



25th Anniversary

California Attorneys for Criminal Justice
Awards Luncheon
December 12, 1998

California Attorneys for Criminal Justice Presents . . .

The 1998 Awards Luncheon

Honoring

Michael E. Tigar

Significant Contributions to Criminal Justice Award

The Kaczynski Defense Team

President's Award

Susan McDougal

Profiles in Courage Award

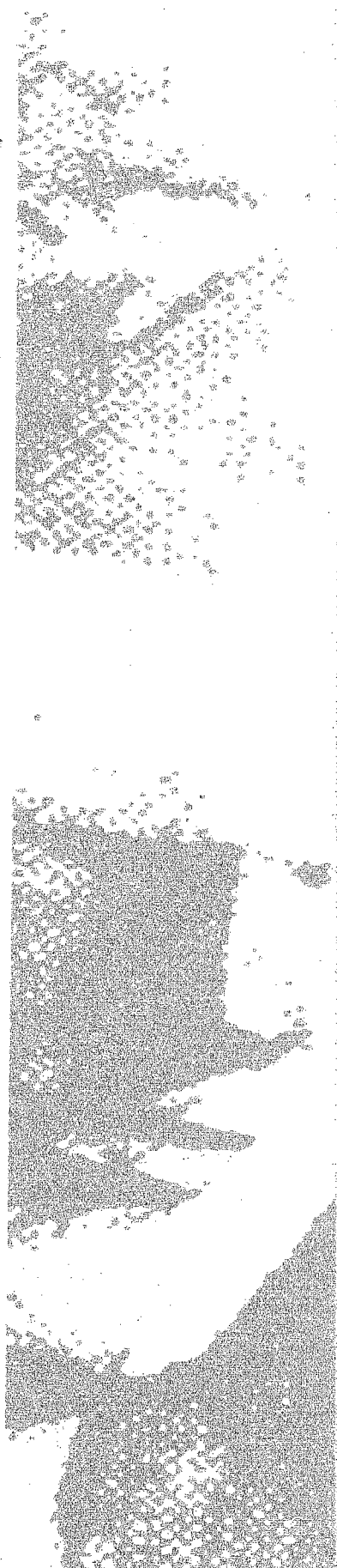
with

Guest of Honor Chief Justice Rose Elizabeth Bird

December 12, 1998

12:00 noon — 1:45 p.m.

The Hyatt Embarcadero, San Francisco



The Presence of Greatness

By Dennis Roberts, CACJ Past President

I first met Michael Tigar in 1964. It was in the first few weeks of my final year of law school, a time when I was feeling that great sense of power that comes from being close to having survived the nightmare of a legal education without the terror that comes from entry into the real world. A mutual friend wanted me to meet a young man just starting out at Boalt Hall. I thought I might be able to reassure him that although that first semester was a sea of confusion it would eventually sort itself out and the important thing was not to panic and drop out. Carried along on this altruistic wave I showed up at Michael's small Berkeley apartment that he shared with his wife. The first thing I was struck by was that this was not your typical first year student, nose buried in a law book, while his spouse entertained the guests and prepared dinner. Actually it was his wife who sat quietly in a corner with a dazed look on her face while this dynamo prepared a gourmet dinner, served various complex appetizers that he had prepared, carried on several scintillating conversations simultaneously with different invited guests and did all of this effortlessly. After a fabulous dinner in which he regaled us with tales of life in London from which he had recently returned as a representative of KPFB radio (an early public radio station in Los Angeles) and in which he must have coined 20 different and brilliant puns, he singlehandedly cleared the table, did the dishes (we had all followed him into the kitchen so as not to miss a word) and continued to entertain with a brilliance I had never encountered before. I knew law school had to be his Achilles heel so at one point I started to commiserate with how difficult he must be finding law school but not to worry, everyone was in the same boat, and similar stupid homilies. He told me he was so glad I had raised that issue as he did find some things about law school very confusing and was delighted to have been introduced to someone who had gone




Michael E. Tigar

through it already and could help him sort it out. His first "bit of confusion" involved his theory about the origin of a real property law concept from feudal times and what he believed was a misinterpretation of some English common law case that had in turn caused a subsequent line of cases... and on and on. I now understood the dazed look on his wife's face. I comprehended about ten percent of what he was talking about and what I did understand made me realize that this was not the kind of confusion of the first year student I had in mind. I smiled, and said it would all come clear very soon. But he wanted to pursue the topic. I broke out in a cold sweat.

