*Hon. Irwin Cotler**

MR. COTLER: Thanks, Paul. I'm really delighted to be here and able to participate in the common cause which brings us together, because in paying tribute to Alan Dershowitz, we really are paying tribute to the pursuit of justice. Alan has imbibed that biblical injunction of *tzedek*, *tzedek*, *tirdof*—justice, justice, shall you pursue—which, and going through his works yet again, I noticed something that I hadn't seen the first time, something that had been inculcated in him by his father, as the same notion had been embedded in me by my father who spoke of the pursuit of justice as being equal to all of the other commandments combined. That it was, as he put it, part of the *vici nam tam de venacha*, that you shall teach it unto the generations. It was something that we had to internalize and teach, and not only teach, but live and experience. And it had to really be an ongoing struggle for justice. And that justice, the pursuit of justice, could only be understood not as a theoretical abstraction but as something that has to be experienced. And Alan goes through this in his works in terms of a theory of rights and in *Genesis*. But the important thing here is that the struggle for justice has to be carried out in terms of the struggle against injustice—that you have to feel the injustice around you in order to be able to pursue justice.

That is why, if you look at two of Alan's recent works, although I use the word recent, that would apply to most people, but since one of them had been written, namely *The Genesis of Justice*, and really ten case studies of injustice from which comes the notion of justice. And, indeed, there were ten commandments before that book was written, and I think close to another ten have been written. And a more recent book, *Rights from Wrongs*, in terms of theory of rights, which comes from the notion of human rights coming from a notion of human wrongs. Again, the pursuit of justice coming from experiencing the struggle against injustice.

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What I would like to do is share with you a kind of snapshot of the variegated or multiple rules to which Alan Dershowitz has given expression in the pursuit of justice in respect of, which one can find, underpinning it always, the struggle against injustice. And let me begin with what I think underpins everything that Alan does. And that is, Alan Dershowitz as a law teacher. Here I speak somewhat as an expert witness because I had the privilege of co-teaching with him on several occasions. But the first encounter I actually had with Alan as a law teacher was when I was a student at that time in 1965–66, a student in the graduate program at Yale Law School. And at the beginning of the year we were taken to Harvard, you know, part of the joke was before we left that the same course at Harvard is called creditor's rights, while at Yale it's called debtor's estates. So we left with a certain sense of, you know, moral—so we went there with a certain sense that we had a greater moral centeredness. But when we came there, I thought I would listen in on—because I had heard about Alan Dershowitz, who was teaching then a course on psychoanalysis, psychiatry and the law. And I found his teaching so compelling, so provocative, and so intellectually challenging in every respect that I returned to Yale, determined to do my graduate work, and did so, in psychoanalysis and law. That was my L.L.M. program. And I don't think Alan knows this to this day, but that became my field of graduate study. I even for a moment explored the notion of actually doing this as a career until I realized that in the best interest of prospective clients, I ought not to engage in that pursuit.

But what I found, in terms of that initial encounter as a student, and then teaching with Alan, were a number of qualities that distinguish him as a teacher. The first being Alan's incredible knowledge of the subject matter. Whether Alan was teaching criminal law or psychoanalysis, psychiatry and the law, what was important was not only the knowledge of the specific subject matter but the principles and perspectives that would underlie that specific subject matter. He would bring to bear historical, ethical, evidentiary, procedural, constitutional, and historical approaches to the study of whatever was the specific subject matter at issue. And so you had, in that sense, a kind of *gestalt* approach to whatever was being taught in a way that you came out and you didn't intellectually view the subject matter in a kind of sense of intellectual silos, but you saw them in their integrated set of principles and perspectives.

The second thing was that Alan was superbly prepared. Not only did he have an outstanding command of the subject matter, which might have allowed him, or, if we had it, allowed any of us not to have to prepare, but Alan prepared for every class with a sense of how to organize the material, how to expose the material, how to present the material, how to challenge the students, how to integrate it in terms of what were the issues of the day, but always anchored in that set of principles and perspectives in such a way that he would embody what I would call, and what was mentioned earlier today, the best of the Socratic dialogue.

Now, Ralph Nader—I remember when I was listening to Alan, Ralph Nader had written an article at the time saying that the Socratic dialogue was a game that only one could play, and that was the professor. But Alan had that inclusive way of engaging and involving his students in a manner that the Socratic dialogue became an inclusive exchange with that kind of evocative and provocative teaching for which he has not only become known, but which has produced a whole generation of other students who engage in that same kind of intellectual, challenging pursuit.

