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Feature: The Father of Miranda

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the father of miranda

Editor's note:

This is the first in a series of articles about the intellectual history of the Law School, and the impact our scholars have had, from the classroom to the Supreme Court.

By James Tobin

Yale Kamisar's transformative impact on the law began with a humble hunch in the early 1960s, when he was a young professor at the University of Minnesota.



It seemed to him that law students were learning too little about criminal procedure. The Supreme Court had been groping, piecemeal, toward a new doctrine in police interrogation. But case materials were outdated, and the subject was taught as an afterthought.

Kamisar persuaded West Publishing to put out a short paperback, designed to supplement traditional casebooks, which he coauthored with Livingston Hall of Harvard Law. Only a few hundred copies sold, and West planned to cancel it.

Meanwhile, Kamisar had been writing vividly about police interrogation. For example:

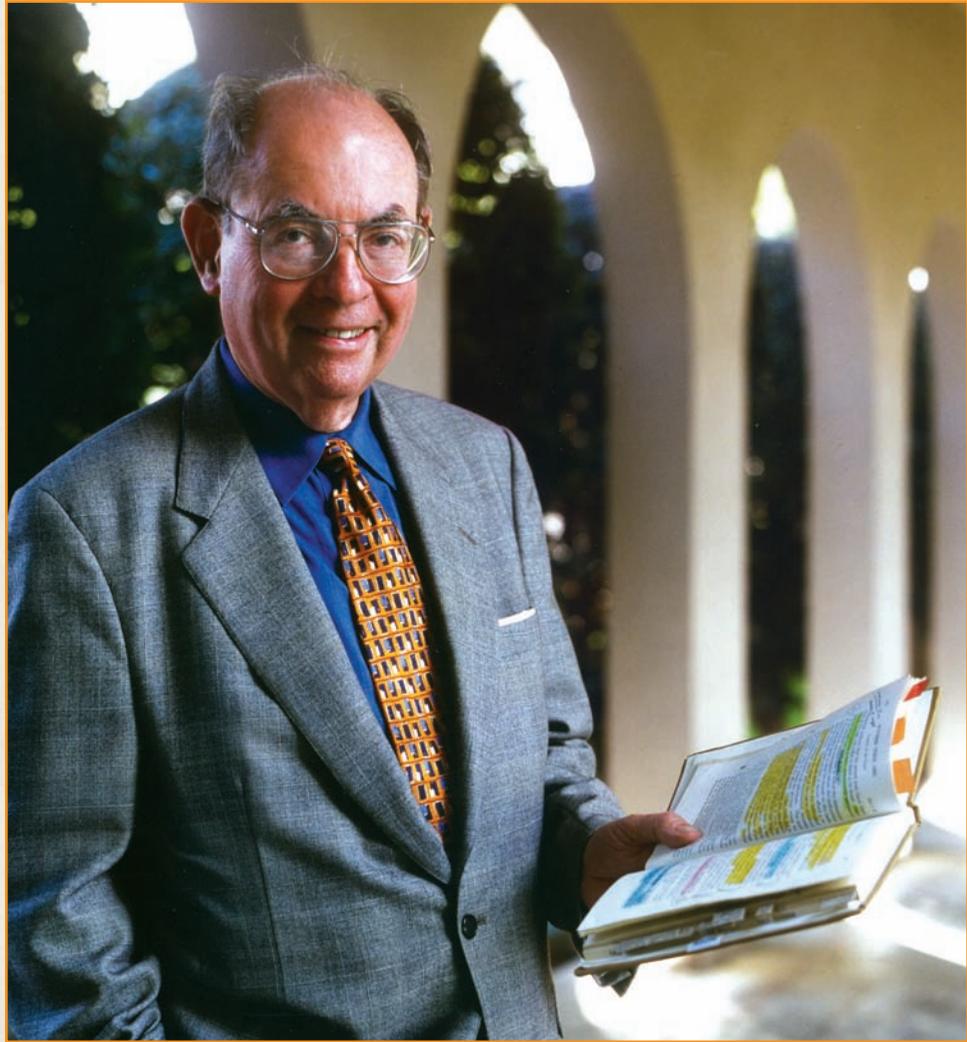
The courtroom is a splendid place where defense attorneys bellow and strut and prosecuting attorneys are hemmed in at many turns. But what happens before an accused reaches the safety and enjoys the comfort of this veritable mansion? Ah, there's the rub. Typically he must pass through a much less pretentious edifice, a police station with bare back rooms and locked doors. **In this 'gatehouse' of American criminal procedure... the ene-my of the state is... 'game' to be stalked and cornered.** Here ideals are checked at the door...

