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# SAYING GOODBYE TO A LEGEND: A TRIBUTE TO YALE KAMISAR — MY MENTOR, TEACHER, AND FRIEND

*Eve L. Brensike\**

I remember it as though it was yesterday — dozens of students filing into Hutchins Hall for their first criminal procedure class. The legendary Yale Kamisar walked briskly to the front of the room, his upper body moving first slightly forward and then ever so slightly backward in almost a rocking manner. He carried nothing except for a two-inch black notebook, tattered at the edges and marked with brightly colored tabs protruding from each page. Paying no attention to the hundreds of eyes fixed on his every move, he dropped the notebook on the podium, stepped up to the blackboard, and began scribbling words and short phrases in three different columns:

*Escobedo*  
*coercion*

*Miranda*  
*compulsion*

*custodial interrogation*  
*voluntariness*

He does not *look* that scary, I thought to myself. After all, he wasn't an especially *large* man. Sure, we had all heard the rumors about how he had thrown a book at a student once and had broken the student's glasses in the process, but that was years ago. He was older now and seemed innocuous enough.<sup>1</sup>

"Mr. Smith, what was the single most important line in *Miranda v. Arizona*?" Kamisar's voice boomed out from the front podium. It was like a scene out of *The Paper Chase*. The room fell silent as everyone looked around for poor Mr. Smith to come out from hiding.

Mr. Smith mumbled some incoherent answer in an attempt to placate Kamisar only to find that, by the time he finished the answer, Kamisar had left the front podium, walked up the center aisle, and was now standing directly in front of him. "So, what if the police just want to interview a suspect?" Kamisar challenged. "Fred Inbau talked about letting the police conduct an 'unhurried interview' — what does Inbau mean by that?" By the time he had finished the question,

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1. For the record, the rumors of Professor Kamisar's "book-hurling days" are greatly exaggerated. Yes, he did hit a student's glasses once, but the student was not *wearing* the glasses at the time. Rather, the glasses were on the desk in front of the student. Professor Kamisar tossed a book onto the desk to demonstrate the use of force in a criminal case and accidentally hit the student's glasses in the process. Professor Kamisar then replaced the glasses and refrained from tossing books in subsequent years.

Kamisar was leaning in so close that Smith must have felt Kamisar's breath on his face. Smith shifted uncomfortably in his seat and was about to say something when Kamisar burst out the answer to his own question. "I'll tell you what he means. He wants to give the police free reign to interrogate! An interview suggests a certain amount of freedom. This isn't an interview! It's not a chat! These cops are out for blood!" Kamisar's face was fiery red at this point. His hand gesticulated wildly next to his head as he continued to rant, getting louder by the minute: "We cannot trust the prosecutors or the police or anyone else! That is why we have the Bill of Rights!" He paused only long enough for the blood to start circulating to his face again. Then he leaned forward as though perched and ready for round two. "Okay," he said, "back to you."

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After only two minutes in Yale Kamisar's classroom, I realized that it was not a place to learn black letter law; rather, it was a place to question it. His course was a lesson in advocacy during which he used law and logic to push students to think, analyze, and argue. While other professors wanted us to read Supreme Court opinions and figure out what the Justices were saying, Professor Kamisar wanted us to understand what the Justices were not saying: What were the flaws in their logic and what had they forgotten or intentionally left out of their opinions? When the opinions were divided, who was right and who was wrong? Which arguments made sense and which could not survive scrutiny? Professor Kamisar forced us to question the law, to formulate our own opinions about what the law should be, and to argue for our ideals — to back down was a sign of weakness, of intellectual defeat. In Yale Kamisar's classroom, the only thing worse than not defending your opinion was failing to have one in the first place.

When I first met Yale Kamisar I was very nervous. After all, I was just a first-year criminal law student and he was "the father of *Miranda*." My first interaction with him did not exactly assuage my anxiety. One minute I was introducing myself, and the next minute I was backed into a corner, and he was standing five inches in front of me yelling about the Supreme Court's latest criminal procedure decision. Like most students, I was intimidated by his gruff demeanor, lack of respect for personal space, and apparent need to shout about *everything*. In time, however, I learned that he yells, not to intimidate or control, but because he is so excited and passionate about the law that he is incapable of expressing himself in any other way. As for his gruff and intimidating demeanor, it didn't take me long to figure out that it was all a façade. Yale Kamisar is one of the kindest, humblest, and most generous individuals I know.

