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*U.S. Court of Appeals for the D.C. Circuit*

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## PROFESSOR YALE KAMISAR: “AWESOME”

*Harry T. Edwards\**

Yale Kamisar arrived in Ann Arbor in the fall of 1965, just after I graduated from the University of Michigan Law School, so I never had him as a teacher. We were colleagues, however, for almost ten years during the 1970s when we were both members of the Michigan faculty. And we have remained good friends ever since.

When the editors of the *Michigan Law Review* asked me if I would submit a “tribute” to Professor Kamisar commemorating his retirement from the faculty, I was happy to accept the invitation. Yale is one of my heroes in the academy — he is the consummate “Law Professor” in all the best senses of the title. And he has been a loyal and caring friend, cheering me on at every stage of my career even when I left Ann Arbor, first to teach at Harvard Law School and then to join the bench. There is no way that I would have passed up an opportunity to pay tribute to my friend and colleague.

Our lives have been intertwined for many years. We have been allies on numerous policy issues (curriculum, faculty hires, and student admissions) that came before the law school faculty. Yale never shied from a good battle in a faculty meeting, so he was great to have on your side. We have played tennis together. Yale wasn’t very good, but he beat me regularly because he had the advantage of practicing with his three sons, all of whom were outstanding players. We have argued endlessly over the fortunes of Michigan’s football and basketball teams, neither giving quarter to the other. We have enjoyed delightful lunches and dinners together, laughing over some of the follies of teaching and debating world affairs. We have shared the stage at conferences addressing the work of the Supreme Court. And we have traded numerous articles and ideas over the years. In all of our encounters, I have always learned from Yale.

The moments I remember most are the occasions when Yale would barge into my office at the law school yelling something like: “Did you see what the Supreme Court just did!” or “Have you read

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that editorial in the *New York Times* today!” or “That faculty meeting was terrible!” Almost everything he said ended with an exclamation mark. Questions were merely rhetorical. His energy was boundless. He cared deeply about his teaching, about his scholarship, about the law school as an institution, about his colleagues on the faculty, about his students, about his family, and all manner of things — especially with respect to criminal justice — that affected the welfare of society.

I have always believed that Yale Kamisar has had an inestimably great impact on his students and that he is seen to be an extraordinary teacher, scholar, and commentator. I decided to test my assumptions by surveying some of my former law clerks and one close friend, all of whom graduated from the University of Michigan Law School. My survey included fourteen respondents who graduated from Michigan between 1975 and 2001. One respondent graduated in the 1970s, seven graduated in the 1980s, four graduated in the 1990s, and two graduated after 2000. Eight of the fourteen respondents were Editors-in-Chief of the *Michigan Law Review*; most graduated at or near the top of their class; nine served as law clerks at the Supreme Court; ten are now practitioners; and four are law professors. I asked each respondent to answer three questions:

- (1) Tell me whether you had Professor Kamisar as a teacher when at the University of Michigan.
- (2) Give a “one word” description of Professor Kamisar — the word that, in your view, best captures the man.
- (3) Write a short paragraph telling me how you would assess Professor Kamisar’s contributions as a teacher, and/or scholar, and/or criminal law commentator, and/or leader at the University of Michigan.

Twelve of the fourteen respondents had Professor Kamisar for at least one law school class. The two respondents who did not have Yale as a teacher knew him well in connection with their work on the *Michigan Law Review*. The words used by his former students to describe Professor Kamisar were, not surprisingly, very similar: passionate (*cited five times*); provocative; exuberant; forceful; unforgettable; unyielding; intellectually rigorous; endearing; institution; hilarious; intense; kitten; and, my favorite, awesome.

The paragraphs assessing Professor Kamisar’s contributions as a teacher, scholar, criminal law commentator, and leader at the University of Michigan are wonderfully revealing. With their comments listed in the order of their dates of graduation — starting with the earliest graduate — here is what some of Professor Kamisar’s former students have to say about this “awesome” man:

*I had Yale Kamisar for my first semester, first year criminal law class. I recall being terrified when he called on me to discuss the cannibal case in*

*the first week of class. After that, things got less terrifying and I thoroughly enjoyed the incessant sparring Yale provoked.*

*After my first year, I worked as Yale's Research Assistant during the summer of 1973. I helped him prepare a section on Symbolic Speech for his Constitutional Law casebook. I was thrilled when he thanked me in the preface.*

