Liberty Tree

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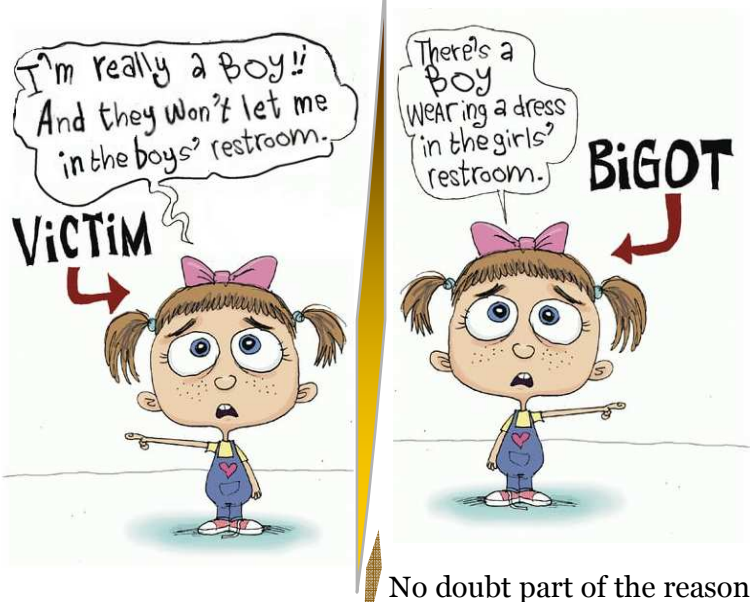
By Dick Greb

Legalized INSANITY

I recently came across an article about a school district in Wisconsin that settled a law suit filed against it by a student who claimed to be subjected to discrimination by the district. The school district agreed to pay $800,000 to the plaintiff, although over 80 percent of that amount would actually be pocketed by the plaintiff's attorneys. The district justified its decision by the economic realities of the case. The insurance company that would be on the hook for any final award saw the writing on the wall and reckoned that to continue on would merely increase the amount – potentially millions of dollars more in legal fees on both sides – that it would ultimately end up paying out.



Unfortunately, even though the reason given for the settlement was the economics of continued litigation, it will no doubt be trumpeted as a major win for the rights of transgender people, who are subjected to the disapprobation of normal people who refuse to accommodate their misguided attempts to alter reality. In that way, it will serve as another step in trying to normalize the abnormal. Even worse, it will also help erode the rule of law by institutionalizing insanity as a part of our justice system. You can be the judge of how far down that road we've traveled after we do a little dissecting of the decision in *Ashton Whitaker v. Kenosha Unified School District No. 1* — the student's suit to enjoin the school from enforcing its policy on bathroom use — decided by the 7th Circuit Court of Appeals on May 30, 2017.

Losing confidence

Court opinions most often have the advantage of being the only narrative available, and so it's like hearing only one side of a debate. Any reasonable argument can sound convincing as long as there's no opposing argument to be heard. So the author of the decision is usually free to mischaracterize the positions presented by the litigants, or otherwise present them in a more or less favorable light (depending on which side he favors), secure in the knowledge that there will be no competing narrative.

Sometimes however, one or more judges simply won't sanction the reasoning of the majority and will present the opposing view. These dissenting opinions can be very instructive reading, because they often cut right to the heart of the problems with the majority's rationalizations. Unfortunately, this just doesn't happen often enough. No doubt part of the reason for this façade of a unified front in judicial decisions is the underlying policy of not wanting to undermine the public's confidence in the judiciary. But a unified front is no substitute for truth and justice, and idiotic decisions like this one will undermine public confidence in the system no matter how many of the black-robed liberty thieves sign onto them.

Mental illness trumps reality

I'll be quoting extensively from Circuit Judge Ann Claire Williams' opinion in the above titled case,[1] and providing some much needed opposition to her one-sided presentation. Willams begins her background of the case describing the plaintiff Ashton Whitaker:

> Ash Whitaker is a 17-year-old who lives in Kenosha,

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1. Judge Williams was appointed U.S. District Judge by Ronald Reagan in 1985, and to the 7th Circuit by Bill Clinton in 1999.

