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THE OKLAHOMA BOMBING

Odd Couple Teams For Nichols Defense

BY JANET ELLIOTT

Michael Tigar, the leftist law professor who loves to challenge government authority, and Ronald Woods, the conservative career prosecutor, promise to make a formidable defense team for Oklahoma City bombing suspect Terry Nichols.

"They're yin and yang," said Houston criminal defense specialist Dick DeGuerin, who worked with both men last year on the successful defense of U.S. Sen. Kay Bailey Hutchison's state ethics charges.

Tigar, a federal appellate expert who teaches at the University of Texas School of Law, has argued seven cases at the U.S. Supreme Court and 59 at U.S. courts of appeals. Although he has concentrated on appeals in recent years, he has kept his hand in the occasional trial. His most recent book, published by the American Bar Association in 1993, is "Examining Witnesses."

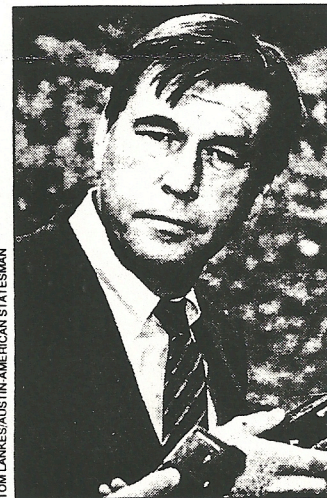
"This is a great lawsuit with genuine fact issues," Tigar said May 16. "I'm going to get ready to cross-examine some FBI agents."

He declined a request for an interview, saying he had to prepare for a May 18 bond hearing for Nichols.

Tigar and Woods, a former FBI agent and U.S. attorney in Houston, have been appointed by U.S. District Judge David Russell of Oklahoma City to represent Nichols, who faces the death penalty if convicted of destroying the Alfred P. Murrah Federal Building in Oklahoma City.

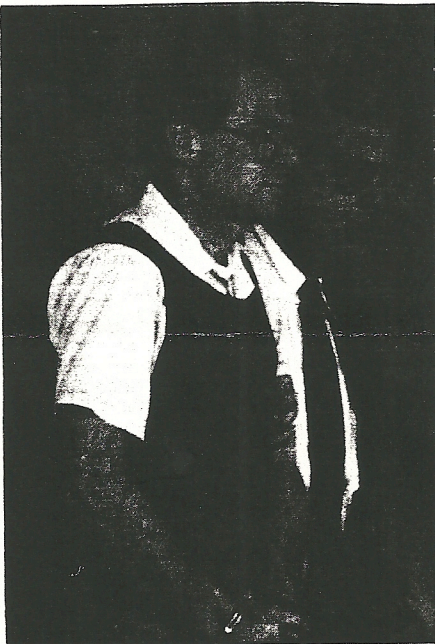
DeGuerin said Tigar is a "brilliant legal strategist" whose magnetic presence and speaking style should go over well with jurors. "I can't say enough about his ability to persuade," he said.

Tigar has been closely involved in death penalty cases at the state level. He is one of the founders of the Texas



MICHAEL TIGAR, nationally known since his law school days at Berkeley in the mid-1960s, has a record of aiding leftist clients but agreed to defend right-wing bombing suspect Terry Nichols.

TOM LANKES/AUSTIN AMERICAN STATESMAN



ASSOCIATED PRESS

TERRY NICHOLS, shown here being escorted by a federal marshal, has a "yin and yang" defense team eager to cross-examine the FBI agents involved in his case.

Resource Center, which provides post-conviction representation for death row inmates. That knowledge, combined with his expertise in federal appeals, could be key skills in Nichols' case because President Bill Clinton has promised to make the bombing prosecutions a test of speeding the federal habeas process.

Woods' strong suit is his ability to manage the details of a complex case and his insider's knowledge of law enforcement, DeGuerin said. Woods has more than 22

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years of experience in law enforcement as an FBI agent, state prosecutor and federal prosecutor.

