's final approval of the petition is affirmed by the filing of an order granting the change, after which the petitioner is usually free to assume the new name.

Grounds for judicial acceptance or denial of a petition: A petition for a legal change-of-name may be granted if the requested change is an honest one, if the facts presented in the petition are accurately stated, and there is no conscious intention to defraud. Other than these, there are no universal grounds upon which a judgement can be made. However, since legal statutes generally leave individual cases to the discretion of the local courts, there is considerable variation in the judicial handling of name-change cases. In most courts, the judicial procedure is merely a formality and the petitioner's appeal is seldom contested. Some courts, however, maintain quite rigid standards to which petitions are applied. Several are

[21] Berry, *op. cit.*

[22] The law also states that a change of name does not allow a person to escape an obligation incurred under the old name. Moreover, one can sign a contract or incur a debt under the new name even if it was adopted without recourse to the courts.

known to be particularly inflexible concerning acceptable motives for the change. And quite a few are known to place limitations on the choice of acceptable names in lieu of the original. Usually the furnishing of insufficient or false information in the petition is grounds for its denial as is a failure to indicate the rejection of a previous petition in another court. Other lawful grounds for denial may be bankruptcy or the existence of unpaid debts. Petitions may also be rejected in some jurisdictions on the grounds that the change may contribute to the furthering of a criminal career. A Philadelphia grocer named Charles Weinstein was once denied the right to assume the name "James C. Winston" when it was brought to the attention of the court "that he had a criminal record and was an habitual user of aliases."[23]

In nearly every court in the United States a name-change petition may be denied if some fraudulent or immoral purpose is suspect, and it is the petitioner's obligation to affirm that no such purpose is intended. Intent to defraud may be variously defined, but such an act is most often perpetrated when one assumes another person's name for the purpose of impersonating him as when a businessman or professional person assumes the name of a more successful competitor in order to delude the general public into believing it is dealing with the latter. This, when it can be proved, is a misdemeanor in most places. It is also illegal to use the name of any living person or organization for the purpose of advertising without the expressed permission of the prior bearer of the assumed name. Intent to defraud may also be characterized by a change-of-name for the purpose of concealing an identity to avoid payment of a debt or the carrying out of other obligations.

In some instances the judge's own personal prejudices may affect the court's decision in a name-change suit. These prejudices are often based on a conviction that a name must identify its bearer's ethnic or cultural heritage. Therefore, if a change is permitted at all, the adopted name must not be radically different from the name the petitioner wishes to replace. This judicial attitude seems to be directed particularly toward Jews whose adoption of so-called "Anglo-Saxon" names is believed to be based solely on a desire to conceal their ethnic identity as a measure of protection in a hostile

[23] 35 D & C (Pa.) 227 (1937). Quotation from Lee M. Friedman, "American Jewish Names" *Historia Judaica*, Vol. 6 (October, 1944), Pp. 147–62.

community wherein they hope to succeed by giving the impression that they are of English, Scottish, or Irish origin.

Two New York cases have become classics on this point. In the first, a Morris Cohen, student at the First Institute of Podiatry in New York City, applied to the court of Justice Joseph T. Ryan for permission to adopt the name Louis Murray Kagan. His petition complained of the commonness of the name "Cohen" and the frequency of its occurrence in the telephone directory and alleged that a change of name would materially aid him in his life's work. In denying his request, Justice Ryan observed that "many distinguished and successful Americans in the professions and in the banking and mercantile worlds ... have proudly borne the name of Cohen ... (and that) in a sense, the name constitutes a badge of noble heritage. Thus may the petitioner know that he bears a traditionally old and honored name, and this court will not aid him in his desire to forswear his original identity by assuming another and totally different one ..."

These words seem kind enough but the underlying implication is that no Jew should be allowed to assume such a fine old Irish name as Kagan, or rather, "Keegan" – from which Kagan is derived. Warming up to his task by describing the honored role in history of the bearers of this distinguished name, Justice Ryan caustically asked whether "honesty, character, and skill (have) no place in the career of this embryonic artisan, or does he labor under the delusion that the more euphonious name of Louis Murray Kagan will pave his course without those qualities deemed necessary to a successful career?"[24] Clearly this decision seems to reflect the personal prejudice of the judge.

