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## CSI: Aoki

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In April, 2008, Keith visited Dallas to give a talk at SMU Law School, where I was Professor of Law at the time. I served as his host in the morning before his talk, and, after our breakfast, we wound up deciding to visit Dealey Plaza, the site of the Kennedy assassination. I am not sure whose idea it was. I know it was an odd choice. As we drove there, Keith said he had always wanted to visit it. His saying so was another example of his graciousness. But passing by one of the most iconic places in post-World War II U.S. history remains for me a quirky memory that is worth sharing.

After driving past the book depository, over the “X” on Commerce Street, placed by someone at the Department of Justice to mark the point of the first impact, then past the off-ramp which the motorcade took on its unexpected diversion to Parkland Hospital, we started talking about a mutual friend who was visiting at a fancy law school, her alma mater. We both knew she would do well. “She’s returning to the scene of the crime,” Keith said with his knowing smile. I laughed at the comment, not sure what it really meant. It sounded cool. Keith got to his talk in time. It was a good day.

“Scene of the crime.” A few months after escorting Keith, I admired that turn of phrase and puzzled over its meaning. In April 2011, after I heard of his illness, I thought about it again. The phrase seems so fitting, in part because my attempts to nail down its meaning are so fleeting. It’s an example of the pithy way Keith could express a thought — dangling the gem in front of you long enough for you to want to fathom its glistening appeal.

In the context of our mutual friend returning to her alma mater, the scene of the crime is a law school — perhaps the one she was visiting, perhaps law schools in general. The notion of a law school as a crime scene is an incongruous one. Perhaps Keith was talking generally about a student’s experience at law school, experiences made more

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trenchant when a student becomes a law professor. Law school teaching methods can come across as criminal, alien, and torturous. The mythology of learning to think like a lawyer — pompous, grandiose, and misleading — is an act of killing one person and building another. And many constituencies in law schools — students, faculty, staff, and alums — feel like a law school is a transgressor, falling short of its lofty ideals as it carries out the business of training lawyers. But are any of these experiences worthy of the yellow tape?

When I learned about Keith's creative energies flowing out into the art movement along the Cass Corridor in the Eighties, another meaning of "scene of the crime" struck me. Edgar Degas declared that creating a painting requires the "cunning, roguishness and wickedness" of a criminal.<sup>1</sup> Keith was not wicked. Roguishness may be an appropriate adjective, but it suggests someone who manipulates people, a rake, a gigolo, or a flimflam artist. The word seems ultimately wrong. I like to describe Keith as "cunning," at least a kinder, humane version of cunningness, like Isaiah Berlin's description of the fox, who knows many things and can use them well.<sup>2</sup> Degas may have overstated the case, but an artist is a rule-breaker and hence a criminal. The scene of the crime is where such rule breaking takes place. What Keith's life teaches me is how being a law professor involves a series of creative and therefore criminal acts. A law school is the scene of the crime, and what we do as law professors is the *actus reus*.

But mere breaking of the rules is as unimaginative and uncreative as blindly following the rules. Where creativity enters is in negotiating the rules. And the ability to negotiate was Keith's craft as a law professor, and as a person. Through his scholarship and his "graphic articles," Keith negotiated his artistic instincts with the nitpicking demands of the legal profession. His approach to legal theory triangulated the dominance of doctrinal legal thinking; the sixties' left-liberal hangers-on of critical legal thinking (largely white and elitist); and the voices of those put off by the varied debates, especially the impulse to reduce all thought to two sides. Keith's outlook combined patience and passion for change, a quiet calm and a wild abandon, and an ability to exist within the system and to shift its contours. There was only one time that I felt that Keith was visibly angry, and that was

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<sup>1</sup> Lorraine Gamman & Maziar Raien, *Reviewing the Art of Crime: What, If Anything, Do Criminals and Artists/Designers Have in Common?*, in *THE DARK SIDE OF CREATIVITY* 155, 159 (David H. Copley et al. eds., 2010).

<sup>2</sup> ISAIAH BERLIN, *THE HEDGEHOG AND THE FOX* 3 (Elephant Paperbacks 1993) (1953) (citing fragment from Greek poet Archilochus, "The fox knows many things, but the hedgehog knows one big thing").

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when he described the circumstances that made him leave Oregon, his academic and personal home for most of his career. But even that move was a brilliant bit of negotiation on his part, especially if one appreciates some of the consequences of that battle.

Some may be bewildered or appalled by my comparison of Keith to a criminal. But criminality entails not only differences in degree, but differences in kind. By playing at the boundary of rules, a criminal can be a creative figure. This process, called “creative destruction,” is not only for the large, well-capitalized firms that destroy existing institutions to support new ones, but also for individuals, acting sometimes in tandem, sometimes alone, in forging change. What is truly incongruous is that in a field like law teaching, where self-aggrandizement and professional self-advancement displace curiosity and concentration, where bigotry and a cynical concern with racism and sexism replace the pursuit of pluralism and genuine diversity, and where intellectual shallowness passes for depth, Keith’s mode of kindness, intellectual intensity, and sense of justice can even be deemed as outside accepted norms.

The creative criminality of negotiating the rules, of being in a position where one has to negotiate and fight for every bit of reward and recognition, of being made to feel like a criminal when all one wants is to be a professional, a scholar, a teacher, and a person — these are what I distill from that haunting phrase, “scene of the crime.” Of course, what I should have done when I had the chance — yet another regrettable use of the past subjunctive — is just ask Keith what the hell he meant that day in 2008. He would have looked at me quietly, smiled, and then gently shown me why I have it all wrong.

I wish I did not have to write this. I like puzzling over the meaning of words, but it is comforting to know that I can just call or email the author who can partly cast aside my bewilderment. For those left behind to gauge its meaning, every death, however natural, feels like an assassination. The furtive assassin does his business and eludes capture, leaving us to find solace in memories both clear and fading. Conspiracies secular and religious provide distraction. All I know is that I was lucky to have Keith cross my path and mark it for me along the way. He set an example of how to live and how to negotiate the hypocrisies and provincialism the world offers. And that cryptic phrase about the “scene of the crime” is just one of many lines that he has left for me to ponder.