APPENDIX K
INTERNATIONAL:
FROM NON-U.S. SOURCES

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INTERNATIONAL LEGAL ASPECTS OF HUMAN GENOME RESEARCH

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International Legal Control of Acceptable Human Genome Research and its Applications

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I. Introduction

A small but growing body of literature addresses the appropriate level of national and sub-national regulation of human genome research and applications in a few advanced countries.[1] Very little attention, however, has been paid to the establishment of *international* legal standards for the new genetics technology. This is unfortunate because most people in the world live in societies wherein this technology is likely to developed in a near legal vacuum.

Marketplace economics will bring genetics technology to nearly every nation in the world.[2] Legal control of this technology in the social interests of a community, however, cannot be expected to arise spontaneously in every country, in tandem with marketplace developments. The simple fact of the matter is that most of the world's nations do not have legal systems that are equipped to develop rules and regulations for as complex a field as genetic engineering. Even the most litigious societies are finding the legal aspects of genetics to be *sui generis*, problematic and difficult to resolve.

Hence there is an important role for the International Bar Association to play in the development of a model national genetics law or of a genetics treaty for national ratification. In this way the ability of the world's nations to regulate the new genetics technology can reasonably keep pace with the rapid exploitation of genetic knowledge expected in the wake of the Human Genome Project. It is to the appropriate scope and nature of such globally applicable rules of law that this paper is addressed.

II. The Major Issues

The Human Genome Project directly produces information about which part of which chromosome is responsible for which human trait. The goal of the Project is to identify the chromosomal locations of DNA-coded instructions for producing every human trait, the vast majority of which are part of our internal biochemistry and are hence usually not seen in everyday life. There are an estimated 100,000 human traits (scientifically called "genes") spread across some three billion possible chromosomal locations (scientifically called "base pairs"), which, in total, is called the human genome.

Identifying the precise chromosomal locations of the human traits is currently very difficult. The DNA-coded instructions for each trait look like strings of similar molecules interspersed among three billion such molecules.[3] How is one to know which strings of molecules code which particular biochemical reactions which result in which particular human traits? This information, for the "general human being" (that is, no one in particular), is the quest of the Human Genome Project.[4]

In many ways the Human Genome Project is similar to every scientific effort aimed at uncovering information about nature. When astronomers turn their telescopes to the heavens, for example, they are trying to obtain information about how the universe works. When geophysicists explore the workings of the earth they also are trying to obtain information on "what leads to what." Is there anything about the Human Genome Project which gives rise to a different need for international regulation than that which is appropriate for other fields of scientific inquiry?

In other ways the Human Genome Project is unique in the annals of science. The Human Genome Project is unique because it is science practiced upon ourselves, and it thus has a potential for transforming human society with an immediacy and directness not found in astronomy, geophysics or any other discipline.

We must therefore ask whether any special rules are needed for this science of our species. A failure to inquire is equivalent to a decision that the genetic information obtained will simply be a marketable commodity. This may or may not be the right decision. But given the spotty record of marketplace economics in allocating weapons (too many in the wrong places), food (too little in the right places) and ecological resources (no costs for pollution), it would be foolhardy to simply assume that the marketplace will wisely allocate genetic information.

Dealing as we are with information, albeit genomic information, the salient international legal questions are:

- What kind of legal subject is genomic information?
- To whom should genomic information belong?
- For what purposes may genomic information be used?

III. Genomic Information as a Legal Subject

As an international legal subject, genomic information appears to be *res communes.* This means that the information is free for the use of all but that it may not be used exclusively by one state and that it may not be used for aggressive purposes. Article 12 of the International Covenant on Economic, Social and Cultural Rights[5] provides as follows:

> "1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
>
> 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
>
>> (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
>>
>> (b) The improvement of all aspects of environmental and industrial hygiene;
>>
>> (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
>>
>> (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness."

It is indisputable that genomic knowledge is of great value in ensuring the "healthy development of the child" and the "prevention, treatment and control of diseases." For example, there are genomic tests the information from which, if used properly, makes the difference between a child growing up nominally or with severe mental retardation.[6] Other genomic tests, performed on adults, lets an individual know if they are at increased risk of a certain cancer.[7] This information is invaluable in the treatment and control of cancer because timeliness of treatment correlates very strongly with success. Accordingly, states are acting in accordance with international law when they undertake programs to decode the human genome. The Human Genome Project may reasonably considered as a "necessary step" achieving the "highest attainable standard of physical and mental health."[8]

Were human genome information not *res communes*, it would be difficult if not impossible to achieve the mandate of the International Covenant on Economic, Social and Cultural Rights. For example, if human genome information were *res nullius*, then states would be fully within their rights to not share the DNA data they decode. However, this has not occurred. The practice of the Human Genome Project from its very beginning has been to encourage open access by any capable entity to DNA information. This meets two of the three key conditions for *res communes* – common ownership and common use. (The third condition, that of nonaggressive use, is discussed below.)

It might be argued that the efforts of several nations to patent strings of DNA is inconsistent with *res communes*. In this view, patenting strings of DNA would be analogous to fencing off territory, precluding the use by others of what one country acquired knowledge of through its genomic research efforts. There are, however, several flaws with this argument.

First, it can be pointed out that patent law promotes the sharing of genome information because the details of a gene's location and structure must be made public after a patent is issued. Second, even if a patent is issued, it has only a relatively short life, after which the information moves into the public domain forever more. Third, it appears unlikely that patents can be issued on pure genomic information as compared to a specific product or process that uses the information. On February 10,1994 the U.S. National Institutes of Health has abandoned its efforts to patent thousands of gene fragments after the U.S. Patent and Trademark Office kept rejecting the applications. Finally, to the extent what is being patented involves a nonobvious application of genomic information, international law recognizes the rights of scientists to enjoy both the "moral and material interests" of their labors. Hence Article 15 of the International Covenant on Economic, Social and Cultural Rights[9] provides:

> "1. The States Parties to the present Covenant recognize the right of everyone:
>
> (a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;
(c) To *benefit from the protection of the moral and material interests resulting from any scientific*, literary or artistic production of which he is the author.

2. Te steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields."

It should be noted that the recognition Article 15 provides for the intellectual property rights of scientists is entirely consistent with the *res communes* status of human genome information. Article 15 recognizes the rights of scientists to share in the "moral and material interests" of their work, not to preclude the dissemination of information. To the contrary, Article 15 specifically requires states to take those steps necessary for "the diffusion of science and culture." One of those steps may be vigorous protection of intellectual property rights because historically this has been shown to accelerate the discovery and dissemination of knowledge by incentivizing the researcher.