No less prejudicial were the personal feelings of Justice Cortland A. Johnson which, in 1943, almost prevented one Samuel Kastenbaum, an artist of some note, from adopting the name "Stanley Kingsley." The petitioner, whose career had been established under the new name, was simply seeking to formalize a previous common law change for, in applying for a promotion as an art instructor in the New York school system, he had to clarify his identity as both Kingsley and Kastenbaum.

Justice Johnson's initial reaction was to question whether the petitioner was not in reality trying to deceive his employers into believing

[24] *In re Cohen*, 297 N.Y.S. 905, 163 Misc. 795.

that he was of English ethnic descent when there was no evidence that he could legitimately "claim that status." The judge, however, granted the order on the implausable grounds that the English translation of Kastenbaum into the absurd "box-tree" was sufficient reason for permitting the change, and this allowed the court to avoid the approval of the name which the petition had selected.[25] In other words, the basis of the affirmation of the petitioner lay in the necessity to change the name rather than in the formalization of the assumed name which had been the petitioner's only ground for desiring the judicial decree. But since New York State statutes specifically declare that such formalization is, in itself, acceptable grounds for granting a petition, Justice Johnson was clearly overstepping his legitimate authority.[26]

Even judges who share the petitioner's ethnic affiliation may show disapproval of an attempt to abandon his name. Many Jewish changers deliberately avoid appearance before judges of their own faith for Jewish jurists are particularly sensitive about having to approve a name-change for what might commonly be regarded as

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[25] *In re Kastenbaum*, 44 N.Y.S. (2) 2.

[26] Two other cases of some note should also be mentioned at this point. (1) Isadore Schwartz's petition to change the name of his twenty-year old son, Leon, from Schwartz to Stewart was denied on August 21, 1941 by New York County Supreme Court Justice Denis O'Leary Cohalan on the ground that skill rather than name is generally used in America as a criterion for evaluating a person in the boy's chosen profession. Leon was a Veterinarian Medicine student who regarded the name as a possible handicap in that profession. Ruled Justice Cohalan: "To the educated ear the surname Schwartz suggests German ancestry. The name Stewart (is) generally regarded as a Scotch heritage. But I am not convinced that an American community will judge a veterinarian by his name rather than by his skill." (*New York Times*, August 22, 1941, p. 17:7.) (2) John Antonio De Renzo field a petition in February of 1942 before the Philadelphia County Court of Common Pleas for a change-of-name to John Renzo Marshall on the reasoning that his name occasionally subjected him to criticism because the United States was then at war with Italy. He wished, instead, to assume his mother's maiden name. A check on this brought the court's attention to the fact that his mother's maiden name was actually "Marsulla" and not Marshall as he had contended. To his argument that his mother had assumed "Marshall," the court, in a decision by Judge P. T. Patterson, replied that "proper names are now subject to translation but are spelled the same internationally." The petitioner also had several records of judgement against him, and besides, the court did not feel that his assertion that his Italian name subjected him to occasional criticism was an adequate reason for permitting his change of name, and his petition was dismissed on June 22, 1942. (*in re De Renzo*, 44 D & C (Pa.) 699.)

an attempt to disestablish identity with their own people. When Everett Levy sought to change his name to Leroy, his petition was assigned for hearing before Judge Aaron J. Levy of the New York County Supreme Court. Levy was awarded a favorable decision but was unable to escape the judge's remarks to the effect that although he understood the many difficulties under which a Jew is forced to labor and "shared his disappointment and grief in his inability to secure employment in his profession" because of his name, he believed, nevertheless, that "character and courage are essential in fighting off these vicious and bigoted influences . . . Doubtless, he is wholly ignorant of the fact that the Bible tells us that the Tribe of Levy never worshipped the Golden Calf. Let the application be granted so that his people might well be rid of him."[27]