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> Wisconsin with his mother, who brought this suit as his "next friend." ... While Ash's birth certificate *designates* him as "female," he does not *identify* as one. Rather, in the spring of 2013, when Ash was in eighth grade, *he told his parents that he is transgender and a boy*. He began to openly identify as a boy during the 2013-2014 school year, when he entered Tremper as a freshman. He cut his hair, began to wear more masculine clothing, and began to use the name Ashton and male pronouns. In the fall of 2014, the beginning of his sophomore year, *he told his teachers and his classmates that he is a boy* and asked them to refer to him as Ashton or Ash and to use male pronouns.
>
> In addition to *publicly transitioning*, Ash began to see a therapist, who diagnosed him with *Gender Dysphoria*, which the American Psychiatric Association defines as "*a marked incongruence between one's experienced/expressed gender and assigned gender* ... ." Am. Psychiatric Ass'n, Diagnostic & Statistical *Manual of Mental Disorders* 452 (5th ed. 2013). In July 2016, under the supervision of an endocrinologist at Children's Hospital of Wisconsin, Ash began *hormone replacement therapy*. A month later, *he filed a petition to legally change his name to Ashton Whitaker, which was granted* in September 2016. [pp. 4-5][2]

In just these few short paragraphs, the "judge" reveals her bias in favor of Ashton. First, it's interesting that she only identifies the plaintiff as "a 17-year-old," without specifying gender, but consistently uses masculine pronouns when referring to "Ash." Equally interesting is the phraseology she uses in the only passage that *correctly* identifies the plaintiff's sex. Williams says "Ash's birth certificate *designates* him as 'female', but he does not *identify* as one." In other words, Ashton is a girl who thinks of herself as a boy. When she was 13 years old, she told her parents that she was a boy. She was wrong, of course, but apparently her parents let her persist in — and even act on — her delusion. In fact, it's acknowledged that Ashton has been diagnosed with a recognized mental illness called "gender dysphoria," as identified in the American Psychiatric Association's *Diagnostic & Statistical Manual of Mental Disorders*.[3] And yet, rather than getting her help for her mental illness, her parents and even a doctor (whatever happened to "first, do no harm"?) exacerbate her condition by giving her "therapy" which can only serve to strengthen her delusion.

It should be noted that "Ashton,"[4] according to the court's timeline, "began to openly identify as a boy *during*" her freshman year of high school. This implies then that at the beginning of that year, she presented herself as a girl, and that sometime in the course of the school year began to present herself as a boy. This is an important point, because the same kids she attended school with that year — who knew her both before and after she began to present herself as a boy — would continue to be her classmates throughout the rest of her schooling. Even those who didn't personally know her would undoubtedly be aware of the 'girl who's now a boy.' This shows the speciousness of plaintiff's claim that "since Ash was the only student who was permitted to use the gender-neutral bathroom in the school's office, he feared that using it would draw further attention to his transition and status as a transgender student at Tremper."

Judge Ann Williams of the Seventh Circuit (who, having done her damage, is now retired.)

Further, at the beginning of his sophomore year, "he told his teachers and his classmates that *he is a boy* and asked them to refer to him as Ashton or Ash." Yet, according to the court's timeline, it wasn't until the summer and fall of 2016 — nearly two years later — that plaintiff took any medical steps to *become* more like a boy, or even changed her name to Ashton. Thus, at that time in 2014, plaintiff was no closer to being a boy than at any other time in her life so far, nor was her name "Ashton" yet. So in reality, she was lying to her teachers and classmates, presumably because her as-yet-undiagnosed mental disorder caused her to believe a falsehood.

What's in a word?

Judge Williams consistently refers to plaintiff's "transition" and yet never declares an exact definition of the term. From the context, it appears that one *transitions* by merely claiming oneself to be the opposite sex. But the court denies that's all there is to it:

> And, while the School District repeatedly asserts that

2. Emphases added throughout unless otherwise noted, and internal citations my be omitted. All subsequent quotes, unless otherwise noted, are from Williams' opinion.
3. Notice that the DSM quote doesn't refer to a person's *actual* gender, but only to their "*experienced/expressed gender*" and their "*assigned gender*."
4. The plaintiff's name at this time was not yet "Ashton," but her name before the change is never given.