What was this guy even talking about? How could he be a first year law student? Why would he even think about these issues that no one, most likely not even the professor, could understand? Fortunately for me the home baked pies (made from berries he had no doubt planted and picked) needed to come out of the oven and that saved me. I knew I was in the presence of

greatness and have spent the many years of our friendship trying desperately to keep him from discovering I didn't understand most of what he was talking about. However, I came to discover that, in the same way that playing with a great ping pong player makes your game better, batting around legal issues with Mike Tigar actually makes you smarter.

There are many stories, real and apocryphal, about his photographic memory and his ability to conceptualize about issues mere mortals do not understand. One of my favorites is a story told about his first year in law school, probably just after I met him, when he raised a question in the same vein as the issue he raised with me, this time in his contracts class. It seemed he had been thinking about some other feudal notion of something or other and had done a bit of research (of course none of this had anything to do with what was currently being studied in this course) and was wondering what



the professor thought of this theory. He then proceeded to read from a law book at a perfectly normal rate of speed. At one point he stopped and apologized for reading so haltingly (he wasn't) but, as he explained, he was translating from archaic medieval French. Oh well.

Meeting him so many years ago has been an enormous and never ending source of pleasure for me. Having had the opportunity to work on several cases together produced the high points in my legal career. Right after he graduated from Boalt he was hired by Justice Brennan to be his law clerk. Because of enormous pressure generated by the John Birch Society and other right wing lunatics the Justice backed down and withdrew the clerkship. It is something which caused Justice Brennan enormous regret in later years. Mike got this rather startling news while driving cross country with all his possessions loaded into a VW bus or similar hippie form of transportation. However, a couple of phone calls got him an offer of a job with Edward Bennett Williams. He was working at the Williams office and I was with Bill Kunstler at the Center for Constitutional Rights in 1968 when SDS confronted the Democratic Party Convention in Chicago. This encounter led to the Chicago 8 (as we purists like to think of it before Bobby Seale was shackled, gagged and finally removed from the trial) case. Michael and I were in charge of the preparation of pre-trial motions for this fascinating and complex case. I flew to the Williams office in Washington, D.C. and we started drafting. I remember having what I thought was probably a very clever and novel way to approach some issue. Mike listened, thought, felt it was basically a sound idea, suggested a refinement and, all the while was pulling one book after another from the library shelves, randomly flipping through them. By the fourth or fifth book he produced what his photographic memory told him was within that year or two of *Fed Supp* - a District of Tennessee case, never again mentioned in the annals of law, right on point. So off we went to Chicago to argue our motions before the Dishonorable Julius Hoffman. You had to see Hoffman to really appreciate this - a wizened ugly little gnome of a man wielding a venomous tongue which lashed out in the most humiliating fashion at anyone who triggered his ire - which meant virtually anyone who appeared before him. The case called before ours was a criminal matter in which the defendant was represented by a very young and frightened woman. Her sin was using the wrong

sized type on her legal documents. Hoffman belittled, humiliated and terrorized her to a point that reduced her to tears, including addressing the defendant directly to suggest that perhaps he ought to consider firing her and hiring a "competent attorney".