Another Jewish changer, salesman Louis Goldstein of Brooklyn, New York, was not so fortunate when in 1930 his petition to assume the name Golding was turned down, ironically enough, by a Judge Louis Goldstein. To the petitioner's stated reasons that Goldstein was "un-American, not euphonious, and an economic handicap," the judge took exception, stating that he did not consider the reasons presented in the petition justified his granting the change, for was not his own success a denial of the allegations cited therein? In short, to many jurists like Levy and Goldstein, the only justification for a change of name in this country is to relieve persons of the burden of a name which is difficult to spell or pronounce.[28]

Another reason for the judicial rejection of a name-change petition is the opinion already discussed that the change would not be to the ultimate advantage of the petitioner or his family. While this might sound like unwarranted presumption on the part of the court, it has some merit as a legitimate grounds for a negative decision. Referring again to the ruling in the *Taminosian case*, Nebraska Supreme Court Justice Rose's decision that a change-of-

[27] *New York Law Journal*, Vol. 78 (No. 94), 1928, P. 1965.

[28] Judges often tend to resent the allegation in some petitions that non-Anglo Saxon names are "un-American." When one Emanuel Voltaire Cohen requested permission of a New York court to change his name to "Conason" in the belief that his "un-American"-sounding name would prevent him from being admitted to a fashionable New England university, Justice Aaron J. Levy consented because his request met the statutory criteria but ordered that this petition omit the derogatory reference to the ethnic character of the name. (255 N.Y.S. 616, 142 Misc. 852, 1932.)

name should not be "subject to the whim of every petitioner" was based on the latter's prior history of irresponsible name-changing. Legal historians feel that Taminosian's simple appeal for a change-of-name on the grounds of religious conversion might have been granted had not the judge become aware of other aspects of the petitioner's behavior which led him to consider the change in a different light. For between John and Mohammed, he had had a host of other names bestowed upon him in consequence of conversions to a number of other faiths and denominations. While the name actually given to him at birth was Mohammed Nadir, he had adopted John Taminosian when baptized in the Christian Church but had also been baptized Isaiah Taminosian in the Congregational Church, was called Yusuf while residing in Egypt, was baptized John Isaiah Taminosian by the Roman Catholic Church, and while in Chicago where he had been employed by the Volunteers of America, he was known as "Tommy the Turk." When his family protested his petition in the Nebraska court on the grounds that another change of name would only further confuse their position in the community, they were upheld. In short, the court ruled that a petitioner's desires alone are often irrelevant and need not determine the decision in such a case.[29]

On the matter of placing limitations on the choice of acceptable names, reference should be made to a decision by Judge Fred G. Stickel of the Essex County (New Jersey) Court of Common Pleas that no name could be adopted which would conceal the ethnic origins of the person. He ruled that a man named Witsenhousen could become "Witsen" but not "Whitman," and that a Mr. Schedlin might assume the name "Schetlin" but that the non-ethnic "Shetland" was not permissible.[30]

A similar ruling made in 1923 by Federal Judge James Madison Morton, Jr. disallowed the assumption by immigrants of old American family names in applying for citizenship because this would tend to conceal their true ethnic origin. So Adolph Papkevitz could not become "Parker" but had to settle for "Popkin" and Hyman Sorocevech's appeal for "Stone" was denied in favor of the more ethnic "Soroko." After all, one could reason with justification, the

[29] *In re Taminosian, op.cit.*

[30] "Shall Yablonszky Become Lincoln?" *The Outlook* for December 24, 1924, Vol. 138, P. 665.

orthographic difficulties of the foreign-sounding names were now reasonably resolved; what else mattered ?[31]

Another judicial limitation placed on the free selection of names rests upon the belief that a name should not subject its bearer or any member of his family to ridicule or undue hardship as would undoubtedly occur with the assumption of a long name or one that would be difficult to spell or pronounce or would have an offensive connotation.

