*Akhil Amar**

It's really an honor to be with you today to celebrate the work of Alan Dershowitz. I'm here really to talk less about any specific substantive area and more to talk about this life of Alan's.

About a decade ago as I was casting about, thinking about various lives lived in the law that might illuminate the path that lay before my own feet, I stumbled across Alan. And in the years since then, much of his life has come to serve as an example for mine. Now, this might seem surprising to some of you in that there are some obvious differences. Alan is one of the nation's preeminent litigators. I've never tried a case; I've never argued an appeal. In fact, if you can keep a secret, and I know there's a tape recorder there, I've never taken the Bar. Alan is a remarkable figure on television. My friends have kindly and gently told me that with a face like mine, perhaps I'd do better sticking with print media and radio. In case you missed it, Alan, of course, is a product of—is at the Harvard Law School. I am at Yale. Alan grew up an orthodox Jew; I did not. Alan's east coast all the way, I'm a California kid. I've attacked the Exclusionary Rule with some vigor; he's deployed and defended it. He has embodied and explained the vision of a zealous advocate in the context of criminal defense. I've raised some questions about that model. So you might think it somewhat surprising that I've come to see his life lived in the law as an example for mine, but, of course, many of the things that I just talked about, these differences, they're skin deep. Asians and Jews, east and west coast, Harvard and Yale. There are similarities here, you see, as well as differences.

We—our interest in issues of criminal defense, advocacy—our interest in the role of truth in the criminal justice system, we disagree about some of these things, but we actually come to these issues with a very similar framework. I like to think a framework that really tries to integrate with a study of the law, a kind of ethical seriousness. And it's more than that, actually, because, you see, in a lot of ways, Alan and I are very much products of the same

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education. We both went to Yale Law School. We both had the same teachers, Guido Calabresi and Joe Goldstein. I used to—in fact, Alan Dershowitz's name really first came to my attention because of the tender, the affectionate stories that his teachers used to tell about him in his student days. And they mentored him; they mentored me. And I think maybe Alan—and I hope he will—is going to talk about some of those things. Steve Briar is another, actually, interesting point of connection between us. We began teaching at fancy places, frankly, Alan and I, at rather young ages. He at twenty-five, I think; I at twenty-six. Our friend, Guido Calabresi, also began very early on. And so when you start at a fancy place early on, much is expected of you. And then whether you live up to that or not, as you begin to mature, you begin to think, "well, what am I going to do for an encore, how am I going to actually redeem the confidence that's been placed in me?" And so, when you reach, as I did about a decade ago, a certain, if not midlife crisis, at least crossroads, you look around for illumination. And that's what I did, and that's when I stumbled across Alan.

Here's how it actually began. And I just want to basically offer five things that I've taken away from Alan's very great life lived in the law. And the first is really how we crossed paths, maybe even crossed swords in a certain way. He reviewed—I published this book called *Constitution and Criminal Procedure*. Truth be told, I don't think it's my best work, but I was approaching forty and I thought, "I have to have a book." And I'd done these articles and they kind of put the cover around them, and it looks kind of like a book. And so, there you have it. And there were some interesting ideas in the thing; I actually stand by the substance of it. I think the tone could have been better. It was a little too edgy, a little too truculent, I think, but it had some ideas and it met with an interesting reaction. Most of the senior people in criminal procedure treated it with a—sort of a mix of contempt, disdain, and loathing. And then Alan Dershowitz reviewed it, and he disagrees with me about a lot of things. It was a generous review, it was a—Alan doesn't pull his punches. He says, look, Amar has these ideas, I actually have—I, Alan Dershowitz, have a different set of ideas, but he engaged the ideas, he presented them actually in a very fair way, he actually let the reader— trusted the reader enough to begin to judge for herself what she might think of this point of view and that point of view. And it was a remarkable act of scholarly generosity actually. A senior person in the field, who doesn't have

to pay attention to any junior person in the field, can just be looking laterally and up, but sort of looking down a little bit, finding this interesting book, bring it to people's attention, treating it seriously.

So the first take home lesson from Alan's example is that as I mature in this business, I aspire to be the same kind of generous reader and senior scholar, looking out for people sort of more junior in the profession, and engaging their work. Not pretending I agree when I don't, but taking seriously the ideas of the next generation. And there are not so many, frankly, senior scholars who do this in criminal procedure, in most fields.

One of my other real models here is Alan's towering colleague, Larry Tribe. There's going to be an event in his honor in Tulsa on Monday and Tuesday, and I'm not going to be able to be there in person, but I hope to participate by video feed. Again, I feel, Alan, the same thing about Larry Tribe. There are lots of junior people who they publish their first article and then a month later they get a little note, a letter, or an e-mail from Larry Tribe saying, you know, I read the piece and it was very interesting and it made me think of this and that; it really shows that you actually read the piece—that he read the piece, and I've talked to innumerable people who said that that really encouraged them to keep going. And again, this is, truth be told, not so common among great men, now great women too in law. So that's the first thing, a generous reader and senior scholar.