Then they called our case. The first motion was to be argued by Mike. You could see the little gnome just waiting to take a piece out of this new young lawyer's hide. In passing, in the discussion of the legal issue, Mike mentioned a quotation from Jeremy Bentham, the kind of quote young lawyers pull from books of erudite legal quotations. Hoffman practically came over the bench he was so excited. Now he had him - another pup quoting a scholar from a legal treatise. "Oh Mr. Tigar" he said. "I just know there are one or two people in this courtroom who do not know the source of that particular quotation from Mr. Bentham and may not even fully appreciate the greatness of the man. Why don't you just give them a little background on Mr. Bentham." "I'd be pleased to your honor, though I do not consider myself a Bentham scholar," he responded, and then proceeded to do 45 minutes, extemporaneously, on the life and times of Jeremy Bentham including references to his every work, reciting long passages memorized from his writings, and fascinating trivia that only Bentham's wife or biographer could have known. Hoffman never asked him another question.

After the Chicago case and feeling the need for a law reporter to deal with the myriad legal problems caused by conscription to the War in Vietnam, Mike created the *Selective Service Law Reporter* in his spare time while still working full time for the Williams firm. It was an incredibly important resource tool for those of us who were doing anti-war draft counseling and trying the draft cases of that era.

We next came together in the Angela Davis case where we were once again responsible for pre-trial motions. His work was brilliant. We finally resigned from the legal team, however, after the Stalinist defense committee rewrote history one time too many, forgetting that Mike had total recall of every meeting and every conversation we had with them.

Since that era he has continued to do remarkable things, not only as a litigator but also as a law professor at UCLA, University of Texas and now American University. Many of us here today are delighted to know him as a friend and colleague and we are thrilled that he has allowed us to honor him.

MENTOR, COLLEAGUE, COMRADE, FRIEND

by Dennis P. Riordan, former CACJ Board Member

I first heard Mike Tigar's name as a college sophomore in the fall of 1967. An activist named Al Record from Washington was on campus talking about his effort to resist the draft. With great gravity, he described an audience at the firm of Williams & Connolly with Michael, who agreed to take his case pro bono. Detecting my ignorance, Record informed me that Mike Tigar was the leading anti-draft lawyer in the country. Indeed he was. Still short of thirty, Mike was editing the *Selective Service Law Reporter* and litigating test cases while holding down his day job.

Mike's name became a commonplace in my life thereafter, first as a central player in legal dramas unfolding on the national stage – the Chicago Seven, the Seattle Eight, the prosecution of Angela Davis – later as a mentor, then as a colleague, a comrade, and a friend. But Al Record's introduction to Mike taught me two things about him that have never changed: he

classes in which they weren't enrolled to see Tigar do battle on even terms with pedantic professors. His gilt-edged law school record having earned Mike the brass ring – a clerkship with Justice Brennan – Mike, his wife and young son Jon set out for Washington, only to learn that the job offer had been withdrawn. Abe Fortas had informed Brennan that the House Un-American Activities Committee, prompted by J. Edgar Hoover, would hold hearings on communist infiltration of the Court if Tigar, who had attended left-wing student meetings in Europe, retained his position. Brennan yielded. His legal career yet to begin, Mike Tigar had become a rare skeleton in the closet of one of the century's legal giants.

Edward Bennett Williams stepped in with an associate position, gaining Mike's brilliance, which he relished, at the cost of his politics, which drove Williams nuts. According to Williams' biographer, when Mike insisted on taking a Denver political sabotage case, Williams retorted: "Can't you find a commie closer to home?" Mike eventually left the Williams firm for UCLA, where he authored the law review article on the justiciability of constitutional challenges to the legality of the Vietnam war which every legal activist had dreamed of writing. A cascade of scholarship would follow, from Mike's tome on the relationship between medieval law and the rise of capitalism to his invaluable treatise on federal appeals.

My own relationship with Mike began as hundreds of others surely have: I asked him for help. In December of 1975, Mike spoke to a CACJ seminar on the applicability of the co-conspirator exception to the hearsay rule, including a very funny story which, in vintage Tigar style, combined references to the treatment of equity jurisdiction by the Long Parliament with a punch line of: "I know bullshit when I see it." I was writing a brief on the co-conspirator exception for the San Quentin Six case, and after the seminar Mike took an hour's time, amidst a parade of well-wishers, to help me with the analysis.

