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## NOTE

# A Woman's Freedom to Choose Her Surname: Is It Really a Matter of Choice?

ESTHER SUAREZ\*

## I. INTRODUCTION

Our names are symbols that define our identities. They tell others who we are and carry with them the reputations that we have built for ourselves. They are sources of family pride and personal integrity. The loss of a woman's independence through marriage is most clearly illustrated by the common practice of her adopting her husband's name. A woman's willingness to relinquish her surname after marriage and accept her husband's represents the deterioration of an essential part her individuality and her submersion into her husband's person. But increasing numbers of women are choosing to find alternatives to taking their husbands' surnames after marriage.<sup>1</sup>

Although the practice of women adopting their husbands' names at marriage is founded on custom rather than law, states have adopted, over time, statutes and administrative regulations based on the presumption that all women do in fact change their names after marriage. Today women face myriad problems concerning their name changes because of outdated statutory requirements, an inflexibility among both governmental and non-governmental

agencies, and the high costs associated with the practice.

This Note examines the procedures women must follow to change their names, and discusses whether reform is needed. It also looks at the evolution of name changes consequent to marriage, the recent movement towards nontraditional surnames after marriage, and the courts' reactions to these changes.

## II. HISTORY

Before the 10th Century, surnames and family names did not exist in England.<sup>2</sup> People were identified only by their Christian names.<sup>3</sup> Surnames did not come into general use until population pressures made the previous custom inadequate in distinguishing among individuals.<sup>4</sup> Surnames arose as descriptive terms.<sup>5</sup> Thus, "Benjamin, son of Peter" would be called "Benjamin Peterson;" "Matthew, the blacksmith" became Matthew Blacksmith;" and "John," who lived in or near a manor house, was "John Hall."<sup>6</sup>

In 13th and 14th Century England, it was common for married women to retain their fathers' surnames.<sup>7</sup> This tradition changed under the influence

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1. See Karen S. Peterson, *Married Moniker Is A Matter of Choice*, USA TODAY, Aug. 28, 1990, at 5D.

2. See *Smith v. United States Casualty Co.*, 90 N.E. 947 (N.Y. 1910).

3. See 57 AM. JUR. 2d *Name* § 2 (1988).

4. See generally *Smith*, 90 N.E. 947 (N.Y. 1910).

5. See *Name*, *supra* note 3.

6. See Lamber, *A Married Woman's Surname: Is Custom Law?*, 1973 WASH. L. REV. 779, 780-81; see also *M.D. v. A.S.L.*, 275 N.J. Super. 530 (Ch. Div. 1994).

7. See Daum, *The Right of Married Women to Assert Their Own Surnames*, 8 J. L. REFORM 64, 67 (1974).

of developing law, and women began taking their husbands' surnames.<sup>8</sup> As English and French law developed, it merged the identities of the wife and husband.<sup>9</sup> The law came to view a married couple as being one person, and to view that person as being the man.<sup>10</sup> The United States was influenced by these legal traditions.<sup>11</sup> Thus, the concomitant custom of renaming women after marriage took hold in the U.S.<sup>12</sup>

Though not enforced by statute or law,<sup>13</sup> so entrenched had the custom become that when Lucy Stone married Henry B. Blackwell in 1855, she became the first American woman to retain her name.<sup>14</sup> "My name is the symbol of my identity and must not be lost."<sup>15</sup>

Although no state law has ever required it, the courts and the legal system historically have as-

sumed that married women take the names of the men they marry. In the eyes of the common law, a husband and wife become one unit upon marriage, and that unit is given only the husband's identity.<sup>16</sup> And it has often proved difficult for women to extricate themselves from that identity. In the past, women have had to go to court to remove their married names and retake their maiden names,<sup>17</sup> and have been denied that right based on a court's determination that it was not in the best interests of their children.<sup>18</sup> Furthermore, though no law requires women to assume their husbands' surnames, courts have imposed penalties on women who have not done so.<sup>19</sup>

8. *See id.*

9. *See* Lisa K. Garcia, *Practice of Patrilineality Has History On Its Side*, ROANOKE TIMES & WORLD NEWS, Mar. 23, 1995, at 1.

10. *See id.* "The legal existence of the woman was suspended during marriage, or at least consolidated, collapsed, into that of the man. The woman was viewed as [being] under the protection and cover of the man." *Id.*

11. *See id.*

12. This common law rule regarding one's surname enforced and strengthened patrilineality, i.e., the designation of kinship through the father. *See id.* "The mother's maiden name remains relatively hidden in today's society—so much so that credit card companies have picked up on this fact and are using it as a password for customer accounts." *Id.*

13. *See Ex rel. Krupa v. Green*, 177 N.E.2d 616 (Ohio 1961); *Stuart v. Board of Supervisors*, 295 A.2d 223 (Md. 1972). Only two courts in the past 50 years have held that marriage automatically changes a woman's surname: *Forbush v. Wallace*, 341 F. Supp. 217 (Ala. 1971), *aff'd*, 405 U.S. 970 (1972) (holding that Alabama common law changed a woman's name upon marriage) (note, however, the wife stipulated to this interpretation of state law and the Alabama Supreme Court later held *Forbush* had misinterpreted Alabama law); *State v. Taylor*, 415 So.2d 1043 (Ala. 1982). A court in Kentucky held that the state could require married women to apply for drivers' licenses under their husbands' surnames regardless of whether marriage automatically changed the wives names. *See Whitlow v. Hodges*, 539 F.2d 582 (6th Cir. 1976).

