

# “WHAT IS A KAMISAR?”

Wayne R. LaFave\*

*A good friend is often better than a brother.*

*One old friend is better than two new ones.*

— old Yiddish proverbs

My good *and* old friend Yale Kamisar is said to be “retiring”<sup>1</sup> after a remarkable life in academe spanning almost half a century. I deem it my extraordinary good fortune to have been able to count Yale as a friend for thirty-seven of those years (not that we were enemies the rest of the time<sup>2</sup>), and to have been able to serve as a collaborator of his, working together in the vineyards of the law, for virtually the entirety of our acquaintance. And thus I am especially delighted to have this opportunity to offer up a “fair and balanced”<sup>3</sup> appraisal and assessment of Yale as he settles into his new-found status of *alter kocker*.

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Portions of this Tribute previously appeared in Prof. LaFave’s latest book, *From Yo, Mama to Yo-Yo Ma: The Relative Influences of Rap and Classical Music on Criminal Behavior*. — Ed.

1. In the old days, retirement was called “statutory senility” because it was brought on by statutes mandating retirement at a certain age. Of course, federal law has now nullified those provisions, so perhaps the situation may now be described simply as “senility.”

Am I saying that Kamisar is *farschimmelt*? Well, let me put it this way. We have many retirees at the University of Illinois College of Law, all members of Senior Educators Not Injuring Legal Education (note the acronym), and if we ever “go national” we’ll sure want Yale as a member.

2. Rather, I could not count Yale as a *chavver* earlier simply because I did not know him until I put in a visiting stint at the University of Michigan law school in 1966. Though I was subbing for Jerry Israel, who in turn was visiting at Stanford the entire time, curiously I also got to know him as well during the visit in a somewhat different way. As explained in Wayne R. LaFave, *Random Thoughts by a Distant Collaborator*, 94 MICH. L. REV. 2431, 2432 (1966), “if you *really* want to get to know someone, sleep in his bed, sit in his easy chair, read from his library, listen to his loquacious cleaning lady, work in his office, and read his files.” But I managed to get to know Yale without the advantage of any of those opportunities.

3. I have emphasized this term in my inchoation in the hope that Fox News will be as kind to me as they were to Al Franken, who was assured a best-seller once Fox attempted to enjoin publication of Franken’s LIES (AND THE LYING LIARS WHO TELL THEM): A FAIR AND BALANCED LOOK AT THE RIGHT (2003) because it allegedly co-opted their spurious motto.

## I. THE QUESTION

*One fool can ask more questions than ten wise men can answer.*

— old Yiddish proverb

The concern here is with a single question (the interrogatory serving as the caption for this Pantagruelian panegyric) which in itself might provide a *shtikel* of *shtuk* for the aforementioned wise men. I believe it first entered my psyche many moons ago — most likely, as best I can recall, in the early 1970s, not long after Yale and I and Jerry Israel first coauthored the *Modern Criminal Procedure* casebook now in its tenth edition. It was one of my first efforts at teaching from the book, and we were just starting the chapter on confessions, which began with excerpts from commentators of various stripes (including Kamisar) about police interrogation. In class, I commenced quizzing my students about their own preliminary views on this subject, and after one student of a liberal bent set out his thoughts, I tried to tie it in with the assigned readings by commenting that the position we had just heard could well be labeled "the Kamisar perspective." No one challenged or questioned that characterization, and the discussion continued until the hour ended, after which a few students approached the podium with a variety of questions. One student held back until the others had left, and then he somewhat hesitantly stepped forward and said, "I didn't understand one comment you made during the class. Just what is a Kamisar?"

I was dumbfounded and a bit *farmisht*. Had this student not read the assigned material containing the Kamisar excerpt? For that matter, did he not even have a copy of the casebook with Kamisar's name prominently displayed on the cover? I could not bring myself to explore either of those possibilities, and thus I muttered "good question" and stalked out of the classroom, leaving the befuddled *nishtgutnick* to stew in his own juices. But once back in my sanctum sanctorum, I began turning the student's query over and over in my mind — what is a Kamisar?; yes, what *is* a Kamisar, anyway? It *really* is a good question, one I then felt ill-equipped to answer fully to my own satisfaction. From that day to the present, I have pondered that provocative perturbation time and again, but still have been unable to sort out entirely that complex personality we know as Yale Kamisar. Perhaps I never will! But I have at last been able to put together some of the pieces of the puzzle, sufficient I hope to allow me to make at least some meaningful observations about my longtime coauthor, colleague, and friend.

As I see it, a Kamisar is made up of four more-or-less equal parts — *kemfer*, *redner*, *shrayber*, *komiker* — which I shall now expatiate seriatim.