So it would be a few years later when Karen Snell and I were about to argue the first appeal in the Fifth Circuit for a Sanctuary defendant – religious workers convicted of assisting undocumented refugees escaping Central American war. Mike was then teaching at the Univer-



Tigar at an early CACJ seminar

casts a very large shadow, and he gives unstintingly of his time and talent to the people and causes he cares about.

Mike's Boalt Hall years provided the early Tigar lore: the two hundred (or was it four hundred) page law review note tracing an obscure California civil statute to its fourteenth century French roots; the students who attended

sity of Texas, and knew the Circuit well. Mike's counsel was generous but never general; getting up only occasionally for a pin cite, he'd rattle off opinions that had to be cited or distinguished.

We won that case, and it led to Mike's role in arguing the Ninth Circuit appeal from the massive showcase trial in Tuscon of the religious leaders of the Sanctuary Movement. That case we lost, in an opinion by three Republican appointees which correctly observed that our position necessarily would vindicate a citizen's right to spurn Reagan's foreign policy in Central America.

It would be impossible to describe in any detail all the human rights cases Mike has handled over the years, including the recent successful defense of an air force officer court martialed for lesbianism. His caseload has always included death penalty appeals on behalf of indigent defendants, a number of which he argued in the United States Supreme Court. Yet his political commitment has never blinded the rich and powerful to his skills, from the Hunt Brothers and former Treasury Secretary John Connally to Senator Kay Bailey Hutchinson. When Nevada attorney Dom Gentile faced disbarment for publicly declaring that a client was innocent (which Gentile later proved at trial, gaining an acquittal), it was Mike who successfully challenged the disciplinary action on constitutional grounds in the United States Supreme Court. And it was Mike who overturned the extradition of John Demjanjuk, proving that the United States government had ignored evidence establishing that Demjanjuk was not the Nazi war criminal Ivan the Terrible. Mike opened his oral argument in the Sixth Circuit by observing "that when we say justice should be blind, we don't mean the Department of Justice."



Grandson Will Tigar

Why did Mike Tigar accomplish so much both early and often? To begin, Mike has what is surely a God-given gift: the ability to retain a stunning percentage of whatever he has learned. If Mike has read it, apparently he can quote it. And Mike has read an awful lot, a student of history and literature as well as law. Many fine lawyers can work up and present a case well, but Mike does it faster and more often,

like a chess grandmaster who plays multiple games simultaneously.

There is, of course, no necessary coincidence of formidable intellectual skills with voice and carriage, but they are joined in Mike. After a dozen hours of intense preparation for the Sanctuary oral argument, Mike took some of his co-counsel on a brisk hike to relax. As he strode around Pasadena, he acted out all the roles of a play he had written on Irish barristers, the accents nuanced as he moved from Daniel O'Connell to Paul O'Dwyer and Michael Kennedy. It was a performance

both uproarious and moving.

Michael loves imagery, be it drawn from religion, sports, war, business, or sex. Oral arguments, even conversations, are opportunities for verbal craft. A defendant was not interrogated by a judge, he was "catechized"; a prosecutor ducking Mike's phone calls is "foxholing"; a victory gained not by brilliance but basic preparation was won "by basic blocking and tackling;" an offhanded observation borrows a line from Milton or Moliere; and puns abound.

The style has not gone uncriticized. In a piece written in the *New Yorker* prior to the Nichols trial, Jeffrey Toobin, after grudging acknowledgment of Mike's skills, called him a "showoff." Much of Toobin's bristling hostility in the piece is due to his expressed and prophetic

fear that Mike's defense of Nichols would succeed, a prospect of-
fensive to Toobin's prosecutorial sympathies, but his initial reaction
to the lunchtime lessons in law and literature is understandable. I
remember the first time Mike's draft of a motion to be filed jointly
in bob wallach's case crossed my desk, ending with a quote from
Byron's *Childe Harold's Pilgrimage*. Was I supposed to top that?

