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THE REMARKABLE CAREER OF JOE GRANO

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Joseph D. Grano, Distinguished Professor of Law at Wayne State University Law School, has had a truly remarkable career in the law.¹ For many years he has been an outstanding and beloved teacher of Criminal Procedure and Constitutional Law at the Law School. He has been a major influence on a generation of law students as he introduced them to his strongly held views about constitutionalism, the nature and legitimacy of judicial review, and striking the proper balance between the rights of persons accused of crime and the interest of society in punishing and deterring criminal behavior. He has been a recipient of the Student Board of Governors Excellence in Teaching Award in 1991, the Wayne State University President's Award for Excellence in Teaching in 1988, and the Donald H. Gordon Award for Teaching Excellence in 1987.² As an avowed "legal conservative" in an academic world

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1. See Professor Grano's resume on file (Professor Grano received his A.B. and J.D. degrees from Temple University in 1965 and 1968. He received an LL.M. from the University of Illinois in 1970. He was an Assistant District Attorney in Philadelphia in 1970-1971. In 1971 he joined the University of Detroit School of Law faculty, where he remained until 1975, serving as Interim Dean during the 1974-5 school year. He joined the Wayne State University Law School as a Professor of Law in 1975 and was named Distinguished Professor of Law in 1984. Professor Grano has also visited at the University of California-Berkeley Law School, Cornell Law School, University of Illinois College of Law, and Temple University School of Law).

2. See Professor Grano's resume on file.

dominated by "legal liberals," Professor Grano justly earned the respect of all of his students, "liberal" and "conservative" alike. The "liberal" students profited greatly from being exposed to a markedly different viewpoint, and the "conservative" students found a teacher whose views they could strongly identify with and whose influence they would long remember.

Professor Grano is a nationally recognized scholar in both the fields of Criminal Procedure and Constitutional Law. He is one of the very few faculty members at Wayne State University Law School who have been honored by membership in the Wayne State Academy of Scholars. In the field of Criminal Procedure, his work of many years in the area of confessions culminated in a highly-regarded book, *Confessions, Truth, and the Law* (hereinafter, *Confessions*).³ This book was given the Wayne State University Board of Governors Faculty Recognition Award. He has also published important articles regarding permissible searches under the Fourth Amendment.⁴

But Professor Grano is best known throughout the Criminal Procedure world for his unrelenting scholarly criticism of the "Miranda rule," which requires the exclusion of any confession unless designated warnings have been given prior to police

3. JOSEPH D. GRANO, *CONFESSIONS, TRUTH, AND THE LAW* (1993) (Professor Grano's earlier law review articles on the subject of confessions include: Grano, *Selling the Idea to Tell the Truth: The Professional Interrogator and Modern Confessions Law*, 84 MICH. L. REV. 662 (1986); *Voluntariness, Free Will and the Law of Confessions*, 65 VA. L. REV. 859 (1980), Reprinted in 3 CRIM. L. REV. 161 (1981); *Rhode Island v. Innis: A Need to Reconsider the Constitutional Premises Underlying the Law of Confessions*, 17 AM. CRIM. L. REV. 1 (1979), Reprinted in 2 CRIM. L. REV. 187 (1980)).

4. See Grano, *Probable Cause and Common Sense: A Reply to Critics of Illinois v. Gates*, 17 U. MICH. J.L. REF. 465 (1984), Reprinted in 7 CRIM. L. REV. 49 (1985); Grano, *Rethinking the Fourth Amendment Warrant Requirement*, 19 AM. CRIM. L. REV. 603 (1982), Reprinted in 5 CRIM. L. REV. 3 (1983); Grano, *Perplexing Questions About Three Basic Fourth Amendment Issues: Fourth Amendment Activity, Probable Cause, and the Warrant Requirement*, 69 J. CRIM. L. & CRIMINOLOGY 425 (1978).