Then, in 1966, a year after Kamisar joined the Michigan faculty, the Warren Court cited two of Kamisar's articles in its historic decision in *Miranda v. Arizona*, and suddenly Kamisar was little known no more. *Time* magazine featured him in two articles in the next two years.

Law schools rushed to create courses in criminal procedure. The casebook began to sell by the thousands, and Kamisar—with his coauthors, including Jerold H. Israel of Michigan and Wayne LaFave of the University of Illinois College of Law—expanded and bolstered it in new editions. He became known as “the father of Miranda.”

Those achievements alone would have made a distinguished career. But they were only the beginning of a long struggle to protect the rights of the accused. In scores of articles and books, Kamisar kept defending these rights, culminating in the Supreme Court's 2000 decision to uphold the constitutionality of *Miranda* in *Dickerson v. United States*.

That decision, said his U-M colleague and former student, Professor David A. Moran, '91, “was a testament to all the work Yale had done in the 34 years after *Miranda*. His view prevailed.



Yale Kamisar with the bound copy of the *Miranda* opinion that he has had since 1966.

“There’s no question he’s been the most influential criminal procedure academic of the last 40 years—which makes him the most important of all time, because there really wasn’t much of a field of criminal procedure until Yale.”

DWIGHT VALLEY

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Yet this, too, was only part of Kamisar's contribution. He became a leading voice on constitutional law (he coauthored 10 editions of a second casebook); on the exclusionary rule and the rights of indigent defendants; and on assisted suicide.

Brilliance alone cannot account for this mountain range of work.

"It's the combination of his intellect and his work ethic and his passion," said Professor Eve Brensike Primus, '01, another Kamisar student. "He works harder than anyone you'll ever meet. It's almost like he can't *not* get involved. The Supreme Court's jurisprudence or what the police are doing concerns him deeply, and he has to do something about it."

He has "done something" always with fierce intensity, but also with respect for adversaries. Paul G. Cassell, the conservative federal prosecutor and judge—now a law professor at the University of Utah—fought bitterly with Kamisar, yet calls him "a real gentleman."

"A lot of people in the legal academy are only interested in an echo chamber where they hear the comments of people who agree with them," Cassell said. "But Yale was always very excited to engage in intellectual debate."

Kamisar, now the Clarence Darrow Distinguished University Professor of Law Emeritus at Michigan and distinguished professor of law at the University of San Diego School of Law, recalled a talk he once had with James Vorenberg, later dean of law at Harvard. They were collaborating on a criminal-procedure project, with Vorenberg defending and Kamisar criticizing the police. Vorenberg told Kamisar about growing up in a wealthy family that feared kidnappers and relied on the police to check out strangers near their fine home.

Kamisar was struck by the contrast with his own boyhood in the Bronx.

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—David A. Moran

"The police were[Vorenberg's]guardians," he said. "I grew up in a neighborhood where we'd play stickball, and sooner or later the ball would break a window; somebody would call the police. Sometimes the police would knock us down and shove us—like they were annoyed, that this was beneath their dignity.

"I didn't see the police as my friends, and it's amazing what impact that probably had on why Jim and I saw things so differently. He trusted the police. He wanted to give them as much power as possible. And I didn't.

"Since then, the universe has expanded enormously. But that might have been my 'big bang' in criminal procedure."

His influence has spread in a broad web. He has been cited many times in Supreme Court opinions and by hundreds of scholars. His casebooks are essential references. ("I keep these helpful books within easy reach in my office," Justice Ruth Bader Ginsburg wrote recently, "as do judges, practitioners, and law professors across the country.") His passion in the classroom has influenced generations of students, including many who became public defenders. And his work has safeguarded the rights of uncounted numbers of the accused.

"For many of us," wrote Kamisar's student Jeffrey S. Lehman, '81, who became dean of law at Michigan, then president of Cornell University, "he will always capture the soul of a great law school." 