Some judges are rather sensitive to what they consider the indiscriminate adoption of "famous names." In one such case, Judge Edward Ruddy of St. Louis denied the petition of Martin Weisenberg, who had desired to assume the name "Truman," because the petitioner was too ambitious and advised him to take a name that was less well known. When the desired name is the judge's own name, however, his sensitivity may be especially acute. In 1936, Kings County (New York) Supreme Court Justice Albert Conway

[31] Incidentally, in spite of what was said before about the statutory rights of new citizens to change their names at their naturalization hearings under Title 8 of the U.S. Code (Sec. 734 e), federal judges may elect to refuse the requested change, particularly if such a change might be construed as possibly threatening to our national security. For example, Federal Judge George A. Welsh in Philadelphia denied the appeal of 54 new citizens to change their names after the outbreak of World War II on the ground that, in wartime, the knowledge of one's national origin is of utmost importance. Though, as he informed the petitioners, the lower courts were open to them if they wanted to change their names, Federal records must continue to show their national origins.

Yet a local Philadelphia court ruled, on the petition of one American of Italian parentage, that although our country was at war with Italy and this fact often contributed to the discomfort of some of our citizens of Italian descent, the court could not accept this as a legitimate reason for permitting a change-of-name. (44 D & C, Pa., 699.)

In short, under wartime conditions, the common law rights of citizens to do a great many things were often abrogated in favor of measures designed to protect our country. In an atmosphere of near hysteria which existed in some quarters in the first few months of 1942 when national surveillance of persons of German, Italian, and Japanese origin had to be maintained, any person with such a name was automatically suspect of disloyalty to the US and possible collaboration with the enemy. Cool heads, of course, prevailed in many parts of the country but 100,000 Japanese-Americans were forceably removed from restricted zones on the West Coast. However, according to a decision by the Attorney General in February of 1942, enemy aliens, under certain conditions, would be allowed to use assumed names for business reasons if they could convince the U.S. attorneys that it was necessary in earning a livelihood and would not result in a threat to our defense effort.

protested the right of Albert Cikanowich and his son to take the name Conway and by this action he was merely expressing the typical indignation of individuals and families who, in all time, have resented the assumption of their sacred names by lesser folk. And, as in those other cases, Judge Conway's resentment was tempered by the rationalization that one in his profession must not allow his constituents to confuse him with another, he put in motion a formal complaint which was, like most of the others, also denied.

All of which leads us to a consideration of some of those other, perhaps more celebrated protestation suits which have been brought, by intesrested parties, to bear upon the requested use of certain names. For the most part, such suits have been based on the unfounded notion that the possession of a name is an exclusive right of property and ought to be as respected as any other personal possession.

The major ground for objection, as has been implied, is the coincidence of the requested name with that of the objector. More specifically, the issue is whether persons with foreign-sounding names should be permitted to assume those of "famous Americans"; and to no less an extent whether "foreigners" have the right to adopt names which Justice Johnson felt would confuse the general public as to their ethnic heritage. Taking issue with this right, a number of societies requiring a certain ancestry as a basis for membership have frequently advocated the control of the practice of name-assumption by non-members.

They are not against the right of individuals to change their names as such but question the propriety of permitting them to assume distinguished names when they can just as easily consider the adoption of little known or very common names or even invent new ones of their own.[32]

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[32] "Shall Yablonszky Become Lincoln?" *The Outlook* for December 24, 1924, Vol. 138, P. 665. (In 1933, for example, the Celtic societies of New York supported a proposal by the Celtic Society of Columbia University to encourage legislation to bar persons of non-Celtic descent from adopting Celtic surnames. No sooner was this advocated than this encouraged an editorial in the New York Times (Nov. 30, 1933, P. 28:4) which suggested that rather than introducing legislation to prevent non-Celtics from adopting Celtic names, the Celts could return to the original Gaelic spelling of the names which are so difficult to the American ear that no immigrant would think of changing to them. "The chief reason," said the editorial, "why Janos Karolyi becomes John O'Kelly is that O'Kelly is easy to spell. But the Vice President

According to most statutes, any person with the same name or a name similar to that which the petitioner wishes to assume has the legal right to protest the granting of the petition by proving fraudulent intent. The basis of such protestation is the protection of the individual and property rights of the original bearer. The exercise of this right, however, is not an absolute guarantee that the petition will be overruled. In most cases (and several examples will subsequently be presented) it is not.