"He's meticulously organized and has a phenomenal memory for details," DeGuerin said.

Woods said May 17 that he feels honored that his name came up in the search for the most experienced federal practitioners. "All lawyers have an obligation to take these occasionally unpopular cases and make sure the people get a fair trial," said Woods, a solo practitioner.

He said he expects the government to indict Nichols by late summer and take the case to trial in early 1996. The lawyers will attempt to keep the cases of Nichols and chief suspect Timothy McVeigh separate and to have Nichols' case moved from Oklahoma, although Tigar failed in his initial attempt May 17 to have all Oklahoma City-based prosecutors and U.S. Magistrate Judge Ronald Howland removed from the case.

REDEEMING THE BAR

When Russell and other Oklahoma federal judges realized they were not going to find lawyers in their state willing to represent Nichols, they turned to Texas.

The word went out through federal public defenders, Texas criminal defense lawyers and judges with the 5th U.S. Circuit Court of Appeals in New Orleans. The search eventually led to Tigar, who is no stranger to friendless clients. Tigar in turn tapped Woods.

5th Circuit Judges Patrick Higginbotham and Fortunato "Pete" Benavides were among those urging Tigar to take the case.

The National Association of Criminal Defense Lawyers, headed by San Antonio's Gerry Goldstein, networked to find quality counsel for one of the most despised men in America.

The choice of the two Texans redeemed the state's defense bar from an earlier embarrassing episode: Two Houston lawyers, Paul Looney and J. Brent Liedtke, showed up in Oklahoma City saying they had been retained by McVeigh's family to represent him.

Looney has been a lawyer for less than five years, and Liedtke was disbarred in 1990 but says he can practice in the federal system. McVeigh quickly rejected their counsel, and Russell declared he would thoroughly check out all lawyers to eliminate "ambulance chasers," Woods said.

McVeigh is being represented by Stephen Jones of Enid, Okla., a litigator who has represented about 25 capital murder defendants. A similar behind-the-scenes effort led to Jones after two federal public defenders in Oklahoma City were allowed to withdraw from representing McVeigh.

Jones will be joined by Rob Nigh, the chief federal public defender in Lincoln, Neb. A third lawyer may be added.

Russell has said the defense lawyers will be paid \$125 an hour, an amount DeGuerin called "woefully inadequate" when compared to the resources the government is pouring into the case.

DeGuerin, a name partner in DeGuerin & Dickson, said he was approached to represent McVeigh, the first suspect arrested in connection with the April 19 bombing that killed 168 people, including 19 children. He said he declined because of his heavy caseload and because he represented Branch Davidian leader David Koresh during the standoff at the religious sect's Mount Carmel compound

A WORLD OF EXPERIENCE

Michael E. Tigar has taught or practiced law in Austin, Buffalo, N.Y., Los Angeles, Washington, D.C., South Africa and France. He has chaired the ABA's Litigation Section, been a consultant to an African National Congress task force on constitutional issues, chaired the Texas Resource Center's board of directors, worked as a summer intern for the American Civil Liberties Union and written books, plays, essays, reviews and articles.

His significant cases include:

- *Gentile v. State Bar of Nevada*, 111 S.Ct. 2720 (1991) — pretrial publicity
- *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir.) — alleged war criminal's defense
- *Breen v. Selective Service Local Board No. 16*, 396 U.S. 460 (1970) — drafting of anti-war protesters
- *Letelier v. Republic of Chile*, 748 F.2d 790 (2nd Cir. 1984) — wrongful death claim against foreign government
- *Graham v. Collins*, 113 S.Ct. 892 (1993) — racism in death sentences
- *Lefkowitz v. Cunningham*, 431 U.S. 801 (1977) — self-incrimination
- *U.S. v. O'Quinn*, 913 F.2d 221 (5th Cir. 1990) — contempt of court

near Waco.

Federal officials believe McVeigh was motivated by anger at the government's handling of the Waco raid. The bombing occurred on the second anniversary of the government's tear gas assault on the Branch Davidian compound. More than 80 people died when the compound burned.