I soon found the shower of allusions anything but off-
putting, for Mike's erudition is at the core of his celebration of
work and life. For Mike, today's battles were fathered by
yesterday's; there is nothing new under the sun; and the game is
to recognize how the result we seek now was presaged in *Bushnell's
Case* four centuries ago. Rather than seeking to distance himself
from others by his learning, Mike is always trying to pull his col-
leagues on board his rollicking intellectual ship. He believes the
hunt for a winning argument should be fun, and with Mike it is.
The man knows how to tell a joke.

Upon his appointment to represent Terry Nichols, Mike
was asked why he accepted such a notorious and thankless task.
He answered simply that a man facing the awesome power of the
United States government entirely bent on taking his life needs a
lawyer to speak on his behalf. In a very real way, the Nichols case
was Mike's destiny, although certainly not in overtly political terms.
Ideologically, Nichols was light years away from the army of cli-
ents whom Mike had defended as his brothers and sisters in the
struggle against war, racism, and poverty. What greater challenge

for a criminal lawyer, however, than the defense of a man charged
with the most heinous crime in the country's history.

But the notoriety of Nichol's case provided only half of
its significance. Of equal importance, Nichols had a defense. A
lawyer assigned to represent him therefore might have an oppor-
tunity to do more than simply hold the government's cloak while
it stoned his client to death. The ultimate penalty could be averted,
but, given the nature of the charge, only by a great lawyer.

When the jurors after trial explained the manslaughter
verdicts and non-capital sentence they had rendered, they did so
in much the same way that Mike and his team had presented and
argued the case. The outcome was a supreme tribute to the power
of advocacy. If Michael's endless efforts on behalf of the American
left recall Clarence Darrow's defense of Tom Moody, Big Bill Hay-
ward, and the rest of the labor movement, then Terry Nichols can
be viewed as Mike's Leopold and Loeb.

In attempting to pick the century's outstanding criminal
defense advocates, what should count? Headline trials? A com-
mitment to the poor and oppressed? Serving as counsel of choice
to senators, billionaires, and consigliere? Supreme Court arguments
and victories? Lives saved from the death penalty? Scholarly con-
tributions? Peer education and support? A willingness to take the
tough cases and risk public obloquy? Measured by one criterion or
by all, Mike Tigar merits the pantheon. We at CACJ are proud to
share his profession.

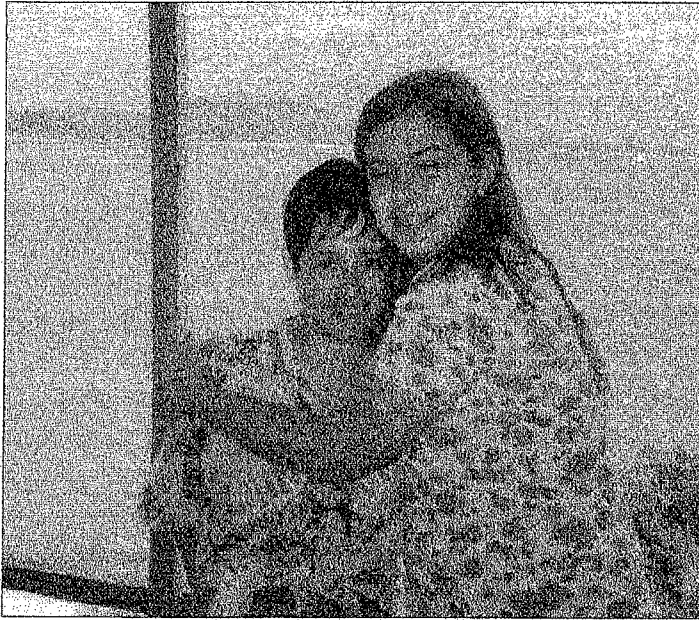


MICHAEL TIGAR: FOR THE PEOPLE

by Michael Kennedy, New York, NY

SCHOLARLY WARRIOR. ACTIVIST TEACHER. LOYAL LAWYER. FEARSOME, FEARLESS FORENSIC. CONSUMMATE COUNSELLOR AND CONSIGLIERE. AWESOME APPELLATE ADVOCATE. WRITER OF BOOKS AND PLAYS. RIGHTER OF WRONGS. GOURMET COOK. CONTRADITIONALIST. CONTRADICTION-IST: independent collectivist and noble proletarian; classical anti-classist; imperious anti-imperialist; a soulful intellectual. And extraordinarily good and generous friend.¹

It is more than "meté in the premises" that you California criminal attorneys honor Michael Tigar. California after all bears some real responsibility for what Tigar hath wrought.



