



The Trial Court and Gender Theory

Recently, upon signing in to renew my license to practice law in Massachusetts, I was notified that I must complete a demographic survey before proceeding further. Of the twenty or so questions, a few stood out:

- Do you identify as a) Male, b) Female, c) Agender/Nonbinary, d) Genderqueer/Gender Nonconforming, e) Different Identity, or f) Prefer not to answer?
- Do you identify as transgender? a) Yes, b) No, or c) Prefer not to answer.
- Do you identify as a) Lesbian, gay, or homosexual, b) Straight or heterosexual, c) Bisexual, d) Queer, e) Different Identity, f) Don't know, or g) Prefer not to answer?

Later that week, an email arrived from the Flaschner Judicial Institute announcing a course for Massachusetts judges. Its title and description read as follows:

Supporting LGBTQ+ People in the Court System and Beyond

“This program will cover issues commonly faced by lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ+) individuals. Speakers will share with the audience basic LGBTQ terminology, sexual orientation, gender identity, gender expression, and other topics. By learning more about the LGBTQ+ community, those who attend will begin to gain an understanding of the issues

faced by LGBTQ+ litigants and of how judges can create a more inclusive and supportive courtroom.”

Then, in researching a probate matter, I logged into Massachusetts Continuing Legal Education (“MCLE”), an excellent educational resource on all things related to practicing law in Massachusetts. A pop-up survey arrived, this one with just four questions, three of them were the same gender questions cited above.

Curious, I searched “transgender and the court system” and found an online course that the trial court has mandated for every trial court employee since 2018: [Transgender People in the Trial Court](#). On its website, the trial court invites any organization “interested” to watch the training.

The court’s mandatory course teaches the following:

A person’s sex is “assigned” at birth based on physical characteristics.

A transgender person is a person whose gender identity is different from the sex assigned to that person at birth.

Gender identity is a person’s sincere belief regarding their own gender.

Gender exists on a spectrum. A person’s gender identity could be anything: male, female, a combination of male and female, non-binary, genderqueer, bi-gender, gender fluid or some other undefined category.

Identifying as transgender is not a choice. It is a biological and psychological imperative.

Employees and judges in the trial court may wear pronoun buttons indicating the manner in which they prefer to be called (“he/him/his”, “they/them/theirs”) in order to be inclusive of people who are transgender and “demonstrate respect for each individual's choice of pronouns.”

The court also provides an interactive chart where employees can answer “Where are you on the spectrum?”:

The screenshot shows a web interface for the TC Learning Center. On the left is a sidebar with a navigation menu under 'Definitions' containing items like 'First Justice', 'Juvenile Court', 'Along a Spectrum', and 'Part 3: Transgender People in the Community'. The main content area is titled 'Where are you on the spectrum? Feel free to use this interactive activity. Or click next to continue.' It features four horizontal sliders, each with a scale from 'Not at all' to 'Strongly' and a list of options on the right:

- Sex Assigned at Birth:** Radio buttons for Male (checked), Female, and Other Sex/Inter Sex.
- Gender Identity:** Slider positioned between 'A little bit' and 'Moderately'. Options: Female/Woman, Male/Man, Other Gender(s).
- Gender Expression:** Slider positioned between 'A little bit' and 'Moderately'. Options: Feminine, Masculine, Other Gender(s).
- Attracted To:** Slider positioned between 'A little bit' and 'Moderately'. Options: Women, Men, Other Gender(s).

Navigation buttons for 'Prev' and 'Next' are at the bottom right.

I also found a list of grievances as described in the most recent report from the Massachusetts’ Supreme Judicial Court Standing Committee on Lawyer Well-Being which included, among others, the following:

Transgender, nonbinary, agender, genderqueer and other gender-nonconforming attorneys experience issues with their forms of identification when their photos do not necessarily match their gender expression in court on a particular day.

Some transgender attorneys were assumed by court staff to be defendants on prostitution charges simply due to their gender expression, specifically clothing and makeup.

Misgendering or deadnaming* attorneys (*using the birth or other former name of a transgender or non-binary attorney without their consent), even after repeatedly being told the attorney’s correct name and gender identity.

Judges and other court personnel were not sharing their pronouns in hearings, on court websites, in email signatures, or in other forms of communication.

These concerns and the others listed may be addressed with a simple reminder to court personnel to be polite and caring in their interactions with all people. Don’t pre-judge. Listen. Instead, the court now mandates a course that espouses gender ideology under the guise of helping an ostensibly downtrodden subgroup to navigate the court system.

The recent BBO and MCLE gender surveys are further modes of conditioning. Even if an attorney chooses “Prefer not to answer,” they absorb the questions. Am I queer? Gender non-conforming? Something different? Do I even know what I am? Meanwhile, the Flaschner course gives a special interest group access to educate judges without needing to contend with an adversarial viewpoint.

There is a serious problem in the court system, but it is not with the interactions between court staff and transgendered people. The problem is that the court has adopted an ideology which casts doubt on its impartiality, harms women and children, and runs contrary to truth.

First, let’s be clear that the court’s gender doctrine is not about an extension of gay rights. When the Massachusetts Supreme Judicial Court (“SJC”) ruled on same sex marriage in 2003, the court added male-male and female-female to the male-female structure of marriage recognized in the Commonwealth. Unlike today, the SJC did not deconstruct the biological reality of male and female. And families in our court were all treated the same, subject to the same rules, whether male-female, male-male, or female-female.

