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INSPIRING GENERATIONS

*Nancy J. King**

It is difficult to imagine Michigan Law School without Yale Kamisar. He seems as much a part of the place as the Reading Room, the heavy oak doors, and the sounds of the marching band practicing, the steam heaters knocking, and the footsteps on the stone floors. That Michigan students will no longer experience his inspiration and guidance in person is sad, but inevitable. Fortunately, law students everywhere, and the law that they have learned to love, will never escape his influence.

The editors of this issue have encouraged us to relate our own experiences with Yale. Mine started long ago. I first encountered Professor Kamisar in 1966, tagging along with my mother to law school when I was just seven years old. “Kamisar” was one of her professors, in his first year teaching at Michigan after leaving the other U of M — Minnesota. Yale has told me that I sat next to my mother in class, looking on in a very early edition of the casebook that I was later to coauthor. I have absolutely no memory of this experience myself (at most I may have ducked my head inside a classroom once or twice). I remember, though, that my mother told me at the time that Kamisar was “a great man.” Years later, as I first sat down in his class as a law student myself, I had high expectations. But nothing prepared me for how much I would end up learning from him.

In a Kamisar classroom, discussion of a decision by the Supreme Court was a highly animated version of “What’s wrong with this picture?” We students discovered where a Justice’s logic fell apart, what questions went unanswered, which real-world conditions were ignored. We learned how to clear aside fuzzy expression and articulate the principles beneath. It wasn’t long before the analytic skepticism we developed in Kamisar’s class became part of the standard equipment that we applied to everything we read in law school. Now and then, we used these tools to test Kamisar himself, doggedly picking apart the arguments that he made to us in class. At those golden moments when we watched one of our classmates holding his own against the master, bringing him up short, Yale would pause, smile, and say, “Good point, damn it . . . OK, OK . . .” For with his heart-felt convictions, he placed a high value on excellence — excellence in reasoning, in

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research, and in writing. Sheer smarts and good work counted with Kamisar, never political correctness.

He reserved his considerable temper for the lazy, the disrespectful, the arrogant or indifferent student who dared to admit he hadn't read for class, didn't listen, or worst of all, didn't care. There were few of these, as I recall. It was the rare student who could manage not to care about a subject with Kamisar yelling about it ten feet away — ten inches or less if the discussion was taking place face to face in the hallway. Not a week went by when he didn't grab his dog-eared copy of the Constitution, which he keeps in a pocket next to his heart, and wave it around to make a point. His passion for the Constitution was contagious, and it was the best affliction we ever caught.

In class, he told us stories about what really happened to the parties, about the Justices, about the litigation. Yale, I later learned, is always ready with a story. Interviewing for jobs, working with law review editors, faculty politics, you name it, for every occasion Yale can produce a meaningful anecdote. Like the one about the poor student who upon receiving an offer on the spot in a clerkship interview with an eminent judge, replied with a polite inquiry about the amount of time he would have to decide, noting that he had an interview in a matter of hours with a different judge to whom he felt committed, only to hear the harsh words, "Well, in that case, the offer is withdrawn." A shocking lesson, just the kind of tale Yale has told generations of law students seeking clerkships in order to impress upon them the importance of preparation and humility.

Judging from my own experience and the comments of others, Yale is unceasingly generous with his time and advice to students and graduates. He has taken many under his wing, calling around on their behalf, writing letters, counseling them on the phone, commenting deftly on drafts, opining on recent decisions.

This goodwill is invaluable, as his name is respected by judges everywhere. Judges, like others who have read Yale's work, have come to recognize the value of the original insights and forceful arguments he has made over a lifetime. The number of decisions in which the Justices of the Supreme Court have cited or quoted Kamisar's publications is extraordinary. Kamisar's writings on assisted suicide, the exclusionary rule, search and seizure, the right to counsel, confessions, and wiretapping have appeared in over *thirty* different high court decisions.¹ From *Gideon* to *Glucksberg*, for nearly forty

1. *Washington v. Glucksberg*, 521 U.S. 702, 733-34 n.23 (1997); *id.* at 754-55, 777 (Souter, J., concurring); *Arizona v. Evans*, 514 U.S. 1, 20 (1994) (Stevens, J., dissenting); *California v. Acevedo*, 500 U.S. 565, 576-77 (1990); *id.* at 597 n.11 (Stevens, J., dissenting); *Minnick v. Mississippi*, 498 U.S. 146, 164 (1990) (Scalia, J., dissenting); *Illinois v. Perkins*, 496 U.S. 292, 297 (1989); *Moran v. Burbine*, 475 U.S. 412, 430, 433 n.4 (1985); *Miller v. Fenton*, 474 U.S. 104, 116 (1985); *Oregon v. Elstad*, 470 U.S. 298, 353 n.34 (1984) (Brennan, J., dissenting); *United States v. Leon*, 468 U.S. 897, 916 n.14 (1984); *id.* at 938 n.6, 958 n.17

years, Yale Kamisar's arguments have been central to many of the most important debates in constitutional law. Despite this enormously influential career, influence few law professors achieve, Yale has maintained his humility and down-to-earth sensibility.

