PROFESSOR EMERITUS Yale Kamisar had the singular distinction last fall of having two law journals honor him — one of them located at a school he never had visited.

The Michigan Law Review devoted Vol. 102, No. 8 (August 2004) to Kamisar, who stepped down from his 40+-year fulltime teaching career at the Law School in 2003. The issue features a dozen tributes to Kamisar, including essays by U.S. Supreme Court Justice Ruth Bader Ginsburg, Kamisar’s longtime co-author and fellow Professor Emeritus Jerold H. Israel, and Eve L. Brensike, ’01, and Marc Spindelman, ’95, former students of Kamisar who have followed him into the profession of teaching law.

The second tribute appears in the young Ohio State Journal of Criminal Law, a publication of the Ohio State University’s Moritz College of Law, which devoted Vol. 2 No. 1 last fall to papers from its symposium “Capital Juries,” tributes to Kamisar, and two articles by Kamisar himself, “A Look Back on a Half-Century of Teaching, Writing, and Speaking About Criminal Law and Criminal Procedure,” and “Postscript: Another Look at Patane and Seibert, the 2004 Miranda ‘Poisoned Fruit’ Cases.” Kamisar said he is especially honored by the Moritz journal’s action because he never has visited or taught at Ohio State.

These feilschrift editions are tangible recognitions of Kamisar’s impact on legal scholarship (his casebook on criminal law is in its 10th edition), jurisprudence (the U.S. Supreme Court has cited him in its opinions more than 30 times, more than any other individual), public debate (Kamisar has published more than 100 op-ed essays, many in the New York Times, Washington Post, and Los Angeles Times), as well as the law students he has helped mold into lawyers.

Ginsburg noted that she — “as do judges, law professors, and practitioners across the country” — keeps the latest editions of his casebooks Modern Criminal Procedure and Constitutional Law conveniently at hand for ready reference.

“Yale might reasonably be called the ‘father’ of the Miranda rule,” wrote former Law School Dean Francis A. Allen, the Edson R. Sunderland Professor of Law Emeritus. “Before the decision was handed down his voice was the most effective in pointing to the need for judicial regulation of pretrial interrogation of arrested persons, and he has been the leading defender of the rule in the years that followed.”

To Israel, Kamisar’s co-author and “sounding board” for more than 35 years, Kamisar’s scholarly writings will continue to be read for many years. “As the academic literature on any issue grows, there is a tendency for each generation of commentators to focus primarily on the writings of their contemporaries,” according to Israel. “Yet some writings will be viewed as so ‘rich’ and ‘powerful’ (to use two of Yale’s favorite adjectives) that they will be cited and discussed even though they date back to an earlier generation. In my opinion, Yale Kamisar has produced a portfolio filled with such writings. Indeed, although he has retired from ‘full-time teaching,’ that portfolio is certain to grow, for he has lost none of his enthusiasm for the issues or the debating of those issues.”

Brensike, a former public defender who is a visiting assistant professor at the Law School this year, studied with Kamisar and worked as his research assistant. She applauded his demand that his students — and he himself — push back the letter of the law to look beneath it. “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,” she wrote. “His course was a lesson in advocacy during which he used law and logic to push students to think, analyze, and argue. While some professors wanted us to read the 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 ideas — to back down was a sign of weakness, or 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.”

Spindelman, another Kamisar student who now is assistant professor of law at Ohio State’s Moritz College of Law, notes that “for Yale, the law is not (as it is for some) about abstract institutional arrangements. It is not designed, as some seem to think it should be, to protect the privileged who sit atop existing social hierarchies.”

Spindelman was one of the prime movers in the “Capital Juries” conference and served as guest editor for the resulting Kamisar tribute issue of the Ohio State Journal of Criminal Law. He worked with another Kamisar fan, his faculty colleague Joshua Dressler, who is co-managing faculty editor of the journal and has taught as a visiting professor at the U-M Law School.

Like the Michigan Law Review issue in Kamisar’s honor, the special issue of the Ohio State Journal of Criminal Law contains numerous tribute essays to Kamisar, including a touching, effusive piece by Kamisar’s teaching colleague and antisoulmate William Ian Miller, the U-M Law School’s Thomas G. Long Professor of Law.

“Yale is larger than life. And so was his damn crim pro casebook,” began Miller, who went on to bemoan the poundage that was the published result of Kamisar’s rigorous and thorough research. Kamisar’s intellectual rigor and passion converted him to the “yea beleaguered suspect, boo cops” side, Miller admitted, “but one night Dirty Harry was on the late show and I was up watching. And Harry’s ‘Do you feel lucky punk, well do you?’ struck me as so much more moving than ‘You have a right to remain silent, etc.’ From then on I was backing Clint. Nevertheless, reading Kamisar never ceased to be a treat even if I had become pro-cop. But poor Yale: imagine a lifetime of work undone by 15 minutes of a Clint Eastwood movie.”

Miller’s respect for Kamisar seems to lift right off the page: “Was ever a man so clearly himself, always himself, and no other person than Yale? He is incapable of even the smallest hypocrisy. . . . We will never see the likes of him again. To borrow the last line of Charlotte’s Web: It is not often that someone comes along who is a true friend and a good writer. Yale is both.”

Spindelman correctly noted in his introduction to the issue that “of course, Yale being Yale, we could not venture a collection such as this one without giving him the last word.” We’ll do the same here, retaining Kamisar’s emphases from “A Look Back on a Half-Century of Teaching”:

“Of course a law professor who addresses a problem or a cluster of problems should start out with an open mind or, as Judge Hand puts it, ‘an open ear to the cold voice of doubt.’ But after hundreds of hours of reading and thinking about critical issues — such as the search and seizure exclusionary rule; the appropriate balance between police officer and suspect in the interrogation room; the relationships, if any, between the crime rate and court decisions; the death penalty; and (to take some very recent examples) the distinction, if any, between prisoners of war and ‘unlawful enemy combatants’ and the rights, if any, of the hundreds of people detained in Guantanamo Bay — aren’t law professors bound to reach some pretty firm conclusions? And shouldn’t they tell the public, if the opportunity arises, what their conclusions are and how and why they reached them?

“I would put it more strongly. I believe that in the past 100 years the media has proclaimed so many ‘crimes crises,’ and law enforcement officials and politicians have warned us so often that ‘we cannot afford a civil liberties binge’ at this perilous time’ or expressed lack of confidence so many times in the capacities of our established institutions and traditional procedures to cope with the particular ‘emergency’ of the day, that members of the academy who are knowledgeable about these matters have an obligation to enter the fray.”

Yale Kamisar