DeGuerin said his taking the case "would have allowed people to unfairly and improperly make the connection between the Branch Davidians and what happened in Oklahoma City."

Now involved in one of the biggest cases of the decade, Woods and Tigar have vowed not to try their case in the press. Woods was known as a closed-mouthed U.S. attorney. And despite the prominence of his career, Tigar has rarely sought out media attention.

Woods cringed at the suggestion he and Tigar might be a federal version of O.J. Simpson's "dream team" of defense lawyers, saying he does not want to invite any comparison between the bombing case and the televised Simpson murder trial. "We don't want to start calling press conferences and going to parties," Woods said.

CONTROVERSIAL CLIENTS

Tigar was instrumental in bringing the Texas Resource Center to Austin in 1988 to help recruit and train lawyers for post-conviction appeals. He was chairman of the center's board from its inception until late 1993 and argued for death row inmate Gary Graham at the U.S. Supreme Court and 5th Circuit.

"He's exciting and a challenging person to be around," said Mandy Welch, the center's executive director. "He's always thinking of something. His mind is always working."

Austin civil rights lawyer James Harrington said the notoriety of the bombing case will not cause Tigar to miss a beat. "He's used to really tough cases and unpopular cases," said Harrington. "And he'll require the government to prove itself every step of the way."

Tigar's roster of notorious clients includes black militant Angela Davis and the Chicago Seven war protesters, who were tried for conspiracy to incite riots at the 1968 Democratic National Convention. He wrote and argued most of the pretrial motions in that case; William Kunstler led the trial team.

Tigar also represented John Demjanjuk, an Ohio auto worker stripped of his U.S. citizenship after being accused of Nazi war crimes. When legal ethics

Professor Monroe Freedman criticized Tigar for taking the case, Tigar stood his ground. [See "Here's Why I Represent John Demjanjuk," *Texas Lawyer*, page 17, Sept. 13, 1993.]

Now 54, Tigar has been in the public eye since he was a law student in the mid-1960s. While attending Boalt Hall law school at the University of California at Berkeley, he finished first in his class all three years while gaining notoriety as a leader of the student radical movement.

Tigar's brilliance landed him a clerkship with Supreme Court Justice William Brennan for the 1966-67 term; his radical student activities cost him that chance to work at the high court.

Brennan's decision to hire Tigar triggered "a campaign to sabotage his appointment," Hunter R. Clark wrote in the just-published biography "Justice Brennan: The Great Conciliator." In those Cold War days, opponents of the court's decisions zeroed in on Tigar's attendance at a youth festival in Helsinki, Finland, that included participants from the Soviet Union.

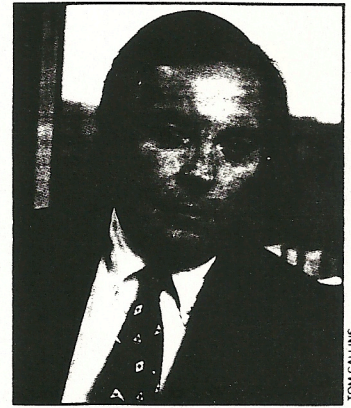
Brennan received considerable pressure to dump Tigar from fellow Justice Abe Fortas, FBI Director J. Edgar Hoover and Hoover's right-hand man, Clyde Tolson. "They bombarded me with all kinds of letters," most having to do with Tigar's participation in the Helsinki meeting, Brennan says in Clark's book.

The final straw came when a congressional investigation into the court was threatened until Tigar was axed, and Brennan fired Tigar when he showed up for his first day of work. Long after the incident Brennan acknowledged, "I must say I've had a number of second thoughts" about firing Tigar, who has argued seven cases before the high court. (Tigar apparently bore no long-term grudge, saying in 1990, "I have enormous respect for Justice Brennan.")

