

# FIRING LINE NEWSLETTER



JAN 12 '90



A production  
of the  
SOUTHERN  
EDUCATIONAL  
COMMUNICATIONS  
ASSOCIATION

NATIONAL REVIEW  
150 E. 35th Street  
New York, N.Y. 10016  
(212) 679-7409

SECA  
P.O. Box 5966  
Columbia, S.C. 29250  
(803) 799-5517

"AWAITING EXECUTION?"

Guest: Michael Tigar

Moderator: Michael Kinsley, The New Republic

#1922 for air on PBS the week of January 5, 1990

Interest: Justice, legality and the death penalty

Rating: Public Interest \*\*\*\*  
Performance \*\*\*  
Entertainment \*\*

"A society that takes 10 years to execute Ted Bundy is a society whose legal processes are not working well enough."--William F. Buckley Jr.

## Comment:

Since the U.S. Supreme Court reapproved the death penalty--for cases that involve aggravating circumstances--in 1976, there have been approximately 240,000 murders in America. There are now 2,200 convicted murderers on death row in the nation's prisons. Of those convicted in the last 13 years, 117 have been executed. Some people--Mr. Buckley included--find these numbers shocking because so few of those convicted of a capital offense have had sentence carried out. Others--like his guest, Michael Tigar--believe these numbers represent 117 executions too many. Mr. Tigar is a criminal lawyer, a professor at the University of Texas Law School, and chairman of the litigation section of the American Bar Association.

This program is not as grim as it sounds. There are no harrowing details, either of murders or of life on death row. The debate, in fact, is for the most part pretty restrained. One senses a weight of moral concern on both sides, but the discussion tends toward issues of legal competence and pay scales, which, while they may have a direct bearing on outcomes, keep one at a remove from the actual life or death question. This has two results: there is a certain flatness on a highly charged issue, but an accompanying freedom to think about it in a fresh, unencumbered way.

## Mr. Buckley's Summing Up:

I admire very much, as I always have, Mr. Tigar's resourcefulness. I understand the obvious necessity to protect from the ultimate penalty as many people as one can protect who are innocent, but I think that if you set yourself up a criterion for doing so that is so difficult to meet, the effect of it is the kind of dislocation from which we are now suffering. Seventy-five per cent of the American people think that cold-blooded murder ought to be punished by execution, and to the extent that we have a republic that writes its own

\* Poor

\*\* Fair

\*\*\* Good

\*\*\*\* Excellent



laws, those laws, in my judgment, ought to be followed. Those laws, in my judgment, are now being frustrated as a result of the cool resources of very bright people who walk into the situation with an ideological predetermination to render the law nugatory.

Excerpts:

TIGAR: If I'm retained as a lawyer and there's a human life at stake--one, of course, is gone, that's why there's a murder charge--the question is, shall the state be entitled to take this other life, this life, now, deliberately. As a lawyer I've got the obligation to go out and walk the mean streets and find the facts, to check that alibi out, to check the defendant's mental condition, to hire an investigator. How can I do that if I'm in, for instance, a state like Georgia, where the only thing I can get for my fee is \$500...and where the pressure of my other business makes it impossible for me to do a decent job?

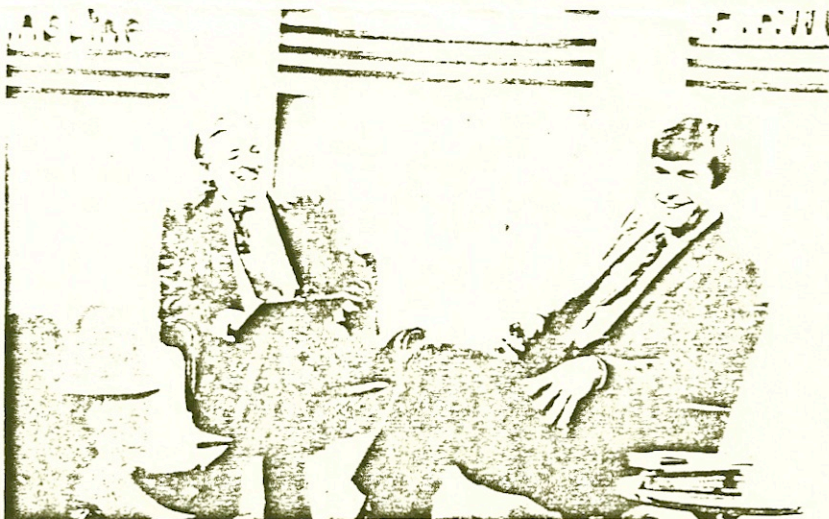
BUCKLEY: I would be more moved by your argument if I thought that you cared very much to apprehend the guilty and to save the innocent. But I don't think you really do. I think that you are philosophically opposed to capital punishment and that you're going to use any means you can to subvert the will of the majority of the people...