Feminist Jane Clare Jones notes the distinction [this](#) way:

“The key thing to understand about trans rights activism is that, unlike gay rights activism, it is not just a movement seeking to ensure that trans people are not discriminated against. It is, rather, a movement committed to *a fundamental reconceptualization of the very idea of what makes someone a man or a woman.*”
(Emphasis in original.)

The trial court’s promotion of this new understanding of male and female is gravely problematic.

1. Appearance of Impartiality

While the court’s teachings are in line with state statutes as the Massachusetts legislature is friendly toward the new gender ideology, the area of sex and gender is ripe for litigation. Courts often hear challenges to state statutes and resolve questions concerning their applicability to certain facts. It should go without saying that when the court itself starts teaching the gender dogma, it sacrifices any pretense of adjudicating gender issues objectively.

The court has an obligation to radiate impartiality. This is its most fundamental duty. Justice is blind.

Suppose two divorced parents disagree intractably over puberty blockers for their minor child, and they appear before a judge known for announcing preferred pronouns. The decision will be tainted no matter how objectively the judge actually manages the case.

Suppose you are a parent in court responding to allegations of neglect of your child and you try to explain to the court staff that you have been under great stress because your 12-year-old son thinks he is a girl. Then you learn through your attorney that every single court employee you engage with has been taught that your young son's sincere belief actually makes him a girl. Can you reasonably expect impartial consideration of your positions?

Suppose a judge decides to appoint a professional, such as a guardian or a social worker, to help a minor child and determines that a female appointee is preferable because of the specific circumstances of the case, such as a prior physical or sexual assault. Will the judge be contravening the court's gender teaching by ensuring that the appointee is biologically female?

Or imagine a case in which a woman alleges that a man raped her. Is she not put at a disadvantage by having to refer to the attacker as "she" if the man identifies as female in court?

2. Women

The court system has endorsed an ideology that denies that there is any meaningful difference between females and males who identify as females. Therefore, the interest of men who want to be women take priority over the interest of women.

Hence, it has become acceptable for

- certain male sexual predators to be sent to female prisons.
- certain males to access female spaces such as locker rooms.
- certain male athletes to crush the dreams of female athletes. No drugs, no surgery, no therapy required, just a sincere feeling.

The words "woman" and "women" are discarded, and substitutes are created. "Pregnant people" is used instead of pregnant women because "men" can now get pregnant too. "People with a cervix" are advised to have cancer screens because "men" may now suffer with cervical cancer. Terms like "people who menstruate," and "vulva owners," are found on reputable websites and in leading institutions. One safe sex guide refers to women as "front hole people."

These language changes diminish respect for women. To test this, an attorney need only ask: Is my mother (wife, daughter) a woman, with all that that word entails, or is she simply a "menstruator." It is hard to believe that the Massachusetts Trial Court has endorsed an ideology that results in this type of degradation. Of all our institutions, the trial court sees firsthand on a daily basis what happens when a woman is viewed as just a body part or a body function.

3. Children

Typical societies want their sons to grow into men and their daughters to grow into women, connected to the very “maleness” and “femaleness” of their bodies. Yet the ideology now being taught by the Massachusetts trial court, when applied to children, encourages them to disconnect from their maleness and femaleness. This runs contrary to a bedrock principle that courts protect children.

Until recently, a miniscule percentage of young boys and almost no girls developed gender dysphoria. On the pretext of helping those few who did so, the gender ideologues are actually spreading the problem to everyone.

There is now a surge in children suffering from gender dysphoria, and the suffering is real. The only historical change leading up to this surge is the full throttle push from the gender industry. And, apparently, only the gender devotees cannot see that offering children a potpourri of genders damages them.

Inundating a child with gender options and gender ideology and asking them “Where do you fit on the gender spectrum? How do you know? Are you sure?” encourages gender dysphoria. That approach is horribly wrong and not in any child’s “best interests.”

4. Truth

The advice people most often receive when they go into court is to “tell the truth.” Before testifying in a court proceeding, one is sworn in with these words: “Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?” The truth is so important in court, that if you lie, you can be sentenced to jail. When Massachusetts lawyers are admitted to the practice of law, they take a solemn oath that they “will do no falsehood, nor consent to the doing of any in court”.

Now, in the Massachusetts court system, the arena where truth is paramount, the Court is telling people otherwise. Everyone is instructed to recognize the expression of gender, not the actual biological sex. We are told to pretend that a man who has gender dysphoria actually is a woman and vice versa.

Power

Gender dogma is backed by enormous power and unlimited wealth. Activists treat criticism of gender ideology as a hate crime. They get books banned, opponents fired, professors cancelled, and world-renowned authors harassed. Now, cherished institutions, like the Massachusetts Trial Court, have aligned with today’s powerful in-crowd.

Lawyers face tough decisions ahead. Their questions will be personal and specific: Will my refusal to recognize the trial court teaching hurt my clients? Can the court compel me to utilize pronouns I believe to be inapplicable? Will my standing as a lawyer be diminished in the legal

community if I engage in efforts to preserve male and female, mother and father? What are the economic and emotional consequences for me and for my family if I refuse re-education?

More poignantly, they will ask: What will my acquiescence do to me? Am I forfeiting my own self to avoid discomfort and struggles?

As someone who faced far greater challenges, Alexander Solzhenitsyn knew much suffering and his advice was always steadfast: Do not take part in the lie.

John M. Smoot
BBO #470770

John M. Smoot served as a trial court judge in Boston's Probate and Family Court from 1990 to 2012. He currently practices law and mediation in Quincy, Massachusetts.