'AN ASTOUNDING CATCH'

"I don't think it was Justice Brennan's finest hour, if one is allowed to say that about an icon," said UT Law Dean Michael Sharlot. Sharlot, who was a young lawyer in Washington at the time, says the clerkship controversy made Tigar a familiar name in the capital — "the hotshot from Boalt" who was "disinvited" by Justice Brennan. (Tigar is still something of an insider in Washington, as his caricature ensconced at the tony Palm restaurant suggests.)

Later, "when he indicated an interest in teaching, I thought he'd be an astounding



RONALD WOODS, the other half of the Nichols defense team, won 96 percent of his cases when he was a federal prosecutor in Houston.

catch for us," Sharlot said.

The dean said he strongly favored Tigar's appointment to the faculty, and the two "have been friends ever since." His faculty job has enabled Tigar to write extensively; his published work includes plays, along with numerous law books and articles.

Last year Tigar, who teaches civil and criminal procedure, was a candidate for the dean's job that went to Sharlot.

Students' views on Tigar range from the one who said he has an "ego the size of the Asian continent" to the stressed-out, first-year student who said she will never forget his kindness when she broke down in his office.

Tigar's current annual salary is \$147,572, which includes \$7,000 for the Joseph D. Jamail Centennial Chair in Law, a position he has held since 1987. Mark Yudof, the former UT law dean who is now provost for the university, said Tigar takes a pay cut for the amount of time he spends on cases. On the Hutchison case for example, Tigar went on a half-time schedule, Yudof said.

Yudof said Tigar hates to see government authorities overstep their roles. That is what drew him to the Hutchison case, which abruptly ended when Travis County District Attorney Ronnie Earle abandoned the case as it was going to trial, citing a pre-trial ruling that he said crippled his case.

DeGuerin and Harrington said Tigar took a great deal of flak from his Austin friends for his representation of Hutchison, who was reviled by Texas Democrats for taking their last U.S. Senate seat.

WORK ON THREE CONTINENTS

A true Renaissance man, Tigar is a gourmet cook and sailing enthusiast. He periodically teaches law courses at a college in France and is involved in teaching a crash course on litigation to black South African lawyers.

He had joined Washington's Williams & Connolly after losing the Brennan clerkship. Tigar cut his teeth on the 1967 legal team headed by firm founder Edward Bennett Williams that defended Lyndon Johnson aide Bobby Baker on tax fraud charges. Baker was sent to prison.

Williams was a mentor to Tigar, although a biography of Williams says he disliked some of Tigar's radical acquaintances. "Williams liked to boast that Tigar was sleeping with Bernadine Dohrn, the tempestuous leader of the Weather Underground, though it was untrue," author Evan Thomas wrote in "The Man to See," a 1991 book about Williams.

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Tigar had left the firm in 1969 to teach in the United States and practice overseas, but in 1974, he rejoined the firm and helped Williams win the acquittal of former Texas Gov. John Connally, then the U.S. Treasury secretary, on charges he was involved in a milk price-support scandal. The win re-established Williams' reputation as the best trial lawyer in America.

In a previous case involving a bombing, Tigar successfully defended a Colorado man charged with blowing up power-line towers in protest of the American defense system. Early in his career, he took on the Selective Service for putting war protesters at the top of its induction lists. He won his first case before the U.S. Supreme Court when that practice was outlawed.

BRILAB PROSECUTIONS

Woods, 57, also went to law school in the turbulent '60s, but he took a much different path. After graduating from UT in 1964, Woods had a three-year stint as an FBI agent. He spent seven years with the Harris County district attorney's office before joining the U.S. attorney's office in 1976. In the early 1980s he was involved in the prosecution of public officials and labor leaders stemming from the FBI's national BRILAB probe. He later said those cases were the most important of his career, although the big fish, Texas House Speaker Billy Clayton, was acquitted.

During his first nine years as a federal prosecutor, Woods tried 50 cases and obtained convictions in 48. He joined Houston's Baker & Botts as a litigator in 1985 and in 1987 opened his own practice, specializing in white-collar criminal defense.