And, finally, I would say I saw Alan Dershowitz while teaching with him, and while experiencing him as a student, as really the ultimate motivational speaker and inspiration. You know, two days ago there was a big conference in Montreal headlined by former President Bill Clinton. Thousands of people paid thousands of dollars to hear a set of motivational speakers—that's become almost a kind of industry on its own today. Yet, Alan was, and is, the omnipresent motivational lecturer. And as the omnipresent motivational lecturer, his sole motivation is a devotion to his students.

And here are several things I want to say in that regard because it's important to disabuse some, you know, hearsay myths. You know, I used to say that, when I was asked: "You're co-teaching with Alan Dershowitz; is he there for the classes?" I would reply: "Not only was he there, Alan never missed a class in all the time that I taught with him." He was described as the most peripatetic civil liberties lawyer in the nation, yet this never came at the expense of always being there for his students. Not only was he scrupulous in never missing a class, but also in being accessible outside of class. And when I say being accessible outside of class, I don't mean in terms of kind of a perfunctory accessibility where you say, I'll be available on Tuesday and Thursday, you know, from 2:00 to 4:00,

and then you sometimes don't show for the same times that you're supposed to be accessible. Alan was always accessible not only to respond to a query of a student, but to engage that student and to bring out the best in that student.

In short, Alan was always teaching, whether it be in the classroom, in his scholarship, in the courtroom, in his op-ed articles, in his novels; whatever the medium, he was always the teacher. You know, the highest accolade, and particularly now while we are reading in the Bible portion each week, Moses is not revered for being a great law giver, which he was, or a great judge that he was, or being a great political leader and liberator, which he was. He's revered most for being a teacher. And the highest accolade he is paid is out of, *Moshe rebeinu*—Moses, our teacher. And that has always been, for Alan, what he has always seen to be his first responsibility.

Let me close with two experiences that I had in Harvard. I'm not sure that Alan is aware of the first, though he would be aware of the second. In the fall of 1983, I came to Harvard as a Visiting Scholar in the fall semester. In that year, there was a certain degree of black-Jewish tensions, that is, tensions between black students—or African Americans as they are now called—and Jewish students. Part of the controversy was bound up with the demand by black law students at Harvard for the appointment of tenured or third-world law professors. This dominated even the faculty meetings at the time.

As it happened, Clyde Ferguson, the only tenured black professor at Harvard Law School at the time, died of a heart attack. The then-Dean, James Vorenberg, invited me to be a visiting professor in the second term, to take over for Clyde Ferguson—his courses, his graduate students, and the like. I mentioned to the Dean that I thought that this was somewhat of a questionable thing to do—that at the time that black-Jewish tensions were acting themselves out in the law school, it wasn't the most appropriate thing to appoint a white Jew to replace the only tenured black professor at a time that the black law students were agitating for the appointment of more tenured and third-world law professors.

The appointment came through, and I was also given Clyde Ferguson's office. I found it rather uncomfortable to sit in his chair, and so I sat in a different part of the office. I say this because within about twenty-four hours of the appointment, a student knocked at the door and introduced himself to me as Mohammed

Kenyatta, who said that he was the President of the Black Law Students Association at Harvard. He said that he wanted to report to me that the black law students had come together to discuss my appointment. And I thought, "Well, here it is." He said, "I want to tell you, Professor Cotler, the black law students are delighted that Harvard Law School made a third-world appointment from Québec." This is a true story—exactly as it happened. In fact, they were so delighted with this third-world appointment from Québec that I actually not only replaced Clyde Ferguson in the courses that he would otherwise have taught, or the students that he otherwise would have directed, but I chaired the meeting of the National Black Lawyers Association that took place in Boston that spring, because that's what Clyde Ferguson would have done. Indeed, as I said to them at that point, I felt sometimes that I was eavesdropping on another family's conversation.

But Mohammed Kenyatta said something else to me, which relates to Alan that he may not know. Mohammed said that Alan had been one of the only professors at Harvard who had spoken up at the faculty meeting in a principled critique of this demand for the appointment of black law professors or third-world law professors to the Harvard faculty. As Mohammed told me, Alan had spoken up and said in a principled way what others otherwise believed in a not so principled way—that he was the only one to have had the guts to stand up and say it, even if it was going to be unpopular or resonate as being ultimately the politically incorrect line to have taken at the time.

