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Yale Kamisar: Up Close and Personal

William Ian Miller*

Yale is larger than life. And so was his damn crim pro casebook. My first experience of Kamisar was lugging that casebook around in law school. Everyone complained. It outweighed other casebooks by 3–5 pounds on average. Like everything Yale wrote, it was thorough and also featured many excerpts from Kamisar’s writings. I must admit they were a pleasure and they stood out like a sore thumb from usual law school fare—for their passion, of course. But mostly because they were so well written. The good writing won me to his cause: yea beleaguered suspect, boo cops.

But one night *Dirty Harry* was on the late show and I was up watching. And Harry’s “do you feel lucky punk, well do you?” struck me as so much more moving than “you have a right to remain silent, etc.” From then on I was backing Clint. Nevertheless, reading Kamisar never ceased to be a treat even if I had become pro-Cop. But poor Yale: imagine a lifetime of work undone by fifteen minutes of a Clint Eastwood movie.

Some five years after lugging around the virtual Yale in law school I came to the University of Michigan as a visitor and met the real Kamisar in the flesh. He was a famous guy so I expected a standoffish snob. Standoffish? Yale standoffish? Hell, he stands right *on* you; the very first thing you notice about Kamisar is that you cannot notice anything else *but* Kamisar. All interaction will be up close and personal, sharing the same space, breathing the very same air.

He grabs you, gets in your face, and you retreat, and before you know it you are up against the wall. He has, in short, arrested you, for he is nothing if not arresting. And he never gives you *Miranda* warnings. He doesn’t have to. He does not need to remind you that you have a right to remain silent, because he ain’t ever going to let you get a word in edgewise, anyway.

No wonder he found his way to his subject matter. *Miranda* is about keeping distance, maintaining distance; cops get too close for constitutional comfort. Yale comes to protect the oh-so-wronged suspect by, you guessed it, interposing himself between the cop and the perp. Hey cop, you’re in *my* space.

Yale is wont to tell the story about how when the 300 guys he graduated with from officer training were shipped out, 100 got off in San Francisco, another 100 in Hawaii, fifty in Tokyo, forty-nine more in Seoul. Last stop T-bone hill and only Kamisar is left to face the bullets. Well the army ain’t dumb, is it? He was their secret weapon. For the next day Yale sets off up the hill to violate the personal space of the North Koreans. No fear he felt could overcome the greater compulsion driving him to get too close for comfort. And the Reds didn’t like it

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one bit. One took such umbrage at Yale's bad manners that he leveled his rifle at Kamisar from about ten yards away.

We would be without Yale here tonight if some second generation Japanese American hadn't blown the Red away. Yale of course wrote the Nisei up for that. That man's luck was not that he saved his second lieutenant, *but that he saved the unit's Homer*. For good deeds done in Kamisar's unit got written up by a master in compelling prose, and the men got medals, more medals than any other unit. Not that they were braver, they just had a better bard.

Kamisar's ability to write well did more than break the boredom for me as a law student; it also saved Yale's life. For when it became apparent to the unit commander that the people Yale wrote up for medals got them, Yale was immediately yanked off the lines and set to composing false tales of unit bravery. Second lieutenants who can stop a bullet are a dime a dozen, but one that can write well needs to be kept out of harm's way.

Yale's getting too close can get him in trouble. There was his scandalous pummeling of the secretary a few years back, which turned out to be nothing more than Yale gesticulating wildly but standing so close that the gesticulation flattened the secretary. The rule came down that secretaries had to be shielded from the wild Kamisarian beast by being restationed down the hall. (I omit the tale of his proctoring his own exam, that led to an absolute rule that no prof could proctor his own exam.)

Yale is not just in my face or your face, or Terry's face [former University of Michigan Dean Terrance Sandalow], he actually gets into his own face. For one of the other great distinguishing traits of Kamisar is what I call his capacity for *autoprovocation*. He provokes himself into fury when no one else is around to aggravate him. It's as if his own words appear in a cartoon balloon in the air before him. He reads them out there and then flies into a fury at the imagined offense they give him.

Here's a typical example: Yale is sitting quietly in a faculty meeting and all of a sudden it dawns on him that perhaps he should say something. He is not even all that interested in the issue. So he says, well, I think we should hire the guy, seems like an easy case. Then he sees those words out there and takes offense at them. But why is it an easy case, dammit? Because Yale Law School gives everyone Honors nowadays. I mean you cannot tell whether any of these so-called stars are any good anymore like they were when [Jerry] Israel got hired. The records are filled with lies, all hype. So to hell with this guy.

I will miss the legendary battles—like so many epic wars of Greeks and Trojans or pygmies and cranes—the wars of Kamisar and Sandalow. Will we imps and Lilliputians who remain make such good material? All our great characters are retiring or soon to retire replaced by careful, guarded, buttoned down ever-so-proper souls (okay, there is Rick Hills but he is the exception).

But mostly I will miss Yale's guileless innocence, that heart on his sleeve. And nary a better heart exists, even after it almost bit the dust a couple of years ago. His partisanship of the younger faculty; his loyalty to this school; his care to

the workers in the vineyard of the profession to read and cite their work, to give others their due and never claim for himself ideas that he could attribute to others. He has perfect integrity.

Yale is a wonderful allegory of human innocence (I mean this as the highest moral praise). If he is interested in something he gets red in the face and fights; if he is bored he nods off during the talk. Yale is utterly incapable of guile. The outer life with all its charm and readily satirizable character traits is a perfect image of the inner life too. (By the way: The best words on Yale capturing him for all time are Yale's own in that interview in the *Res Gestae*,¹ capturing so perfectly the sheer exuberance, the innocent irresistible energy; there we have Yale Kamisar performing perfectly Yale Kamisar; role and man, mask and soul are completely united, always. The text of that interview should be hammered into stone and put for all to read at the cornerstone of any new building we build.) Was ever a man so clearly himself, always himself, and no other person than Yale? He is incapable of even the smallest hypocrisy.

I have to say my heart is not in the mood to joke around. Yale's retirement simply depresses me and for some reason I feel myself on the verge of tears. I simply do not know what to say except I just love the man. We will never see the likes of him again. To borrow the last line of Charlotte's Web: it is not often that someone comes along who is a true friend and a good writer. Yale is both.

¹ Andy Daly & John Fedynsky, *Caught on Tape: Yale Kamisar Talks About End of Teaching Career*, RES GESTAE, Oct. 28, 2003, at 1.