TIGAR: The problem is that when you talk about 240,000 homicides, you're talking about all degrees of homicide, including first degree murder, second degree murder, manslaughter in the heat of passion and so on. The conservative majority of the Supreme Court of the United States has said that the death penalty can only be imposed on that very small fraction of murders in which there are peculiarly aggravating circumstances. And then only after a trial in which the aggravating circumstances are considered. So that the numbers game that folks try to play really is misleading...

TIGAR: One of the problems with the death penalty in the French Revolution, as Edmund Burke pointed out, was celerity. So doing it quickly isn't necessarily a good thing. And the problem is that for every Ted Bundy you point out, where the process took so long, we find that there are three or four people who are in the seventh or eighth or ninth year, and all of a sudden a competent principal lawyer gets a hold of the case and finds that there's some reason there that this penalty ought never to have been given...

BUCKLEY: The lawyers have permitted the development of a judicial system on the basis of which it is becoming an almost impossible epistemological question to establish basic guilt or innocence where capital punishment is concerned...this makes a travesty of the law and a travesty of the democratic process...

TIGAR: If we're going to have this penalty, which I acknowledge I oppose and you acknowledge that you favor, I take it that it's common ground between us that the state should never be able to exact it without making sure that the system that led to it is fair and just and decent and right and accurate...



(This newsletter is prepared by the producers of FIRING LINE. Mr. Buckley is not consulted in any way in its preparation.)



NOV 20 '89

**NATIONAL REVIEW • 150 East 35th Street, New York, New York 10016**

**Tel. 212-679-7330**

**WILLIAM F. BUCKLEY, JR.**

Editor-in-Chief

November 10, 1989

Dear Mike:

Sorry we didn't have more of a visit while you were up in this part of the world. You were your usual brash brilliant self, but plainly wrong on the Hugh Carey matter. How does it feel to be wrong every now and then?

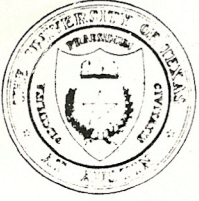
With warm regards,

*Bee*

Wm. F. Buckley Jr.

Mr. Michael Tigar  
School of Law  
University of Texas  
727 E. 26th Street  
Austin, TX 78705





SCHOOL OF LAW

THE UNIVERSITY OF TEXAS AT AUSTIN

727 East 26th Street • Austin, Texas 78705 • (512) 471-5151  
Teletypewriter Number (512) 471-6988

Direct Dial Number (512) 471-6319  
Direct FAX Number (512) 478-3202  
ABA/net ABA8407

December 1, 1989

William F. Buckley, Jr.  
National Review  
150 East 35th Street  
New York, New York 10016

Dear Bill:

Thanks for your letter. Given other experiences with him, I would be pleased to see proof that Hugh Carey did something wrong. Proof that he promised to spare someone from the executioner in the manner provided for by the New York Constitution doesn't quite do it for me.

As for me, I will plead guilty to being brash. I am taking your letter home tonight to show my mother, and she will thank you for "brilliant." I hope our paths cross again soon. If I can arrange for Mandela's lawyer to get to the US, maybe you would like him on the program. (Maybe if the South Africans were as liberal in granting exit rights as, say, the East Germans . . . . )

Warm regards.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Tigar".

Michael E. Tigar  
Joseph D. Jamail  
Centennial Chair in Law

MET/jjp  
cc: Charles Culhane  
(with letter)