14. *See* THE CENTER FOR A WOMAN'S OWN NAME, BOOKLET FOR WOMEN WHO WISH TO DETERMINE THEIR OWN NAMES AFTER MARRIAGE 19 (1974). Lucy Stone fought against slavery, lectured for women's suffrage and helped organize the first national women's rights convention. Linda R. Monk, *The Game of the Name; What the Brave Lucy Stone Bequeathed to Hillary Rodham*, WASH. POST, Feb. 7, 1993, at C5. When Lucy Stone and Henry Blackwell married on May 1, 1855, they formed a protest and rejected the laws of marriage which "refuse to recognize the wife as an independent, rational being, while they confer upon the husband an injurious and unnatural superiority, investing him with legal powers which no honorable man would exercise, and which no man should possess." *Id.* Ironically, because the local registrar refused to list Lucy Stone's name on the voting list except as Mrs.

Blackwell, Lucy Stone was deprived of the right to vote; the one thing for which she had fought the hardest. *See id.*

15. *See* BOOKLET FOR WOMEN WHO WISH TO DETERMINE THEIR OWN NAMES AFTER MARRIAGE, *supra* note 14. Lucy Stone Blackwell's daughter, Alice Stone Blackwell, further wrote "Lucy looked upon the loss of a woman's name at marriage as a symbol of the loss of her individuality . . . . With her it was a matter of principle." *Id.* In an effort to encourage women to keep their surnames after marriage, Lucy Stone later formed the Lucy Stone League. *See* Garcia, *supra* note 9.

16. *See generally* *Mellott v. Sullivan Ford Sales*, 236 A.2d 68, 70 (Me. 1967); *see also In re Reben*, 342 A.2d 688 (Me. 1975).

17. *See In re Reben*, 342 A.2d at 688.

18. *See In re Moskowitz*, 385 A.2d 120 (N.H. 1978). Problems arise when a custodial mother, after divorce, wants to change her child's surname to her own maiden or remarried name. *IRA M. ELLMAN ET AL., FAMILY LAW* 120 (1991). Courts are hesitant to grant a woman the right to change her children's last names. *See id.* Attorney Priscilla Ruth MacDougall, a national authority on naming-rights law, comments that the courts today tend to be sympathetic to the custodial parent's wishes if the children are not at an age where they would know their names yet. *See Divorce Adds Its Own Complications*, USA TODAY, June 14, 1990, at 4D. However, if the child is more than four years old, at which age children generally know their names, the fathers almost always win in court "based on the traditional preference for the paternal name." *Id.*

19. *See* SUSAN DELLER ROSS & ANN BARCHER, *THE RIGHTS OF WOMEN* 245 (1983). A married woman, seeking to be naturalized requested the court to grant her naturalization certificate in her maiden name instead of in her married name. *See In re Kayaloff*, 9 F. Supp. 176 (S.D.N.Y. 1934). The reasons she gave for this request were that she was a professional musician and was known professionally by her maiden name. *See id.* She feared that she would suffer a financial loss if her naturalization certificate listed her under her husband's surname rather than her maiden name. *See id.* The court denied her request, stating that the certificate of naturalization must bear her husband's surname, otherwise she could not be granted citizenship. *See id.* The court argued that the petitioner would not suffer a loss if the certificate were issued in her husband's surname and it noted that under New York law, at marriage, a woman takes the surname of her husband, which becomes her legal name, and she ceases to be known by her maiden name. *See id.*

## A. Historical Progress

Generally, however, recent caselaw does not rely heavily on precedent in this area, but instead appears to be more tolerant and concerned for the women involved. Although this new concern may not have a great impact on courts' ultimate decisions, it does indicate that courts are at least listening to the arguments being made by married women.

Courts began showing some sensitivity to this issue in the 1960s. Ohio was the first state to discard the common law presumption that a woman always adopted her husband's family name after marriage.<sup>20</sup> In *Krupa v. Green*, an Ohio appellate court held that a married woman was permitted to be listed on a voting ballot under her maiden name.<sup>21</sup> The court considered several factors when making its decision: the existence of an antenuptial agreement stating that the petitioner would retain her maiden name; a notice to the Board of Elections of the use of her maiden name; a notation on her voter registration card indicating that she was married; the petitioner's use of her maiden name in her profession as an attorney; and the use of her maiden name when voting in several previous elections.<sup>22</sup> The court stated that there was no statute compelling observance of the custom.<sup>23</sup>

## III. PRESENT SYSTEM

Under common law, a person may adopt a different name "in the absence of fraud, misrepresentation or interference with the rights of others."<sup>24</sup> A woman "upon marriage has a freedom of choice. She may elect to retain her own surname or she may adopt the surname of her husband."<sup>25</sup> Presently, an individual who wishes to change his or her

name may do so without a court proceeding merely by adopting another name.<sup>26</sup> Alternatively, an individual may change his or her name as provided for by statute, which has clear advantages.<sup>27</sup> It is speedy, definite and provides a record by which the change of name is clearly and specifically established.<sup>28</sup>

The basic statutory procedure for a name change consists of the filing of a certificate, application or petition to a court of record.<sup>29</sup> Additionally, one must notify Social Security, the Internal Revenue Service and the Division of Motor Vehicles of the name change.<sup>30</sup> One must also change employment records, bank and investment accounts, loans, leases, voter registrations, insurance and any other pertinent records.<sup>31</sup>

In New Jersey, a woman is required by statute to notify the Commissioner of Registration<sup>32</sup> as well as the Division of Motor Vehicles of any name change.<sup>33</sup> She must also notify the office of Social Security, and the Internal Revenue Service.<sup>34</sup>

## IV. RAMIFICATIONS

The custom of taking a husband's surname has consequences not just for individual women who choose to follow it. It affects all women. Although the women's movement has made tremendous advances within the past twenty years, an overwhelming majority of women still adopt their husbands' names at marriage. By losing her last name, the symbol that has always identified her, a woman loses a part of herself.<sup>35</sup> This stifles women's development generally. As less than a third of all women keep their own names after marriage, it is clear that society still resists change and finds comfort in

20. See J. Hughes, *And Then There Were Two*, 23 HASTINGS L.J. 233, 235 (1971).

21. See *Krupa v. Green*, 117 N.E.2d 616, 619 (1961).

22. See *Krupa*, 117 N.E. at 617-19. Petitioner took precautionary measures to ensure that she would not be addressed by her husband's surname. See *Krupa*, 117 N.E.2d at 617-19.