## II. THE FIGHTER

*When your enemy falls, don't rejoice — but don't pick him up either.*

— old Yiddish proverb

If I were to accuse Yale of being a philopolemicist, I am sure he would instantaneously respond with an argument to the contrary — probably without even pausing to look up the word first. And that would be the proof of the *kugel*, for he is indeed a person who loves to argue and debate. Just what accounts for this highly competitive (indeed, combative) aspect of the Kamisar personality is beyond my ken, although I once had occasion to sound out someone whose professional expertise extends to such matters. During a teaching visit at the University of Michigan Law School several years ago, I cotaught the criminal law course with the distinguished alienist Dr. Andrew Watson, and after each class we would retire to the restaurant across the street for some java and whatever was on the good doctor's mind until each session was abruptly terminated by Watson leaping to his feet and shouting "to horse" (something else I have long wondered about). Anyway, early on at one of these coffee breaks I soon learned that one of Watson's burning professional interests at that time was how to explain Kamisar, and his theory was that Yale had been profoundly affected earlier in life by one (or perhaps several) physical assaults to his person.

At subsequent sessions, the esteemed shrink and yours truly spent some time speculating further about this matter. One thesis was that Yale's combativeness actually came from combat. Yale was a shavetail on the front lines during the Korean War (while others such as myself basked in luxury at an air base in Japan), and it was an established fact that during an American assault on T-Bone Hill Yale had picked up some hot North Korean lead in his *tokhis*. But Watson was inclined to the view that Yale's strong competitiveness came to the fore at a much earlier age, and the good doctor's thesis (supported by his earlier groundbreaking research at the National Institute for the Study of Jewish Eccentricities) was that the source was rabbinical in nature. To this I added the speculation that Yale might have been under the tutelage of an especially stern rabbi as he prepared for his *bar mitzva*,<sup>4</sup> for I had conjured up in my mind's eye this scenario: At one instruction session, the rabbi called upon young Yale to explain the

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4. Which reminds me that accompanying Eve Silberman, *Yale Kamisar on Guard*, 17 ANN ARBOR OBSERVER 3:31 (1992), and appearing on page 34 is an absolutely priceless picture of the thirteen-year-old Yale on the occasion of his *bar mitzva*. He is *farputst* from *dein* to *shpitsfinger* — dressed in a double-breasted suit and fedora plus a *tallith* with *tzitzis* over his shoulders, and he has a *puter-wouldn't-melt-in-his-moyl* look on his *punim*. The caption to the picture notes that his *bar mitzva*, at which he forgot his speech halfway through, was the last time he "spoke without a written speech."

Hebrew verses he had studied from the book of Leviticus, and the lad responded: "It forbids various abnormal sexual practices; the only thing is, *rebiniu*, I don't understand about abnormal sexual practices." The agitated teacher then laid a *potch* on his own forehead and followed this with a good *zetz* to the side of Yale's head, exclaiming, "And how is it about normal sex you're knowink?" What followed in my phantasma was a knock-down, drag-out *tumel* and *sichsech* until Yale was finally able to convince the rabbi he was *tsnueh* and not a *paskudnik*, or, for that matter, even a *shkotz*.<sup>5</sup> Watson acknowledged that something along those lines might have occurred, but his thesis was that the triggering event came much earlier in Yale's life, when he was but a *pisher*. "I think," Watson asseverated, drawing upon his cutting-edge research at the Institute, "that it goes back to Yale's bris, when his *petseleh* suffered at the hands of a *mohel* who was a bit of a *shlemiel*, leaving him with a *shlecht shlang*, that is, a *plotzed putz*, or, if you will, a *shvachkeit* in his *shvantz*." (Well, maybe so,<sup>6</sup> but I must say that I always thought Watson was himself a certifiable *meshugener*.)

But enough speculation about causes; the essential fact is that for whatever reasons Kamisar is one hell of a competitor who always relishes a good fight, at least on an intellectual level. As one reporter noted, some years back Kamisar "became a stalwart in a never-ending series of skirmishes in defense of the Warren Court's rulings," one "particularly dramatic example" being that when Attorney General Meese mounted a public campaign against *Miranda*, Yale quickly prepared "an angry rebuttal accusing Meese of 'exaggeration and distortion' [that] was widely reprinted in newspapers across the country."<sup>7</sup> While many other such examples could be given, I want to emphasize that Yale's lust for argumentation and debate is also reflected in various ways in his more academic accomplishments. For one thing, he has often published articles directly responding to and in opposition to a companion piece by an author of a different persuasion, tearing into the positions of his opponent with unabashed relish. The most recent illustration of such a debate-in-writing was in 2003, when Kamisar vigorously and most effectively challenged yet another proposed substitute for the Fourth Amendment exclusionary rule set out in an immediately preceding article by Judge Guido

5. He convinced the rabbi that he would never *shloof* with a *shlooche*, and that he wouldn't know a *zadnitse* from *prezhinitse*.