questioning of a suspect.⁵ In a penetrating 1985 law review article, *Prophylactic Rules in Criminal Procedure: A Question of Article III Legitimacy*,⁶ Professor Grano asserted a structural challenge to the “*Miranda rule*,” maintaining that the Supreme Court’s promulgation of the rule was itself prohibited by the Constitution.⁷ Professor Grano continued his attack on *Miranda* before Congress⁸ and in a series of debates with proponents of *Miranda*. Perhaps most notable was Professor Grano’s debates with Professor Yale Kamisar of the University of Michigan Law School, in forums ranging from academic conferences to Federalist Society-sponsored debates to the NBC Today show.⁹

Professor Grano’s structural challenge to the “*Miranda rule*” and to the Court’s authority to promulgate it has influenced other constitutional scholars to call for its abolition. As Professor Paul Cassel, who argued *Dickerson v. United States*¹⁰ before the Supreme Court, has put it in his tribute to Professor Grano:

“No greater tribute can be paid to Joe than to recognize his vital role in keeping the *Miranda* debate alive so that a new generation of legal scholars could pick up the argument. In the last few years, the embers of the *Miranda* controversy,

5. See *Miranda v. Arizona*, 384 U.S. 436 (1966).

6. 80 NW. U. L. REV. 100 (1985).

7. See *id.* at 106-11. (Professor Grano’s other law review articles attacking the “*Miranda rule*” include: Grano, *Miranda’s Constitutional Difficulties: A Reply to Professor Schulhofer*, 55 U. CHI. L. REV. 174 (1988); Grano, *Miranda v. Arizona and the Legal Mind: Formalism’s Triumph Over Substance and Reason*, 24 AM. CRIM. L. REV. 243 (1986)).

8. In March, 1995, Professor Grano testified before the United States Senate Judiciary Committee in support of statutory modifications of *Miranda* and of the exclusionary rule.

9. The Grano-Kamisar debates over *Miranda* and other issues of constitutional criminal procedure have been memorable events at both Wayne State University and the University of Michigan law schools. Professor Grano has also debated Professor Kamisar and other proponents of *Miranda* at the University of Chicago, New York University, the University of Pennsylvania and Mercer University Law Schools.

10. 530 U.S. 428 (2000).

kept burning by Joe almost singlehandedly for so long, have been fanned into flames of controversy.¹¹

And Justice Antonin Scalia, dissenting from the Court's holding in *Dickerson* that the "*Miranda rule*" was constitutionally based, cited Professor Grano's book on *Confessions*¹² and his article on prophylactic rules¹³ to support the contention that, "[o]ur continued application of the *Miranda* code to the States despite our consistent statements that running afoul of its dictates does not necessarily—or even usually—result in an actual constitutional violation, represents not the source of *Miranda's* salvation but rather evidence of its ultimate illegitimacy."¹⁴

In the field of Constitutional Law, Professor Grano has been a most articulate advocate of the interpretivist view of judicial review, that courts act illegitimately when they go beyond text and historical context and base their decisions on "unenumerated norms." In his path-breaking 1981 article, *Judicial Review and a Written Constitution in a Democratic Society*,¹⁵ Professor Grano developed the thesis that interpretivism is not a matter of "divining the intent of the framers,"¹⁶ but a matter of constitutionalization of values.¹⁷ Professor Grano maintains that the framers and ratifiers constitutionalized values into the text of the Constitution, and that the courts cannot legitimately go beyond those values to "discover" or more accurately, "create" "fundamental rights."¹⁸ This work continues to be cited in virtually every academic commentary dealing with the nature and legitimacy of judicial review.

Professor Grano's national stature and reputation in both of his fields resulted in numerous presentations and panel participations

11. Paul G. Cassell, *A Tribute to Joe Grano: He Kept the Flame Alive*, 46 Wayne L. Rev. 1215 (2000) of Cassell text.

12. See Grano, *supra* note 2.

13. See Grano, *supra* note 5.

14. *Dickerson*, 120 S. Ct. at 2343 (Scalia, J., dissenting).

15. 28 WAYNE L. REV. 1 (1981).

16. *Id.* at 63-69.