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> Ash may not "unilaterally declare" his gender, this argument misrepresents Ash's claims and dismisses his transgender status. *This is not a case where a student has merely announced that he is a different gender*. Rather, Ash has a medically diagnosed and documented condition. Since his diagnosis, he has consistently lived in accordance with his gender identity. [p. 25]

And yet, according to its timeline, that's exactly what happened here. As already noted, before July 2016, Ashton had done nothing more than *announce* that she was now a boy and wanted to be treated as if it were true. Williams refers to Ashton's "medically diagnosed and documented condition" as if it changes the nature of her announcement. But the diagnosis was not that she was indeed a boy. If it had been, we would have a whole different story, and no transition would have been necessary. Rather, her medical diagnosis was that she had a *mental disorder* which caused her to believe — and act as if — she was a boy. Nevertheless, she was still a girl. So, despite the court's repeated use of the term "transition" as some transformative event, Ashton's only transition was from a girl to a girl pretending to be a boy.

Melissa Whitaker hugs her daughter "Ashton" Whitaker, who "identifies" as a boy despite being born a girl.

Where's the harm?

Leading into the alleged harm suffered by Ashton, the court notes that nobody complained when she wore a tuxedo like the boys for an orchestra performance, but that the school is not as "accepting" of Ashton's "transition," since they refused to allow her to use the boys' restrooms, and insisted instead that she use the ones for girls. But she didn't *want* to use the girl's restrooms because she felt that it would "undermine [her] transition." She also didn't want to use the gender-neutral restroom, because she thought it would draw attention to the fact that she was "transgender" — presumably, more so than the fact that she "transitioned" in the middle of the previous school year. But the fact remains that she could have used either of those options, but she simply didn't want to. Instead, she wanted to use the boys' restrooms, the only set she was restricted from using.

> For these reasons, Ash restricted his water intake and attempted to avoid using any restroom at school for the rest of the school year. Restricting his water intake was problematic for Ash, who has been diagnosed with vasovagal syncope. This condition renders Ash more susceptible to fainting and/or seizures if dehydrated. To avoid triggering the condition, Ash's physicians have advised him to drink six to seven bottles of water and a bottle of Gatorade daily. *Because Ash restricted his water intake* to ensure that he did not have to utilize the restroom at school, *he suffered from symptoms of his vasovagal syncope, including fainting and dizziness. He also suffered from stress-related migraines, depression, and anxiety because of the policy's impact on his transition* and what he perceived to be the impossible choice between living as a boy or using the restroom. He even began to contemplate suicide. [p. 6]

Now we come to some of the harm that plaintiff claims results from the school district's policy of requiring girls to use only the girls' restrooms and boys to use only the boys' restrooms. Despite a diagnosed medical condition which causes serious problems if she becomes dehydrated, Ashton *chose* to restrict her water intake anyway, and that choice resulted in the expected development of those very problems. In addition, she claims that the impact of the school's policy caused her to suffer headaches, depression and anxiety. Remember however, that her diagnosed mental disorder was "gender dysphoria." According to The American Heritage Dictionary of the English Language: "**Dysphoria.** An emotional state *characterized by anxiety, depression*, and restlessness." So, it is certainly possible that Ashton's ailments were a direct result of her gender dysphoria rather than a result of any impact of the school policy. Even her headaches and thoughts of suicide were equally as likely to be the result of her choice to ignore reality and live in a state of delusion, than to be a result of the school's restroom policy. The bottom line here is that none of the harm alleged by Ashton in her lawsuit can be definitely shown to be a result of any discrimination by the school, but the majority of it can indeed be linked directly to her own actions in conjunction with her personal medical problems.