6. Or maybe not, for I am suspicious of the proclivity of psychiatrists to opt for explanations somehow related to sex, especially when, as in Yale's case, there was very possibly another cause, namely, that a *shammes* had *shlogen* Kamisar back when he was a *mamzerook*. See note 24 *infra*.

7. Silberman, *supra* note 4, at 33.

Calabresi.<sup>8</sup> Another most worthy antagonist was the highly regarded Wayne State law professor and Federalist Society guru Joe Grano, a former student of mine who “went astray,” so to speak.<sup>9</sup> But the most famous of such exchanges occurred some years ago in the pages of what was then called the *Journal of Criminal Law, Criminology and Police Science*, where Yale and Professor Fred Inbau of Northwestern University went at it tooth and nail debating public safety versus individual liberties in a most exciting series of articles.<sup>10</sup> Inbau’s perspective on the subject is perhaps best revealed by the fact that he was affectionately known by his students, colleagues, and others as “Freddie the Cop”; curiously, Kamisar never became known as “Yalie the Perp.”

Because I have characterized this aspect of the Kamisar persona in gladiatorial terms, I should add that Kamisar’s hassles with the aforementioned adversaries were only on the level of ideas, and were not personal. He did not call any of them a *chazzer*, *chutzpenik*, *draikop*, *ganef*, *k’vatsh*, *nudnik*, *ongeblozzener*, *oysvurf*, *potzevateh*, *pustunpasnik*, *schmendrick*, *shikker*, *shlub*, *shmegegi*, *shmok*, *shnook*, *traifnyak*, *trombenik*, *yold*, *yukel*, *zhlob* or *zhulik* (terms of endearment he apparently reserved for me<sup>11</sup>), and indeed Yale expressed the greatest respect and affection for those who engaged him in these rhetorical rhubarbs.<sup>12</sup> It is also important to note that Kamisar was so taken with this confrontational style of legal analysis and writing that if no live opponent was at hand, he would invent one. This explains, for example, the approach taken in a piece he did some years ago with the ungainly title of *Illegal Searches or Seizures and Contemporaneous Incriminating Statements: A Dialogue on a*

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8. Yale Kamisar, *In Defense of the Search and Seizure Exclusionary Rule*, 26 HARV. J.L. & PUB. POL’Y 119 (2003) (responding to Guido Calabresi, *The Exclusionary Rule*, 26 HARV. J.L. & PUB. POL’Y 111 (2003)).

9. Yale Kamisar, *Remembering the “Old World” of Criminal Procedure: A Reply to Professor Grano*, 23 U. MICH. J.L. REFORM 537 (1990) (responding to Joseph D. Grano, *Introduction — The Changed And Changing World of Constitutional Criminal Procedure: The Contribution of the Department of Justice’s Office of Legal Policy*, 22 U. MICH. J.L. REFORM 395 (1989)).

10. Yale Kamisar, *Some Reflections on Criticizing the Courts and “Policing the Police,”* 53 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 453 (1962) (responding to Fred E. Inbau, *More About Public Safety v. Individual Civil Liberties*, 53 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 329 (1962)); Yale Kamisar, *Public Safety v. Individual Liberties: Some “Facts” and “Theories,”* 53 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 171 (1962) (responding to Fred E. Inbau, *Public Safety v. Individual Civil Liberties: The Prosecutor’s Stand*, 53 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 85 (1962)).

11. See LaFave, *supra* note 2, at 2442 n.47.

12. See Yale Kamisar, *Joe Grano: The “Kid from South Philly” Who Educated Us All*, 46 WAYNE L. REV. 1231 (2000); Yale Kamisar, *Fred E. Inbau: The Importance of Being Guilty*, 68 J. CRIM. L. & CRIMINOLOGY 182 (1977).

*Neglected Area of Criminal Procedure*,<sup>13</sup> where he created two characters with no names other than Q and A and then manipulated them through seventy printed pages of dialogue (including, curiously, the debaters' conveniently dropped 315 footnotes) until Q and A argued themselves into total exhaustion (though doubtless any reader was equally *oysgehorevet* well before that point). Ever the *kemfer*, Yale did not insist upon an opponent from the academy; he would, in effect, "debate" courts, including the Supreme Court, about the results and reasoning of their decisions. Nor did he let the fact that a court handed down a decision he agreed with deter him from his argumentative style. How else explain why he wrote an article entitled *A Dissent from the Miranda Dissents*?<sup>14</sup>

### III. THE TALKER

*The entire world rests on the tip of the tongue.*

— old Yiddish proverb

Yale Kamisar's acute logorrhea, which is apparently not susceptible to any effective treatment, is well known to all. The only uncertainty, it seems, concerns the magnitude of the problem; some but certainly not all would go so far as to label him a blatteroon, a verbomaniac, or even a *pisk* or a *plyoot*. But I would protest that his "gift of gab" is certainly not all bad, for it played a major part in bringing him into the legal profession (where, of course, such a condition, more commonly characterized as *cacoethese loquendi*,<sup>15</sup> is by no means unusual<sup>16</sup>). As Yale himself tells the story, after he received his undergraduate degree but failed to get the job of his dreams,<sup>17</sup> he was at loose ends and did not know which way to turn, but when "people said 'Yale, you love to talk — go to law school,'" <sup>18</sup> he did just that, and the rest is history.

