

Changing of the Guard Amid Calls for Social Justice

Anti-racism dialogue must happen and continue until our country lives up to its promise of being “one nation indivisible with liberty and justice for all.”

By **Gail S. Tusan** | August 28, 2020 at 12:26 PM



Senior Judge Gail Tusan, Fulton County, Georgia. (Courtesy photo)

Fact: On-the-job Zoom meetings and anti-racism discussions are time consuming. Explaining to you/others/them what I/we/they want or demand in terms of social justice and economic parities is exhausting. Fiction: Protesters

are nothing more than walking hashtags; diversity and inclusion and access to justice committees will resolve the demonstrations and calls for judicial reform.

Not quite.

Before March 2020, most of us devoted a minimal amount of time to dialogue with colleagues, co-workers, employees, neighbors, fellow congregants or elected officials about bias, discrimination, educational, economic, health or housing disparities or social justice issues. Yet, anti-racism dialogue must happen and continue until our country lives up to its promise of being “one nation indivisible with liberty and justice for all.”

The uncertain, quiet, isolated days we endured this past spring in the initial phase of the coronavirus pandemic are gone. Anxiety, tension, restlessness, protests, corporate messaging to customers and employees and extended orders declaring judicial emergencies define our current normal.

I will be disappointed, but not necessarily surprised, if by now (circa Ahmaud Arbery, Breonna Taylor, George Floyd, Rayshard Brooks, Jacob Blake and, astonishingly, the horror of murders and assaults on people of color continues) you have not been invited to join or else stepped forward to lead a constructive conversation somewhere with someone about race and social justice.

Thank goodness, responses from white people—mostly, sincere and well-intentioned—are shifting from asking the presumptive victims and targets of racism, who happen to be their friends, neighbors or co-workers, “what can I do to help” to expressing more enlightened, thoughtful commitments to listen and learn. After a diversity and inclusion conversation this past June among my colleagues, I received an email from one of them stating: “Thank you for your remarks today at the Diversity Lunch. Some of the conversations and

discussions I have listened to over the last two weeks stress the qualitative difference between being anti-racist versus non-racist. Life is an adventure in learning, and I am listening and learning.”

My husband and I often take long walks through our neighborhood. Walking is a great outlet for physical exercise and mindfulness. We live in a moderately diverse Atlanta neighborhood where residents—I confess, for me as a senior judge, they always will be prospective jurors—often exercise their First Amendment free speech by erecting yard signs supporting political candidates, warning passersby to “take your dog’s poop elsewhere,” college affinity during football season and more recently, expressing support for #BLM. One of my favorite signs is based on a quotation from Martin Luther King Jr.: “Injustice anywhere is a threat to justice everywhere.”

I am partially skeptical, curious and hopeful regarding the occupants of the houses with #BLM signage and especially, their neighbors who do not have similar displays. Do the adults in the household proactively shutdown racist, sexist, homophobic, anti-Semitic chatter and comments in their workplaces? As the children in these households are growing up, are they taught by their parents and elders to treat their classmates with kindness and to tolerate diversity in all forms. When those same kids enter their teen years, are friendships from when they were younger—with classmates from differing religious, ethnic and socioeconomic backgrounds and cross-town neighborhoods—sustained through college and beyond?

As a senior judge who has presided over countless jury selections and criminal trials, I cannot help but muse over the experiences and perspectives of my neighbors (and citizens from neighborhoods and communities all over Fulton County). What is their reaction upon receiving an email from the neighborhood watch team about a recent car break-in or other “suspicious”

activity? Undoubtedly some implicit bias kicks in, and selective email replies get sent seeking clarification of the demographics of the perpetrator(s) in order to be on the lookout, safe and not sorry. And when that dreaded jury summons arrives in the mail, what thoughts befall these same citizens as they make their way downtown to the courthouse?

Several of my final criminal trials involved gang-related activity charges. Mind you, the defense counsel's goal is to select a jury of the defendant's peers, and the state's mission is to get a representative jury interested in the pursuit of the truth. During jury selection one day, jurors were being examined about their knowledge of gangs—besides what they may watch on “Law and Order.” You might imagine the range of responses considering the jury pool was drawn from all over Fulton County—suburban, rural, urban, poor, not poor, working class, retired, professional, black, white, other. No one—prosecutors, defense attorneys, judge or jurors—were expecting the candid, articulate admission by the very well dressed, personable, gregarious juror (no, I'm not revealing his race/ethnicity—you decide) who stood and shared his experiences growing up poor, his years as a member of a gang and his success in disassociating from the gang as an adult to become a successful businessman.

I thought, “Now ‘there's a great juror capable of giving both sides his attention, who can fairly consider the evidence.” But who to select or strike as a juror is not the judge's ultimate call (unless a party rejects the juror's prospective service for an illegal, unconstitutional reason). Yep, by the end of that voir dire, Mr. Former Gang Member was a goner.

There should be more stories like his. I will share more later about my takeaways from the gang trials conducted in my courtroom during my final year as a full-time superior court judge. As a society, we have to reengage

and pay attention as (grand)parents, taxpayers, voters, elected officials and human beings to the calls for systemic change which are coming at us from a uniquely diverse national coalition of urgent voices, and collectively, take action. I am encouraged by the recent elections of judges, district attorneys and legislators who will bring their experience, empathy and commitment to devising responsible, progressive change to our legal system. As the guard changes, so must our tolerance for social injustices.

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