

For Defense Lawyer in Bomb Case, Latest in a Line of Unpopular Clients

By STEPHEN LABATON

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By STEPHEN LABATON

Over the last three decades, Michael E. Tigar, a law professor at the University of Texas, has represented many of the most vilified criminal defendants. So his assignment last month to represent Terry L. Nichols, one of two men accused of blowing up the Federal Building in Oklahoma City, is hardly novel.

Like Mr. Nichols, his other clients have been involved in cases presenting unusual or complicated legal and political questions. And many of them have said they were victims of overzealous law enforcement.

Beyond that, they come in all kinds of ideological stripes and with all kinds of legal problems. In the 1960's, Mr. Tigar's better-known clients were leftists like Abbie Hoffman and H. Rap Brown.

In the Chicago Seven trial, at which Mr. Tigar represented David T. Dellinger, he was one of three lawyers briefly jailed for contempt of court. The citation was lifted after an outpouring of protest from other lawyers and legal scholars.

More recently, his clients have come from the right. His two biggest recent successes were on behalf of John Demjanjuk, an accused Nazi war criminal who at one time had had faced execution in Israel, and Senator Kay Bailey Hutchison, Republican of Texas, who had been accused of misusing her office as State Treasurer.

In Mr. Tigar's earlier successes, he helped win the acquittal of Angela Davis in 1971 on charges of planning

a courthouse shooting in Marin County, Calif. That year he also won the acquittal of Cesar Chavez's son, Fernando, on charges of draft evasion after showing that the younger Chavez had adopted his father's views on pacifism.

One of his bigger civil awards was the \$2.9 million judgment he won in the early 1980's against Chile for the Pinochet Government's assassination in Washington of the former Chilean Ambassador, Orlando Letelier.

"He understands that the way we measure the value of our justice system is how it treats society's pariahs," said Michael J. Kennedy, a co-counsel of Mr. Tigar in many cases. "It's easy to treat the popular people well. But what Mike understands is that the system will be measured by how it treats those people that the Government considers to be despicable."

In the case against Mr. Nichols, Mr. Tigar is facing a no-lose proposition, other lawyers say.

Based on what the Government has said so far, prosecutors have a weaker case against Mr. Nichols than against the other defendant, Timothy J. McVeigh. If Mr. Nichols goes free, it will be attributed to Mr. Tigar's skills. And if he is convicted, it will be said that Mr. Tigar struggled mightily against the unlimited resources of the Federal Government.

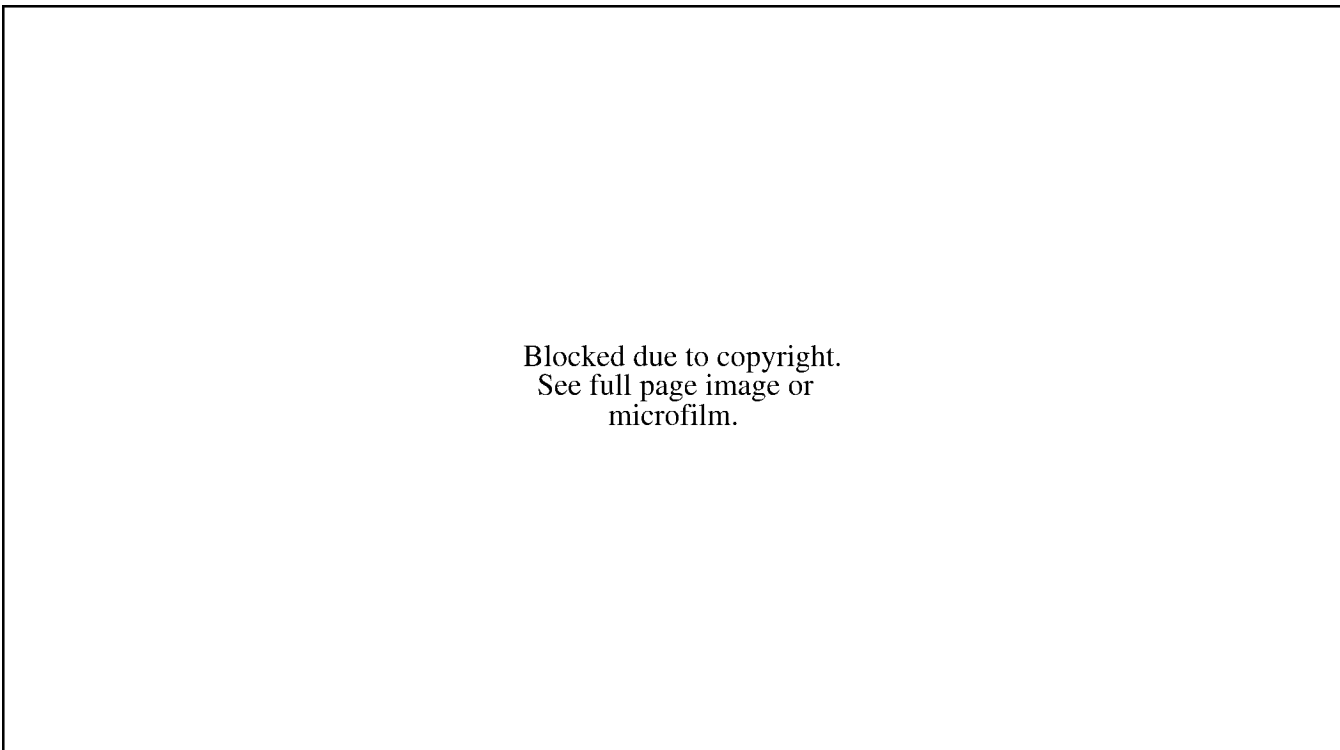
Mr. Tigar's strategy so far has been to exploit gaps in the Government's account of Mr. Nichols's role

in the bombing. For instance, when investigators tried to make much of the fact that a search of Mr. Nichols's house had yielded supplies for bomb making, like a fuel meter, Mr. Tigar argued that the supplies were garden-variety tools that could be found on any farm and that the meter had not been working.

