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Albert Alschuler

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# Hail Yale

Albert W. Alschuler \*

Yale Kamisar is one of America's two or three greatest scholars in the area of criminal justice. He is known especially for his path-breaking work on the law of police interrogation. One of his earliest works on this topic<sup>1</sup> sparked the Supreme Court's 1966 decision in *Miranda v. Arizona*.<sup>2</sup> Kamisar compared the elaborate safeguards of the courtroom with the then nearly complete lack of safeguards surrounding police interrogation. His analysis proved forceful and historic.

Kamisar soon found himself protesting the subversion of *Miranda* by the Burger and Rehnquist Courts.<sup>3</sup> He did so with passion and eloquence and with careful, painstaking scholarship.

When the University of Michigan made Kamisar a Distinguished University Professor, it asked him to name his own professorship. Honoring a UM Law School dropout, he became the Clarence Darrow Professor. Kamisar is appropriately regarded as a devoted civil libertarian.

Yet Kamisar's writings have been far from doctrinaire. In 1990, the Supreme Court cited his work in support of its refusal to apply *Miranda* to a case in which a suspect was unaware that he was being interrogated by a law enforcement officer.<sup>4</sup> Despite the literal applicability of *Miranda*, Kamisar maintained that its special safeguards should not extend to cases of this sort, and the Supreme Court was persuaded. Of course some Supreme Court Justices may not have *needed* much persuasion, but Justice Brennan was among those who accepted the Kamisar position.

Kamisar has expressed regret that Congress did not accept the *Miranda* Court's invitation to devise an effective alternative to its procedures—for example, by modifying the required warnings while requiring the police to videotape interrogations.<sup>5</sup> He also has exhibited a sympathetic view of proposals to replace

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\* Julius Kreeger Professor of Law and Criminology, the University of Chicago Law School.

<sup>1</sup> Yale Kamisar, *Equal Justice in the Gatehouses and Mansions of American Criminal Procedure*, in CRIMINAL JUSTICE IN OUR TIME 19 (A.E. Dick Howard ed., 1965).

<sup>2</sup> 384 U.S. 436, 473 n.41 (1966) (citing Kamisar).

<sup>3</sup> See, e.g., Yale Kamisar, *Brewer v. Williams, Massiah and Miranda: What is "Interrogation"? When Does it Matter?*, 67 GEO. L.J. 1 (1987); Yale Kamisar, *Duckworth v. Egan: A Little-Noticed Miranda Case that May Cause Much Mischief*, 25 CRIM. L. BULL. 550 (1989); Yale Kamisar, *On the "Fruits" of Miranda Violations, Coerced Confessions, and Compelled Testimony*, 93 MICH. L. REV. 929 (1995).

<sup>4</sup> *Illinois v. Perkins*, 496 U.S. 292, 297 (1990).

<sup>5</sup> Yale Kamisar, *Miranda Thirty-Five Years Later: A Close Look at the Majority and Dissenting Opinions in Dickerson*, 33 ARIZ. ST. L.J. 387, 425 (2001).

police interrogation with a form of open and safeguarded questioning before a judicial officer—proposals that other civil libertarians have viewed with alarm.<sup>6</sup>

Kamisar has written extensively on the law of search and seizure as well as the law of interrogation. He has demonstrated the current Supreme Court's departure from the original grounding of the Fourth Amendment exclusionary rule,<sup>7</sup> and he has emerged as America's most persistent and eloquent defender of the rule.<sup>8</sup> He also has tackled challenging issues like mandatory drug testing,<sup>9</sup> recognizing the difficulty of these issues, suggesting their larger social implications, and advocating solutions that are thoughtful and fair.

Kamisar's prolific writings have extended to many other topics from flag burning to euthanasia. The latter subject in particular has engaged Kamisar's scholarly attention since long before Dr. Kevorkian and others put the "right to die" on the front page. Kamisar's first article on this topic—published forty-six years ago—is an often reprinted classic.<sup>10</sup> The Supreme Court cited two other Kamisar works when it upheld a state's prohibition of assisted suicide in *Washington v. Glucksberg*.<sup>11</sup> It is partly because of his own scholarship that Kamisar can write today of *The Rise and Fall of the "Right" to Assisted Suicide*.<sup>12</sup>

At least thirty-two Supreme Court decisions since 1960 have cited Kamisar's writings. The names of these decisions include *Gideon*, *Wong Sun*, *Elkins*, *Ker*, *Hayden*, *Alderman*, *White*, *Argersinger*, *Schnecko*, *Gerstein*, *Faretta*, *Janis*, *Innis*, *Henry*, *Williams*, *Leon*, *Elstad*, *Burbine*, *Minnick*, *Acevedo*, and *Evans*.