The second experience I remember was when we both taught together with the former President of the Israel Supreme Court, Justice Aaron Barak, a course in comparative constitutional law, which looked at American, Canadian, and Israeli constitutional law in comparative perspective. Of the three, the only one who had a true comparative perspective—because in his knowledge and in his preparation he developed a command of the three legal systems—was Alan Dershowitz. He brought that comparative perspective that so engaged the students, and I think Alan will remember that the seminar that was scheduled to run from 4:00 to 6:00, would usually go on to 8:00 or 9:00, and we concluded simply because of the late hour. As Alan once put it, it's surprising that we should be paid to be doing something that we so thoroughly enjoyed. Indeed, it was one of the great intellectual experiences of my own academic life.

Let me move to Alan Dershowitz as a legal scholar, where his scholarship is as profound as it is prolific; where it is as persuasive as it is provocative; where it has been as prescient as it has been present; and where it has been as prescriptive as it has been pervasive. Also, as Paul Finkelman said earlier this morning, Alan has probably had a greater impact on more areas of the law than any other single legal scholar. Simply put, we are in the presence of—and these are not words that I would use easily or idly—what is a true Renaissance legal scholar for whom law is a real seamless web, engaging private law and public law, domestic law and international law, and substantive law and procedure.

Indeed, Alan has not only written in these areas—and it's astonishing when one looks at the areas in which he has written—but has written comprehensively and effectively in criminal law, in constitutional law, in international law, in human rights law, in psychoanalysis, psychiatry and the law, in evidence and procedure, in legal theory, legal ethics, legal history, the legal profession and legal process. But most important—and for those of us who've read his works, you understand what I mean—he is writing in *all* these areas every time he writes in any *one* of these areas. That's what I mean about the uniqueness of his legal scholarship, and where Alan is teaching through his scholarship just as his scholarship underpins the teaching; where he advocates in his scholarship as he is scholarly in his advocacy. He is, in a word, the ultimate teacher, scholar, and advocate.

This brings me to a third dimension—Alan as pre-eminent criminal defense lawyer—where his early work, *The Best Defense*, really demonstrates the adage, that the best form of practice is a good grounding in theory. It was because of Alan's pre-eminent knowledge of the law that he was able to engage in those criminal law cases—and civil cases as well—and in that kind of practice reflected in the cases in that book.

But the obverse is also true, that the best test of theory is its application in practice. What Alan found, as he comments in his book, is that the practice of the best defense—in both the civil and criminal law—had a transformative impact on his perspective of criminal law, and on the actors in the criminal law process, be they the police, the prosecutors, the judges, defense attorneys, the clients and the like.

In *The Best Defense*, Alan writes, "In the process of litigating these cases and writing this book and teaching my class, I have

discerned a series of rules that seem, in practice, to govern the justice game in America today." He then goes on to say: "Most of the participants in the criminal justice system understand them. Although these rules never appear in print, they seem to control the realities of the process. Like all rules, they are necessarily stated in oversimplified terms but they tell us an important part of how the system operates in practice. Here are some of the key rules of the justice game."

Let me read you some of these rules. My reason for doing so—apart from stating the rules of the justice game at the outset of this book, published 25 years ago—my question would be to Alan, "If you were to go back now, would you still restate the same rules, or would you modify them or amend them in any particulars, or repeal some of them?"

Here are the rules, as Alan has stated them at the time: "Rule 1. Almost all criminal defendants are, in fact, guilty. Rule 2. All criminal defense lawyers, prosecutors, and judges understand and believe Rule 1. Rule 3. It is easier to convict guilty defendants by violating the Constitution than by complying with it, and, in some cases, it is impossible to convict guilty defendants without violating the Constitution. Rule 4. Almost all police lie about whether they violated the Constitution in order to convict guilty defendants. Rule 5. All prosecutors, judges, and defense attorneys are aware of Rule 4. Rule 6. Many prosecutors implicitly encourage police to lie about whether they violated the Constitution in order to convict guilty defendants. Rule 7. All judges are aware of Rule 6. Rule 8. Most trial judges pretend to believe police officers who they know are lying. Rule 9. All appellate judges are aware of Rule 8, yet many pretend to believe that trial judges who pretend to believe the lying police officers. Rule 10. Most judges disbelieve defendants about whether their constitutional rights have been violated, even if they are telling the truth. Rule 11. Most judges and prosecutors would not knowingly convict a defendant who they believe to be innocent of the crime charged or a closely related crime. Rule 12. Rule 11 does not apply to members of organized crime, drug dealers, career criminals, or potential informers. Rule 13. Nobody really wants justice." You have, therefore, this statement of these 13 rules of the justice game. If time permits, Alan, I think it would be interesting to hear your perspective on these principles at this time.