*Working with Yale was great training for me. He has always been enormously generous and supportive. It is not surprising that I eventually decided that I too wanted to be a law professor, in fact to teach Constitutional Law. Yale has continued to encourage, inspire, and support me. He even helped convince West to publish my book on the Supreme Court. As I said, he is "awesome." I hope that I can be half as inspiring and helpful to my law students.*

\* \* \* \*

*I have rarely met a person more powerfully and forcefully committed toward a singular view. He made a huge commitment as a scholar and a presence at Michigan because of his absolute, unyielding view of the injustice of the criminal justice system, of the rights of persons accused of crime, and of the unfairness of police practices. To me, he was at times frustrating as a professor because everything fit in that almost one-dimensional world view; there were never two sides to a problem or difficult choices to be weighed and reconciled. But because of his impassioned — screaming — sense of the rightness of his world view, he was very influential. He simply willed the world to see things the way he did, and he succeeded.*

\* \* \* \*

*Whether students agreed with him or not, his approach to classes always generated substantial and often intense student involvement, which ought to be one of the principal goals of the classroom experience.*

*I thought for a while about [describing Professor Kamisar as] "consistent" because his adherence to the principles that drove him when I was at the University of Michigan (and from his early writings much earlier than that) has never wavered. He used to tell stories about growing up playing stickball in the streets and having all the kids take off as soon as a "cop" appeared. I suspect that experiences like that really colored his world view and gave him an unshakeable skepticism about the motives and bona fides of authority figures like the police.*

*I think for many students of my vintage, he represented all that was great about the law school. He taught many classes. He was enormously popular. Students didn't want to leave the place without experiencing him at least once. When we organized a morning faculty session for our 20th*

*reunion and solicited input on which professors alums would most like to spend time with, there was virtual unanimity in favor of Yale and JJ White.*

*From a personal perspective: I very much recall my criminal law class with him, first semester of first year. No one knew what to expect at law school. Most of the classes were pretty tame — someone would be called on and grilled for a while with mostly soft questions. Everyone was terrified but in retrospect it was pretty mild because you rarely had the sense that the professor had a view to which he or she was firmly committed and that he or she would defend with more than a detached intellectual curiosity. Kamisar was completely different because you always knew what he thought about any subject he was discussing. There was complete transparency. Rather than putting out ideas with a veil of neutrality, he made his arguments and seemed to want them to be challenged and to want students to learn how to advocate a position. He was loud. He was aggressive. He was a riot. And the most amazing aspect of it was that it wasn't an act. He cared about the issues — deeply and passionately — and no one could come away from an encounter not at least as impressed at how much he cared as by how much he knew. And of course he was irreverent (in an entirely appropriate way) in his criticism of decisions and lines of reasoning, opening our eyes to the fact that judges are not infallible and that their reasoning (but not their selves) was completely fair game and that nothing needed to be taken as necessarily correct just because it was written in a bound volume.*

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*Yale took a strong interest in the Law Review and saw it as an important part of the Michigan Law School institution. He tried to steer good criminal procedure articles our way, which sometimes meant he would bring a relative unknown who was doing interesting work to our attention. We always made our own decisions, and he respected that, but we valued his suggestions. His energy and enthusiasm seemed to know no bounds and they were connected to practical steps.*

*I think of Yale as a great mentor. I know two Michigan grads with whom Yale has stayed in close touch and they both credit him with boosting opportunities for them. That was also what was going on with his law review recommendations, of course, so his mentoring was not confined to Michigan grads. I think he had a commitment to helping everyone do their best and the confidence that this was the best way to benefit his fields of scholarly interest and the institutions he cared about.*

\* \* \* \*

*I had Professor Kamisar for first year criminal law. His class was by far the most entertaining and intellectually stimulating one I took during my three years at UM Law School. I disagreed then, and I still disagree, with many of his views on criminal law issues such as the good faith exception*

*to the exclusionary rule (a hot issue then, I recall). But to this day I admire the passion and skill with which he advocated those views, and I am thankful for the experience of having been in his class. Every first year law student should be so lucky.*

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*As a person, the one best word to describe Professor Kamisar is passionate. As a criminal law teacher, commentator, and scholar, that passion took the form of fiery compassion for those whom I believe he referred to as "the little guys." Professor Kamisar brought the soul of a public defender to the halls of academia and made it clear that to be a check on those who wield power can be a noble calling.*

