



## **A Tribute to Juan Osuna**

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I wanted to thank all of you for being here today to honor our friend Juan Osuna. In one way, this may have been the easiest conference we ever organized in that so many people loved Juan and wanted to participate and attend. One of the greatest tributes to Juan has been the time and effort that our moderators, speakers, and authors devoted to preparing for today. Another is how far many of you travelled to be here and thanks to the rest of you as well, who braved the snow to make it.

People want to do justice to this good man and to build on his legacy. We thought that a good way to do that would be to organize an event on the issues, values and institutions to which Juan devoted his professional life, particularly the rule of law; the immigration courts and judicial review; legal representation, due process, and access to justice; and refugee protection and asylum.

Juan had many gifts:

- First and foremost, the gift of a loving wife and family
- The gift of friendship
- The gift of good work, which we all share
- The gift of vision
- The gift of humor and an infectious smile
- The gift of intellect
- The gift of humility: he was very accomplished, but also very accessible and adept at putting people at ease.

He also had great gifts as a public servant, among them a passion for doing justice and always trying to do better; a genuine concern for his colleagues; and the ability to see beyond his particular job and bureaucracy, and view the immigration system as an integrated whole.

I would like to speak, in particular, to his gifts of magnanimity and empathy; that is, his willingness to try to understand the perspective of others and afford them the benefit of the doubt.

The divisiveness in the country today was anathema to Juan, and our community is at ground zero on that score. Immigrants today not only speak to who we are as a people, but they *expose* it as well. As an immigrant, Juan took to heart our nation's defining ideals, which seem more contested today than they have been in decades. Of course, he was staunchly pro-immigrant or, maybe more accurately, pro-person. Truth be told, he was not a fan of identity politics, at least not to the extent it polarizes people. His instinct was to bring people together and to search for common ground.

Some years ago, I shared with Juan a report that I wrote. As a former editor, he was always interested in what friends were writing and thinking. The report argued, among other things, that all removal cases should go before an immigration judge and that detention should not be the default option for those facing removal. This is something I strongly believe, and others strongly do not. Sarah Huckabee Sanders recently offered the administration's take on this issue. "Just because you don't see a judge," she said, "doesn't mean you aren't receiving due process." Actually, yes, that's exactly what it means.

In any event, Juan told me that he found the report difficult to read because it was so at odds with his day-to-day challenges. I totally understood that: it is one thing to think and write and advocate on how our laws and systems should be structured

It is another thing entirely to wake up every day and commit to working effectively and intentionally within government, with all its pressures, challenges, and diverse interests and perspectives.

Juan respected people with different views, and was never sneering, contemptuous or dismissive of others -- not in public, not in private. He worked in government for 17 years over four administrations, and it always gave me great comfort to know he was a public servant, working for the common good.

Juan tendered his resignation the day after the president fired James Comey. Two months later, he spoke at a CMS event quite dispassionately about how the administration and Jeff Sessions in particular viewed immigration through an enforcement and security lens. I was impressed with how he tried to fairly convey Sessions' perspective -- not to agree with it, but to help others to understand it.

Sessions recently applauded his own commitment to the rule of law during his tenure as Attorney General. Yet the rule of law is not about:

- Erecting insurmountable, technical roadblocks to asylum or denying access to asylum at our borders.

- Sending asylum-seekers and migrants to their countries of origin “immediately, with no Judges or Court Cases,” as the president has proposed.
- Separating children from their parents, indefinitely detaining children *with* their parents, detaining to deter, or unnecessarily detaining anyone for that matter.
- Mandating detention without individualized custody determinations.
- Divesting legal immigrants of status, denying legal status to residents who are American in everything but their papers, or using human beings as political instruments.
- Eliminating due process from the overwhelming majority of removal cases.
- Spending 50 times more on enforcement than on the courts that handle the cases that result from the enforcement system.
- Consistently underfunding the immigration court system and then declaring that the system broken.
- Treating the US Constitution’s 14<sup>th</sup> amendment as an immigration loophole that can be dispensed with by Executive decree.

And the rule *of* law is not the same as rule *by* law. If it were, then tyrants and autocrats would be its most ardent champions, not its greatest threat.

As Juan knew and lived, the rule of law is about ensuring that government officials and institutions remain accountable to the law, and not silently acquiescing as elected officials attempt to put themselves above the law.

It requires access to justice, due process, legal representation, judicial review, the separation of powers, and checks and balances. Apologies to our Acting Attorney General, but *Marbury v. Madison* remains good law, not a case study in judicial usurpation.

The rule of law is about living up to the letter and spirit of the law and adhering to our nation’s commitments to refugees, asylum-seekers, Torture Survivors and others.

It is about recognizing that human rights apply to persons, not just citizens.

It demands strong and principled enforcement of the law – enforcement that respects fundamental rights and the nation’s fundamental law, in our case the US Constitution.

It requires robust, independent institutions, which permit informed and meaningful participation in society.

It depends on competent, ethical, independent and sufficiently resourced courts, as the ABA insists.

And, finally, this venerable concept speaks to the legitimacy and inclusiveness of the political system that gives rise to the laws.

Juan Osuna had a lifelong commitment to the rule of law. He also had a habit – which we shared – of jotting down inspiring quotes. Here are three from my journal that remind me of my friend and colleague of 25 years – who was empathetic, humble, a teacher, and a leader.

“Humility is not thinking less of yourself. It’s about thinking less about yourself.” CS Lewis.

“Fight for the things you care about, but do it in a way that will lead others to join us.” Ruth Bader Ginsburg.

“It’s not the years in your life that matter, but the life in your years.” Abraham Lincoln.

Juan poured a full and good life into his too-few years. I am very pleased that we have joined today to honor Juan, to dialogue on the issues he cared about, and to steel ourselves to carry on his legacy.