As a long-time friend and co-worker of Yale's, I have often been on the receiving end of his languorous loquacity, sometimes with interesting results. Permit me a few illustrations. On one occasion, I

13. Yale Kamisar, *Illegal Searches or Seizures and Contemporaneous Incriminating Statements: A Dialogue on a Neglected Area of Criminal Procedure*, 1961 U. ILL. L.F. 78.

14. Yale Kamisar, *A Dissent from the Miranda Dissents: Some Comments on the "New" Fifth Amendment and the Old "Voluntariness" Test*, 65 MICH. L. REV. 59 (1966).

15. For the Latin impaired, this means "the irresistible urge to talk."

16. In a letter to President Madison, Thomas Jefferson lamented that Congress, "a body containing one hundred lawyers in it . . . will prove to be an impracticable one from its cacoethese loquendi." Letter from Thomas Jefferson to James Madison, President of the United States (Feb. 1812), at <http://etext.lib.virginia.edu/etcbin/foleyx-browse?id=Lawyers>.

17. See *infra* text accompanying note 27.

18. Silberman, *supra* note 4, at 34.

telephoned Yale to make an important inquiry about how we should handle certain matters in the new edition of our casebook on which we were then all feverishly working. I identified myself to Yale's secretary, and then he came on the line and said "Hi, Wayne," at which I opened my mouth to respond, only to be preempted by a torrent of impetuous speech. At top speed,<sup>19</sup> he led me through every single change he was then making in his confessions chapter, tossed off a multitude of suggested additions to my search and seizure chapter that surely would have expanded it by an impossible one hundred pages, described in excruciating detail the advertising materials for the next edition he was sending to West, and then went through a *magilla* or two before launching into a hodgepodge of law school gossip, never pausing for a breath the entire time.<sup>20</sup> It was as if he had just been released after ten years in total solitary confinement. After about a half an hour of this, by which time I was at the end of my *zitsflaish* and totally *farmutshet*, there finally came his customary and quite accurate terminus ("It's been good talking to you; *zay gezunt*"), which was in turn followed abruptly by Yale hanging up the phone. Once I regained my senses I realized that I had ended up with *bupkis* — my important question had not been answered (or, indeed, even asked) — and thus I pondered what to do. I could call back, but then . . . aw, to hell with it!

But talking on the phone with Yale is child's play compared to what one is in for in the event of a face-to-face encounter. This is because, notwithstanding Yale's longstanding campaign against coercive police interrogation methods, he is himself the epitome of the "bad cop";<sup>21</sup> if you sent over to central casting for a "bad cop" and they sent you Kamisar, you'd say "well done; a perfect fit," right down to the *Miranda* card he carries in his pocket.<sup>22</sup> There is that penetrating stare, the firm and commanding voice, and of course the intrusion upon your personal space; Yale believes in getting up close to those he is conversing with.<sup>23</sup> I have no doubt but that Kamisar could extract a

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19. One estimate is that Kamisar talks "five words to the second." Silberman, *supra* note 4, at 37. I would say that is a tad low.

20. It was enough to give me *farkuckt matkes*.

21. I am reminded at this point of a Graham Wilson cartoon that appeared in a recent issue of the *New Yorker*. The scene is a police interrogation room; on one side of the table is a *nebbish* of a man, an obviously terrified suspect, and on the other side is a Kamisar-type leaning over the table glaring at the suspect. The caption has the suspect saying: "So where's the good cop?"

22. *Gloib mir!* As Dave Barry would say, I am not making this up. Silberman, *supra* note 4, at 34.

23. I am certainly not the only person who has taken note of this characteristic. "Kamisar likes to get physically close to people when he talks, often pressing their shoulders or hands. Most people have a 'bubble of personal space that they keep between themselves and other people,' says Jeff Lehman, law school professor and former student. 'Yale just doesn't have that bubble.'" Silberman, *supra* note 4, at 37. Dedicated Seinfeldians have speculated that Yale was the inspiration for the "Close Talker" episode.

confession from a suspect in short order. (Indeed, I have been told that some years back Yale, wishing to have some empirical evidence on the dynamics of the interrogation phenomenon but yet not willing to pursue that information by empirical research bringing him into personal contact with the police,<sup>24</sup> actually beat a confession out of himself.)