When I first heard and read these rules, I felt that they were somewhat overdrawn, and that there even was an undue cynicism

with respect to these rules. But there are certain caveats that Alan did provide that—in all fairness—one should state.

First, that while nobody in the justice system seems interested in abstract justice, the irony is that the net result may well be a kind of rough justice nonetheless. As Alan puts it: "Corruption lies not so much in the results of the justice system, which tends to produce a certain kind of rough justice, but in its process, particularly the corruption of the judges." Indeed, Alan indicates that he almost titled the book, "Black Robes, White Lies," as a critique of the judges. He also makes the point that the American justice system is not "repressive"—there is more freedom to speak, to organize, and to advocate in the American justice system than in any other system of justice anywhere—something that he appreciated in particular as when he wrote in Chapter 7 of *The Best Defense* about an American lawyer in the Soviet legal system.

As I said, I found some of these rules somewhat overdrawn—if not, cynical—nor did they comport with my own experience in a much more limited set of criminal defense cases. But then I realized the profound difference between Alan Dershowitz and myself—and I say this to his credit—that, as Alan puts it, as a law professor he had the opportunity to select which cases he would take, to select those who were decent and honorable and arguably innocent people. On the other hand, I would only take those cases of the decent and honorable people.

Alan would defend all those where there was a compelling legal issue at stake—where there was a compelling principle and precedent to be pursued—even if he would believe that the client was, in fact, guilty of the crime alleged. My involvement ended up being a self-fulfilling prophecy since I only took those cases where I felt the clients were decent and honorable people. Accordingly, I would therefore look upon these rules as being somewhat overdrawn and, if not, a cynical appreciation of the process. But Alan's perspective of someone in the trenches with all the criminal law defendants, with a much more comprehensive and authentic database, could make a much more principled argument.

At the same time, I found out more about the validity of those rules when I became Minister of Justice and Attorney General. Let me give you two case studies. The first is the case of Maher Arar, a Canadian citizen of Syrian origin. It's a *cause celebre* in Canada, and it's making its way through the American media and the American legal system.

In October 2002, Maher Arar was traveling back from Tunisia to Canada, where he was employed and had been for some seventeen years as an engineer. He was stopped at Kennedy Airport. He was interrogated and then, to use the more charitable term, he was deported to Syria where he was tortured, as it was later demonstrated, for close to a year before he was released. Now, I represented Maher Arar during the period of his incarceration. When I became Minister of Justice, I was told that I would have to recuse myself from any further involvement in his case. But before that took place, I recommended to Cabinet; and Cabinet approved the establishment of a judicial commission of inquiry into the Maher Arar case. This judicial commission of inquiry, otherwise known as the O'Connor Inquiry, after its Justice, Dennis R. O'Connor, reported in September 2006 that Justice O'Connor determined that not only was Maher Arar an innocent person but that the he had been the innocent victim of three governments, of Canadian officials who had given false and misleading information to American officials in the aftermath of 9/11 about Maher Arar, which they had corrected prior to Maher Arar being detained at Kennedy Airport; but the misleading information had been to the effect that Maher Arar was an Islamic extremist associated with Al Quaeda. You can appreciate that that would set off alarm bells in the aftermath of 9/11 amongst American authorities. And, though the Canadian officials had corrected that misleading information prior to his being detained and deported, nonetheless, Justice O'Connor concluded that the false and misleading information likely contributed to his deportation to Syria

The second thing that the O'Connor Commission determined was that Maher Arar was, indeed, tortured during his incarceration in Syria.

The third thing they concluded all had to do with the United States. And this is the part I want to speak to because the U.S. Government refused to cooperate with the O'Connor Commission of Inquiry, refused to have anyone come and testify and present the position, and the like. But what Justice O'Connor determined was that the American authorities had, among other things, violated the Vienna Convention on counselor relations by not advising Maher Arar, when they were detaining him, of his counselor rights, nor advising Canada that they were detaining a Canadian citizen. More than that, they deported—and I guess the more proper term would be extraordinary rendition—Maher Arar to Syria, a country which,

at the time of the deportation, even the U.S. State Department Website characterized as a state sponsor of international terrorism and a country that "routinely tortures its detainees." And so with that knowledge, publicly affirmed by the Americans, he was nonetheless deported to Syria.