The most celebrated of all protestation suits was issued on August 13, 1923 against the petition of one Harry H. Kabotchnik who had appealed to the Philadelphia Court of Common Pleas for permission to shorten his name to Cabot. The suit was presented by attorney Francis Chapman on behalf of the Pennsylvania Branch of the Order of Founders and Patriots, the Historical Society of Pennsylvania, the Genealogical Society of Pennsylvania, and a half dozen living members of New England's renowned Cabot family, including Judge Cabot of the Boston Juvenile Court, Philip Cabot, Headmaster of the St. George School in Newport, Rhode Island, and Dr. Hugh Cabot, Dean of the University of Michigan Medical School.

In substance, the suit of objection argued that an immigrant had no right to assume a name which might lead the general public to infer kinship to an illustrious family whose forbears had helped to settle this country.[33] Though such an inference was undoubtedly possible, it was not the stated intention of Kabotchnik. In his petition, he and his wife, Myrtle (both of whom, incidentally, were native-born Americans) gave no reason for their choice of name, indicating only that their original appellation was "cumbersome, a hardship, and an inconvenience."

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of the Irish Free State writes it Sean O'Ceallaigh. It is obvious that Sandor Miclosz from Hungary will think twice before becoming Alexander Macquire if he will have to spell it Alasdair MacUidhir. What non-Celt would persist in becoming Frank Aiken at the cost of spelling it Proinnsias Oh-Aodhagáin, or become John McEntree and write it Seán Mac an tSaoi?")

[33] A New York Times editorial at the time of the protestation hearing suggested that the Kabotchniks might have considered inventing an original name for themselves – one all their own – or at least adopting a common name which nobody could confuse with that of any particular family. It might even be to their advantage to do this since they could thus avoid the handicap of an obligation to live up to the distinguished name, "an obligation not all wearers of (such a) name can meet." (NYT, 8/15/1923, P. 16:4.)

Judge Charles Y. Audenreid, in granting the petition on behalf of the Kabotchniks, overruled the objections on the ground that there was nothing in the law to prevent anyone from using this or any other famous name. Their petition complied in every way with the statutory demands, and their act was compatible with the rights of all citizen of the Commonwealth. What the petitioners had sought was simply to shorten a long name and change the spelling to conform to orthographic patterns in this country. There was no intention of becoming, even vicariously, members of a famous American family. The judge added that he personally would have considered it a tribute if anyone would have adopted his name.[34]

The Cabot decision was significant in that it provided the opportunity for other families of recent European descent to legally adopt the names formerly held to be the exclusive possession of distinguished Americans. Yet it was by no means the first case of this kind. On January 5, 1922, a suit was brought by the Chicago meat packing firm of Libby, McNeill, and Libby to enjoin one Samuel Libby (ne Lipsky), a 33 year old Boston wholesale meat dealer, from using the names "Libby" and "Libby and Libby of Massachusetts" in connection with his business. Lipsky, a Russian immigrant, had successfully petitioned for a change of name to Libby in February of 1920 in the belief that it would help his business if he adopted an "American" name. "Libby" was slected because it resembled Lipsky and was also a name which carried some prestige in the meat business. Charles Ambrose DeCourcy of the Massachusetts Supreme Court, in overruling the objections to the decision of the lower court, could find no evidence of intent to deceive the public into believing it was doing business with the plaintiff firm or that the latter's business was in any danger of suffering, as had been alleged in the protestation petition.[35]

Three additional cases involving objections by the members of distinguished American families to the adoption of "their" names by persons of foreign descent should be considered. Again, in each case, the protestations were overruled, and the right to effect the change was affirmed.

[34] Another New York Times editorial asked why the Cabots could not have been like the great lords of Mediaeval Scottish society who permitted and even encouraged the humble peasants in their domain to assume their "lofty names." (New York Times, August 16, 1923, P. 14:5.) [35] 241 Mass. 239 (1922).