23. See *Krupa*, 117 N.E.2d at 618.

24. See 57 AM. JUR. 2d *Name* § 16 (1988); *Egner v. Egner*, 337 A.2d 46 (N.J. App. Div. 1975).

25. *Dunn v. Palmero*, 522 S.W.2d 679 (Tenn. 1975).

26. This is also known as a "self-help" method. See ELLMAN, *supra* note 18; see also *In re Miller*, 617 N.Y.S.2d 1024, 1025 (1994) (holding that a name change is effected simply by consistent usage or habit).

27. See ELLMAN, *supra* note 18.

28. See 57 AM. JUR. 2d *Name* § 17 (1988).

29. See *id.*

30. See *How Women Can Build Their Credit*, HOUSTON CHRON., Mar. 1, 1992, at 3; Mary Arrigo, *Should You Keep Your Maiden Name—Or Change It?*, COSMOPOLITAN, Mar., 1993, at 124.

31. See *id.* Presently there are several non-governmental agencies such as Document Service or National Records Advisory that will change the name of all of one's documents for a fee. Amy Wallace, *What's In A Name? For Some, Identity; Marriage: More Than A Convenience, Keeping One's Maiden Name Can Be A Highly Personal Decision to Ensure That Marriage Bonds Don't Bind Self-Image*, L.A. TIMES, Nov. 25, 1990, at B2.

32. See N.J. STAT. ANN. § 19:31-13 (1994).

33. See N.J. STAT. ANN. § 39:3-9(a) (1994).

34. See *id.*

35. See Joan S. Kohout, *The Right of Women to Use Their Maiden Names*, 38 ALB. L. REV. 105 (1973).

the *status quo*.<sup>36</sup> When a woman calls herself "Mrs. Peter Smith" rather than "Martha Black," she identifies herself in relation to her husband.<sup>37</sup> She relinquishes her ties to her own family and submerges her identity into that of her husband.<sup>38</sup>

The fact that a woman at marriage loses her name and assumes that of her husband is an example of a custom that is, to a greater or lesser degree, harmful to a woman's self-development. A man who can see no harm whatsoever in this practice should ask himself how he would like to lose his own name in marriage and raise children who would be named after someone else.<sup>39</sup>

#### A. Social Pressures

Even today, there is still social pressure on women to change their names after marriage—pressure from people who do not value women equally with men.<sup>40</sup> Federal Judge Hubert I. Teitelbaum of Pittsburgh recently threatened Attorney Barbara Wolvovitz with jail because she insisted on referring to herself as Ms. Wolvovitz rather than Mrs. Loel, after her husband.<sup>41</sup> Hillary Rodham Clinton faced similar pressures when her husband, Bill, lost the 1980 gubernatorial election in Arkansas.<sup>42</sup> She used the last name Rodham during the 1980 cam-

paign and only later adopted the name Clinton to appeal to socially conservative voters.<sup>43</sup> Perhaps significantly, Bill Clinton proceeded to win reelection in his next gubernatorial race.<sup>44</sup> To this day, however, some people resent her use of Rodham as a middle name.<sup>45</sup>

#### B. Credit History

There also can be serious repercussions, however, for the great majority of women who choose to adopt their husbands' surnames. In order to maintain her credit history and improve her credit rating, a woman who changes her name must open all accounts jointly with her husband, not merely be listed as a user on her husband's account.<sup>46</sup> This allows both parties to be responsible for all payments on credit cards and both to build a credit history.<sup>47</sup> Many women, however, change their names after marriage and pay bills on accounts which list the husband as the primary holder of the account and the woman as an authorized user.<sup>48</sup> Consequently, they develop no credit history for themselves, and it is likely that they will be turned down for loans and other forms of credit because of it.<sup>49</sup> Conversely, if a woman divorces and resumes the use of her maiden name, she will have lost

36. *Bride Mag.*, Oct. 1992; Jennifer Bojorquez, *It's Hard for Women to Win the Name Game*, SACRAMENTO BEE, Mar. 19, 1993, at SC1. As neither the Census Bureau nor the Social Security Administration keeps track of name changes, there are no official statistics. *Id.*; see also Suzanne Schlosberg, *In The Name Of Love; Should A Newly Married Woman Change Her Law Name? Should He Take Her Name? Couples Can't Wait For Society To Catch Up, So They're Making Their Own Rules*, L.A. TIMES, May 22, 1995, at E3. In regard to couples finding alternative surnames, a sociologist at Doana College in Nebraska says "I don't think it's ever going to be the norm, but I think we're going to see more of it in the future." *Id.*

37. See GLORIA STEINEM, *REVOLUTION FROM WITHIN* 44 (1992). Gloria Steinem relates this to her experience in India. Natives preferred using "South Asia" or "Southeast Asia" rather than "Near" and "Far East" because the latter assumed Europe as the center of the world. *See id.*

38. *See Kohout, supra* note 35.

39. *See* LEO KANOWITZ, *SEX ROLES IN LAW AND SOCIETY*, at 192 n.6 (1973). Brief, Commission in Report of the Royal Commission on the Status of Women in Canada, 234 (1970).

40. A common complaint of women who choose to keep their surnames after marriage is relatives who insist on addressing them as "Mrs. Ralph Kalish." *See* Sue Ann Wood, *For Many Women, There's Lots In A Name*, ST. LOUIS POST-DISPATCH, Aug. 3, 1994, at 1F.