There were other findings that were made, and the like, but I mention all this because, to fast forward it to the present time, the Canadian Parliament has apologized unanimously to Maher Arar for the ordeal that he suffered. The RCMP Commissioner at the time, Commissioner Zaccardelli, was forced to resign. But before that, when he came before Public Safety Committee, he also apologized for the ordeal that Maher Arar and his family endured. And the Prime Minister, who had been somewhat reluctant, nonetheless, our Canadian Prime Minister finally both apologized and compensated Maher Arar in the amount of over $10 million for the ordeal that he and his family suffered. I mention all this because, as I speak to you, Maher Arar and his family are still on the U.S. Watch List.

So, not withstanding all the unequivocal evidence that has emerged, not only will the United States not cooperate with Canadian authorities, but, in fact, maintains them on the Watch List with the cloud of suspicion that such a watch list entails. And those of us who have seen the Watch List, and I'll just use the words of the Minister of Public Safety, Stockwell Day, in the present government who said that there is no basis in any of the information the Americans have shared with him for maintaining Maher Arar and his family on the Watch List. So, we have the anomalous situation not only that Maher Arar and his family remain on the Watch List, but President Mahmoud Ahmadinejad of Iran is not put on the Watch List and is granted entry to the United States, and is even feted here, as he was in the fall at the U.N. General Assembly, and otherwise.

I'm not talking about any U.S. international headquarters agreement or the U.N. I'm talking about those groups and others who receive Ahmadinejad, where if he had been on a watch list, he either would have been ruled as being inadmissible to begin with, or, with a very restricted admission, limited to the purposes of the United States visit.

The second thing that I learned with respect to the criminal justice system is that, as Minister of Justice and Attorney General, I had a particular power with respect to determining whether there

had been a wrongful conviction in any particular case. In other words, if a person believed that they had been subjected to a wrongful conviction and had exhausted all other remedies and were able to adduce what could be called fresh evidence, they could make an application to the Minister of Justice, who then would read the record and make a determination as to whether a miscarriage of justice indeed occurred in that particular case.

One of the cases that came to me is that of Steven Truscott. Forty-five years after an initial conviction for murder and rape in 1959—when he was 14 years of age and the victim, a young girl, 12 years of age—the application came before me for a wrongful conviction, but, to sum it up, the Minister of Justice has two remedies. If he makes the threshold determination that a miscarriage of justice has indeed occurred, the Minister of Justice can either quash the conviction and order a new trial, or, he or she may refer the matter to an appellate court for a fresh hearing on the merits. I took the second option because I knew, had I taken the first, the Crown would still maintain his guilt, would have stayed the proceedings, and the public vindication that he was seeking would never have come to pass. So, that matter is now before the Ontario Court of Appeal.

[On August 28, 2007, Truscott was acquitted of the charges by the Ontario Court of Appeal, and ultimately vindicated.]

But in all the seven cases that I otherwise also held that one could reasonably conclude that a miscarriage of justice had indeed occurred, I found that there was a pattern that found expression in each, if not all, of the cases. In other words, there were some eight or nine factors that would manifest themselves in cases of wrongful conviction, which dovetail with a lot of what Alan Dershowitz says in *The Best Defense*. And I'll just enumerate them for reasons of time: the tunnel vision or predetermination of a particular guilty suspect to the exclusion of all other relevant evidence; the absence of police disclosure, which would be exculpatory of the accusee; the absence of prosecutorial disclosure, which would be exculpatory of the accusee; coerced interrogation; false confessions; jailhouse informants, some of them who have been bribed; mistaken forensic evidence; judicial error; and inadequacy of defense counsel.

Most of, if not all, of these wrongfully convicted cases would, I submit to you, have benefited from Alan Dershowitz's *The Best Defense*. And, had Alan been representing them, they might not have entered into the annals of Canadian legal history.