President George Bush named Woods U.S. attorney for the Southern District of Texas in November 1990. He resigned in

From the Pen of Michael Tigar

"We must expect — I would even say hope — that death cases will inspire commitment proportional to the stakes involved. Saving lives from the hangman's noose has inspired some of our profession's proudest hours.

"Moreover, the federal courts have taught us that any issue not raised at the earliest possible hour may be waived. Inevitably, this leads to a proliferation of argued points, a tactic at odds with the more common practice of selecting only those arguments perceived as strongest. All lawyers and judges now know that Justices of the Supreme Court have often granted stays when the Fifth Circuit has summarily refused them, a fact that ought to make judges a little more tolerant of these multi-claim petitions.

"Finally, the reinstatement of death sentences in large numbers has brought an expected and salutary consequence: a re-examination of the process of investigation and trial to see if it will ever be fair, decent, and reliable enough to permit us to kill people based on its results. In approximately half of the cases, federal review finds defects in state procedures. Additionally, the federal-collateral-review counsel is often the first to make a thorough review of the constitutional issues in the record.

"The high-stakes process of rearranging

fundamental values demands two kinds of participants: advocates who are willing to be courageous, selfless, tireless, diligent and eloquent enough to bear the battle; and judges who are willing to have the tolerance,

patience, wisdom, and — yes — humility to understand the demands of the system their predecessors built and in which we now live.

"I hope I am not misunderstood. I raise this issue to make a proposal: the judges of the circuit should begin an earnest discussion with the lawyers of the circuit — and with the bar groups who help to recruit volunteer lawyers — to address these concerns."

— *Judges, Lawyers and the Penalty of Death*

23 Loyola of Los Angeles Law Review 147

(November 1989,

reprinting remarks made in December 1988 at a symposium)

"Freedom of the press is an unusual right in one respect. We usually think of a 'right' as something a person has for his or her own benefit. In our society, we are conditioned by our basic political philosophy to view 'rights' in this way.

"Freedom of the press, however, was not put in the Bill of Rights solely to benefit those who owned newspapers. It was put there because the Founding Fathers under-

stood the benefits of public debate. By forbidding interference with 'freedom of the press,' they sought to guarantee the right of the people to be informed, and to take a meaningful part in government. . . .

"The newspaper will argue that the possibility of prior prejudice can be taken care of in various ways. At the trial, prospective jurors can be asked whether they have read the newspaper stories and whether this would prejudice them. The judge could grant a 'change of venue,' which would move the trial to another community where there has not been such a barrage of publicity. The judge can order the police not to leak prejudiced and one-sided information to the press.

"The defendant will counter by noting that prior prejudice from extensive media coverage is extremely difficult to assess. Lawyers and social scientists who have studied this question doubt that many jurors are even aware of their own biases. So pretrial questioning of jurors is not effective.

"The defendant will also say that a change of venue is inadequate because it deprives him of his right to be tried in the community where the crime was committed, and where he may have enjoyed a good reputation."

— *Defendants' Rights vs. Press*, Austin American-Statesman (Oct. 4, 1987)

January 1993, at the start of the Clinton presidency.

During his 2½-year tenure, he hired 57 new prosecutors, bringing the total to 130. He also refocused the office from its concentration on drug interdiction — predecessor Henry Oncken had been criticized for clogging the Houston docket with small-time drug cases — to bank fraud and environmental crimes.

Woods has tried only two death-penalty cases while he was a Harris County prosecutor. The most recent was *Texas v. Moses Lopez Garcia*, 581 S.W.2d 168, in 1975, one of the first cases under Texas' then-new death penalty statute.

Garcia's conviction and death sentence was another of Woods' victories, but it didn't last. The death sentence was commuted to life, and Garcia was paroled in 1987. ■

— with MARK BALLARD, ROBERT ELDER JR. and GORDON HUNTER



A seminar on the bombing and the motion to delay demolition of the Murrah Building are in LEXIS COUNSEL CONNECT under the DISCUSS and LIBRARY headings. See page 47.