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YALE KAMISAR THE TEACHER

*Jeffrey S. Lehman**

I first heard Yale Kamisar's name in the spring of 1977 while deciding where to go to law school. The then Dean of Admissions at Michigan suggested I call a graduate practicing law near me in upstate New York. The graduate eloquently endorsed Michigan. But what impressed me most was his statement, "When you go to Michigan you must be sure to take a course from a professor named Yale Kamisar. That course changed the way I thought about law. Every day we'd go to class and talk about interesting cases and I was always confused. But at the very end of the course, when I was studying for exams, I figured it out. Professor Kamisar thought all those cases were wrongly decided!"

Others who have studied with Yale might wonder why it took that student until the end of the course to understand what Yale was saying. I suspect he was exaggerating a little bit for the benefit of a prospective student. In any event, it worked. The statement stayed with me when I arrived in Ann Arbor.

As a first-year law student, I was assigned to Jerry Israel's criminal law class, and a friend of mine was assigned to Yale. Unlike the upstate New York graduate I had spoken with, however, my friend was ambivalent. He acknowledged that Yale was "entertaining," but worried that Yale was spending too much time going over and over and over the same, straightforward issues, of "intent" and "causation." How, my friend fretted, could he be fully prepared for practice if he had a robust understanding of questions like those at the price of a lost opportunity to master the difference between embezzlement and larceny by trick? I'm sure that with the benefit of hindsight, my friend appreciates the wisdom of Yale's choices.

As my law student years progressed, I kept hearing "Kamisar stories." He was a faculty member who loomed larger than life. For example, one day he told his nine a.m. class he had been up until three in the morning finishing an article, that he wasn't prepared, and that he was going to reschedule the session. I daresay he's not the only professor ever to show up for class unprepared; but Yale had the integrity to confess that to his students and to cancel class for the day, rather than trying to bluff his way through the hour.

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Notwithstanding Yale's reputation, I somehow managed to reach my final year of law school without having taken a course from him. So that fall I signed up for criminal procedure à la Kamisar. I learned a lot about the Fourth Amendment and *Miranda* and *Massiah* in that course. But what I really learned had much more to do with teaching and with advocacy.

I think that much of what law professors teach is not substance but a skill — a particular style of advocacy. Most of us implicitly suggest that effective, ethical legal argument involves a certain “pose.” The pose is that of the thoughtful, reflective scholar; one who sees the difficulty of a problem, its complexity, the nuances, the play of competition among worthy social values; one who then struggles to make the close judgment that one position is better than its opposite.

During my first two years of law school, I am quite sure that I came to believe that this pose was the way lawyers *should* advocate. It was instrumentally effective. And it was morally worthy.

In that criminal-procedure class, Yale offered us a different model. Of course, it was obvious that he knew how criminal procedure is riddled with the same close balanced judgments between respectable concerns as any other field of law. From time to time he would even talk about the area as reflecting a difficult choice between responding to citizens' concerns about the menace of state power and responding to their fears of one another's private lawlessness.

But even then, it was obvious which concern affected Yale more deeply. He made no secret of his belief that the Bill of Rights embodies a special concern with the dangers of concentrated state power. Indeed, what made Yale's class so special was that he did not park his passion at the door; it infused every hour of every day we met.

I had other professors in law school who held passionate commitments, but none of them brought their passion to the classroom the way Yale did. Indeed, until I took a class from Yale, I had come to believe that hot-tempered passionate argument was at best counterproductive and at worst a kind of unprincipled bullying.

Yet Yale's example showed us otherwise. In that class, he combined passion with nuance. It was effective. He won a lot of converts to his perspective on criminal procedure, and even those who remained unpersuaded were not unmoved. More importantly, he showed us that lawyers could exercise their craft in the fully engaged service of profound personal commitments.

I later had the privilege of being Yale's faculty colleague and friend. And I saw how the virtues we saw in the classroom were leavened with still other admirable qualities — warmth, humor, generosity of spirit. For many of us, he will always capture the soul of a great law school.

Today I am once again living in upstate New York. I hope that prospective law students will ask me about Michigan, because I know

what I will say. I will tell them about the many ways in which I was intellectually transformed in Ann Arbor. I will tell them about my remarkable class with Yale Kamisar. And I will urge them to take a class from one of Yale's disciples — those rare and special professors who, by example, teach their students how to forge compelling arguments from an amalgam of intellect and passion.