Lives in the balance

On the other side of the balancing test which the court must undertake to determine whether an injunction can issue, the school district asserts that if enjoined from enforcing its restroom policy:

> the harm extends to 22,160 students in the School District whose privacy rights are at risk by allowing a transgender student to utilize a bathroom that does not correspond with his biological sex. ... Additionally, the School District asserts that the injunction harms the public as a whole, since it forces other school districts nationwide to contemplate whether they must change their policies and alter their facilities or risk being found out of compliance with Title IX. Noncompliance places their federal funding at risk. Based upon this record, however, we find the School District's arguments unpersuasive.

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> The School District has not demonstrated that it will suffer any harm from having to comply with the district court's preliminary injunction order. Nor has it established that the public as a whole will suffer harm. As noted above, before seeking injunctive relief, Ash used the bathroom for nearly six months *without incident*. The School District has not produced any evidence that any students have ever complained about Ash's presence in the boys' restroom. Nor have they demonstrated that Ash's presence has actually caused an invasion of any other student's privacy. [pp. 33-34 (emphasis in original)]

Well folks, there you have it. Despite the lack of any proof that the school policy actually caused the alleged harms of *one student*, and the fact that the injunction will affect the privacy rights (and physical security) of not just the *20 thousand students* in this district, but *many millions more* in other districts around the country (which will fall prey to the same insane challenges to their similar policies), the court is not persuaded that the balance of harm favors the school district. So, the privacy rights of those millions of students, who may not want to share bathrooms with members of the opposite sex, but had no means to protect their interests in this case, are simply tossed aside because *one* student wants to use the wrong one.

It's the policy, stupid!

Ashton claims, and the court agrees that:

> the School District has denied him access to the boys' restroom *because he is transgender*. A policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX. The School District's policy also subjects Ash, as a transgender student, to *different rules, sanctions, and treatment* than non-transgender students, in violation of Title IX. Providing a gender-neutral alternative is not sufficient to relieve the School District from liability, as *it is the policy itself which violates the Act*. [p. 24]

However, the truth of the matter is that Ashton is denied access to the boys' restroom because she is NOT a boy. The school's policy is that she must use the restroom corresponding to her biological sex. In this respect, she is treated exactly like every other student in the district. And yet, Judge Williams, apparently suffering from some sort of mental illness of her own, reasons that treating her the same as everybody else constitutes different treatment. Conversely then, the only way she could be treated the same, is for the school to treat her differently than everybody else. Who can argue with logic like that?

> [T]he School District contends that ... requiring students to use facilities corresponding to their birth sex to protect the privacy of all students is a *rational* basis for its policy. ... Ash disagrees. He argues that transgender status should be entitled to heightened scrutiny in its own right, as transgender people are a minority who have historically been subjected to discrimination based upon the *immutable* characteristics of their gender identities. [pp. 26-27]

According to the American Heritage Dictionary: "**Immutable.** Not mutable; not susceptible to change." Here the plaintiff, in order to bring her claim within the framework of discrimination based on sex — an immutable characteristic — alleges that "gender identity" is likewise immutable. Thus, she claims that one cannot change their gender identity, after she did exactly that just a few years earlier. But rationality and logic are no barrier to the court. Williams states that the district's policy basing restroom use on biological sex is itself discriminatory.

Carrying that decision to its natural conclusion then, every school district in the country which requires students to use the restroom corresponding to their biological sex is equally discriminatory. And if "requir[ing] an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance," then it must also follow that requiring an individual to use a bathroom that conforms to their biological sex (when they want to use the opposite one) punishes them for their gender conformance. After all, why should they be treated differently than 'transgender' students who get to use the restroom of their choice regardless of their biological sex?

So, how long will it be before teenage boys are free to share restrooms and even gym shower rooms with your young daughters? Even if this shift in policy is limited to 'gender non-conformists,' the potential for harm is exceedingly great. After all, if one's 'gender identity' can change once, then it could change again. And if it can change year to year, then it might change month to month, or day to day, or even minute to minute. Theoretically at least, one might identify with both genders at the same time! Since there can be no objective measure of any person's 'gender identity' at any given time, there's no way to effectively control a policy based on such a standard. Hopefully, at some point, parents will rise up against decisions such as this and the policies that will result from them. In the meantime however, it will be your children who will pay for this experiment in legalized insanity.