It has been an honor and a privilege working these past several years as one of Yale's coauthors. Yale, Jerry Israel, and Wayne La Fave refer to the criminal procedure casebook simply as "*Modern*," an efficient way to distinguish it from the dozen or more other titles the three have authored over the years individually and together. By the time I joined, just before edition number nine, I found that the Three Musketeers had comfortably allocated the work and had developed their own special roles. For example, Yale, whose name appeared first, and who could make the most noise, had assumed the job of chief liaison with the publisher, expressing freely his evaluation of editorial efficiency and quality in all matters associated with the book and its offspring. As a student law review editor laboring on Sub-3 of our underground library, I had already learned about his demanding publication standards. Stories of unknown accuracy about attempts to edit something Kamisar had written ("You know what his response was? 'My goddamned name is on it and I can write a one-word sentence if I want to!'") were passed on from one generation of law review editors to the next. His occasional booming visit to our offices supplemented this lore for us firsthand. As his coauthor, I must admit that it has been refreshing to be the beneficiary rather than the target of this sort of attention.

Yale, Jerry, and Wayne have the kind of friendly respect for each other's styles that one would expect from a relationship blessed by such time and talent. One notable aspect of Yale's style has been to include more rather than less, adding commentary and dissents liberally throughout. When he has to choose between two excerpts on

(Brennan, J., dissenting); *Berkemer v. McCarty*, 468 U.S. 420, 437 n.26 (1984); *Nix v. Williams*, 467 U.S. 431, 453 n.2 (1984) (Stevens, J., concurring); *Robbins v. California*, 453 U.S. 420, 451 n.12 (1980) (Stevens, J., dissenting); *United States v. Henry*, 447 U.S. 264, 280 (1979) (Blackmun, J., dissenting); *Rhode Island v. Innis*, 446 U.S. 291, 300 n.4 (1979); *Baker v. McCollan*, 443 U.S. 137, 154 n.13 (1978) (Stevens, J., dissenting); *United States v. Janis*, 428 U.S. 433, 450 n.22 (1975); *Faretta v. California*, 422 U.S. 806, 811 n.6 (1974); *United States v. Hale*, 422 U.S. 171, 177 n.5 (1974); *Gerstein v. Pugh*, 420 U.S. 103 (1974); *Gooding v. United States*, 416 U.S. 430, 464 n.1 (1973); *Schneekloth v. Bustamonte*, 412 U.S. 218, 267 n.24 (1972) (Powell, J., concurring); *Argersinger v. Hamlin*, 407 U.S. 25, 60 n.26 (1971) (Powell, J., concurring in result); *United States v. White*, 401 U.S. 745, 771-72 n.4 (1970) (Harlan, J., dissenting); *Alderman v. United States*, 394 U.S. 165, 206 n.8 (1968) (Fortas, J., concurring in part and dissenting in part); *Berger v. New York*, 388 U.S. 41, 100 (1966) (Harlan, J., dissenting); *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 300 n.6 (1966); *Miranda v. Arizona*, 384 U.S. 436, 440 n.2, 469 n.38, 472 n.41 (1965); *id.* at 511 (Harlan, J., dissenting); *Rinaldi v. Yeager*, 394 U.S. 305, 310 n.5 (1965); *Ker v. California*, 374 U.S. 23, 59 n.13 (1962) (Brennan, J., dissenting); *Gideon v. Wainwright*, 372 U.S. 335, 338 n.2 (1962); *Wong Sun v. United States*, 371 U.S. 471, 485 n.11 (1962); *Elkins v. United States*, 364 U.S. 206, 208 n.2 (1959).

the same topic (his coauthors have now and then prevailed upon him to do so in order to keep the tome under 2000 pages), he has explained that he prefers to include that material with a viewpoint most unlike his own. The book's staying power is largely due to Yale's commitment to balance and completeness.

Unlike Wayne, who appears to have become part computer, responding within microseconds to any e-mail that he receives after 4 a.m., Yale still prefers the telephone for long-distance communication. A phone call from Yale does not begin with a greeting and then pick up speed, like phone calls from most people. Phone calls from Yale start off in high gear, with an exclamatory statement ("Well, they did it again!"), or a straightforward demand ("This Smith fellow, you know him?"). This is a man who is incapable of beating about the bush or coming at something sideways. Honest and direct himself, he expects the same behavior from others and has little patience for obfuscation and dissembling.

As a colleague, Yale is wonderfully kind, sharing information, sources, and ideas. A few years back, teaching at Michigan for a semester, I had an office on the ninth floor of the Legal Research building, within shouting distance of both Yale and Jerry. Generous and thoughtful, Yale would always drop what he was doing to talk over a late-breaking development or suggest an example. Those who have had the pleasure of working near those two will tell you how lucky they are. With Yale's razor-sharp ability to cut to the heart of an issue and stake out an unassailable position before you could even take a deep breath, few half-baked, wishy-washy ideas could survive that hallway.

Not long ago, Yale revealingly said: "I write best when I'm angry." If outrage is his muse, it has served him well. His writings have left a mark on the law that will not be erased. His teaching at Michigan has inspired thousands of law students to care, and care deeply, about the Constitution and what it means, particularly for the less fortunate. They will pass along this passion to others, for generations to come.