So then I began to get to know—and that review—I think I'm remembering right, actually led to kind of an exchange that Alan and I actually had on slates.com. We sort of—where we sort of e-mailed each other back and forth and posted these things, and he gave as good as he got in that exchange. And it was a lot of fun for me. And so that led to kind of the beginning of, you know, literally a correspondence or relationship. And I invited him to come speak to my students. I actually got invited, in turn, to meet—to attend his class. Some of his undergraduate students have ended up at Yale Law School, where they became my students. So now we not only have teachers in common and Steve Briar in common, but students in common. And so, this leads to the second way in which he's been an example for me. And that's—I really can report to you firsthand and through lots of indirect gossip—Sandy Levinson would call this sociology of law, but it's gossip. And I can report to you that this is a man who's a very engaged teacher. He loves the classroom. I've been in the classroom. He has the same kind of

interaction with his students, actually, I think, that he does with—he doesn't play patty-cake, he pushes you. He pushes you hard, but he wants you to push back, actually. And when you do, his eyes light up. He's very interested in ideas and exchange. You don't fully see this Alan Dershowitz always on television. You see it in the classroom, actually, because television is a different kind of medium and there's not quite the time, for you have to sort of sometimes shout over the other fellow because that's how they've structured the program. But that's not how Alan structures his classroom. And so it was really magical to sit in his classroom, watch him engage his students. I took notes, actually. And to have him, in turn, come speak very candidly with my students, not just about his views about the law, but about the life he's led in it, the choices he's made, because Alan helped me, see. There were some others as well. I've changed my idea about what I actually do for a living. I used to think I taught law. And, of course, there are the usual jokes about whether anyone teaches law at the Yale Law School. See, I don't think I teach law anymore. And Alan has actually helped me with this. As I said, there were others too. I now think I teach students, which is different. And so, the second thing I just want to report to you all that's been an example for me is that he's not just a generous reader, but he's an engaged teacher. And I think, Alan, that we both may be, to the extent that we aspire to do this, and that's been an important part of our self-conception. I think we owe a lot to Joe Goldstein and to Guido Calabresi; they were our first models. So there's a lot of Yale Law School, you see, in this Harvard Law product and in this Harvard Law professor.

Then there's the third for many of you, if you haven't been in his classroom, if you haven't had the occasion of having your work reviewed and engaged by him—the third dimension of Alan Dershowitz. He's not just an author; he's a very ambitious author. Writing an extraordinarily wide range of things such as books; there have been articles addressed to general audience readers, not really to specialists, fiction, non-fiction, memoir, across just an extraordinary range of serious issues: the nature of human existence, our relationship with the cosmos, the war on terrorism, truth in the criminal justice system, and much else. Now, this is unusual for law professors. Until relatively recently—where is Paul, by the way? Is he here, Paul Finkelman? Yeah, okay. You have to—so I was going to mention something. So people in other parts of the Academy are actually serious scholars in ways that, for

many years, law professors really weren't quite. Law professors would get tenure on the basis of an article or two, and then they'd never do anything else. They would be practicing lawyers often and legal experts. But I look at Paul because Paul Finkelman has written so many books really, and that's what people in history departments do. People in law schools, actually, until relatively recently, didn't much write books. Maybe they did a case book, and you've heard Paul say a little bit about whether case books really count as serious scholarship, or not. And take the Harvard Law School, the previous generation of the Harvard Law School, some of the most preeminent people, I'm not sure they ever wrote a book, other than a case book. Did Henry Hart write anything other than an amazing case book on federal jurisdiction? And another amazing case book, never published actually, used, I think, in mimeograph form for many years, now posthumously published, with Al Sacks on the legal process. There was no one greater at the Harvard Law School than Hart. Did Freund write a book, Paul Freund? I'm not sure. A collection of essays. T. R. Powell, I think, again, had some—a collection of essays, but not really a sustained scholarly project the way that Harry Tribe has a treatise. Alan Dershowitz produced a library. So that's interesting to me that someone would, in law school, could actually take this extraordinary freedom that we have, especially once we have tenure, and use it to try to do something really ambitious; write big things on big topics, not just for narrow audiences across a very wide range. There's an audacity there, you know, dare I say it, a chutzpa to try to write on topics that you knew nothing about five years ago. And you see, when I started, I knew nothing about criminal procedure, and everyone else in the field, when I actually started writing about criminal procedure, reminded me of this fact.