In summary, human genome information in the abstract -- the output of the Human Genome Project -- is most likely a *res communes*. The international practice of the past several years has the hallmarks of *res communes* -- no rights of appropriation or exclusive appropriation by any country and free access by any capable country. This practice is in accord with the relevant international treaty, and with the underlying international norms.

There is nothing about the current conduct of the Human Genome Project which violates international law. To the contrary, countries have an affirmative obligation to participate in the Project to advance the physical health interests of their citizenry. On the other hand, countries participating in the Human Genome Project are obligated under the principles of *res communes* to share the information they acquire with other nations. The human genome is the common heritage of all humanity. The obligation to share genomic information is not inconsistent with awarding royalty rights to the scientists who discover the genome information -- so long as the intellectual property process does not result in denial of access to human genome information.

IV. To Whom Should Genomic Information Belong

The principle of *res communes* dictates that genomic information in the abstract belongs to all humanity. But what of the genomic information about a specific individual? Is there an international legal interest in standardizing national rules concerning ownership of personal genomic information?

The creation of a human being involves the reduction of *res communes* genomic information to concrete, appropriable form. The creation of a human being does not deplete the human genome, just like the passage of a ship across the ocean does not deplete the sea. But once that human being is created, international law vests it with certain basic rights. Those rights are summarized as the "dignity and worth of the human person."[10] Hence a human genome is a powerful thing. Once formed, and not aborted, it acquires rights. Those rights include freedom from ownership (slavery).[11] We own ourselves. Hence, we own each part of ourself. Ergo, we own our own genome.

Ownership does not imply absolute dominion. For example, something once owned may be abandoned, sold or traded. Something owned may not be used in a manner which infringes on the rights of other persons, as in the case of a nuisance. The next question to address is how these limitations of ownership bear upon our ownership of our own genome.

If the Human Genome Project succeeds, it will be possible to tell from a person's DNA some of their most personal medical information. Even today, with rudimentary genomic information, it is possible from a person's DNA to tell if they will die from certain diseases as to which they show no symptoms.[12] If this or similar information is used to limit a person's employment, insurance or family rights it is fair to say that the dignity and worth of that person has been abridged.

On the other hand there are many reasons why a person may want their genomic information known and disclosed. Medical practitioners may be able to provide a person with better health care based on their genomic information. A person may be able to more efficiently plan their life based upon their DNA-coded medical predispositions. Couples may be able to make reproductive decisions they are less likely to regret if they knew their genomic health risks in advance. Employers may be able to avoid placing employees in environments which carry special health risks to some genotypes but not to others. It is clear that genomic information can be of great value to a person.

The issue here is how do we preserve our ownership rights in our genome, and still exchange genomic information with those we choose to have it? In theory this could be done through contract. Every time a person shared their genomic information with someone else they could sign a contract that limited that person's use of the genomic information to some specific intended purpose. This is the gist of the recommendations of the United States Institute of Medicine[13], which relies heavily on the notion of voluntariness and informed consent for any sharing of genomic information.

The contract solution is not wise for several reasons. First, a valid contract implies a meeting of the minds between commensurately knowledgeable parties. This condition will not be met in the real world because most individuals sharing their genomic information will never acquire much biotechnology knowledge. Second, the transaction costs involved in creating contracts for every exchange of genomic information would be a huge drag on efficient health care. Third, the consequences of breaking a contract are usually not too bad. Persons offering genomic information would be hard-pressed to ensure compliance with their conditions, and collecting damages for non-compliance would usually prove problematic. The case-by-case contract solution (informed consent) solution for limiting access to one's genomic information is fundamentally unfair because the donor will almost always be giving up far more property rights in their information than they thought.

An alternative approach to permitting limited use of one's genomic information is legislative. In this solution by law it is illegal, with criminal sanctions, for genomic information to be used to devalue the worth or dignity of a person. Examples of devalued worth or dignity based on genomic information would be discrimination in employment, insurance or reproductive rights. Under this approach a person's genomic information, once disclosed, may be used without the need for "informed consent" so long as it is not used to devalue the worth or dignity of that person. A recipient of genomic information could be certain they complied with the law by limiting name-associated use of genomic information to the person's health care, and removing the person's name for any other use of the genomic information.

The legislative approach to sharing genomic information does not mean that one will be forced to give up copies of their DNA, although in theory mandatory genetic testing for one's own health is not different than mandatory vaccination for one's own health. Instead, the legislative approach means that whenever our DNA becomes separated from our bodies -- because we gave blood, had a haircut, or intentionally contributed cells -- we still retain a limited property right in it. The nature of that property interest is that the genomic information cannot be used against us. How we become separated from our DNA, whether from mandatory blood spots at birth, a voluntary decision to undergo genetic counseling, or otherwise, need not be a concern of international law.

In summary, we own our own genomic information by consequence of owning our own bodies. With the advent of modern genetic testing technology there will be reasons for us to share our genomic information with others. International law has a legitimate concern that in sharing our genomic information we not fall under national legal regimes which devalue our worth and dignity. The best way to ensure this human right is with an international legal standard which criminalizes any use of a person's genomic information which devalues their worth or dignity, including discrimination of any sort. Such a legal standard would obviate the need for informed consent as a condition of sharing genomic information. Informed consent does not appear to be a fair obligation to impose upon the donor of genomic information, is not a strict enough restriction to impose on the recipient of genomic information, and is overall an unnecessary legal burden on the health care system.

V. For What Purposes May Genomic Information Be Used?

If general genomic information is *res communes*, then it can be used for any peaceful, nonaggressive purpose. If personal genomic information is personal property, then it should also be useable for any non-violent, non-tortious purpose. Even if the personal genomic information becomes separated from the person, this paper recommends that the new possessor of that information be able to use it for any purpose so long as the contributor of that genomic information is not discriminated against thereby.

Purposes to which general genomic information might be used include development of genetic therapies to cure genetic diseases, and creation of genetically altered life-forms, either human or transpecie.[14] Genetic therapies are modifications of one's own DNA to eliminate harmful genetic conditions. The intent is to return oneself to a better level of health. This is a peaceful use of *res communes* genomic information and should be liberally permitted.

Genetically altered life-forms are the result of modifying the germ cell (egg or sperm) DNA. This might be done to increase an offspring's resistance to illnesses like the common cold or to change an offspring's phenotype. While the child may or may not appreciate what its parents bestowed upon it, such modification of the germ line does not seem to violate any international legal norm. Choosing the appearance or characteristics of one's children is a peaceful, non-aggressive activity. Accordingly, it should be a legitimate use of *res communes* genomic information. Indeed, in some form, intentional modification of the germ line is actually what occurs whenever someone seeks out a mate with particular characteristics, or chooses sperm from a man with particular characteristics out of a sperm bank catalog. Even the creation of a transgenic life-form should not be illegal. So long as the new life-form is not likely to cause harm, there is no *a priori* reason as to why humans should only beget humans. As it is, we share about 99% of our DNA with chimpanzees.