41. *Call Him Foolish*, TIME, July 25, 1988, at 37. Wolvovitz's co-counsel who protested on her behalf was found to be in contempt of court. *See id.* The judge later apologized and stated, "This is the way my generation was taught." *Id.*

42. *See* John Balzar, *Hillary's Role Resurrects An Old Arkansas Dilemma*, L.A. TIMES, Oct. 4, 1992, at A26. *See also*,

Emily Laurence Baker, *For Richer, For Poorer, In Your Name or In Mine; What Makes A Woman Change Her Name When She Marries?*, THE GUARDIAN, June 2, 1993, at 13; *What's His Is Hers*, 10 J. OF MARRIAGE & THE FAMILY 4 (1993).

43. Balzar, *supra* note 42.

44. *See id.*

45. *See id.*; *see also* Bojorquez, *supra* note 36.

46. *See* Arrigo, *supra* note 30.

47. *See How Women Can Build Their Credit, supra* note 30. Often a woman with bad credit will take her husband's surname in order to escape her credit history from damaging her in the future. *See* Arthur Salm, *To Change, or Not To Change, Isn't Such a Big Question Now*, SAN DIEGO UNION-TRIB., July 30, 1995, at D1. By taking her fiancé's name, Jennifer Conti, who will be Jennifer Coward, will now begin a new credit history with her husband, and will not be affected by her past bad credit. *See id.*

48. *See* Judy Garnatz, *Wives Need Their Own Credit Rating*, ST. PETERSBURG TIMES, Mar. 31 1991, at 8.

49. *See id.* This is a common problem especially when a recently widowed woman applies for a loan. Because all her accounts listed her husband as the primary holder, the woman will not have a credit history under her name. This is also a problem whenever a woman chooses to change her surname. *See id.* Another problem that arises with widowed women is the loss of Social Security benefits if the woman chooses to change her surname back to her maiden name. *See Name Change Is Subject of Booklet*, OMAHA WORLD HERALD, May 15, 1995, at 28. Women should take steps to protect themselves. The United States General Services Administration has a booklet titled "Social Security . . . What Every Woman Should Know." For a free copy, send your name and address to Consumer Information Catalog, Pueblo, Colo. 81009.

whatever credit history she built for herself during her marriage because of her name change.<sup>50</sup> This not only contributes to a woman's financial dependency on her husband, but also prevents women from entering and actively participating in our economy. It makes it more difficult, if not impossible, for women to take out loans in their own names and to start small businesses.

## V. PROBLEMS WITH PRESENT SYSTEM

### A. Statute Establishing Judicial Proceeding

Although women today are at more liberty than ever before to choose their last names, they still face many difficulties regarding name changes. As mentioned earlier, the first time a person chooses to change his or her name, he or she may do so merely by adopting another name, or as provided by statute, neither of which requires a court proceeding in most states.<sup>51</sup> Most states have adopted the rule that petitioning courts for a first-time name change is optional.<sup>52</sup> If, however, a woman adopts her husband's name after marriage and later divorces and chooses to retake her former surname, most states require that the woman seek a court's approval.<sup>53</sup> Ordinarily, a woman can seek such court approval by requesting it during her divorce proceeding; the divorce court judge then has the power to grant the wife her name upon the divorce.<sup>54</sup> However, if a woman and her husband di-

vorced and divide their belongings without a court's intervention, the court system presently in place in most states require the woman to seek a court's permission, enduring the time, expense, and inconvenience of doing so, to resume the use of her former surname.<sup>55</sup> Furthermore, because the courts are typically backlogged with cases, a woman may have to wait months, if not years, for a court date in order to change her name.<sup>56</sup> This system frustrates a woman in the exercise of her right to choose her own name. Divorce is so common in our society today that a woman should not be required to petition a court to reassume her former surname.

Neither should women need to seek anyone else's permission. Yet, there have been instances in which judges, in deciding whether to grant women's name change applications, have looked to the women's husbands for permission. Lucille Anne Martin of Rhode Island tried to retake her former surname in honor of her father's memory and was told by Judge Anthony Sciarretta that she would need the written permission of her husband to do so.<sup>57</sup> Nancy E. Graves, who had been divorced for seven years, had a similar experience when a Missouri judge asked Graves' ex-husband for permission for Graves to retake her former surname.<sup>58</sup> When the ex-husband indicated that he had no objection, the judge ruled that Graves' former surname was restored.<sup>59</sup>

50. See Garnatz, *supra* note 48. In these instances, a woman is left with the option of either beginning again with a new credit history, or keeping her ex-husband's surname so that she will be able to benefit from the joint credit history and have an easier time applying for loans. Garnatz, *supra* note 48.

51. See *In re Miller*, 617 N.Y.S.2d at 1025 (holding that a name change is effected simply by consistent usage or habit). See also, ELLMAN, *supra* note 18. In some states, however, there is a cost to individuals who wish to change their surnames for any reason other than marriage. See Kay Harvey, *Bias Claimed in Court Costs*, TAMPA TRIB., July 17, 1995, at 4. Teresa Patton paid \$132 to Ramsey County in Minnesota in order for her to legally change her name to her mother's name so that she could carry the name forward. See *id.* If Ms. Patton had married, a marriage license in Minnesota would have cost her only \$65 and there would have been no charge for the name change. See *id.* Ms. Patton argued that this system discriminates against people on the basis of marital status. *Id.* The conciliation court agreed. See *id.*

52. See, e.g., OKLA. STAT. tit. 12 § 1637 (1988); see also Judy Mann, *When Your Name Is Up To Your Husband*, WASH. POST, Apr. 13, 1990, at B3.