Now, Alan wasn't above mentioning to the audience that, you know, I really haven't practiced, and you know, in this exchange, I said, yeah, and maybe part of the problem is that those who practice see things a certain way and those who don't, we might have certain blind spots, and we also see things that the practitioners don't. So—but, see, Alan didn't just stop by saying, well, this guy's never practiced. He said, well, and he's got some interesting ideas. So someone who doesn't begin as an expert in—as a credentialed theologian is nevertheless competent, Alan shows by his example, to actually engage serious religious text. Someone who wasn't hired to do constitutional law can write about the Declaration of

Independence, where rights come from. This was liberating for me. This actually was an inspiration to basically—this is what I've now tried to do over the last ten years. Every summer I actually try to learn a new field, learn something that I didn't know before and try to make it part of a book project, ultimately. Now, I can't keep up with this guy, he writes probably faster than I read. So, instead of a book a year, I, frankly, aim for one every three or four or five.

But on a different topic, sort of moving rather than just writing the same book over and over again, which some people do. You know who I mean. And then there are the folks, by the way, at the other, and there are many other great law schools, but another one is the University of Chicago where the basic motto is that anything worth publishing is worth publishing twice or three times, and so you sort of see the same thing.

Okay. So generous reader, engaged teacher, ambitious author. Now, here's one thing that I'm not going to try to do, just because it's not my comparative advantage. I don't think I could ever do fiction, and Alan has done fiction as well as non-fiction. But Alan was still an example. And some of my colleagues are really amazing in this way. Jed Rubinfeld; I hope you've read The Interpretation of Murder, it's really brilliant. Steve Carter, on The Emperor of Ocean Park; he has a new one out, New England White, that's coming out in a month or so. Kim Roosevelt, Kermit Roosevelt, Thin Shadow of the Law. Brilliant legal scholar, one of maybe my most brilliant students ever, and writes this very engaging book. It's all about law and lawyers and law as a lived practice, and how a life in the law actually shapes who you are and how it looks different if you're the senior partner or a junior associate, or a pro bono lawyer, or how it looks different if you're a Supreme Court Clerk golden boy or just a grunt in the firm. Fascinating account, actually, of law, using fiction. But to talk about some deep truths about the law and the tradition, in my view, actually, Kim's book is, of say Lawn Fuller, of The Case of the Spelucean Explorers, who actually uses sort of fiction to illuminate deep ideas about legal sensibility. Kim has a chapter that's actually just an entire chapter of this book that's a legal complaint. And you read it, and it's really interesting, as, let me share another chapter of this, a judicial opinion; and it's woven into the narrative. And it's fascinating. And this book is reviewed in the New York Times Book Review very generously, actually, by none other than Alan Dershowitz, actually, because he's a broad guy and he's a generous reader. But I don't have that gift so I'm never

going to do that, Alan, unfortunately. You know, I wish I could. I might be able to send my kids to college. But it's just not my gift.

But when I cast about for an editor for my books, I picked an editor, it might be the world's greatest editor, who did fiction as well as nonfiction—the great Robert Lumis at Random House, precisely because he can do fiction as well as nonfiction, and understands all sorts of things about narrative and flow. My editor, at one point—this book that I did on the Bill of Rights, it bogged down right in the middle, a chapter on Article 3 and the Judiciary, and Bob said, you know, it really bogs down here. I said, gee, I was hoping you didn't notice, because the book starts really so well and it ends very well, and, you know, I was just hoping if it has this sort of dull patch in the middle people won't quite notice. And he said, you know, well, I noticed. And he said—and he smiled at me and he says, you have an Act 3 problem. You know, because this is a guy who does fiction and sort of understood—and I said, oh, and I said, well, can you fix it. And he said, no, but you can and I'll tell you how. But I wanted to work with him because I thought, you know, people who can do fiction as well as nonfiction, actually, are going to help me take my game to the next level. And this is an author who really runs the range. And then it was sort of a combination of sort of that with his memoir.

So generous reader, I can learn from that. Engaged teacher, I can definitely emulate, try to emulate that. And ambitious author, trying to write for our fellow citizens of law shouldn't be this sort of mandarin technical domain only for a few high priests. Law is how we, in a democracy, interact with each other. And so those of us who teach it should try to make it accessible to our fellow citizens. So our fellow citizens can decide whether they really agree with these laws or not, and that's what Alan, I think, tries to embody in his library, which is what really he has produced, a veritable library.

Here's a fourth thing. When Alan writes, it's in an authentic voice. You can really hear Alan Dershowitz on the page. Just—and this has been helpful to me. Authors sort of struggle, you know, finding their voice. And you might actually be tempted to try to copy someone else's style. This is a mistake. You have to find your own. I began to learn this in law school when I went back, Alan, in my third year and sat in again on the classes of my favorite teachers. Tried to figure out what the common denominator was, because I wanted to be a good teacher, and I realized there actually

wasn't much of a common denominator. Guido Calabresi taught his class so differently than Owen Fiss. Guido Calabresi, just to give you an example, he conducts class kind of liturgically. There's kind of a script. A hub and spoke is through him. He will say to you, "the Lord be with you"; and the proper liturgical response is, "and also with you." And he goes around the room till someone says something close enough to, "and also with you"; and then we move on through the script. And again, it's very hub and spoke. It's all through him. He's a small fellow, very kind of clever and wily, and he turns—and he flips everything upside down.