Personal genomic information is likely to be used for advising people on better health practices, and reproductive decisions, as a consequence of genetic screening. So long as this advice is undertaken in a manner which preserves the dignity and worth of the individual, there is no legal problem. For example, if a patient believes that their personal dignity and worth is dependent in part on whether or not they beget children, then it may not yet be the right time to advise them on their chances of reproducing a child with a genetic condition. It should be noted that almost any violation of the confidentiality of medical information runs a high risk of impugning the patient's dignity.

By strongly protecting people against genetic discrimination, it should be possible to share genomic information with spouses and affected relatives. The reason for this is that the stronger the protection from genetic discrimination, the less likely it is that a person will be devalued because of what others know about their genome. Accordingly, personal genomic information collected from patients may be used to help guide the patient's health care, the care of affected relatives, and for general research -- all on the condition that there is stringent legal protection against discrimination on the basis of the collected genomic information.

Finally, genomic information should not be used by the state in reproductive decisions. State use of genomic information tends toward eugenic policymaking. Eugenics, by denying access to the human genome to one or more subsets of people -- namely, those the state does not want to reproduce -- violates the principles of *res communes*. Eugenics may also come within the definition of "genocide" as defined in the Convention on the Prevention and Punishment of the Crime of Genocide:

> "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such ... (d) Imposing measures intended to prevent births within the group."[15]

It might appear that the above-quoted provision does not apply to the genetic conditions a eugenics-oriented government would want to eliminate over a few generations. However, such a conclusion may not be warranted. The term "racial" is not defined in the Convention, but clearly "racial" is nothing more or less than a genetic condition. Indeed, about 20 years later, in the International Convention on the Elimination of all Forms of Racial Discrimination, the term "racial discrimination" was defined to mean "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin ...."[16] By "descent" the Convention can be read to encompass inherited conditions as a "racial" category. In any event, the use of genomic information to forge divisions within a population tends to be aggressive. As such, eugenics is inconsistent with the *res communes* nature of the human genome.[17]

VI. Summary

International legal control of human genome research and applications is necessary to ensure protection of the human rights of people worldwide. The international legal controls required are limited to those necessary to (a) preserve the *res communes* nature of general human genome information, and (b) protect the personal property rights of individuals in their own human genome information as against uses of that information that would degrade their dignity and worth.

To preserve the *res communes* nature of general human genome information it is important that all countries have fair access to genetic data banks, with due regard for the material interests of the scientists who discovered the information. It is also important that state reproductive decision-making based on genomic information be strictly prohibited.[18]

To protect the personal property rights of individuals in their own genome information it is important that states be required to criminalize any discrimination against people based upon their genetic status. It is also important that states take other steps to ensure that the health benefits of genetic screening are made available to its citizens in a manner which at all times respects each person's dignity and worth.

Footnotes

1. For example, the National Research Council, the most prestigious advisor to the United States Government, has approved a report which details recommended bioethical limits for the application of human genome research to genetic screening of adults, newborns and prenatal life. L. ANDREWS, ET. AL., EDS., ASSESSING GENETIC RISKS: IMPLICATIONS FOR HEALTH AND SOCIAL POLICY (1994) [hereinafter cited as ASSESSING GENETIC RISKS].

2. After amniocentesis was first performed in India in 1975 "hundreds of private practitioners in Bombay, Delhi, and elsewhere started offering the test, at a cost of anywhere from $5 to $80. Some gynecologists offered follow-up abortions [of XX fetuses] for as little as $5. In Bombay alone, almost 300 clinics offered the service early this year. ... The clinics are especially popular in the developing world -- Taiwan, Thailand, India, Pakwstand, and Jordan ...." *Preventing Women from Being Born*, 52 THE PROGRESSIVE 14 (1988).

3. Adenine, Thymine, Guanine and Cytosine. M. SINGER & P. BERG, GENES AND GENOMES 38 (1991)

4. The phrase "Human Genome Project" means the loosely coordinated and mostly competitive multi-million dollar efforts of several nations and dozens of private organizations to decode the entire human DNA. There is no actual building, organization or budget called "Human Genome Project." There is a threadbare international secretariat called the Human Genome Organization (HUGO) whose purpose is to encourage transnational cooperation in human genome research. *See generally*, D. Kevles, "Out of Eugenics: The Historical Politics of the Human Genome", in D. KEVLES & L. HOOD, eds., THE CODE OF CODES: SCIENTIFIC AND SOCIAL ISSUES IN THE HUMAN GENOME PROJECT 2-36 (1992).

DNA from people all over the world comprise the source material for decoding the human genome. Except for identical twins, no two people's DNA is identical, although the DNA of all humans is more than 99% the same. Information gleaned from the Human Genome Project goes into various computer databanks, and is sometimes printed graphically. The largest such databanks are at Johns Hopkins University, the European Molecular Biology Laboratory and GenBank, maintained by the US Department of Energy in Los Alamos, New Mexico. "The first complete human sequence was expected to be that of a composite person: it woud have both an X and a Y sex chromosome, which would formally make it a male, but this "he" would comprise autosomes taken from men and women of several nations – United States, the European countries, and Japan. He would be a multinational and multiracial melange, a kind of Adam II, his encoded essence revealed for the twenty-first century and beyond." *Ibid* at 36.

5. International Covenant on Economic, Social and Cultural Rights, *opened for signature* December 16, 1966, U.N.T.S. (entered into force in 1976).

6. "Genetic therapies for most diseases are far in the future, but knowledge of genetic defects can still be medically useful. Postnatal tests for phenylketonuria (PKU), compulsory in many states, have allowed control of this disease through rather simple dietary measures. A severe genetic disease that can result in mental retardation, PKU can be controlled by removing phenylalanine from the diet of afflicted children." Nelkin, The Social Power of Genetic Information, D. KEVLES & L. HOOD, eds, THE CODE OF CODES: SCIENTIFIC AND SOCIAL ISSUES IN THE HUMAN GENOME PROJECT 179 (1992)[hereinafter cited as CODE OF CODES]. PKU occurs in about 1 out of every 15,000 births. Thus this genomic information can help about 10,000 children each year, based on 150 million new births per year worldwide.