53. A divorcing spouse must make a request to assume her former surname under N.J. STAT. ANN. § 2A:34-21 (West 1979). After a divorce, each spouse has the option of either resuming the name used prior to the marriage, or assuming a different surname. See *id.* A woman cannot simply divorce and resume the use of her former surname without having to go through this statutorily mandated process. See *id.*

54. See, e.g., GA. CODE ANN. § 19-5-16 (1982); see also *In re Erickson*, 547 S.W.2d 357 (Tex. Civ. App. 1977) (In deciding the issue of existence of "good cause" for granting application for change of married name back to maiden name, it was enough that applicant for her own proper reasons conscientiously felt necessity of being known and referred to by her previous name, and to deny her such right would be a violation of equal protection under law by creating an invalid classification based on sex.); *Klein v. Klein*, 373 A.2d 86 (Md. App. 1977); *Garbrecht v. Garbrecht*, 1994 Conn Super. LEXIS 2345 (1994).

55. See *id.*

56. See Sue Ann Wood, *For Many Women, There's Lots In A Name*, ST. LOUIS POST-DISPATCH, Aug. 3, 1994, at 1F.

57. See Mann, *supra* note 52. Martin told the United Press International that the judge "pointed to the document and was hitting it and said, 'You need your husband's signature on this.' It was like I was a little girl." *Id.* Martin got the backing of the Rhode Island chapter of the American Civil Liberties Union and is appealing the case. See *id.*

58. See Wood, *supra* note 40.

59. See *id.* Similarly, in 1975 two women went to court to readopt their original surnames. Both were married and without children. The judge denied the request, stating that there was "no compelling need for a change of name." See *id.* Additionally, the court stated that the proposed name change "went against society's substantial interest in the easy identification of married women" and that their unborn children "would be substantially burdened in explaining to their peers why they did not have their

## B. System Inflexibility

Another problem women face in changing their surnames is the inflexibility of the system presently in place. The Social Security Administration, the Internal Revenue Service, the Division of Motor Vehicles, insurance companies and all banking agencies require a court document before they will agree to accept a name change.<sup>60</sup> As the Social Security Administration points out, its intentions are to keep consistent and accurate records, to avoid any confusion with its office and the IRS, and to avoid any possibility of fraud.<sup>61</sup> For the first time, the IRS is matching every Social Security number on its tax returns with the Social Security Administration's records.<sup>62</sup> The names on tax returns must match the exact names listed in the records provided by the Social Security Administration, or the IRS will reject the returns.<sup>63</sup> However, because of ill-equipped computer systems, these agencies may reject certain nontraditional names, which makes it difficult, if not impossible, for the agencies to accurately record a woman's name.<sup>64</sup> A common complaint is that such computer systems typically do not accept hyphens or hyphenated last names.<sup>65</sup> If a woman is not able to register her name through the pertinent governmental agencies that require accurate name registration, she cannot fully exercise her right to choose her own name.

Today, men, as well as women, cannot fully exercise their rights to choose whatever names they desire because of obstacles presented to them by agencies and institutions. Joseph Keel of St. Louis, Mo., formerly Joseph Buback, says he experienced reverse discrimination when he took his wife's last name.<sup>66</sup> His credit card company refused to change his name over the phone even though they admitted it was common practice for them to do so with women who changed their names.<sup>67</sup> If women and men do in fact have a right to choose their own names, all agencies and institutions, primarily governmental ones, need to be flexible enough to enable them to fully exercise this right.

The National Council for Civil Liberties has on file a multitude of complaints about employers, banks, building societies, solicitors, airlines and passport offices, all of which have made name changes difficult for women.<sup>68</sup> In some cases, society is simply not equipped for husbands and wives to have different names. Couples often have difficulties with mortgage applications, bank credit cards and other financial records.<sup>69</sup> Although the states may have a legitimate interest in maintaining uniformity and efficiency,<sup>70</sup> these state interests are being met largely at the cost of women who may be forced to choose names they do not want. The state must find new ways of achieving these goals and

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mother's name and why their mothers and fathers had different names." Garcia, *supra* note 9. The higher court disagreed. *See id.*

60. *See* Garcia, *supra* note 9. This requires a woman to carry around certified copies of a court order to prove that her name has in fact been approved by the courts. *See* Garcia, *supra* note 9. In New Jersey, the cost of each certified copy of a change of name is \$50. *See* N.J. STAT. ANN. § 22A:4-1(a).

61. *See* Carol Marie Cropper, *Check Up On Those Social Security Records; Mistakes Are Rare, But With More Job Hopping, Errors Can Multiply And Are Costly To A Recipient*, CHICAGO TRIB., June 29, 1995, at 3C; *see also* Sue Ann Wood, *Uncle Sam's Preference*, ST. LOUIS POST-DISPATCH, Aug. 3, 1994, at 1F.

62. *See* Albert B. Crenshaw, *IRS Crackdown On Fraud Snare More Than Cheats*, WASH. POST, Sept. 17, 1995, at H1.

63. *See* Dan Goodgame, *The Point of No Return*, TIME, Apr. 17, 1995, at 26. This resulted in ten million instances in which there was a mismatch with names and Social Security numbers. *See id.* Many of these mismatches were honest mistakes, such as women who had married, changed their last names and failed to notify the Social Security Administration. *See id.* Similarly, the Social Security Administration is concerned that an estimated 20% of legal workers may be turned down by a new system implemented to verify the immigration status of new workers. *See* Marc Lacey, *Worker Verification Plan Provokes Intense Debate*, L.A. TIMES, Feb. 19, 1996, at A1. The reason for this is that many women who change their last name after marriage fail to notify the government. *Id.*

64. *See* Schlosberg, *supra* note 36. Problems with airlines using frequent-flier tickets have also arisen because computer systems are not equipped to keep a woman's name separate from her husband's name. *See Your Name—Keep It or Change?*, THE PLAIN DEALER, Mar. 9, 1993, at 4C.

