

As Election Day Looms, Senior Judge Ponders Changing of the Guard and Stirring Up More Good Trouble

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By **Gail S. Tusan** | November 02, 2020 at 12:56 PM



Senior Judge Gail Tusan. (Courtesy photo)

Over the past few weeks and ending Tuesday, Americans will have spoken by either voting or not.

While it would be unfathomable for my family and me to have opted out of voting in the 2020 presidential general election with all that is at stake for the present and for generations to come, I know that regrettably many people decided to self-disenfranchise. Too many people with much to say about this year's hot topics, including the importance of wearing masks to retard the spread of COVID-19, the hardship endured by business, government and school closures during the pandemic, and the timing of the nomination of Judge Amy Coney Barrett to succeed the late Justice Ruth Bader Ginsberg, convinced themselves to disengage from the political process and stay at home. Our airwaves, social media, cellphones, landlines and day-to-day existence have been invaded with appeals by and on behalf of candidates seeking the highest elected office in the U.S. all the way down to state and local positions, all of which will influence the public policy determining how financial resources should be allocated for the public good.

But that is not all: While trying to remain safe, alive and afloat during the coronavirus pandemic, we have been subjected to the psychological trauma of reading about and viewing video footage of what should be routine, controlled citizen/law enforcement encounters imploding into the horrific killings of Black and brown people in their homes, outside of their vehicles and on the streets of America.

Regardless of the final numbers on the historic record of early voters, there is an abundance of more good trouble to be stirred up in this illusory melting pot called the United States of America. I call it illusory because, if we truly examine how we are coexisting as people diverse in their ancestry, ethnicity, cultural mores, religious practices, sexual orientation and more, the reality is

that there is a huge imbalance in resources essential to one's health, education and general welfare. The melting pot standard for a prosperous diverse coexistence has been thwarted by fear, ignorance, arrogance, apathy, racism, sexism, homophobia, xenophobia and systemic economic inequities. The "Haves" can no longer ignore the "Have-nots." Those with power and influence must use their authority and privilege to lend a hand to those who voted for them and especially to those who labor in essential jobs for the public's benefit.

2020 and its intersectionality of dialogue over social injustice and inequality, criminal justice and community policing reform, the SCOTUS appointment process, public health disparities among people of color and access and the effect of remote learning on low income families leave most of us reeling and desperate for ways to reengage and become proactive in our communities. As I mentioned [in my article in August](#), talking about race and disparities often is not comfortable. Since this past summer, I have had some meaningful if unplanned conversations. I've talked with my parents, who are in their 80s, about their experiences with integration and race relations in the '50s and '60s. My father, a retired narcotics detective, was among the first African American graduates of the Los Angeles Police Department Police Academy. As a rookie cop, he received—more than this daughter would want—ridicule and racial animus by his fellow white officers. No doubt he was required to engage in respectability politics for his Black existence to be less menacing to sheltered, prejudiced colleagues.

Unfortunately, many folks today have expectations that people of color should continue to display the respectability race card on the workforce and in the boardroom. During his service as an undercover officer, my father mentored and helped train officers in responsible, respectable policing and how not to

take out your own fear or frustration on citizens, no matter how dangerous you may perceive them to be. I am sure he had to make several life-threatening judgment calls, while every day risking his own safety and responding to dispatched calls for police intervention and officer assistance. I know of the tragic outcome of one call where residents shot through the door and hit my father's partner, thereby paralyzing him for life. No doubt that traumatic experience altered my dad's sense of the danger he confronted each day on the job and informed his own responses when confronting individuals on the street. Within that context, he and I have talked about the current police state culture in many law enforcement departments where officers are ill-trained and engage in abusive behavior without accountability.

My father has helped me to adopt a balanced perspective on the pros and cons of defunding the police, and we together, through listening to each other, were able to reach consensus on what must change in terms of citizen/police encounters and a framework for a properly funded, accountable police presence in American cities, communities and neighborhoods. My conversations with him enriched my perspective as a trial judge presiding over criminal cases—that is, enhanced my judicial lens when hearing evidence about stops and frisks, searches, arrests and conflicting accounts about what happened on the subject day or night of the crime. But so has my own experience as an African American woman married to an accomplished, highly-regarded African American male physician who has encountered racism as a young man and even today, and the mother of sons who despite receiving good educations still encounter double standards manifested at best, through others' implicit bias or at worst, overt racism, whenever the men in my family leave home.

When we listen to our sons and daughters talk about what we all see and hear on the news and social media, I think about the myriad repetitive scenarios underlying my criminal trials conducted over the past two to three decades. Lack of education, employment, housing security and the benefit of the doubt given to those who live within certain ZIP codes hampers access to true justice. I would like to see judges, attorneys, psychologists, social workers, financial experts, public health specialists and educators come together to create a robust, achievable pipeline from birth to college graduation for every child in this country. Barring that—some may feel such a pipeline is not obtainable—we must allocate more funds toward public education, affordable housing for low income families and accountability court programs which focus on redirecting individuals with unaddressed mental health issues and substance abuse problems. My conclusion is we must remain ever vigilant in our willingness to have discussions (not debates) about the above-mentioned issues, listen to opposing views (rather than blocking them out) and get our hands dirty, feet wet and egos bruised a bit as we follow the example of those good trouble change agents who paved the way for us.

Regardless of who wins the election, the identity or presumptive philosophies of the nine U.S. Supreme Court justices, whether a new or more seasoned superior court judge is assigned to hear a particular case, for the average person they are seeking simply to be acknowledged, heard, respected and treated with equality and dignity. Just like you and me.

Senior Judge Gail S. Tusan has an arbitration and mediation practice with JAMS, serves as an adjunct professor at Emory School of Law and Spelman College, hosts a podcast called “Behind the Case with Judge Tusan” and has published two novels under the penname, Susan Washington, “Misjudged” and “Riley, The Judge’s Son.”