

## TRIBUTE TO JUSTICE SONIA SOTOMAYOR

*JUDGE GUIDO CALABRESI*

It's a great, great joy to be back here—to be back for this event, where I was the subject some years ago; to walk by the portraits of Ricky [Revesz] and John [Sexton], two remarkable deans; and most of all, to be here to honor Sonia, to honor Sonia. I've heard many quite correct descriptions of what makes Sonia the wonderful judge and human being that she is: great intelligence, empathy, grounding in facts and in her own remarkable life experience—and as those who were at the civil justice [know]—humor and humanity. They're all true.

But there is one quality that I have not heard mentioned which makes all of the others, all of the other attributes, work. It is courage. And it is on that quality that I would like to focus my remarks today. I don't know much about physical courage; I don't really understand it. I've never been called to exercise it. I'm not sure that I would if I had to. It's another form of courage that I'm concerned with. It's moral courage. It's moral courage that I have in mind, and it is moral courage that characterizes Sonia. That quality, both rare and wonderful to behold, is what for me makes all the rest of Sonia so powerful.

Let me give a few examples of Sonia's moral courage. I start long, long ago with a very young Hispanic girl from Puerto Rico and the New York projects. She arrives at the Yale Law School, a place that tries to be nice but that scares any number of kids who have all sorts of safety nets underneath them. They react by giving back to their teachers what their teachers told them, almost word for word. They make no mistakes, they take no chances, and they sell themselves short out of a very understandable form of what, dare I call it, is cowardice. Perhaps it even happens in as nice a place as NYU. But not Sonia. I taught her torts, and I know. Where she got the guts, I can't say. But right from the start she took chances, used her imagination, and disagreed when she did not agree. Courage.

Later, as a district judge—when everyone said be careful, be cautious, don't be controversial, and you will have a great future and a great career—"SS," as we call her on our court, paid no heed. Read those early opinions and you'll see what I mean. And of course, it resulted in opposition that almost derailed her appointment to the Second Circuit. Go back and see what some senators

were saying. But Sonia had refused to let cautious careerism keep her from doing what she believed justice and law required. And if it made appointment and confirmation impossible, too bad. Courage.

On our court, it was the same again. Many a very good circuit judge gets mentioned in the press as a possible appointment to the Supreme Court, and all of a sudden you see that very good judge start to waffle—a sad, but understandable, sight. Sonia was talked of for the Court from the moment she came to us. And I dare anyone to find anything she did that might in any way have seemed to bend to that wind.

But there is more. Sonia was and is devoted to her mentor and great role model for Hispanics and Puerto Ricans: the brilliant, powerful, and charismatic José Cabranes. José is, unlike me, a person of strong views. He probably expected that Sonia would out of deference and perhaps “juniority fear” go along with him. But there too Sonia was always herself. Agreeing with her mentor when she did—and standing up to him, fiercely even, when she didn’t. And this is what is more remarkable. She did this while constantly reaffirming her affection, gratitude, love, and deep debt to him. Courage.

And on the Supreme Court, how easy it is for a junior justice to be silent, to go along with revered seniors out of fear of stepping out of line! Even very great ones have done so. My own judge, Hugo Black, told me of how, to his sorrow, he went along with Cardozo and voted to allow a clear double-jeopardy execution in *Palko v. Connecticut*, to his everlasting dismay.<sup>8</sup> “I was new, and I did not dare to stand up to the great Cardozo,” he said to me. I could mention many, many others among justices whom I greatly admire, but who have failed in this regard.

But not Sonia. Here too and from the very beginning, she knew what she believed law and justice required, and she said so whether with others or alone. Has that made her seem less cozy to some of her Supreme Court colleagues? Perhaps. I don’t know. Holding to one’s belief is always costly. But to me it bespeaks a quality that is most rare in public life and in private life as well. It is a quality that made me think somehow of a poem by the great abolitionist poet James Russell Lowell.

Once to every man and nation  
Comes the moment to decide,  
In the strife of truth with falsehood,

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8. *Palko v. Connecticut*, 502 U.S. 319 (1937).

For the good or evil side;  
Some great cause, some great decision,  
Offering each the bloom or blight,  
And the choice goes by forever,  
'Twixt that darkness and that light.  
Then to side with truth is noble,  
When we share her wretched crust,  
Ere her cause bring fame and profit,  
And 'tis prosperous to be just;  
Then it is the brave one chooses,  
While the coward stands aside.  
Till the multitude makes virtue  
Of the faith they had denied.<sup>9</sup>

Sonia has never stood aside. She has always spoken the faith that law and justice required. And it is that quality that makes all the others—brains, imagination, empathy, a background that qualifies one for a job, et cetera, et cetera—meaningfully effective, because without courage they don't do anything. It is a quality that shines on and commands respect when much else has passed away. It is a quality that makes Sonia as truly admirable as she surely is. Thank you.

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9. James Russell Lowell, *The Present Crisis*, in *POEMS OF JAMES RUSSELL LOWELL* 96 (1912), as adapted in *Once to Every Man and Nation*, in WILLIAM J. PETERSON & ARDYTHE PETERSON, *THE COMPLETE BOOK OF HYMNS* 185 (2006).