This brings me to the annual meeting of the American Law Institute some years back. I had barely gotten my foot inside the Mayflower Hotel, overnight bag in hand, when I was accosted by Kamisar, who proceeded to engage me in a *shmooz*. I put down my bag as our conversation (more monologue than dialogue, as I recall) continued; I was at that time standing just inside the main hallway running the entire length of the hotel. While not afflicted with propinquophobia, I nonetheless sensed that Kamisar was bearing down on me as he spoke, and thus I began a slow withdrawal, but to no avail, for each step of my retreat was matched by a Kamisar move forward. When some twenty minutes later we finally parted so that I could check in and he could get to the opening session, I discovered that Yale had backed me the entire length of the corridor, virtually an entire city block! I hastily retraced my steps to where I had started and discovered that my overnight bag was still there in the middle of the floor, truly a miraculous happenstance given the number of lawyers then in the hotel.

Lest I seem unduly peeved about the professor's piteous prolixity, I should report that on at least one occasion I was able to turn it to my advantage — all the way to saving myself from one entire class preparation. Yale was at my law school to deliver the Baum lecture, and at my invitation he visited my criminal procedure class the next morning. I simply asked him to take a seat in the front row, and gave no indication that he had any part to play in the ensuing proceedings. As fate would have it, we were that morning just beginning the

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24. The semester I taught at Michigan, Al Conard arranged an evening social occasion at the law school when I could discuss with the faculty my recent work with the American Bar Foundation's survey of the administration of criminal justice in the United States, which involved empirical research such as riding with police. I barely got started on my presentation when Kamisar raised his hand to inquire, "Why don't liberals ever ride in police cars?" My memory of the occasion ends at precisely that point, I suspect because I either gave a stupid answer, had no answer (not even the *trepserverter* "Why don't you ask one?"), or had an answer I thought would skewer Kamisar to a fare-thee-well but didn't have the *baitisim* to take on such a *k'nacker*. I later discovered what I believe is the answer to why you will never find the liberal Kamisar in a police car, namely, that as a young *arumloifer* and *hulyen* growing up in the Bronx, he was the victim of police excesses:

Growing up, "I never viewed the police as my friends," he says. He remembers the police breaking up stickball games on the streets in the East Bronx, after neighbors complained. "When the police came, everyone ran," he says. "If the police got me, they'd just shove me around, kick me in the rear end, knock me down." To Kamisar, it was an enduring lesson that "people can get carried away."

Silberman, *supra* note 4, at 34.



confessions chapter, so I pushed the students into a general discussion of the virtues and vices of police interrogation. The student responses seemed more directed to the latter, so I played the devil's advocate, doing my best "Freddie the Cop" imitation, while silently counting the seconds to myself as I went along. In what I calculated as something short of a minute, my exposition was interrupted by an explosion from the front row. Kamisar had taken my bait and was on his feet! He launched into an extended attack upon police interrogation techniques that ran nonstop until the final bell,<sup>25</sup> while I meanwhile enjoyed my hour-long vacation from teaching.

#### IV. THE WRITER

*Words should be weighed and not counted.*

— old Yiddish proverb

Well before Yale even gave a thought to the possibility of attending law school, he had a compelling urge to write for publication. His talent for writing as a *kolboynik* in the Bronx won him a scholarship to the High School of Music and Art, and thereafter, whenever assigned to write an essay as schoolwork, he would do several, keeping the best one for himself and parceling the others out to his schoolmates.<sup>26</sup> As an undergraduate at N.Y.U., he regularly turned out a sports column called the "Yale Key to Sports,"<sup>27</sup> generally viewed as the best thing this side of Red Smith. Yale's burning ambition at the time was a career in sports journalism, and upon graduation he sought the best, a job on the sports staff of the *New York Times*. As directed, he prepared and submitted a piece on the Brooklyn Dodgers to the sports editor, but was chopfallen when the article and his job application were summarily rejected. Just why he failed is not entirely clear, though the article's 347 footnotes may have had something to do with it.

So it was on to law school, then law practice, and then into law teaching, where Yale unleashed upon the unsuspecting world a calorifacient cataclysm of legal scholarship. This was not just writing to get tenure, but writing with a message, and in the intervening years Kamisar never relented in communicating his considered views on a

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25. I don't know if one would classify Kamisar's outpouring as merely *drek auf dem teller*, but it caught the students attention like a *fortz n' zovver*, even to the point where it skewed the final exam test results. See Part VI *infra*.

26. It is rumored that Kamisar has followed essentially the same practice as a law professor, which, if true, means that he has been responsible for the entire corpus of the Michigan Law School faculty's scholarly output for the past thirty-eight years. Somehow, I can't quite bring myself to believe this. I mean, can you even imagine Kamisar on Icelandic blood feuds?