In the first of these, occurring in April of 1942, three New York attorneys named Ferris and a colleague named Ferriss filed suit in the Bronx County Supreme Court of Justice Lewis A. Valente to enjoin another attorney, one Adolph E. Finkelstein and his wife, Ruth T., from adopting their family name. In his petition, Finkelstein, who also sought to change his first name from Adolph to Arthur, argued that the change of name had been the suggestion of his employer who felt that, due to the nature of his work which took him to a number of Latin American countries, a Germanic name might create some difficulties and thus "it was advisable to select a name not connected with any particular country..."

The four attorneys, like the Cabots before them also descendants of New England colonists, argued in their appeal to Justice Valente that they too wished to avoid any confusion as to the identity of each family.

The famed "Pursuit of Happiness" decision overruling the Ferris protestation was handed down by Justice John E. McGeehan to whom the Finkelsteins had presented their original successful appeal. Justice McGeehan ruled that "although the name of Finkelstein is an ancient and honorable name, if the petitioner in the pursuit of happiness, which is a right conferred upon all Americans through the efforts of men like the ancestors of the ... Ferris family, desires to forsake his original name for another name, that is permissible under our system of jurisprudence."[36] Those who bear famous names do not have the right to disallow others from adopting these names if no intent to defraud can be demonstrated since no family possesses a copyright on its name.

The second case involved the appeal of a Russian-born bartender to the Philadelphia County Court of Common Pleas to formalize

[36] Justice McGeehan's decision continues: "American blood is a rich mixture of many people. It has a peculiar aversion to discrimination and religious intolerance and it always sponsors a wide latitude for people in their quest for happiness ... If Mr. Finkelstein and his wife will find happiness in assuming the name of Ferris that is satisfactory to this court. Family names are not copyrighted. Every famous man has namesakes not related to him through blood or marriage and the assumed name is generally viewed as a compliment to the man whose name has been assumed." The court did, however, advise the new Ferrises that their namesakes had the right to expect them to "familiarize (themselves) with and devote (themselves) to the fine American traditions associated with the name (they had) been permitted to assume. (34 N.Y.S. (2) 909, 178 Misc. 534, 1942.)

a prior common law change from Abraham Bitle to Abraham Biddle. Objection was raised by the numerous descendants of William Biddle, a Seventeenth Century Pennsylvania Quaker, on the familiar grounds that the petitioner was seeking to give the impression of English origin and that the reason stated in the petition of desiring to eliminate the difficulty in spelling and pronunciation was simply rationalization and not true at all. The protest suit advocated that persons not be permitted to assume another name simply because they like it in preference to their own if that names happen to belong to another and if it would conceal the ethnic origins of the petitioner.

Bitle's attorney pointed out, in response, that the choice of name was the inevitable effect of a popular tendency to spell the petitioner's name "Biddle." Moreover, on the implied assumption of the exclusiveness of the objector's name, it was pointed out that the 175 Biddles in the Philadelphia City Directory included junk dealers and chauffeurs as well as lawyers and brokers, many of whom may no more be descendants of William Biddle than the petitioning bartender. Finally, it was insisted, the law permits the free adoption of any name if there is no intent to defraud.

In his dismissal of the objection, Italian-born Judge Eugene V. Alessandroni asserted that there was nothing unlawful in the practice of name-changing to conceal ethnic origin and whether it may also be unethical is of no consequence to the court. Nor was the court concerned with the reason for the change. "While we find much to admire in the loyalty to an honorable family name and tradition, we cannot acknowledge to the objector such a proprietary interest in his family name as to prohibit a change."[37]

In the third protestation suit, also filed in a Philadelphia court, a local attorney, Thomas E. Frame, Jr. objected to the prior granting of permission to two Falcucci brothers to adopt his family name. In June of 1940, Joseph Nicholas Falcucci and his minor brother, Benjamin R. had successfully petitioned the Common Pleas court of Judge James C. Crumlish for a change-of-name to Frame. The objection suit, filed after a discrete seven years delay, took issue with the petitioners' contention that they had suffered personal embarassment and inconvenience as a result of difficulties in the spelling and pronunciation of their name, and further averred

[37] 54 D & C (Pa.) 329, (1945).

that they (the Falcuccis) were attempting to derive advantage from the ensuing confusion in identity between themselves and the Frame family to the detriment of the latter.