7. "Nonpolyposis colon cancer strikes one in 20 people, and as many as 18% of these cancers may result from mutations in MSH2 and MLH1 [genes]. Commercial genetics labs are already staking their claims on this huge potential market. No fewer than 10 companies have already purchased the rights to develop MSH2 and MLH1 tests." *Genetic Testing Set for Takeoff*, 265 SCIENCE 464, July 22, 1994. A positive test result cues doctors to look carefully for cancerous colon growths so that they may be removed before they spread to other organs. Similarly, the recent identification by an Australian team of a gene responsible for bone density holds promise for better control and treatment of osteoporosis. This crippling disease afflicts over 50 million people, especially older women, and frequently causes death as a consequence of hip fracture. Genetic testing of people at risk for osteoporosis can save many lives by targeting those people who

test positive for skeletal-enhancing interventions (such as calcium and weight-lifting) when their skeleton is still growing and they are presymptomatic. *Simple Genetic Test May Identify Increased Risk of Osteoporosis*, The Washington Post, January 20, 1994 at A3.

8. Note 5, *supra*.

9. *Id.* (emphasis supplied)

10. "We the Peoples of the United Nations Determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person ... ." Charter of the United Nations, *entered into force* on Oct. 24, 1945. These introductory words to the most widely acceded to of international treaties clearly restate a pre-existing international legal norm, namely the "dignity and worth of the human person."

11. "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." Universal Declaration of Human Rights, Dec. 10, 1948, Art. 4.

12. Huntington's disease, for example, is caused by a single dominant gene and is invariably expressed, although the date of onset varies widely. If a person has the gene they also have a 50% chance of passing to each child they bear. ASSESSING GENETIC RISKS, *supra* note 1 at 87. *See also* Wexler, Clairvoyance and Caution: Repercussions from the Human Genome Project, in THE CODE OF CODES,*supra* note at . In a similar vein, when testing began for sickle cell anemia, carriers of this recessive trait (who would not even get the illness themself) found they were discriminated against in employment, insurance and marital matters. D. KEVLES, IN THE NAME OF EUGENICS 278 (1985).

13. "The committee recommends that before genetic information is obtained from individuals (or before a sample is obtained for genetic testing), they (or in the case of minors, their parents) be told what specific uses will be made of the information or sample; how -- and for how long -- the information or sample will be stored; whether personal identifiers will be stored; and who will have access to the information or sample, and under what conditions. They should also be informed of future anticipated uses for the sample, asked permission for those uses, and told what procedures will be followed if the possibility for currently unanticipated uses develops. The individuals should have a right to consent or to object to particular uses of the sample or information." ASSESSING GENETIC RISKS, *supra* note 1 at 277.

14. *See generally,* M. Rivard, *Toward a General Theory of Constitutional Personhood: A Theory of Constitutional Personhood for Transgenic Humanoid Species,* 39 UCLA L REV 1425 (1992); M. Shapiro, *The Technology of Perfection: Performance Enhancement and the Control of Attributes,* 65 S. CAL. L. REV. 11 (1991); G. Annas, *Genetics and the Law: Mapping the Human Genome and the Meaning of Monster-Mythology,* 39 EMORY L J 629 (1990).

15. Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948, *entered into force* on Jan. 12, 1951, 78 U.N.T.S. 277.

16. International Convention on the Elimination of all Forms of Racial Discrimination of March 7, 1966, *entered into force* on Jan. 4, 1969, 660 U.N.T.S. 195.

17. "If nothing else, the history of the twentieth century ought to have taught us that individuals can sometimes behave badly, but they can never behave as badly, or as destructively, as governments can." Ruth Schwartz Cowan, Genetic Technology and Reproductive Choice: An Ethics for Autonomy, in THE CODE OF CODES, *supra* note 6 at 263.

18. As an example of what can occur when the state gets involved with genome-based reproductive decision-making, "from [1934] Germany, it was reported that authorities in Saxony were demanding the sterilization of twenty thousand children yearly; that in Kiel a girl who had cheated in school had been sterilized; that zealots in Freiburg were going after 'moral defectives' as though they were psychpaths; that sterilization was practiced upon otherwise sound people with webbed fingers or clubbed feet; that some enthusiasts were calling for the sterilization of diabetics in the interest of racial health. It was estimated that sterilization killed between one and two percent of healthy German women who underwent the operation." D. KEVLES, IN THE NAME OF EUGENICS 169 (1985). The spectre of eugenics is not just a matter of history. Last year China's Public Health Ministry submitted draft legislation to the National People's Congress entitled "On Eugenics and Health Protection." The bill would have barred people with hepatitis, venereal disease or mental illness from marrying or required their sterilization. *China Planning Restrictions on 'Inferior' Births,* The Washington Post, December 22, 1993 A1, A28. In the United States, bioethicist Arthur Caplan of the University of Minnesota has observed that in his country "eugenics is not going to come from a Hitlerian dictator saying, 'You must do this.' It's probably going to come from a society saying 'You can have a kid like that if you want, but I'm not paying.'" *Grading the Gene Tests,* SCIENTIFIC AMERICAN June 1994 at 97.

- **THE SITUATION OVERSEAS:** Nearly all the EC states, 48 of the US states, Canada, Scandinavian countries, South Africa (since 1974) and many eastern bloc countries grant transexuals legal recognition in one form or another.

As far as our researches reveal this change has not resulted in "a lessening of public faith in the records" nor imposed upon the rest of the population "new duties". These were the defences offered to the European Court of Human Rights by the UK government.

Without wishing to over dramatise the situation we would like to emphasise that the transexual condition does cause intolerable emotional stress and attempted suicide figures are very high.

The South African legislators felt in 1974 that they "would like to eliminate any unnecessary aggravation of the emotional stress that has already been experienced"

- **WE WANT** no more and no less than the non-transexual citizen enjoys - the right to marry and found a family, the right to privacy, employment security and dignity in death.
- **WE NEED** to be legally recognised in the status congruent with our social one. Until then, treatment however caring and skilful is less than fully effective.

▸ **FURTHER READING:**

New Law Journal October 5th 1990, p.1384.
European Court for Human Rights:
  Rees v UK (9532/81)
  Cossey v UK (10843/84)
Caroline Cossey: "My story", Faber.

Published by PFC, May 1992.

- **PRESS FOR CHANGE** was founded in February 1992, but its real beginnings go back to the early 1970s when transexuals including Mark Rees and Caroline Cossey started to campaign and to make applications to the European Court for legal recognition of their status.
- **PRESS FOR CHANGE** co-ordinates the efforts of all those transexuals and organisations which support them in their fight for legal change. It has affiliated all the Self Help Transexual organisations.

- **HOW <u>YOU</u> CAN HELP:** If you are in Parliament, then please press the Government to reform this law (described as "cruel" by a leading medical expert) and/or enter the ballot for a Private Members Bill.

If a private citizen please write to you MP to "press for change". Talk to people about the situation - we find that once people are aware of the situation they are very sympathetic (91% supported change in a recent radio poll).

We need funds urgently, these are to ensure that the message is heard. A recent simple black and white leaflet mailing to the House of Commons cost over £500.