27. Silberman, *supra* note 4, at 34.

variety of subjects as to which he was indisputably a *maiven* — from euthanasia to search and seizure to the right to counsel to confessions to the trading of law professors baseball-style.<sup>28</sup> The quantity is just staggering, and I mean books, articles, op-ed page pieces, and whatever, and there has never been any respite because, as he once told a reporter, he wants "to prove to younger faculty that he can keep up with them."<sup>29</sup> At long last I have discovered a Kamisar understatement, for what he should have said is that he wants to prove to the younger faculty that they don't have a chance of keeping up with *him*. I wish I could get my hands on the good Dr. Watson's notes on Kamisar, for I would bet that the word "graphomania" appears therein with some frequency.

But there is an aspect of Yale's legal scholarship beyond the sheer volume of it that I want to emphasize here. Based upon the product of Kamisar's acute<sup>30</sup> *cacoethes scribendi*,<sup>31</sup> there is every reason to believe that Yale's own assessment as to why his Brooklyn Dodgers article failed was *not* that it had too many footnotes, but that it had too few. The hallmark of Kamisar's legal scholarship is total, absolute thoroughness,<sup>32</sup> and his meticulous attention to detail is such that his footnotes could even have footnotes! His articles are so comprehensive that the titles could well include two colons instead of the traditional one,<sup>33</sup> although with uncharacteristic restraint Yale has not strayed beyond the norm in this regard. From all of this, however, there is little doubt about one thing — though no *schlockmeister*, Yale would like to rewrite that old proverb to say: words should be *both* weighed and counted!

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28. While Kamisar's writings on the other subjects are so well known as to require no citation, perhaps I should offer a citation on this last topic, for otherwise readers might believe that in an otherwise credible sycophancy I have in this one instance let my imagination run away with me. See Yale Kamisar, *Three Professors Involved in Major Trade — Smith, Leading Antitrust Man, Goes to Yankees*, 11 J. LEGAL EDUC. 549 (1959). Apparently Yale, still smarting from his earlier turndown by the *New York Times*, was determined to break into print with a baseball story after all.

29. Silberman, *supra* note 4, at 39.

30. I say acute because Yale "writes in longhand, sometimes for so many hours at a stretch that his finger gets sore; he tapes it up and keeps going." Silberman, *supra* note 4, at 39.

31. For the Latin impaired, "an unhealthy passion to write."

32. Since Yale is not an *okuratner mentsh*, this explains why his office always looks like a *chazzershtal*.

33. For anyone doubting whether this is even feasible, consult the alternative title to LaFave, *supra* note 1, at 2431, n.†.

## V. THE JOKER

*Laughter can be heard further than weeping.*

— old Yiddish proverb

Yale's addiction to persiflage is yet another significant aspect of his character, and his delightful sense of humor is a joy to all who know him; it also keeps those of us who work with him on our toes, for we never know when we might be the object of a Kamisar *gleichvertel*. Yale's own taste for things comic was doubtless developed by his attendance during his youth, whenever he could scrape together the price of admission, of comedies performed at the *Folksbiene* during the heyday of the Yiddish theatre in New York. Indeed, Yale was on hand for what turned out to be the final performance of his idol, the most celebrated Yiddish *badhkin* of all time, the great Schlomo Lipshitz. After a lengthy intermission, the manager stepped out on the stage and announced: "Ladies and gentlemen, I'm distressed to report that Mr. Lipshitz just suffered a fatal heart attack in his dressing room, so we cannot continue." Stunned by this announcement and true to his upbringing, Yale impulsively cried out: "Quick! Give him some chicken soup!" The manager looked up into the cheap balcony seats from which this aberrant adjuration emanated and responded, "But the man is *geshtorben* — dead, dead, *dead*. What good will chicken soup do?" Characteristically unwilling to back down, Yale shouted back, "What harm?" Hence was established Yale's talent for the quick comeback, always reflecting at least a *shtikel* of *shpitzik*.

Permit me a few samples of Yale's *shtik* from my own experience. The first is from about twenty years back, at a time when the Supreme Court had granted cert. in a trio of cases to consider adoption of a good faith exception to the Fourth Amendment exclusionary rule, a prospect neither of us looked upon with favor. Up for review were the *Leon*, *Sheppard* and *Quintero* cases; in the first two, the claim was that good faith reliance by the police on a search warrant that turned out to be defective should suffice, while *Quintero* presented the broader and much more troubling claim that a good faith belief in the reasonableness of *any* search, warrant or not, should suffice. A friend of mine who was then clerking at the Supreme Court phoned me the just-breaking news that the Court was dismissing the *Quintero* case as moot because the defendant had just passed on to his reward. I breathlessly phoned Kamisar and told him this important bit of news, to which he responded with pseudo-solemnity: "Just remember this, Wayne: Mr. Quintero died for his country."

Now on to another occasion and another phone call a few years ago, when Yale, Jerry Israel, and I<sup>34</sup> were working frantically to get out a new edition of our *Modern Criminal Procedure* casebook. We had received the galleys from West and we were all busily proofreading our respective parts. Because I needed to check a cross-reference I had made to Yale's confessions chapter, I searched out the place being referenced to get the page number I needed, and in doing so found an error in Yale's galleys I thought I should call to his attention. I phoned him immediately and said, "Look on galley 587, seven lines down in that note where you consider what the Chief Justice had said in a earlier case. The name should be spelled B-U-R-G-E-R, not B-E-R-G-E-R as you have it." Without a moment's pause, Yale shot back: "Wayne, now you can see why Jerry and I have a gentile for a co-author."