65. *See* Schlosberg, *supra* note 36.

66. *See id.*

67. *See id.*

68. *See* Liz Gill, *Sally Bigg Gunnell?*, N.Y. TIMES, Oct. 19, 1992, 3D. A representative of the National Council for Civil Liberties has stated that "there are the pressures put on women by parents, in-laws and friends which often lead them to change their names in defeat or frustration." *Id.*; *see also* CARLSSON, *SURNAMES OF MARRIED WOMEN AND LEGITIMATE CHILDREN* 262-63 (1983).

69. *See* Schlosberg, *supra* note 36. Teresa Patton, of Ramsey County, Minn., expresses frustration about the system's support of an out-of-date expectation that after marriage, a woman automatically takes her husband's name. *See* Harvey, *supra* note 51. "Even though it has become popular in recent years for women to keep their birth names, the legal system does not reflect that trend." *Id.* She adds "There is a real strong and unexamined bias in favor of women changing their names when they get married. It's built into the fee structure of our country." *Id.*

70. These interests may include preventing fraud in motor vehicle registration and voter registration, being able to quickly and correctly identify people in numerous circumstances and preventing people from fraudulently misrepresenting themselves. *See generally* Lamber, *supra* note 6, at 798.



still allow the residents of the state the flexibility they need to choose their own names.

### C. Court Fees

If a woman already has changed her surname once, court fees may be another obstacle in her path to name change.<sup>71</sup> This legal procedure, which requires a brief appearance in court, can cost between \$200 and \$500.<sup>72</sup> This includes the filing fee which, ordinarily, will run between \$100 and \$200,<sup>73</sup> and court costs ranging from \$200 to \$400.<sup>74</sup> In addition, there is the expense of publishing a legal notice in a newspaper.<sup>75</sup> Although the costs involved in changing one's name may be worth it to many women, there are some who cannot afford these costs and, as a result, must retain their married names against their will. Margaret Randolph of St. Louis, Mo. suffered extreme spousal abuse during her 23-year marriage to Gary Randolph.<sup>76</sup> When she left her husband, Margaret did not have the money to hire a lawyer to file for divorce, nor did she have the \$350 she needed to change her name.<sup>77</sup> Consequently, Margaret must continue using the last name of Randolph despite the severe physical and emotional trauma her husband inflicted on her.

## VI. NEW SYSTEM OF NAMING IS NEEDED

Instituting a new system means passing new laws, although this requires a prolonged effort. Meanwhile, many women, and some men, want to deviate from tradition by taking names that reflect a more egalitarian view of the spousal relationship.

These people are sometimes told that the difficulties of doing so are insurmountable, or that they will lose important legal rights if they do so. This is not really true. Although perfect solutions will not exist until laws are changed, many people have found ways of coping with the present system.

A recent survey conducted by American Demographics magazine showed that 10% of married women in the United States do not choose to adopt their husbands' surnames after marriage.<sup>78</sup> Of those 10%, only 2% go exclusively by their maiden names, 5% hyphenate their names, and approximately 3% choose nontraditional surnames, such as using their maiden names as middle names or using their maiden names professionally, but using their husbands' surnames in social settings.<sup>79</sup> Recently, there has been a backlash against even this minimal deviation. Some women are now arguing that they prefer to "buck the feminist viewpoint" and choose for themselves their own tradition.<sup>80</sup> These women are more likely to take their husbands' surnames.<sup>81</sup>

That only 10% of women choose to keep their surnames after marriage seems at odds with the progress women have made in other areas. Because our society has not been prepared for women to keep their surnames, many problems arise when women and couples do not follow tradition. Many couples may wish to avoid these problems by following tradition and keeping one surname as the family name.<sup>82</sup> Ideally, our society needs a new system for naming people. Children should be given surnames that either reflect the names of both

71. Legal procedure is required if a woman has changed her name once, i.e. if a woman chose to take her maiden name back after divorce, or if a woman has already once in the past changed her surname. See N.J. STAT. ANN. § 2A:34-21 (West 1979).

72. See Virginia Baldwin Hick, *Name Change Easy, Lawyer Says*, ST. LOUIS POST-DISPATCH, Mar. 15, 1993, at 3A.

73. See James Steinberg, *Change Your Name? Sure, But You'll Still Be You*, SAN DIEGO UNION-TRIB., Sept. 5, 1994, at B2.

74. See *id.*

75. See Baldwin Hick, *supra* note 72.

76. See Elizabeth Gleick, *Civil Assistance May End Too*, TIME, June 19, 1995, at 46. Legal Services Corporation assisted Margaret in obtaining a permanent restraining order against her husband. In an effort to save the money she needs to change her name, Margaret is working at her first full-time job. See *id.*

77. See *id.*

78. See Salm, *supra* note 47.

79. See *id.* Jim Smith is Jim McGilvery at home and with his children. Professionally, however, he continues to be Jim Smith. See *id.* Approximately 14% of women under 40 use nontraditional names, compared with 10% of those in their forties, and about 5% who are fifty or older. See *id.* The gap may be a result of educational differences; the more educated a woman, the

more likely she is to use a nontraditional name, and younger women tend to be better educated than their mothers and grandmothers. See *id.*

80. See Karen DeWitt, *Ideas and Trends: Here Comes The Bride; That'll Be Mrs. To You, Boomers*, N.Y. TIMES, May 28, 1995, at 5D. Karen Richie thinks that this movement towards accepting the address of "Mrs." may also be a countercultural reaction to the names sometimes imposed on them by parents who followed the 60s trends. KAREN RICHIE, *MARKETING TO GENERATION X* (1995).