To make a donation, send support or receive more information please write to PFC, BM NETWORK, LONDON WC1N 3XX. Tel: 071-372 5917.

- <u>SPEAKERS CAN BE PROVIDED FOR ORGANISATIONS.</u>

Press For Change

BM NETWORK, LONDON WC1N 3XX Telephone 071 372 5917

► PRESS FOR CHANGE is a campaigning group set up to bring about legal recognition to transexuals of their re-assigned roles thus giving them the civil rights and protection afforded to every other citizen of the United Kingdom.

► THE PRESENT SITUATION: came about in 1970 as a result of a divorce case involving a male to female transexual; April Corbett (nee Ashley). The judge, Mr Justice Ormrod ruled that April was a man. This meant that in future all male to female transexuals were unable to marry as women. The converse was true for female to male transexuals.
The judge intended that his ruling should only apply to marriage, however it has been used since on every occasion that a transexual's sex has been legally determined.
Prior to this case transexuals often had their birth certificates amended, and some had very public and legal weddings.
These individuals have retained this recognition of their new legal status - <u>this proves that it is possible for the UK government to accommodate the needs of transexuals</u>.

The Corbett ruling has since been overturned by courts elsewhere including the Supreme Court of New Jersey (1976) and the South Australian Court of Appeal (1988). But despite this and an increasing amount of scientific evidence showing that transexualism is NOT chosen but a condition determined before birth, possibly due to hormonal factors in utero, the UK Government remains unmoved and its attitude continues to blight the life of every UK transexual.

<u>HOW THE LEGAL SITUATION CURRENTLY AFFECTS THE LIVES OF TRANSSEXUALS.</u>

► MARRIAGE AND FAMILY LIFE: Transexuals can only marry members of the legal "opposite sex" ie. their present same sex. Socially, psychologically and after reassignment surgery; physically, this is impossible.
This bar to marriage makes it unlikely that transexuals will be allowed to adopt children. Should the female partner of a female to male transexual become pregnant by Artificial Insemination, her "husband" being legally female cannot be registered as the baby's father.
Not only are transexuals denied the "right to found a family", but their families can suffer adversely - in a recent child access case a judge pronounced that by having a "sex change" an individual gave up all parental rights. Access was refused despite the transexual's ex partner willingness for it to continue.

► EMPLOYMENT: Transexuals have no employment rights or protection at all. They can be dismissed merely for being transexual, whether pre- or post-operative. Even when they have been doing a job for many years in their new role transexuals have been summarily dismissed from their posts.

► PENSIONS: Currently male-to-female transexuals are obliged to retire at 65, yet female-to-male transexuals - who are men to their workmates for all intents and purposes - will find their wages office receiving notification from the National Insurance office of their proposed retirement at the age of 60.

► SOCIAL SECURITY: When ever a transexual applies for welfare benefits, or makes enquiries concerning pensions at their local benefits office - they (and anyone else in the office) may see on the computer screen details of their new name BUT their old gender. For example : Mark - single female, Janet - single male.

► THE CRIMINAL LAW: If a male-to-female transexual is raped her assailant will only be charged with sexual assault - a lower tariff offence. However if she works as a prostitute she will be charged with the masculine offence of "importuning" - a higher tariff offence.
Pre-operative male-to-female transexuals convicted of serious criminal offences nearly always will be sent to a male prison - where they will often serve their sentence on Rule 43 - that is amongst sex offenders - for their protection. Otherwise they face sexual assault and worse from other prison inmates.
Likewise a post-operative female-to-male transexual will always be sent to a female prison.

► LACK OF PRIVACY: transexuals have no protection from media attention of any sort.
Because the UK Government have not amended Birth Certificates for transexuals since 1971, employers, college authorities, insurance companies, passport office etc. often get to know of a transexual's change of status.
Even death certificates of transexuals should have the "old sex " on them.

This is why we <u>PRESS FOR CHANGE.</u>

Transvestism, Transsexualism and the Law.

A Handbook.

Melanie McMullan and Stephen Whittle

The Beaumont Trust
The Gender Trust

Transvestism, Transsexualism and the Law.
A Handbook

by Melanie McMullan and Stephen Whittle

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Foreword.

Alice Purnell.

In theory, all British citizens are equal before the law but, with no Constitution, (as in the USA, with its Constitution and Bill of Rights) equality before the law in terms of the rights of individual citizens are only protected or challenged by Case Law and parliamentary lobbying for statutory changes. The Law evolves in this way and is about what is considered acceptable in a changing society, as law.

The English (and Scottish) Legal System has evolved, and is evolving, as society changes. Its moral roots were affected by Common Law and a Judeo-Christian (patriarchal) moral ethos. English Law is intended to provide order and justice and to reflect public attitudes and opinion.

At times the Law has been ahead of society, as it was in the case of the removal of the death penalty, which was abolished before British public opinion had largely swung to reject a death penalty. At other times, it has been behind public opinion, which can be more or less liberal than the Law itself.

Anomalies exist, so that Justice, the giving or rendering to everyone, what is his or her due in accordance with fairness and impartiality; is not always seen to be done: common sense and Common Law are not always in accord, in the eyes of some minorities.

The position of the Legal Age of Sexual Consent is still unequal for gay men at 18, while it is 16 for females, (and lesbianism, fortunately is not recognised as a problem by the law).

Politics play a considerable part in Law, in that it is Parliament which has the ability to replace old laws, and which guides the judiciary, whose job it is to interpret the law and see that it is carried out in cases before them. It can be said that current Law reflects to some extent current political opinion and social mores.

The position of a single individual before the law is that his or her situation is in a sense dictated by the opinions and rights of the majority. So it is true that Justice and Law are not necessarily the same thing, although hopefully the gap is not so great as to result in injustice.

The Legal Situation for Transsexuals in Europe and Human Rights

by Jenny Sand, Norway

This presentation will discuss the legal situation for transsexuals in Europe. I wish to present some facts and describe the current status in some countries, but I neither have the knowledge, nor the time to cover them all. If you as an example take the Council of Europe, a political body which I think is of great importance for us, it consists of 26 member states. These states have great differences in history, culture and legal framework. The Council has the purpose of defending and strengthening pluralistic democracy and human rights. It could easily be argued that the interpretation of democracy is varying a lot. There is a large step from Turkey to Sweden, just to take one striking example.

In April 1993 I participated in a conference about "Transsexualism and Law", organized by the Council of Europe. Most of the member states were officially represented, (not Turkey, but as a matter of fact not Denmark either), and I was not alone to feel this conference was very important. A very good final document was published, supported by the majority present. Bureaucracy is not working fast anywhere, however I have a good hope we will see some positive and concrete results one day or another. Most of my presentation here today is based on what I learned those intensive days in Amsterdam.