This leads me just to a fourth factor, Alan Dershowitz as a defender of political prisoners. If you read *The Best Defense*, you will find one chapter which is often overlooked, Chapter 7, which is an American Lawyer in a Soviet Court. Even if you read that chapter, because of Alan's modesty, you will not understand the indispensable role that he played in the *Sharansky* case, for Alan was the one who brought Sharansky's case to the Court of International Public Opinion. When he was not permitted by the Soviets to plead in a Soviet court, he nonetheless published the legal argument he would have pleaded, and thereby, it entered into the International Court of Public Opinion. That went a long way, not only to validating Anatoly Sharansky's defense, but indeed all those who were similarly situated. In effect, Alan's was able to point out in the cases of the political prisoners that he represented, that the Soviets violated their own law—not American law or Canadian law—particularly in the pre-trial aspects. These violations were of such magnitude that the charges should have been quashed even before the trials began. And if there were trials, these trials were replete with both false and absurd allegations on the evidence that were themselves a violation of rights protected under the Soviet Constitution.

This brings me to the next dimension, Alan as an international human rights scholar and advocate. This is something that finds particular expression since the year 2000. It has its genesis, if I can use that as a metaphor and message, in his book on *The Genesis of Justice* and its *Ten Case Studies of Injustice*. It finds its expression in the post-9/11 universe, which is not only the 9/11 universe for America but what was the 9/11 universe for Israel, which suffered the equivalent of a half-a-dozen 9/11's in the year 2002 alone in proportional population terms, all of which helped anchor Alan's works, both with respect to *Why Terrorism Works*, and then the book on *Preemption: A Knife that Cuts Both Ways*, which were book-ended by the two books on *The Case for Israel* and *The Case for Peace*.

If you look at the books on *Why Terrorism Works* or the book on *Preemption*, you see why references are made to Alan as a public intellectual, in the manner in which the books draw upon philosophic, political, moral, and historical discourse and the like. In *The Case for Israel* and in *The Case for Peace*, one could sum up Alan's position as being that he comes to the support of Israel not because he would regard it as being a Jewish cause—that would not

be enough for him, nor would it be enough for me to come to the support of Israel for that reason—but because he sees it as profoundly being a just cause, and, therefore, it needs to be defended against those who would bear false witness.

This takes us back to his book on *Genesis*, and you see the importance of the bearing of false witness in this conception of justice. You have to read this together with *The Case for Peace*, and you see Alan not only as a pursuer of justice, but as a pursuer of peace. And as he put it, "I am not just pro-Israel—I'm pro-Israel, I'm pro-Palestinian, I'm pro-peace." That is why one should see the two books as being a struggle for justice and peace, as being inextricably bound up, one with the other—not a zero sum game—and not without, where appropriate, critiques of specific Israeli policy and practice where warranted.

A sixth dimension is Alan is a syndicated columnist and journalist. You find this in his two books, *Taking Liberties* and *Contrary to Public Opinion*, which are collections really of his op-ed pieces, his commentary, and the like. If one did not know everything else that Alan did—and only knew about the columns collected in those two books—one would probably say this is a very prolific journalist. Indeed, I found it surprising that he was able to publish as much as he did in the op-ed journalistic medium while publishing at the same time as prolifically and as profoundly as he did in terms of legal scholarship.

Moreover, when you read these two books, they serve as commentaries on the Jewish condition, on the American condition, and on the human condition—and mostly commentaries on justice and injustice. This leads me to the point that Alan's work, as mentioned earlier, is basically inspired by the Hillel epigram—to the first part, namely: "If I am not for myself, who will be for me?" You see this in the books *Chutzpa* and *The Vanishing American Jew*, and in the columns which give expression to this point, and to the profound position that underpins it; namely, if Jews do not affirm their own history and heritage, their own values and visions, how can they expect others to understand who they are, let alone respect who they are. This brings me to the second point in the Hillel epigram, "If I'm not for myself, who will be for me?" You see this theme finding expression not only in *Chutzpa* and *The Vanishing American Jew*—and *The Genesis of Justice*—but something that underpins his whole pursuit of justice in his other books as well. The third point of the Hillel epigram, and which in

my view, is crucial, is the notion, "If not now, when?" Namely, that the pursuit of justice has to have a sense of urgency about it; that confronting evil cannot be postponed; that pursuing justice means unmasking, exposing an injustice and doing so in real time because lies have long legs.