Another example also happens to involve the aforementioned *Leon* case. The Supreme Court decided the case, holding there was a good faith exception in the case of police reliance upon what turned out to be an invalid warrant, so I set about editing this important decision for inclusion in our next casebook supplement. Once all my material for the supplement was ready, I shipped it off to Kamisar, our senior editor, so that he could assemble the various contributions into a whole and send it on to West. A few days later, I got a phone call from Yale, which, I must say, was not unanticipated. In his characteristic mile-a-minute staccato, Yale vociferated: "I was just looking over your version of *Leon* for the casebook, and it seemed to me that you edited out some pretty important stuff." This is about as close to subtlety as Yale can get, and I had no doubt whatsoever to what he was referring: in *Leon*, he is cited or quoted several times, and in my scissoring down of the case *all* references to Kamisar had ended up in the waste basket, a consequence which I thought at the time might render him more of a *vilder mentsh* than usual. But I too kept the discussion on a more general level, noting that the case was fifty-six pages long in the *U.S. Reports* and thus required severe editing to bring it down to manageable size. There was more sputtering at the other end of the line, at which point I decided, as the risk of being deemed a *shetik drek*, to take the bull by the horns: "Come on, Yale," I joshed, "you're just upset because I took out all the references to *you*." His response was immediate, reflecting *either* his delightful sense of humor *or* his innate competitiveness (take your pick): "It's not just that Wayne. You not only deleted any and all references to me, but you left in footnote 20 with a long quote of Jerry Israel!"<sup>35</sup>

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34. This was prior to the time that Nancy King joined us on the book.

35. Indeed I had, but no one will ever know whether I did so because I thought the Israel quote was critical to the Court's discussion, or because I could thereby get Kamisar's goat.

I have one final example, admittedly based only upon hearsay, but since hearsay can suffice for probable cause,<sup>36</sup> I feel justified in going forward. The incident, at least as initially reported to me by Kamisar himself, is as follows: Yale was at Wayne State Law School to debate Joe Grano on the pros and cons of the Fourth Amendment exclusionary rule. At an apparently prearranged point in Grano's presentation, the rear doors of the auditorium opened and the law school's librarian wheeled a book cart down the aisle to the podium. The cart contained five books — the five volumes of my *Search and Seizure* treatise, to be exact. Grano took note of the size and heft of these volumes, and then made his central point: that if the law of search and seizure was this complex, then surely an exclusionary rule made no sense. Kamisar's immediate response, he would have me believe, was: "Well, the treatise wouldn't be any smaller without an exclusionary rule, would it?" But Yale's account is suspect, for the fact of the matter is that without an exclusionary rule I could have written the treatise on the back of an envelope, as then Fourth Amendment violations simply would not matter and thus would not be a regular subject of judicial analysis. Thus I hope Yale will not think me a *farshinkener* when I say I am inclined to give credence to another version of the story I was told by a *mosser* I engaged to dig up some *shmutz* on Kamisar. What Yale *really* said was this: "The fact that it took LaFave five volumes to explain the 54 words in the Fourth Amendment says more about LaFave than about the Amendment itself!"

## VI. THE FINAL EXAM

*Tell an ass by his long ears, a fool by his long tongue.*

— old Yiddish proverb

Speaking of long ears, I recall that one time many years ago I actually included Yale Kamisar in a final examination in my criminal

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36. A point I make here only to have an excuse to cite myself (which reflects that, after all these years, a bit of Kamisar has rubbed off on me). See 2 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 3.2(d) (3d ed. 1996).

At least I have spared Kamisar the *brokh* I recently visited upon a colleague at Illinois for whom I was called upon to perform encomiastically. On that occasion, to thwart my Illinois compatriot's expectation that he would improve his standing vis-à-vis yours truly in the list of most cited law professors, I filled my footnotes with citations to everything I had ever written but mentioned *not a single work* by the eulogizee. See Wayne R. LaFave, *Rotunda: Il Professore Prolifico Ma Piccolo*, 2003 U. ILL. L. REV. 1161. I couldn't bring myself to do the same thing to Kamisar, who still has not recovered from the time that *People* magazine killed a story about him in order to cover Liberace's death. Silberman, *supra* note 4, at 35, 37.