I have an outline for this seminar I would like to present for you now. It consists of four major parts: First I would like to put transsexual rights in a larger perspective, of civil and human rights, and explain why I feel this is so important. Secondly I will say a little about TS versus TV interests, and how I feel those are strongly connected. The third part will be a brief history of the major legal cases in the European Court of Human Rights, cases where transsexualism has been the issue, and about the evolution of the legal situation we have today. The fourth and last part will be some personal conclusions, and my suggestions for organized action in the future.

1.
Let's jump into it.

Why is the legal situation for transsexuals important? Isn't it a small problem on the fringe of mainstream society, with implications for only a tiny little minority of people?
That is probably how many people would choose to present it.

Our standpoint should be clear and simple: Legal rights for transsexuals is a basic question of both civil and human rights, no more or no less. We can not as civilized people or nations accept the existence of second class citizens, no matter how small the group is. As long as you don't hurt other people or restrict their freedom, you should be free to choose your own path in life, and you should have equal rights to anyone else. The example of the British current policy of denying operated transsexuals the right to marry is appalling and unacceptable. So is the refusal to change or even amend birth certificates, forcing people to live with the daily prospect of being confronted with their past history at any time in any situation. However, United Kingdom is not the sole example of this practice and I will come back to the factual situation.

By making transsexual law a question of basic civil and human rights, we can gather support from all democratic people, organizations or institutions. And this without complicating the issue or classifying the transsexual a freak, an abnormality in need of special treatment. It is not necessary to "understand" everything about transsexualism. In fact you don't even have to like transsexual people, or identify with them. The whole point is that we demand equal rights, not special rights, not benefits at others expense. Of course many of us here today have a personal stake in this, and in a democratic society there is nothing wrong with fighting for your own interests, as individuals or as a group. But a minority can never turn the tide by themselves; they can not vote the problems away on their own. We must fight the issue as a general question of civil and human rights, gather a wide support for this standpoint, and then a change can follow. The step from being an outcast to an accepted citizen with equal rights is a large one. At many times this has to be done in steps. And further: Even if you get the legal framework corrected, you can't change all people's minds over night. But, official acceptance, and legal protection, is definitely a first step, necessary for general acceptance to grow in any country.

2.

Now I would like to say something about transsexual versus transvestite interests.

First there is the general aspect. I have already argued this: transsexual legal rights is an issue for everyone who wants a free democratic society. That is in fact a strong enough reason for all transvestites, transgenderists, drag queens, or whatever we prefer to call ourselves, to give our full support and take part in this work for change. No one is really free until everyone is free. That's basically how the gay rights workers already have gained support outside their own group, and made changes possible for that minority group.

Second, a society with clear and accepted rights for transsexuals will also be a better place to live for transvestites. You can not see on a crossdressed person you meet on the street, if it is a TS, TV or TG. The general public don't see a difference. They don't know enough about the person, or the subject, to see a difference, so they really can't. In fact, if we, who do know a lot about the subject, meet this crossdressed person, we are in the same position. We don't know this particular person. We can only guess. Think about it. Acceptance of one sub-group, within the larger group, will benefit everyone. I strongly believe there is a large common ground for all people who crossdress for whatever reason. There are separate issues of course, but many are the same or very similar. We have so many common interests, and common experiences, that sticking together is a very natural thing. We should act like a family, and in a family you stand up for each other.

Third, and my last argument for a natural solidarity to exist among all so called "T-people", is maybe a little more controversial, also in our group: I do not believe you can draw a final and clear-cut dividing line between transvestites and transsexuals. Labels is really a curse. You need to put names on thing to be able to discuss them. You need to have the same set of describing names to be able to communicate well. This works fine when discussing apples and pears. An apple is an apple is an apple. They are not pears. But putting labels on people, sorting them in boxes, can have terrible results. Personally I accept the need for a set of describing labels, but I never stick them on people around me. If someone stick them on themselves is fine with me. I accept that. But I never tell other people what they are in terms of labels. All transvestites, transsexuals, transgenderists, or whatever, are self-diagnosed. There is no medical test available to find out who is who. Not yet anyway. No psychologist can open the brain on a person and peek inside. So we have a problem with so called professional helpers, running around telling other people what they are, and how they should live their lives, in line with that label. We also have this problem in our own groups, with peer pressure. We all seek confirmation that our choices are the right ones, we want others to follow our lead. That justifies what we are doing. Those who are just coming out seek answers, seek people to identify with, seek role models.

The truth is we share interests, goals, hopes and dreams with many other people, across all labels, not with just one little well-defined group. (If there is such a thing.) We are more or less similar to other people, regardless of what the label is. Many of us know instinctively that we fall between these accepted labels, TV, TS and so on. We should of course never give up our individuality. But, to be able to express this individuality freely in society, we need to work together, and to show solidarity with those who are on a slightly different track. That's my whole point. This my third argument is not the subject of <u>this</u> seminar, but that is how I feel, and for those who disagree with this line of thinking, the first two arguments should be enough.

3.
Now to some history.

The main reason for the differences between different countries laws, is historical. The creation of laws is an essential part of how societies evolved and gained stability. There are historical lines to follow way back in history, in many directions. Greece is claiming a several thousand year old democracy. Their history has in turn influenced other nations. In more recent time we have the Napoleonic law, and the present laws in France, Belgium and Luxembourg are mainly in line, because of this common heritage. We have the English common law, spread throughout the commonwealth countries. Some Scandinavian law could still be traced back to the Vikings. Also the catholic church, with its strong political influence in many countries through the history, has put its distinctive mark in existing laws. We get appalled by Islamic fundamentalists claiming to carry the one and only, definite law for building a society. But we should not forget that Europe has been through such phases too, with religious leaders wanting to impose their version of law on everyone. Furthermore, countries with close ties, like the Scandinavian, have been influenced by each other, sometimes copying certain juridical solutions almost by the letter.

In modern times, the two major factors working is evolution through case law, and change of laws through political, parliamentary decisions. A third and growing factor, is outside pressure on countries coming from international bodies, bringing the members more and more in line. The influence of the Council of Europe, and the European Union, are two examples on this process.

Changes through case law come about when a law gets a certain interpretation, through pilot cases, brought to the highest courts for decision, and then made to be the norm in all similar conflicts. In some countries this side of the evolution in law is extremely important. Take the United States where the whole question about abortion turned on one famous Supreme Court ruling. Unless this ruling gets overturned by a new one, the US politicians are unlikely to change the underlying law. At many times governments are happy not to have to decide in controversial issues, to pass new legislation. Instead they let the high courts take the heat, by interpreting already existing laws.