As his research assistant, I spent countless hours in his office discussing the revisions to his casebooks and the research needed for his next article. Even though he was extremely busy, he always took the time to share his insights with me and ask for my thoughts. He challenged me to think critically about my views and always encouraged me to follow my gut and fight passionately for what I believed. His love of the law was infectious. Soon, I found myself getting as outraged by Supreme Court decisions as he did. I would storm into his office shouting about some case that I had read the night before only to have him laugh at me and say “just wait thirty years and see how you feel after you have read hundreds of cases like that one.”

The hours that Yale Kamisar invested in me were only a small fraction of the time that he devoted to his students and colleagues. Every time I walked into his office, he was on the phone answering questions. I was not surprised when I learned that he receives about a dozen calls every day from people asking for his advice. What did surprise me, however, was how much time he would spend on the phone returning each and every call. When he was not on the phone, he was answering student e-mail questions or reading manuscripts sent by his colleagues. He would often be up half the night working on his own articles, because he had spent all day responding to his colleagues with suggestions on how to improve their manuscripts. I remember asking him one time why he spent so much time reading people’s manuscripts. His response was simple: “Because they ask me to.”

Even though Yale Kamisar selflessly helped others with no expectation of something in return, his humble and giving spirit did not go unnoticed. The summer between my second and third year in law school, the Supreme Court decided *Dickerson v. United States*.<sup>2</sup> The *Michigan Law Review* and Criminal Law Society worked closely with Professor Kamisar to organize a symposium about the status of confession law after *Dickerson*, and we invited the top confession law scholars from around the country to participate. I remember calling Paul Cassell, one of Professor Kamisar’s harshest critics, and telling him that we were hosting a confession law symposium dedicated to Professor Kamisar. When I asked if he would attend, he immediately replied, “for Yale, of course.” Even though they were on opposite sides of the political spectrum, Paul Cassell’s immense respect for Professor Kamisar’s work and his admiration for Yale Kamisar as a person superseded their ideological divide. Every scholar we invited responded with equal enthusiasm. They were all willing, without hesitation, to drop everything and fly hundreds of miles to participate

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2. 530 U.S. 428 (2000) (holding that *Miranda v. Arizona*, 384 U.S. 436 (1966), was a constitutional decision that Congress could not override by statute).

in a symposium dedicated to Yale Kamisar. It certainly wasn't the Ann Arbor weather that attracted them to our symposium; rather, it was their appreciation and respect for Professor Kamisar and their desire to honor his life-long commitment to legal scholarship.

Many lawyers and law professors have the intellectual ability to read and absorb case law and legal scholarship, but only a few have the passion and the drive to read and retain everything that has been written on a particular subject. Among those with the requisite drive and dedication, an even smaller percentage possesses the acumen to understand the logical problems within the law and to formulate progressive solutions to those problems. Then, every once in a great while, the world is fortunate enough to have a legendary scholar like Yale Kamisar — an individual who not only has the innate intelligence, drive, and ability to create innovative solutions to the nation's legal problems, but who also has the rare talents of a master advocate. Yale Kamisar arms himself with knowledge about the law, as well as an understanding of the historical context of the time, the political pressures on the courts and legislatures, and the philosophical beliefs of the key players in every branch of government. With that knowledge, he knows when and how to most effectively communicate his message to those in the best position to effectuate his desired changes. Add to that a genuine heart of gold and a never-ending desire to help others, and you have a truly amazing scholar, teacher, and friend.

When I was young, my father taught me that success should not be measured by the ultimate destination that you reach in life, but rather by the number of people whom you positively influence along your journey. By that definition, Yale Kamisar is the most successful person I know, not because of the number of articles he has written or the number of times that he has been cited by the Supreme Court, but because of his dedication and devotion to his students and colleagues. For the past thirty years, Professor Kamisar has ended his criminal law and criminal procedure classes by imploring his students, if they do nothing else over the course of their legal careers, to represent at least one indigent client in a criminal proceeding. Little does he know how many of his students have taken that message to heart. In the two years that I have been working as a public defender, I have run into dozens of lawyers who are public defenders because of Yale Kamisar. Thousands of indigent defendants have benefited from his teachings. Judges and prosecutors nationwide think twice about a defendant's Fourth, Fifth, and Sixth Amendment rights because of Yale Kamisar's lectures and writings.

I still hear his voice in the back of my head when I argue a suppression motion or attack the constitutionality of a criminal statute. Never has a teacher pushed me so hard or taught me so much.

To my mentor, my teacher, and my friend — you will be missed more than you will *ever* know.