After a rather lengthy review of Pennsylvania law on name-changing, State Supreme Court Justice George W. Maxey, in his decision, took issue with the objection, affirming the original ruling of the lower court on the basis that close relatives in Washington, D.C. had previously been allowed to change their name to Frame, that there was no evidence of "unlawful purpose" on the part of the petitioners, and that lawyer Frame had no legitimate call to issue objection for his name was not so unique that it should have been construed as having any "special significance as a means of identifying him." Nor could he and the petitioners in any way be confused with one another since they were not in the same occupation, nor associated with each other or with any common third parties. Citing precedence in Lord Chelmsford's Ruling[38], he reminded the objector that no person, under the common law, has exclusive right to his name and therefore cannot lawfully prevent anyone else from adopting or using it.[39]

The cases just presented exemplify protestations which were overruled in favor of allowing the name-change petitioners in each case to assume some "famous name." Others could have been discussed but are less well known. Though, perhaps one other case should very briefly be considered, partly for its historic significance and the precedence of its memorable decision. This was a case of a slightly different nature from those already considered but its outcome was much the same. It involved the noted film producer, Samuel Goldwyn who, aware of the inherent disadvantages of his family's original name, Gelbfisch, succeeded in replacing it with his

[38] Du Boulay v. Du Boulay, 16 English Reports, 638, (1869).

[39] "The mere fact that a man is proud of his patronymic because of its association in the public mind with honor or achievement is no reason why a court should heed his objection to some other respectable person's legally adopting the same surname unless it is clear that such other person has a dishonest purpose in seeking to do so or desires to injure or embarrass the person whose name he wishes to assume. The same surname is sometimes borne by individuals who are illustrious and honored and also by individuals who are obscure or disreputable. However, this is one of the incidents of living in a world in which there is not a sufficient number of distinctive patronymics to allow each individual to monopolize one." (*In re Falcucci:* 355 (Pa) 588 50 A (2) 200, 1947.)

present name in 1918. He then went on to found the Goldwyn Picture Corporation. When he lost control of this firm in 1923 but continued to make motion pictures under the name Goldwyn, the old company under new management but still bearing the old Goldwyn appellation, sued for a permanent injunction. Judge Learned Hand, presiding over the Federal District Court in New York in vacating the injunction wrote to the effect that when a new name has been assumed by a person it becomes as much his as the name he was born with and if he has made something of his life by it and it has become identified with him and his achievements, one can well appreciate his resistance to "being deprived" of it. In the specific case of Mr. Goldwyn, Judge Hand reminds us that "a self-made man may prefer a self-made name."[40] (*Variety*, October 25, 1923, P. 19.)

This decision does not, as it may seem, affirm what the other rulings cited above deny – that a name can become a possession of its bearer. On closer examination, it appears that Judge Hand's statement, here paraphrased, has reference to the equivalency of the original and adopted names and not to the exclusive right of possession of a name by any one person, for the original production firm – i.e. the plaintiff in this case – was not denied the right to continue using the Goldwyn name but its insistence on exclusive use of the name in the trade *was* regarded as a violation of the rights of Mr. Goldwyn.

There have, of course, been some memorable objections to changes-of-name which were successful in effecting denials or reversals of court petitions. When Walter Zushnit of Philadelphia sought to adopt the name of Walter Clayton French, a prominent Phila-

[40] *Variety*, October 25, 1923, P. 19.