Laws regarding transsexuals are no exception to this model of change. The first European country to pass special legislation was *Sweden, in 1972.* I don't know exactly what prompted the Swedish legislators to act as pioneers in this field. Since I'm Swedish myself, I could offer the suggestion that transsexuals had started to run down the authorities doors, over requests for name changes, and changing sex-specific personal identity numbers. In Sweden they had already accepted the medical intervention, now they had to regulate the legal side. Being a socially liberal country, they wrote a decent but quite bureaucratic law, regulating an exception, and then everything was back to order again. Swedes do not like unregulated situations and anarchy.

The next two countries to legislate were *Germany and Italy, in 1980 and 1982 respectively.* Both these are examples of pressure from the outside. At this time, both countries had cases brought before the European Commission of Human Rights up for evaluation. Instead of risking to lose face in a possible court decision, both Germany and Italy hastily passed legislation, without much discussion.

Next in line was the *Netherlands, passing a law in 1985*, which from my limited knowledge of detail seems to be the best prepared one of them all. Of course they had the other countries to learn from, but most important was probably that the people drafting the law, took advice from lawyers and doctors, who had been working for and together with transsexuals, for a long time. Already in 1972 the Dutch Gender Foundation was founded by professionals in medicine and law. They understood the problems well, and tried to find the best solutions based on the realities, in an unusually straightforward and clear law text.

Surprisingly the next country to legislate was *Turkey, in 1988.* The underlying story behind this seems to be quite special. The way I've been told the story, it goes like this: One of the most popular singers in Turkey, Bülent Ersoy, almost with a cult status, surprisingly underwent sexual reassignment surgery in 1981, and came back one day as a female singer. This created a conflict with the authorities who refused to accept this, and change the name and birth certificate status. As a highly visible protest the popular singer decided to stop performing, unless the laws were changed. During all the proceedings up to the Supreme Court she kept her silence, almost creating a government crisis on her own. Finally the Ministry of Justice succeeded in getting a new law drafted and passed, in a record short time of fooW momths, and the singer could again be heard on stage and records. I will not speculate over what relationship the minister had with the cabaret singer, let's say he was one of her greatest fans. (Here I must make some reservation for the cause of events, I have not been able to read any reliable sources yet. I think it's a great story anyway.)

When talking about Turkey I must add a few comments to moderate the happy ending for the cabaret singer.

The Turkish law seems to be very short, and I'll guess subject to wide interpretation by local judges. Not exactly the ideal example of a law. Furthermore we know from other sources, that transsexual and transvestite prostitutes are heavily harassed by the police in Istanbul. Their civil rights are denied them, and indefinite jailings with beatings and rape by police and jailers, is happening all the time. A few with a high political profile, like Demit Demir you probably heard of, have received extra hard treatment, because they have tried to create civil and sexual rights organizations, and have published demands for civil rights in the press. Demit Demir have as a result of this spent time in the worst prison of them all, the one where "Midnight Express" was filmed. If you saw the movie you know why it is so feared. To conclude this part about Turkey, I feel we must give special attention to the lousy human rights record this country has, aspiring on being regarded as democratic. We need to find out more, establish more contact, and support those who could make a difference.

The last country on the list of countries preparing special legislation is *Finland.* The Department of Justice has been working on the bill for a couple of years, and has looked a lot to the Swedish law in this process. Per today the law has not yet passed parliament.

How about the rest?

The European countries without laws, could roughly be grouped into two camps. Those who try to hold the brakes, refusing to grant transsexuals full civil rights, - and those who accept a change in Civil status. Further you can distinguish between those who let the system work on administrative decisions only, or on court decisions and case law. An example of a country pulling all stops is Spain, where the Ministry of Justice is blocking change of civil status in the records. Another more publicized, but different example, is the United Kingdom, which I soon will talk more about.

Norway, Denmark and Austria could be counted in the second group, Civil status can be changed, and here a body of experts selected by the government make the final decisions. The actual lawfulness of the medical intervention is covered by older laws, like laws about castration. This system works fairly good as long as those sitting as administrators are doing the right thing, but there is always the risk of the cream going sour. If a person gets turned down, he or she can try again maybe a year or so later, trying to convince the board of appointed experts, but there is no higher court to appeal to, and no legal text to base the argumentation on. So you can't hire a lawyer and fight your case that way. The system is open to randomness, to unequal treatment, and also a possible general change of policy almost over night. Here will also political demands on budget cuts within the health service come into play, and alter the odds for acceptance for SRS or rejection, depending on the current economical situation in government finances. We have seen some worrying signs of that lately in Scandinavia.

A system working on case law is found in France, Belgium, and Luxembourg. Here rulings in different courts regulates the current policy. In Switzerland there is a special twist to this, where in a situation there is no specific law, a judge can act as if he was laying down a new law, and then rule after that. Per today all these countries are accepting civil records to be changed, but France gave up their resistance just recently, in 1992, and only after losing a case in the European Court of Human Rights the same year. I'll come back to that shortly.

It is impossible for me to go into all details and differences, but I will leave some for the discussion. Instead I would like to talk about the European Court of Human Rights. I think this is an important institution, and will continue to be so.

I'm now going to present the four cases so far ruled upon in The European Court of Human Rights. For those of you who aren't sure of what this institution really is, I'll give you the short story. In 1950 the groundbreaking European Convention of Human Rights was ratified by all the member states of the Council of Europe. At the same time a commission was instituted, to monitor the compliance with the convention, and to handle complaints. The European Convention was also inspired by the ongoing process of creating a universal declaration of human rights, finally adopted more than 25 years later by the United Nations in 1976.

In 1959 the Council of Europe instituted a special court with the purpose of better handling serious complaints over breaches of the convention. The European Court of Human Rights, with seat in Strasbourg, has the right to overrule national courts in cases clearly covered by the convention. All the old members of the European Council finally accepted this over-nationality, all new members have to conform from day one. This makes the European Convention a much stronger human rights instrument than the UN declaration, which is monitored jointly by all UN member states. A breach of the UN declaration must be dealt with in the large format of the assembly, and a reaction must be found for each incident separately. (This problem has recently been addressed in the UN, with the election of a special High Commissary for Human Rights as one visible result.)

Before taking a look at the four main cases, Oosterwijk, Rees, Cossey and Botella, I would like to explain one thing. Each complaint based on an alleged breach of the convention is first evaluated by the Commission. Only those cases which the Commission decide to send to the Court can be handled there. Any individual, citizen of one of the member states, can appeal to the Commission, but cannot be present themselves in the Court if the case is referred there. An individual will be represented by a lawyer, and so will the offending government.

As a general rule only new cases will be sent to the court. The Commission can either throw the case out altogether, on the grounds that it's not covered by the Convention, or can just tie the case to an earlier ruling over the same type incident. But like an appeal to any court, if you can argue that your situation is different, or that new evidence can be added since the last ruling was made, your case can still be admitted. I think this is very apparent in the following four cases.