Kamisar is not only a distinguished scholar but also an educator of renown. He is the co-author of the leading law school materials on both criminal procedure<sup>13</sup> and constitutional law.<sup>14</sup> As one who has used Kamisar's criminal procedure materials for many years, I am in awe of the prodigious labor the preparation and updating of these comprehensive materials require. Although criminal procedure is my specialty, I confess that I sometimes fail to stay current.

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<sup>6</sup> See Yale Kamisar, *Kauper's "Judicial Examination of the Accused" Forty Years Later—Some Comments on a Remarkable Article*, 73 MICH. L. REV. 15 (1974).

<sup>7</sup> Yale Kamisar, *Does (Did) (Should) the Exclusionary Rule Rest on a "Principled Basis" Rather than an "Empirical Proposition"?*, 16 CREIGHTON L. REV. 565 (1983).

<sup>8</sup> See, e.g., Yale Kamisar, *In Defense of the Search and Seizure Exclusionary Rule*, 26 HARV. J.L. & PUB. POL'Y 119 (2003).

<sup>9</sup> See, e.g., Yale Kamisar, *Drugs, AIDS and the Threat to Privacy*, N.Y. TIMES, Sept. 13, 1987 (Magazine), at 109.

<sup>10</sup> See Yale Kamisar, *Some Nonreligious Views Against Proposed "Mercy Killing" Legislation*, 42 MINN. L. REV. 969 (1958).

<sup>11</sup> 521 U.S. 702, 734 n.23 (1997).

<sup>12</sup> Yale Kamisar, *The Rise and Fall of the "Right" to Assisted Suicide*, in THE CASE AGAINST ASSISTED SUICIDE 69 (Kathleen Foley & Herbert Hedin eds., 2002).

<sup>13</sup> See YALE KAMISAR ET AL., MODERN CRIMINAL PROCEDURE: CASES, COMMENTS, QUESTIONS (10th ed. 2002).

<sup>14</sup> See JESSE CHOPER, RICHARD FALLON, YALE KAMISAR, & STEVEN SHIFFRIN, CONSTITUTIONAL LAW: CASES, COMMENTS, QUESTIONS (9th ed. 2001).

There are too many judicial decisions, too many statutes, too many government reports, and too many scholarly writings to master. I allow myself to falter, but only because I know that the next year's revision of the Kamisar, LaFave, Israel, and King casebook will quickly and reliably bring me up to speed. Kamisar also has prepared important continuing-education lectures for the bar each year and has written extensively for the popular press.

You might not guess it from his LOUD classroom style, but Kamisar is one of the gentlest people in the world. He is also one of the most generous. I have never known him to turn down a request for a favor from a friend, student, colleague, or stranger. In public and in private, he exhibits a rare and enthusiastic appreciation of the work of others. He is, moreover, as quick to find excellence in the scholarship of people who take issue with him as he is in that of his many disciples and allies.

In 2000, Kamisar published a lengthy appreciation of the work of Joe Grano, a scholar who disagreed with Kamisar about many things and who was at the time tragically ill. The article concluded:

Conservative law professors need people like Joe Grano. But we liberal professors need people like him too. He challenges us. He provokes us. He makes us (or at least should make us) rethink our positions. And sometimes, no matter how strongly we felt about an issue at first, the force of his reasoning made us change our position, or at least revise it. This is how Joe educated us all.<sup>15</sup>

Yale Kamisar, too, has educated us all by his example and by his intellect and insight. He serves the academy, the legal profession, and the public with great distinction.

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<sup>15</sup> Yale Kamisar, *Joe Grano: The "Kid from South Philly" Who Educated Us All*, 46 WAYNE L. REV. 1231, 1269 (2000). Two years after Kamisar published this article, he and his co-authors dedicated their criminal procedure casebook "to the memory of Joseph D. Grano, the criminal procedure professor who educated us all." For Kamisar's enthusiastic appreciation of a scholar who might have regarded Joe Grano as soft on crime, see Yale Kamisar, *Fred E. Inbau: "The Importance of Being Guilty"*, 68 J. CRIM. L. & CRIMINOLOGY 182 (1977); see also Yale Kamisar, *The Writings of John Barker Waite and Thomas Davies on the Search and Seizure Exclusionary Rule*, 100 MICH. L. REV. 1821 (2002) (extolling the work of Davies, who is a Kamisar soulmate, and of Waite, who was not).