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*Professor Kamisar's basic teaching tool was to engage in a rigorous argument with his text, usually a Supreme Court opinion. No sloppy reasoning or fuzzy non sequitur was safe from his analysis: "Well, which way does that cut?" . . . "What do you mean by that?" Or, most devastatingly: "So what?" Ever since, it's been hard to write a sentence in a brief without thinking about whether it would get by Professor Kamisar.*

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*He's simply amazing — he taught me the art of progressive rhetoric. I always feared that being a progressive meant being the underdog in a debate because the conservatives always managed to occupy the intellectual high ground since they didn't have to resort to arguments of compassion to prevail. What Professor Kamisar did was pull out the compassionate, emotional arguments so gracefully that no one noticed — or, even, others mistook them for straight intellectual arguments. He's a master.*

*There's also a very funny story [about an experience I had with Professor Kamisar when he was writing an] article for the Review. He really wanted to be in [an] issue with Professor Burt from Yale, but he was drafting the article slowly, even as he was pushing us to get the Review "caught up" so that it published on the date on its cover. Ultimately, after delaying as long as I could, I had to break the news to him that we'd have to postpone his article to the next issue and publish the Burt article without his. He was gracious about it, but must have told anyone who'd listen that I bumped his piece by a month, since within hours I started getting calls from junior faculty members asking how on earth I'd had the guts to bump Kamisar's piece? He still refers to me as the EIC that bumped him.*

\* \* \* \*

*I had Professor Kamisar during my first semester of law school for criminal law. My earliest recollection of him, therefore, is one of hazy*

terror. Somewhat ironically, given his landmark scholarly contributions relating to *Miranda*, Professor Kamisar was the consensus choice among students as the most fearsome interrogator in the classroom. I still remember watching him scan the seating chart and praying that his eyes would not come to rest on my name.

Nevertheless, my one-word description of Yale is “endearing.” This is surely not the word I would have chosen during my first semester of law school. And yet I soon came to know Yale as a man of remarkable warmth and generosity. When I was editor of the law review, Yale appeared in my office to volunteer helpful ideas and leads on good articles. When I applied for clerkships and, later, went on the teaching market, Yale was enormously supportive. And during my first years in the academy, Yale continued to send me gracious notes of encouragement. As many other beneficiaries have learned, there is no one kinder and more supportive of junior colleagues and those trying to get a foothold in the academy.

Yale Kamisar’s achievements as a scholar are legendary, but his generosity and warmth as a mentor and colleague will be remembered with equal admiration by generations of Michigan alumni.

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This was hard. I opt for “passionate,” which I am sure will be a popular word. The other leading contender was “encyclopedic” for of course his knowledge in the field was that — and he was passionate about sharing this encyclopedic knowledge. I sought for a word that combined the two, but was at a loss. “Savant” didn’t quite capture it, given the mechanistic portrayal that the savant syndrome received in the *Rain Man* movie. If you had permitted me more than one word, I would have opted for “artistic savant” to convey the comprehensiveness, brilliance, creativity, etc., often associated with the musical or artistic manifestations of the syndrome. I of course do not think or wish to imply that Professor Kamisar actually suffered any sort of physical or psychological syndrome, but rather am trying to capture the essence here.

Of course I enjoyed greatly his *Criminal Procedure* class, but I enjoyed more his visits to the Law Review office or the random encounters in the hallway or in his office. When the Court had decided a case that he cared about — and in those days he was working as much on euthanasia as on *Criminal Procedure* — Professor Kamisar’s excitement to share his thoughts was overflowing. I would sometimes see him in the library, his office, or the hallway, and he would quite enthusiastically declaim on the current case (or, sometimes, something else that was on his mind). It was always passionate, always very analytic, and he always seemed to be enjoying himself. In the words of the great *Spinal Tap* movie, his volume “went to 11” on those occasions. Indeed, this last was the best part, and an

*especially useful thing for a student who felt sometimes like the work never ceased. His joy for the law (even when it was turning against his preferred outcomes) seemed boundless.*

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*I did not have Professor Kamisar as a professor. All those tales of his fire and brimstone (that I believe he foments) kept me out of his Criminal Procedure, in addition to the fact that it never worked for my schedule. Although I was not in his class, even I heard repeated his frequent references to the critical relationship between cops and donuts!*