81. Ms. Richie also states that younger women, or any women who have taken their husbands' names, do not consider this return to tradition to be a step backward. See Richie, *supra* note 80. "Having inherited the benefits of the women's liberation movement, they took the fact that they would work and have children, and would be able to rise in their professions, as a right . . . . It is perhaps more appropriate for them to soften their attitudes . . . . It's OK for them not to carry the torches that we carried." *Id.*

82. See *id.* Kathy Traxler may consider taking her husband's surname, Gevanthor, after their seventeen-month-old daughter, Kate, begins school "just to avoid confusion at Kate's school—even if it generates some confusion in [Kathy's career]." *Id.*



parents or reflect neither. When these children marry in return, both men and women could keep their surnames, combine them<sup>83</sup> or choose a third name. None of these choices would favor a male's name over a female's name.

#### A. Alternatives

Couples have already begun moving society into a more progressive position by making their own rules for naming themselves and their families. Many women choose to keep their maiden names and others simply hyphenate their and their husbands' surnames.<sup>84</sup> An increasing number of women have been adopting their maiden names as their middle names and taking their husbands' names as their surnames.<sup>85</sup> Some couples have chosen other alternatives in order to form a family bond. George Harter and his wife, Susan Weinberg, agreed for both take the surname Weinberg-Harter after their marriage twenty years ago.<sup>86</sup> When Jeff Nicholson of Champaign, Ill., married Dawn Owens, he became Nicholson-Owens and she became Owens-Nicholson.<sup>87</sup> Other couples are opting for the husband to change his name and take his wife's surname.<sup>88</sup> Nancy Herman of Minneapolis and her husband, Don Perlmutter, came up with yet another variation. They merged their last names and became the Perlman.<sup>89</sup> Women who want their last names passed down to their children are giving their sons their last names and their daughters their husbands' last names.<sup>90</sup> Elise Goldstein and her husband Baruch Brown took the colors in each of their names, mixed them together and created Sienna, the legal last name of their children.<sup>91</sup> One West Virginian couple rotated their names every five years, first using her surname, then his.<sup>92</sup>

83. If a combined name is elected, the next generation will have to modify their names.

84. See Peterson, *supra* note 1.

85. See *id.* Next to keeping her surname, the second most popular alternative is for a woman to take her husband's name and use hers as a middle name.

86. See Salm, *supra* note 47. There is one common characteristic among the group of people who choose alternative names after marriage: they have at least one college degree (and oftentimes, more than one), and often, they are in the middle to upper-class income brackets. See Lisa K. Garcia, *Name Game; More and More Couples Are Breaking Tradition and Exercising Their Options for Change*, ROANOKE TIMES & WORLD NEWS, Mar. 23, 1995.

87. See Schlosberg, *supra* note 36.

88. See *id.* Pete Schult of Santa Cruz took his wife's name and gave up his last name of Dombrowsky. *Id.*

89. See *id.* A similar couple in Delray Beach, Fla. had to challenge a state law that required parents to pass on the father's

A Maryland couple created a new name altogether when they agreed to give their child the surname Roth-Tubman, after the author Philip Roth and the 19th century abolitionist Harriet Tubman.<sup>93</sup> Finally, some women are rejecting men's names, whether husband or father, altogether: Ann Tatlock of Minnesota opted for her mother's maiden name as her surname.<sup>94</sup>

#### B. Statistics

There are no official numbers on name changes; neither the Census Bureau nor the Social Security Administration keeps track of them. However, there have been numerous informational surveys done in order to ascertain the degree of name changing among women. A research study examining attitudes of Midwestern college students towards marital name change showed that females were significantly more likely than males to believe that it is acceptable for a woman to keep her maiden name when she marries.<sup>95</sup> Also, females were significantly more likely than males to think it appropriate for a man to adopt his wife's surname, and males were more likely than females to think that a man should never do so.<sup>96</sup> The most recent survey performed by the University of Nebraska showed that about half of the women surveyed thought it was acceptable to use one's own maiden name after marriage, though only 10% of married women actually kept their last name.<sup>97</sup>

#### C. International

Other countries have found other solutions to the problems posed by name changing after marriage. In Iceland, a woman keeps her maiden name, but her children use the father's surname with the

surname. They merged Dean Skylar's surname with Chris Ledbetter's surname, creating Skybetter. When their first son was born, they had to go to court to get the state law changed in order for their son to keep his new surname. *Hybrids, Hyphenates and More*, USA TODAY, Aug. 28, 1990, at 5D.

90. See Howard G. Chua-Eoan, *It Hyphenated One Night; In Surnames, The Distinctive Mark Can Wreak Havoc*, TIME, Apr. 17, 1989, at 78.

91. See Janice L. Kaplan, *Many Last Names Are Now A First*, N.Y. TIMES, Jan. 21, 1993, at C1.

92. See *id.*

93. See Chua-Eoan, *supra* note 90.

94. See *Hybrids, Hyphenates and More*, *supra* note 89.

95. See Laurie Scheuble & David R. Johnson, *Marital Name Change: Plans and Attitudes of College Students*, 55 J. OF MARRIAGE & THE FAM. 747, 751 (1993).

96. See *id.*

97. See CNN News: *Attitudes Keep Changing Over Maiden Names* (CNN television broadcast, Sept. 18, 1995).

word for "son" or "daughter" after it.<sup>98</sup> Children in Spain combine both the mother's and father's surnames with a conjunctive "y."<sup>99</sup> Arab and Moroccan women do not change their names upon marriage.<sup>100</sup> Many British women hyphenate last names to reference both the mother's and the father's lineage.<sup>101</sup>

Until recently, Japan legally compelled a married couple to use the husband's surname in most cases.<sup>102</sup> Sociologist Reiko Sekiguchi began her fight against the system when she was forced to use her husband's surname professionally as a professor in three of Japan's government-run universities.<sup>103</sup> Ms. Sekiguchi filed suit demanding that the university accept her maiden name.<sup>104</sup> Since then, Japan has introduced a system under which a woman is officially allowed to retain her maiden name after marriage.<sup>105</sup> This new rule allows a married couple to choose on their wedding day whether they will have the same name or different ones.<sup>106</sup> Once married, they are not allowed to change.<sup>107</sup> It is also traditional in Japan for a man who marries a woman with no siblings to take the woman's family name, and for the couple to then use that surname.<sup>108</sup> Although this method is not perfect, it does acknowledge that keeping a woman's family name is important and worthwhile.

