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## The Election of 2020

### WILL HE GO? TRUTH IS STRANGER THAN FICTION

American author Tom Clancy once said that “the difference between fiction and reality is that fiction has to make sense.”

Clancy died in 2013. Besides being a prolific and popular writer, he was also more than a little bit prescient.

As we stumble toward the eighth month of the COVID-19 pandemic, Clancy’s quote perfectly describes our current reality. It makes no sense and could never be turned into a Tom Clancy thriller. No editor would have believed it.

As you read this column, there is something else that is real, but makes little sense. We are about 30 days away from the 2020 Presidential election. I don’t have to tell you that little in this election makes sense, or that it has enormously real consequences for all of us.

I just finished reading a small book by Lawrence Douglas, the James J. Grosfeld Professor of Law, Jurisprudence and Social Thought at Amherst College in Massachusetts. The title is “*Will He Go*” and it’s described by Pulitzer Prize-winning author Elizabeth Kolbert as “the most compelling sort of political thriller – one whose outcome will affect us all.”

The book describes events that will take place in the next few months from the perspective of a law professor who has spent years studying and writing about Presidential elections and the Constitution. The book essentially begins on Election Day, November 3, and then describes the events that will take place through and possibly beyond Inauguration Day, January 20. Douglas describes probable, even likely scenarios that could “begin a constitutional crisis of unprecedented gravity.” Those are the law professor’s words, not mine.

Douglas writes about events grounded in law and American political norms that have taken place with little drama since 1796. It is about the peaceful transition of government following our quadrennial Presidential elections.

Douglas writes that “elections represent the bedrock of the democratic process; they are the fundamental tool by which citizens choose those leaders vouchsafed with protecting and advancing their interests.”

Certain things in our lives ground us and keep us focused. Trial lawyers know that these include long-held legal norms, the rule of law and the U.S. Constitution. They allow us to make sense of times that often make no sense.

As we learn more about the goals and aspirations of our current President, most of us are comforted by knowing that the rule of law and the Constitution assure us that there will be a peaceful transition from one President to the next. I’m sorry to be the bearer of bad news, but according to Professor Douglas, “Our Constitution does not secure the peaceful transition of power, but rather presupposes it. The peaceful transition is a background condition of democratic governance, a condition created and maintained through tradition and norms.”

Douglas predicts that “anything short of a clear and emphatic defeat in 2020 will embolden the President to either reject an electoral loss outright, or, in the case of an uncertain result, refuse to accept any outcome other than victory.” Douglas asks, “How well equipped is our system to repulse such an attack?” His answer will not make many of you happy.

“The impressive stability that our system of presidential succession has demonstrated for over two centuries might suggest we are very well prepared. Alas, we are not.”

According to Professor Douglas, “That we have largely avoided electoral disasters has more to do with our democratic culture and the character of those seeking office than with any inherent strengths of the electoral system itself. In fact, the peculiar way by which we elect a president is tailor-made for exploitation by an authoritarian intent on causing mayhem.”

Douglas lays out a doomsday scenario that he describes as “an entirely plausible result and one the nation has experienced in the past.” Coupled with the extreme partisanship “not seen in our national politics in decades, and the result is a constitutional crisis from which there is no clear exit.”

Actually, Douglas does give us a clear exit from the Constitutional crisis he so logically describes. On the book’s last page, he writes “In the end, the most reliable check on this outcome lies not in our laws or Constitution but in the hands of the American people.” Douglas says that should voters give Democrats a decisive victory with majorities in both the House and the Senate, the President will find himself limited in his power. “He could cause chaos, but not a meltdown.”

The clear way to avoid a constitutional crisis is very simple. It is imperative that as many people as possible vote. We must make sure that the outrage felt by so many translates to action on Election Day, whether at a polling place or by mail.

You can find a long list of ways to get out the vote by going to the Government Relations page on the CAALA web site. Click on the “Your Voice Your Vote” icon at the top of the landing page.

Tom Clancy was right, the reality of these times and what we are facing in this election makes no sense. Fiction makes sense, not this reality. It is up to us to do something about it. 🗳️