*I did edit one of his articles while I was EIC at the Law Review. Two words immediately come to mind to describe him: unforgettable and passionate. The article that I edited was an exchange between Professor Akhil Amar and Professor Kamisar about the Fifth Amendment. Professor Kamisar was inexhaustible. He pored over Professor Amar's analysis and responded to each and every point of disagreement. He would arrive at my office early in the morning and late at night to bring me new material that absolutely, positively had to be included in his piece. He had no concern for the publication schedule — such a mundane detail should not serve as a barrier to the publication of the truth as he saw it! Not only did he work tirelessly on the article to advocate for his point of view, he also worked tirelessly to convince me that he was right, legally and morally. He was so committed to his ideas and his point of view that he never tired of explaining them to me, trying to make sure that in the course of my editing responsibilities, I did not fall prey to — in his considered opinion — Professor Amar's faulty logic. Professor Kamisar was indefatigable, totally in love with and inspired by legal reasoning. His passion was inspirational, even if it was sometimes exhausting. Among all the authors that I worked with over the course of my year as EIC, his willingness to trudge down to the depths of the Michigan law library to talk to me (and shout, stamp his feet, and shake his hand) stands out.*

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*Professor Kamisar taught me criminal law during my first semester of law school, in the Fall 1994. I had the misfortune of being late for the first day of class; by the time I arrived, the only seats left were in the front row, which is where I sat. For the rest of the semester, Professor Kamisar called on me anywhere from once a week to three times a class. U.S. Senators in the 1950s and 1960s may have received the "Johnson treatment." I received the "Kamisar treatment."*

*As a result of either forced frequent class participation or sheer close physical proximity, I quickly came to realize what I think everyone in the class eventually appreciated: Professor Kamisar was a force of nature, as a teacher, lawyer, and human being. As a criminal law professor, he assumed every student learned the doctrine as we went along. This might*

*have surprised some of the class at finals time. What he reinforced daily in classes that were challenging, funny, sometimes raucous, and never boring, were the critical value and policy choices underlying society's decisions to penalize (or not) particular conduct. For example, euthanasia. By the end of the semester, wherever we found ourselves on the bell curve, my classmates and I knew that Professor Kamisar had energized our initial thinking about the law.*

*Later, I got to know Professor Kamisar in slightly different ways, as a member of the Law Review and fellow member of the Michigan Law School community. During those times, I learned that Professor Kamisar cared deeply not just about what happened on a daily basis in the classroom, but also about the Law School as a long-lived institution. Professor Kamisar was present and available everywhere: in his office, at panel talks and receptions, and up and down the school's hallways. There was no important issue that escaped his attention and thoughtful consideration. And, of course, he never hesitated to share his view with others. Put simply, Professor Kamisar was the soul of the law school.*

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*"Institution" is the word that sums up his contributions. I cannot think of Michigan Law School without Professor Kamisar, whose name is virtually synonymous with the institution. Nor could I imagine having gone to Michigan without taking a class taught by him — he is so much the spirit of the place. Even after his long tenure, no professor had greater passion for either teaching or the law, and none a more fervent regard for the Constitution. He is the genuine article.*

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*Professor Kamisar plays an increasingly rare role in modern academia — he is at once an enthusiastic and caring teacher who provides a wonderfully engaging classroom experience while also playing a central role in defining Michigan's public character. His success in the law only makes him more interesting and more effective as a teacher and his outspokenness is matched only by his generosity.*

*I ran into Professor Kamisar in the hall shortly after I had accepted your offer to clerk for you. He was very excited in his congratulations and expressed great satisfaction that I hadn't found myself working for someone who, in his words, traded his clerks' toil for personal gain. He then went on to lament that the reason he had never achieved much in life was that he was "just a kitten at heart" and incapable of exploiting others to make a name for himself. Though a bit over the top, his description was entirely accurate — his magnificent achievements only come because of his intellect and work ethic, making the mark he leaves on Michigan and the law all the more remarkable.*

There is so much more that I could say about Yale Kamisar, but it is unnecessary. There is nothing more gratifying for a teacher than to know that he is respected, treasured, and admired by his former students. There is no need for me to embellish their words. What is clear is that Yale's passion and brilliance will be sorely missed at the University of Michigan Law School.