In a similar case, Al Jolson's brother brought suit against the famous entertainer in New York County Supreme Court for $25,000 allegedly owed him for the right to the exclusive use of the family's name in show business. In 1934, the brothers had agreed that Harry would quit show business in preference to his brother's exclusive use of the name on receipt of $150 a week. Payments were made continuously until 1937 and then stopped. Harry's suit was for payment of arrears and a guarantee that the agreement would continue in effect. On July 21, 1941, New York Supreme Court Justice Samuel H. Hofstadter dismissed the suit and ruled that the agreement was "repugnant to the Statute of Frauds and was unenforceable in the courts." (*New York Times*, May 6, 1941, P. 24:3 and New York Times, July 22, 1941, P. 22:7–8.)

delphia businessman and philanthropist of the 1870s, the grandson of that worthy appeared in court to protest. Judge J. Willis Martin sustained the objection and ruled that although the petitioner could adopt the surname "French," he would have to abandon his plans for including the middlename "Clayton," as that might have made him sound like he was trying to trade on the other man's better known reputation. Also when a Baltimore physician, Henry Lyon Sinskey applied for permission in 1941 to assume the name "Sherwood," he was met by the protests of a wealthy oilman with the same name. Baltimore Circuit Judge J. Abner Sayler, on November 19th of that year, denied the doctor's petition but, oddly enough, approved the right of his son, a young lawyer, to assume the desired name.[41] In still another case, a Michael Kabotchnick (no kin to the other Kabotchnik, but in this case an immigrant from Vilna, Lithuania who came to Boston in the mid-Eighties and estabieshed himself in the clothing business in that city) changed his name to Cabot without recourse to a court of law. The illustrious Cabot family this time was successful in abrogating the change. Perhaps they fare better on their home grounds. In any event, Kabotchnick moved to Brockton, Mass., changed his name to Kabot and later to Kabat and then dropped out of history.[42]

Even many distinguished American-Jewish families have resented the adoption of their names by others of their faith. When a Philadelphia dentist named Isaac Solomon Cohen began signing his name "I. Solis Cohen," the Solis Cohens, a distinguished family of physicians in that city, were quite indignant but refrained from taking the matter to court by the example of the unsuccessful Cabot protestation in the same city.[43] And, as Maurice Davie has pointed out, fear of ridicule and charges of snobbishness have prevented many others from protesting the adoption of their family names to the courts.[44]

In view of all that has just been said about persons appealing for the right to adopt famous names, it is refreshing to hear of occasional

[41] H. L. Mencken, The American Language, Supplement Two, New York: Alfred A. Knopf, 1948, Pp. 418–19.

[42] Helen P. Wulbern, "The How and Why of Name-Changing" *American Mercury*, Vol. 64 (1947), P. 720.

[43] Mencken, *op.cit.*

[44] Maurice Davie, *World Immigration*, New York: Macmillan, 1949, P. 109.

cases in which petitions are filed with the opposite intent, and often with the opposite effect. So, in August of 1921, one George Washington Hiscomb's application to drop the Washington was refused by New York City Court Justice Joseph M. Callahan who could not understand why anyone would want to change such an illustrious name. "Many good American parents have felt that the name 'George Washington' added distinction and honor to their own in bestowing it as a given name to their offspring . . . There is no good reason for thinking they are wrong (in having given) a son a name that means embarrassment to him in future life."[45]

After a name has been changed in a court of law, the possibility of its being changed again will vary between the several states. In Michigan, for example, the right of re-change (and by "re-change" is meant either a return to the original name or the adoption of still another name) is permissible and can even be effected by common law procedures. Yet in other states, such a right, if it exists at all, can only be put into practice through the issuance of another court order. And this is equally the case in states like New York which recognize de facto changes under the common law and states like Pennsylvania which authorize only the judicial method for name-changing. In other words, in these states, there is no recourse to the common law method once a name has already been changed by a court order. If the court has authorized one's use of a certain name, that is the only name he can legally bear.[46] Ironically, however, if that same person, in New York, say, changes his name by the common law method, he is free to effect as many re-changes as he wishes also by the same procedure. It is only when he goes to court that he must continue to appeal to the courts for any additional changes. Needless to say, many legal theorists have advocated serious study of this lack of uniformity in the name-change statutes of the various states.

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[45] *New York Times*, August 17, 1921, P. 11:5.

[46] Smith v. U.S. Casualty Company, *op.cit.*