17. See *id.* at 69-75.

18. See *id.* at 18-29.

in judicial and academic venues. He has made presentations before the Judicial Conferences of the District of Columbia Circuit, Third Circuit, Sixth Circuit, Ninth Circuit and Tenth Circuit. He presented the inaugural Robert E. Krinock Lecture on the topic, *Delimiting the Concept of Judicial Activism: Flag Desecration and Abortion*, at the Thomas M. Cooley Law School in November, 1989, and two lectures, *The Constitutional Legitimacy of Prophylactic Rules* and *Misconceived Objections to Police Interrogation*, as part of the Speaker Series sponsored by Drake University Law School's Constitutional Law Resource Center in February, 1990. He also made a presentation on the right to counsel at a symposium on a contemporary perspective on the criminal justice revolution of the 1960's at Drake in April, 1992.

Professor Grano has made additional academic presentations at New York University, Loyola University of New Orleans School of Law, the National Judicial College at Reno, Nevada, the American Studies Center in Washington, D.C., Boston University Law School, the University of Chicago, the John Jay College of Criminal Justice, and Hillsdale College. In 1992 and 1994, he participated in panels of the Criminal Justice Section of the Association of American Law Schools at the Association's Annual Meeting. In 1991, he made a presentation on *Individual Responsibility in the Criminal Law* at the Bicentennial of the Bill of Rights program sponsored by the American Bar Association Section of Individual Rights and Responsibilities at the Association's Annual Meeting.

Professor Grano is one of the most prominent members of the Federalist Society, and has been a very sought-after speaker at Federalist Society Programs. He made presentations at the Federalist Society's Annual Lawyers Convention in September, 1988, September, 1991, and September, 1995. He was a participant in Federalist Society-sponsored programs by the Columbus Ohio Federalist Society Lawyers Chapter, and by the Federalist Society chapters at New York University Law School, Cornell Law School, Case Western Reserve School of Law, University of Illinois School, University of Detroit School of Law, and Emory Law School. In

1997, the Lawyers Chapter of the Michigan Federalist Society honored Professor Grano by establishing the Joe Grano Award and naming Professor Grano as its first recipient.

At the same time, Professor Grano has generously shared his constitutional knowledge and insights with the public and legal community in the State of Michigan. In addition to numerous media interviews and presentations to the students at Wayne State University Law School, Professor Grano has made presentations before the Detroit Federal Bar Association, the 1987 Law Day Program at Alpena, the Greater Detroit Chapter of the American Jewish Congress, the Upper Michigan Legal Institute, the Prosecuting Attorneys Coordinating Council, the 1992 Annual Conference of the Michigan Judges Association, the 1992 Constitution Day Dinner of the Downriver Republican Grassroots Organization, the Metropolitan Detroit Branch of the American Civil Liberties Union, and the Mackinac Center for Public Policy.

Professor Grano's career has also included important public service contributions. From 1982 to 1989, he served as the Reporter for the Michigan Supreme Court's Committee on Rules of Criminal Procedure. In that capacity, he drafted the proposed rules for Committee consideration and prepared detailed commentary for each rule.¹⁹ These rules were adopted with some modifications by the Michigan Supreme Court and became effective on October 1, 1989.²⁰

From August to December, 1988, Professor Grano served in the United States Department of Justice as Deputy Assistant Attorney-General, Office of Legal Policy. Shortly before undertaking this position, he made a presentation on *Resurrecting the Search for Truth in Criminal Justice* at the Attorney-General's Conference on the

19. See 422A Mich 1, 370 Mich. Rep. XV (1985); 428A Mich.1, 406 N.W.2d LX (1987); see also Joseph D. Grano, *Implementing the Objectives of Procedural Reform: The Proposed Michigan Rules of Criminal Procedure—Part I*, 32 WAYNE L. REV. 1007 (1986); Joseph D. Grano, *Implementing the Objectives of Procedural Reform: The Proposed Michigan Rules of Criminal Procedure Part II*, 32 WAYNE L. REV. 1335 (1986).

20. See 443 N.W.2d 782 (Mich. 1989).

What a remarkable career has been the career of Professor Joe Grano! This career has enriched Wayne State University Law School in his quarter-century as a faculty member, as it has enriched the thousands of students who have studied under him, his many colleagues who have been privileged to serve with him, the world of legal scholarship, and the legal profession as a whole. His contributions will endure, and we recognize and honor those contributions on the occasion of his retirement from the Law School.