That's why one finds that, in Israel-Hezbollah War, there is no other commentator, legal or otherwise, that sought to expose and unmask the bearing of false witness more than Alan Dershowitz. This could be demonstrated empirically as well as from a scholarly point of view—referring to the prolific number of publications—but their profundity, as dramatized in his immediate yet comprehensive and documented response to the Walt Mearsheimer book, or his immediate and comprehensive response to the Jimmy Carter book, or his immediate and comprehensive critiques of U.N. resolutions, or his immediate and ongoing involvement with respect to bringing Ahmadinejad to justice.

This leads me to a seventh dimension of Alan, his work as a novelist, be it *The Advocate's Devil* or be it the other novel, *Just Revenge*. You see in *The Advocate's Devil* a refinement of *The Best Defense*; and you can see in *Just Revenge*, the moral, philosophical, historical, legal, and psychological dimensions of justice in the post-Holocaust era.

The eighth dimension is that of Alan as a legal historian. This is sometimes forgotten, or not even known, but look at his works in this domain, and the nature of these works. I'm referring, in particular, to his work on the great trials of the last 300 years—sixty trials of the last 300 years—many of which had a transformative impact on America. So, when you read *America On Trial*, you have a better sense of where America came from—I say this as a Canadian—also where America is going and why, through this looking glass into these transformative trials. Or, look at *America Declares Independence* an appreciation of the origins of justice and injustice. Or, the book *Supreme Injustice* on the *Bush v. Gore* case, which Alan refers to as being the most corrupt decision ever made by any Supreme Court in the United States. Or, the book on *The Genesis of Justice*. All these books are really Alan as historian, and bringing that kind of variegated historical perspective.

The ninth dimension is that of Alan as a preeminent biblical legal scholar; these are not my words. Those who have reviewed his work, who are themselves biblical legal scholars, have characterized

his work as ones of preeminent biblical legal scholarship—where Alan's *midrashim*, his commentaries on Genesis, actually dovetail with the family name; for the etymology of Dershowitz is that of *midrash*, a notion of commentary. It's not surprising, as Alan reported, that Alan's relatives may have wanted his name excised, for that was perhaps the highest commentary or praise with respect to how his own commentaries, his *midrashim*, dovetailed with the etymology of his name, even when it embarrassed his relatives.

Finally, I would call Alan an exponent of a theory of rights. If you look at the book on *Rights from Wrongs*, it is a natural sequel to *The Genesis of Justice*. From the ten case studies of injustice in Genesis, you find a theory of rights that is, itself, founded on the notion that human rights come from human wrongs, that rights—or Alan's theory of rights—proceeds, as he put it, not from God, not from nature, not from logic, not from the law alone, but it comes from human experience, particularly the experience of injustice.

All this would lead me—in the end—is to where Professor Finkleman began, and that is that he is the preeminent public intellectual. For only a preeminent public intellectual could somehow have integrated all these various involvements with such a set of integrated principles and perspective. What is so extraordinary about Alan's life in the law, or his life's work, is that each of the eleven dimensions or contributions above-described are themselves worthy of a life's work, of a life in the law well-lived, of pursuing justice by confronting injustice. Alan's work, as a teacher, as an advocate, as an author and architect of all eleven books constitutes a critical mass of teaching, scholarship, and advocacy that, in my view, is unmatched anywhere. I would be remiss, however, if I did not single out one quality of character that has made his pursuit of justice so pervasive and so principled. I'm speaking about an unflinching moral courage in the unrelenting pursuit of justice. Regrettably, we live in an age where there are too few people who are prepared to stand up, let alone to stand up and be counted. That is what is Alan's greatest contribution—a role model for moral courage, a role model for speaking out against whatever may be the politically correct un-wisdom of the age, and being prepared to swim against the currents in the pursuit of justice, and against injustice.

Well, there's one thing—I mean, there's so much one could glean from Alan's work, but one of the things that one can glean is where he discusses the appointments of judges. And I think one of the

problems in America is the nature and manner of judicial appointments. And whereas in a place like Canada, you not only get appointments that are for the most part on the basis of merit, you could not tell who appointed what judge to the Supreme Court in terms of their political philosophy, ideology and the like. And so a merit-based judicial appointment system that would not have the politicization that has characterized the American system, I think might lead to judges who would be more principled in their decisions. You could have predicted in *Bush v. Gore* how the Supreme Court was going to vote. And that, to me, was a tragedy. And I think in Canada you couldn't have made that prediction. And I don't think Canada's better. I just think we have a better appointment process, and so there's less politicization and more principle.