In *1979 a transsexual, van Oosterwijk,* took the Belgian government to the Strasbourg court. The background was the denial to register the change in civil status, from woman to man, which could be regarded as a violation of Article 8: "Everyone has the right to respect for his private and family life. . ." The Commission now made a very strong and almost revolutionary statement, and for the first time adopted the idea of a fundamental right for an individual to a "gender identity". The case later went to the Court, but was turned entirely on a procedural question, so the judges never had to give an opinion on the right to a gender identity. The reason was that it was discovered during the proceedings, that van Oosterwijk had not tried his case in the Belgian high appeal court, on his lawyers recommendation who meant this was meaningless, before turning to the European Court. There is a general rule that local remedies must be exhausted first. The result was that the case in 1980 was just thrown out, and never ruled upon. In the light of following cases this was very unfortunate.

What happened to van Oosterwijk? He got his personal case retried in Belgium in 1986, won this, and later got a job as a lawyer with the EU-commission in Brussels.

The next two cases to go to the Court were *Rees in 1986, and Cossey in 1990,* both against United Kingdom. Unfortunately the majority of judges gave UK a wide margin of appreciation in both cases, meaning that they felt the UK birth register was special to most other countries, in that that they were historical documents impossible to change, unless an error was made at time of birth. This attempt to make UK an exception from the rule, which was the main line of defence from the UK lawyers, impressed the majority of European judges. The fact that you can change your name quite informally, and without real restrictions, and the facts that UK has no sex-specific identity number, or national identity card like other member states, were other elements adding strength to this standpoint.

In the Rees case was Article 12 also tried for the first time; "Men and women of marriageable age have the right to marry. . .", and so on. As a consequence of the ruling over the question of birth certificates, the question of marriage was also ruled in UK's favor. Two persons of the same sex can not marry in UK.

What happened to Mark Rees? He is today a respected citizen in his local community, politically active in the local council. He is also active in the FTM network in UK, and in the TS activist group "Press for Change", trying to change UK laws.

The Cossey case was more or less a repeat of the Rees case. There are however two important things to notice. The majority of judges ruling in favor of United Kingdom had shrunk in the Cossey case, compared to the Rees case. This shows in my opinion that the UK line of defence is less and less impressive with passing time. They might not win a third time. The second thing is a remarkable warning from the majority of judges already in the Rees ruling:

> "That being so, it must for the time being be left to the respondent State to determine to what extent it can meet the remaining demands of transsexuals. However the Court is conscious of the seriousness of the problems affecting these persons and the distress they suffer. The Convention has always to be interpreted and applied in the light of current circumstances . . . The need for appropriate legal measures should therefore be kept under review having regard particularly to scientific and societal developments."

Actually "for the time being" lasted a good five years. In *1992 a French transsexual, Botella*, took France to Court over the refusal to change the civil record. This time the Court ruled in favor of the transsexual, and forced the French Supreme Court, the Court of Cassation, to overturn its earlier ruling, and 11 November 1992 the right of transsexuals to change civil status in France was recognized. Victory at last!

The judges who voted 15 : 6, were however very careful not to overturn their own earlier rulings. Building on the earlier standpoint that distinguished UK from most of Europe, the judges pointed out three unique conditions present in France: First, official documents in daily use, like the new computerized identity card, and the social security number, both carry a designation of sex. Secondly, unlike the UK, obtaining a female forename by a registered male, or vice versa, is impossible in France. Third but not least important, the French birth certificate already allows updating.

If you are interested in the Cossey story, you should read her self biography, *My Story*, I think it is very good. What's not in the book, is that she has moved to Atlanta in USA, and that she from what I have seen written, is somewhat active there for transsexual rights.

4.
Now I'm down to a conclusion of this seminar. From this look at the present situation in Europe, I can see three main goals in the legal field:

First we should *support attempts to bring different countries laws more into line with each other.* Of course this must be done so that we don't lose rights already won, the best examples must be the norm for this process. We have one factor working strongly in favor of this happening, namely recognition of other states decisions. Today we have an unbearable situation where a British subject could move freely to Holland, apply for SRS after one year of permanent residency, get the SRS, and name and civil status changed there, and then go back to UK later to find that the UK government refuses to accept the Dutch decision. On the other hand a born Dutch national who has undergone SRS can move freely to England and will be recognized there. This was a prominent argument at the Amsterdam Conference, and the Council of Europe will undoubtedly put further pressure on UK to change it's policy over time.

Secondly, if growing pressure does not affect UK at all, we should maybe *make UK a focus for our work with transsexual rights*. If UK is forced to give in, I believe no other country in Europe could stay on the sideline for very long. In reverse, as long as UK policy stands, other governments will have an easier situation defending a discriminatory policy.

Thirdly we must work to *put an end to the terrible human rights violations in countries like Turkey.* We cannot accept continuing violence against transgendered individuals.

Fourth, we must work also with the many smaller *discrimination cases*, in daily European life. That could be *regarding employment, housing, child custody, medical care, pensions and many other issues*. Also in countries that basically have a basically good legal protection, these connected issues are very important for the individual.

Before letting the discussion open I would like to start a list of concrete tasks that we could start working with today:

1. Publish more articles and information about the situation and demands for change. To do this we need to collect information.
2. Work with law people and all institutions having influence on transsexual law. To do this we need a functioning network.
3. Build up a pressure on the politicians, both nationally, and in international bodies like the Council of Europe. To do this we need organization.
4. Support those individuals who could successfully challenge existing policy or law in court, both nationally, and in international courts like the European Court of Human Rights. Several new cases are prepared right now.
5. We must seek allies, like gay rights organizations, and human rights organizations such as Amnesty International. We need mutual support.
6. We have a direct interest in supporting the passing of laws, making marriage-like conditions available for homosexual couples. Some of the argumentation regarding Article 12 would be put in a different light, if this should be common throughout Europe. Today Norway and Denmark register homosexual partners as couples, with almost all rights of a married couple. Sweden has followed the other two Scandinavian countries just recently.

Now we can spend the rest of the time discussing this, I would like everyone to focus on what we actually can do, adding to the list, but I will of course try to answer questions about anything unclear in this speech. There might also be facts in need of correction, or additions to the description of today's situation.

Thank You.

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Appendix: Documents from the Court of Human Rights

	DM	Pages	
van Oosterwijk			
A 40	11	60	
B 36	32	160	(Hardcover)
Rees			
A 106	11	55	
B 89	42	182	(Hardcover)
Cossey			
A 184	22	107	
B 174 (planned)		?	(Hardcover)
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A 232 C	37	177	
B 213 C (planned)		?	(Hardcover)
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