And Owen Fiss is a big guy with big ideas and a big booming voice, and he conducts class completely differently. There are two ways of analogizing. One is, he conducts class the way someone conducts traffic, sort of pointing here and then you stop, and then over here—or maybe the way a great orchestra conduct or conducts an orchestra, sort of begins in silence, you know, just point to someone, because he knows what you're going to say before you say it because he's a very good listener. I sat in a second time, and he had a completely different cast of people and he ended up making them say the same thing. And sort of, I'm thinking that they were doing it when he actually was orchestrating. He was conducting it. So—because he knows what people will say because he's a very good listener. First the oboe, then the piccolo, then he brings in the clarinet and the bassoon. And it's great music, and it's a very different style. And so I said, well, what unites these two, they're very, very different? I loved them both. What unites them. Each was authentic, actually. Each was very true to himself, each wasn't trying to be the other person, true to himself. Therefore, I think, a few scholars really who have kind of a more distinctive voice than Alan's, and you really feel it. You hear it.

And, in fact, I'll tell one other story about—that was just why it's so absurd when people wonder whether Alan Dershowitz wrote Alan Dershowitz's books, you know. He wouldn't let anyone else write them, you know, and no one else could, you know, get inside his head in that way. And I've actually been in the room where it happens, and I love the fact that Alan is sitting there working on something and he's got students in the room at his elbow right next to him, and they're sort of working on one part of the project that they'll feed to him. It's really quite inspiring to see the master and the apprentice in this way.

But the authenticity of the voice is made literal when Alan

Dershowitz reads Alan Dershowitz on Books on Tape. And several of the books of Alan's that I've read, I've actually—I've heard rather than read on the page, hearing his voice. One thing that I really—there are very few authors, actually, on Books—I'm a Books on Tape addict. But very few authors actually read their own books; maybe, only about ten percent of the Books on Tape that I've read, I've experienced that way. Several of them are Alan's. The Case for Israel. Maybe, I think Chutzpa. And one thing that I very much like experiencing on the Books on Tape is he goes off the page. He ad libs sometimes and sort of—and it's very—it's delightful. It's really—because no reader would have the chutzpa or the audacity to—now, Alan, this got me into trouble once. Another set of friends that we have in common are the Baraks, Aaron and Elika, the now former Chief Justice of Israel, and The Case for Israel is really a very powerful book, building very much on the last presentation. So Israel, in the middle of actual wars and with real threats to their security and not the most defensible borders in the world, and not these 3,000-mile wide moats that protect them from the rest of the world; Israel, at this time a fragile place, has had a judiciary that actually has limited the government and limited the military in war time and really—in ways that almost no other nation facing a comparable threat ever has. That's kind of—you know, in a nutshell I think maybe, if not the biggest idea, one of the biggest ideas of this book. And so it really is a celebration—an homage to the Israeli Supreme Court, which has been a courageous Supreme Court in context.

So our friends, the Baraks, were over to our house once, and I think I was just chatting with Elika, Aaron Barak's wife, and I said, you know, I just read Alan Dershowitz's book, The Case for Israel, it's a very powerful—you know, have you—has Aaron read it. And she looked at me a little quizzically, and she said, why, you know, yes, you know it's dedicated to him. And, you know, I didn't because Alan didn't read the dedication page. So, you know, I really had experienced the book, as I hastened to tell Elika, but next time you have to read the dedication page.

Okay. Generous reader, engaged teacher, ambitious author, and authentic voice.

The final thing I want to say is, loyal friend. One thing I really admire about Alan is he has stayed in touch with people that he grew up with. You often hear him talk about his kids, or the friends that we have in common. This is also not always true of these

people who achieve certain media-arch heights. They sometimes tend to forget the people that they knew way back when. Alan hasn't— and this has really been a great example to me, so let me end, actually, with another friend that Alan and I had in common. A one time classmate or schoolmate of Alan's at the Yale Law School, a colleague of his on the Harvard Law School faculty, a co-author of his in some of his early scholarship in criminal procedure, our late friend, John Hart Eeley, a truly towering figure, well, one of my real role models in constitutional law. And the dedication page, Alan, of John's monumental great work, Democracy and Distrust, is dedicated to the person for whom he clerked, Earl Warren. For Earl Warren you don't need many heroes, if you choose carefully. My suggestion is, you don't need that many, actually, examples, models if you choose carefully. For me, Alan really has been such a model. I think I've chosen carefully, and I'd offer him to you as a model in these five ways. Thank you very much.