#### D. Courts and Legislatures

Our judicial system has the power and influence to help change our society's hesitancy in allowing women the full flexibility of choosing their surnames. The courts today are at best tolerant of society's movement toward change.

With some notable exceptions, [judges] have failed to bring to sex discrimination cases those ju-

dicial virtues of detachment, reflection and critical analysis which have served them so well with respect to other sensitive social issues . . . . Judges have largely freed themselves from patterns of thought that can be stigmatized as "racist" . . . . With respect to sex discrimination, however, the story is different. "Sexism"—the making of unjustified (or at least unsupported) assumptions about individual capabilities, interests, goals and social roles solely on the basis of sex differences—is as easily discernible in contemporary judicial opinions as racism ever was.<sup>109</sup>

The courts must play a larger, more pro-active, role in assisting women and moving our society towards full equality. If the courts lead this movement by removing bureaucratic red tape and making it easier for women to negotiate the process, society will follow and ultimately views will change.

Since judicial action has been only moderately effective, legislatures need to provide a simpler and more definite procedure for individuals who wish to change their names. One option would be to allow a husband and wife to declare on their marriage license the name each one chooses to use after marriage.

Divorced women who wish to retake their former surnames should not have to undergo an unnecessary court proceeding. As this procedure is statutorily mandated, our courts and legislatures should work to remove these barriers. It is time-consuming and wasteful for the women involved, the courts and the taxpayers.

Were it easier for couples to choose their surnames upon marriage, an increasing number would consider the various options. Presently, many

98. See *Your Name—Keep It or Change?*, *supra* note 64.

99. See *id.* "Y" means "and" in Spanish. Upon marriage, women in Spain add their husband's surname between a woman's first name and her maiden name. As an example, Carmen Perez will become Maria Sanchez Perez after her marriage to Manuel Sanchez. "The wife just adds the husband's name if she wants, but it's only used in very formal situations. Right now very few people add it, so it's not an issue." De Witt, *supra* note 80.

100. See *Customer Loyalty Programs Fulfillment: The 'Back End' Is Now The 'Sharp End'*, BRAND STRATEGY, Sept. 30, 1994, at 69.

101. See *Name Game*, *supra* note 86.

102. See Mayo Issobe, *Woman Fights Japan to Keep Maiden Name*, ST. LOUIS POST-DISPATCH, Mar. 26, 1991, at 1D. Although this rule is not enforced, Taiwan and South Korea also adopted this "koseki" system while they were Japanese colonies. See *id.*

103. See *id.*

104. See *id.*

105. See Michiko Nakajima, *Old Rules About Marriage About To Change*, DAILY YOMIURI, Dec. 21, 1993, at 7. Before the process was implemented, a large number of couples refused to file applications for marriage with local governments and stated that they would wait until a new system was instituted.

106. See Hitomi Ishinable, *Lawyer Makes Case for Japan to Bridge Gender Gap*, NIKKEI WKLY, Apr. 3, 1995, at 15.

107. See *id.* If the couple chooses different names, at the time of marriage they must declare what their children's last name will be so that siblings will have the same last name. See *id.* During a one-year grace period after the law is enacted, any married couple will be allowed to change their last names. See *id.*; see also Crenshaw, *supra* note 62.

108. See Schlosberg, *supra* note 36. It was seen as a gift that the groom's family would give to the bride's family.

109. See John D. Johnson & Charles L. Knapp, *Sex Discrimination by Law: A Study in Judicial Perspective*, 46 N.Y.U. L. REV. 675, 676 (1971).

couples would rather follow tradition and take on the husband's surname than deal with the inconvenience and confusion involved in choosing alternative surnames. The courts, voter registration systems, the Division of Motor Vehicles, insurance companies, landlords, and other agencies and groups should assume that a woman's name is her birth-given name, unless she indicates otherwise. This would properly place the burden on people adopting new names, and remove it from women and couples who would like to choose alternatives to the prevailing custom.

## VII. CONCLUSION

The importance of one's name cannot be overestimated. People's beliefs in that importance are ancient and universal. Primitive tribes considered a person's name to be sacred.<sup>110</sup> One's name and identity are inextricably linked.<sup>111</sup> Renaming is re-making, and women more and more are resisting this. When a woman gets married, whatever deci-

sion she makes about her name is a difficult one and, with family involved, can often be emotionally charged. In an age when women are still fighting to get equal pay for equal work and to have exclusive control over their own bodies, a woman's wish to keep her name and her identity should not be difficult, tedious, time-consuming or expensive. Nor should this wish be interpreted to mean that a woman is any less committed to the relationship or the family.

The increasing number of people who support women retaining their surnames when they marry, as well as the number of men changing their surnames when they marry, may represent a change in societal expectations for men and women and for the institution of marriage. However individual women and couples decide to resolve it, the issue of surnames will likely remain a contentious one as men and women struggle to find their roles in our changing society.

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110. Lois G. Forer, *UNEQUAL PROTECTION, WOMEN, CHILDREN & THE ELDERLY IN COURT* 135 (1991).

111. *Riley v. Linchfield*, 150 N.W. 81, 83 (Iowa 1914).