Juggling his popular classes at the University of Texas at Austin with his high-profile law practice, Mr. Tigar has built a reputation for being able to combine erudite legal scholarship with courtroom folksiness. He is known for his plain-spoken style, which connects with many common-folk jurors as well as the loftiest of appeals judges.

In the case against Senator Hutchison, he and his co-counsel, Dick DeGuerin, successfully challenged the indictment on technical grounds, forcing prosecutors to re-indict several times. Then, as the trial began, the defense lawyers claimed that large amounts of evidence had been improperly seized and, therefore, should be excluded.

When the judge refused to rule immediately on the admissibility of this evidence, the prosecutors refused to go forward, delivering a stunningly swift victory to Mrs. Hutchison and her lawyers. The judge immediately order an acquittal. In Mr. Demjanjuk's case, Mr. Tigar used the law of habeas corpus in an unusual context: to win Mr. Demjanjuk's release from Israel's death row so he could participate in the reopening of the case that had



Bill Albrecht for The New York Times

Michael E. Tigar, a lawyer in the Oklahoma City bombing case, has built a career out of defending outcasts.

stripped him of his United States citizenship.

After Mr. Demjanjuk's return to the United States, Mr. Tigar persuaded a Federal appeals court in Cincinnati that the United States Government had withheld significant evidence from Mr. Demjanjuk. That has made it difficult for Mr. Demjanjuk to be retried and extradited to Israel again, as some prosecutors have wanted.

Mr. Tigar, 53, grew up in Glendale, Calif., the son of an executive secretary of Local 727 of the machinists union at Lockheed. When he was 12,

he told his father he wanted to be a lawyer. Mr. Tigar recalled that his father handed him a copy of "Clarence Darrow for the Defense" by Irving Stone and told him: "Darrow was for the people. This is the kind of lawyer you should be."

Like some of his clients, Mr. Tigar found himself an outcast of sorts when he embarked on his legal career in 1966. For three straight years, he had ranked first in his law school class at the University of California at Berkeley, and by his last year, was editor of the law review. At the same time, he was active in the university's Free Speech Movement. He was then offered the highest honor afforded a young liberal lawyer: a clerkship with Justice William J. Brennan Jr. of the United States Supreme Court.

But as Mr. Tigar tells it, after conservative columnists wrote critically of the appointment, and some conservatives on the Court objected, Justice Brennan withdrew the offer. Years later, the Justice wrote to Mr. Tigar that he had probably overreacted to the criticism.

The rejection led Mr. Tigar down a new career path: He became the 10th lawyer hired at the Washington law firm Williams & Connolly, where he was quickly taken under the wing of Edward Bennett Williams. At the firm, Mr. Tigar became an expert on the draft laws and on the Federal Government's use of electronic surveillance.

Mr. Tigar's courtroom persona is a blend of scholar and advocate for underdogs. His memory seems to be photographic; he cites case precedents by volume and page number off the top of his head.

Arguing before the Supreme Court that teen-agers should be exempt from the death penalty, Mr. Tigar stated that age had been considered "a disability through antiquity." That prompted Justice Antonin Scalia to quiz Mr. Tigar about how antiquity had treated youthful offenders.

Without glancing at notes, Mr. Tigar described in detail how the Justinian Code and several other ancient legal systems had treated youths differently from adults. Ultimately, the Court and Justice Scalia ruled against him, but death-penalty proponents said the case had been a long shot from the outset.

Prosecutors do not take to Mr. Tigar's style. In the Oklahoma bombing case, for instance, Mr. Tigar said at a recent hearing that Mr. Nichols was being prosecuted because of his association with unpopular people and causes. Mr. Tigar

reminded a Federal magistrate that his client had, in fact, turned himself over to the authorities when he found out he was being sought. To emphasize the point, the lawyer quoted from the Scriptures, "The guilty flee where no man pursueth but the righteous are as bold as a lion."

That prompted the Justice Department's senior lawyer handling the case, Merrick Garland, to assert — as other prosecutors have argued in other cases against Mr. Tigar — that his oratory had obscured the larger legal issues.

"Mr. Tigar is articulate and can quote a lot of old cases and old Scripture," Mr. Garland said, "but none of these are relevant to why we are here today."

Although an advocate for some clients considered extremists, Mr. Tigar is himself sometimes among the most traditional of lawyers. He is married to a lawyer, Amanda Birrell, and has three children. He is active in the American Bar Association and under the pen name Edward

Measuring justice by the treatment of 'society's pariahs.'

Michaels has written articles for the group's *Litigation* magazine about Henry Charles, a fictitious Texas lawyer. Mr. Tigar has also written three plays about famous lawyers and the courts. In his play about the trial of John Peter Zenger, a printer charged with libel, which was performed at a meeting of the American Bar Association in Manhattan, the title role was acted by Scott Armstrong, co-author of "The Brethren," a book about the Supreme Court, and Zenger's advocate was played by the playwright.

In a review of the performance, *The New Yorker* said: "Professor Tigar went way past ham (he went whole hog) into eloquence in the part of Andrew Hamilton, the aged, gouty Philadelphia attorney who persuades the jury to disregard the corrupt instructions of the judge hand-picked by Governor Cosby and instead to find Zenger not guilty."

Next week, a profile of Stephen Jones, who is representing Timothy J. McVeigh, the principal defendant in the Oklahoma bombing case.