Lest it be thought that I am here making out Yale as a *grois-halter*, I would only say that with respect to his taste for the public eye, he is most certainly the un-Israel. See LaFave, *supra* note 2, at 2437, for Jerry Israel's rating on the "humility index," which made him "distinctly nonDershowitzian." *Id.* at n.24.

procedure course. In order to retain my eyesight and my sanity, I have customarily made about a third of my final exam multiple-choice questions, gradable by a machine, rather than essay questions. On this particular occasion, I found myself one multiple-choice question short, so I decided to add a "freebie," a question to which the answer should be evident to anyone who was present in class and half awake. The question involved the visitors we had in the class on separate occasions that semester, who consisted of Kamisar, Chief Justice Rehnquist, a visiting professor with the unlikely moniker of Alfonse Squillante, as well as (just before the Easter break) someone wearing a complete rabbit costume who came by to publicize a forthcoming student talent show. My question read as follows:

Of the various visitors we have had in the course this semester, the one with the most elongated auditory apparatus was

- (A) Chief Justice William Rehnquist
- (B) Professor Alfonse Squillante
- (C) Professor Yale Kamisar
- (D) The Easter Bunny.

A few days after the exam I got back the results of the multiple-choice scores, together with a printout analyzing the performance on each question. In perusing the latter, I was astonished to see that as to the foregoing question the preferred answer (selected by 41% of the students) was option (C). I was, to say the least, dumbfounded, for — while no one would characterize Yale's ears as *pitsvinik* — he could hardly match the Easter Bunny (with whom, of course, he lacked even a nodding acquaintance), or, for that matter, even Squillante (who I viewed as the best "distractor" in my question). In later reflecting on this curious testing result, which regrettably dropped the scores of six students below the passing level, I came to this conclusion: the students found Yale's performance in my class, as I described earlier, so incredibly stunning that he was the most memorable of the four visitors, and thus (as students are wont to do) my test-takers simply picked the most familiar answer without regard to the substance of the question!

And now the time has come for yet another multiple choice question, the question this time being the conundrum serving as the title to this *kakapitshi*: What is a Kamisar? Here are your choices:

- (A) an official in a communist government
- (B) an urn for heating tea water
- (C) an alloy found in meteorites

(D) a military attack made at night

(E) a retiring law professor.

If you proceed more cautiously than my students did, you might try to identify and discard some of the distractors. Thus, it looks like (A) should go, for that is a commissar. (B) doesn't seem right, as that's a samovar. As for (C), isn't that kamacite? And (D) surely must be camisade. Ah, but now comes the rub, for (E) doesn't seem right either. If the word "retiring" is being used in the sense of "shy," we know for certain that this is not the answer, for Kamisar is certainly not *shemevdik*. And if that word is being used in the sense of "withdrawing from office, business, or active life," that is equally beyond belief, for anyone who knows Yale will be certain in the knowledge that in the years ahead he will continue fighting, talking, writing, and joking, just as in the past, all to our collective betterment.<sup>37</sup> So perhaps if in desperation we pick (E) as the answer, it is for much the same reason as my clueless students: because of the great impression Yale Kamisar has made upon all of us, not only as a *kemfer*, *redner*, *shrayber* and *komiker*, but also as the ultimate *choshever mentsh*.<sup>38</sup>

37. One thing for sure, Kamisar will still have a podium available to him. Apparently still smarting from his bout of unemployment following the summary rejection of his application by the *New York Times*, see *supra* text following note 27, Yale cautiously delayed filing for retirement at the University of Michigan until he had gained tenure in a warmer climate at the University of San Diego. For a full account of the Kamisar transition, see Robin Wilson, *Flight of the Snowbirds*, CHRON. HIGHER EDUC., Mar. 12, 2004.

38. Not wishing even the most sheltered of *goyim* to miss the import of this final remark in this *ongepatshket hekhsher*, I should explain that *choshever mentsh* means: a man of worth and dignity; an elite person; a respected person. (In an earlier draft, I followed that observation with the one in-English old Yiddish proverb I had left over from the batch earlier inserted in this paragon of puffery, namely: "He is a fool who looks for a notch in a saw." But on reflection, it occurred to me that I had no idea whether Kamisar had or had not ever looked for a notch in a saw, so I decided to eliminate this last proverb rather than risk dulling the impact of my panegyric postlude.)

While my translation in this footnote prompted the editors of this esteemed *Review* to suggest that I should likewise provide a translation for the *umwisndik* of all the other Yiddish terms used herein, I have convinced them that this would be *geferlekh* because the corresponding English words are *umonshtendik* and thus would offend the sensibilities of their readers and result in irreparable damage to their own moral fiber (and also, I might have added, would make me out as a *grober*). I may be in enough trouble as it is, considering that Lenny Bruce "was arrested and charged with violating state obscenity statutes essentially for \* \* \* using Yiddish expressions," Patrick H. Haggerty, Book Review, *FED. LAW.*, Apr. 2003, at 62, and that Jacob Abrams was convicted of conspiracy to commit espionage for writing broadsides "in the Yiddish language," *Abrams v. United States*, 250 U.S. 616, 617 (1919).