Tigar's wife Jane and his daughter Elizabeth

Born and raised in Glendale (home of California's first "legal" drug and alcohol testing for public employees) to progressive parents, Michael attended California at Berkeley, both as an undergrad (B.A. in Political Science, 1962) and law student (J.D. Boalt, 1966; Order of the Coif, of course, as well as Editor-in-Chief, *California Law Review*, and first in his class all three years). Tigar "acted" as a Professor of Law at UCLA (1969-71), served as a Fellow at the Center for the Study of Democratic Institutions (Santa Barbara, 1971) and was "of counsel" to

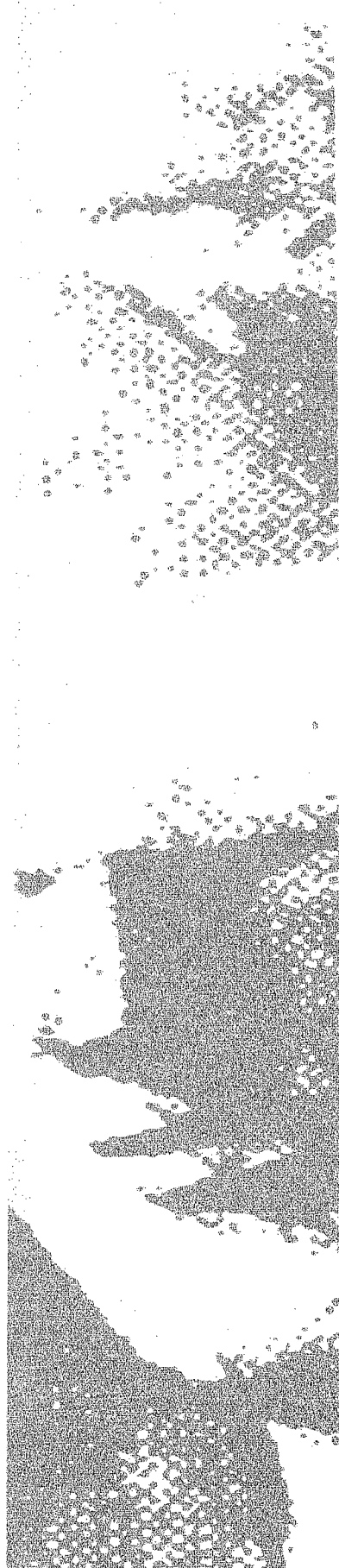
an erstwhile San Francisco law firm in the early Seventies. Michael has graced Federal and State courtrooms throughout California for many years, and his son, Jon practises criminal law with one of your own, John Keker. So Tigar knows and likes California. You honor yourselves by returning the favor.

Despite his national notoriety and eminence as one of the best lawyers in generations, Michael Tigar remains private and independent, thereby actualizing two of the most important features for any citizen in a democratic society. With his deep distrust of government power ("Anyone our government doesn't like can't be all bad.") and life-long battle against government abuses ("The criminal justice system is the only working railroad in America."), Tigar has guarded his own privacy as zealously as he guards his clients'. Not because there is anything to hide, but because anything personal that can be hidden should be hidden. Tigar has often made the point that we citizens are not our government's business. Business remains our government's main business. Whatever time is left over after taking care of Business is devoted to reducing the rights of the citizenry and enhancing the intrusive role of government in our affairs.

Tigar long ago understood that privacy is much too important and delicate to be left to the vicissitudes of government. No one in government respects privacy. Indeed, any effort to keep the insatiably snoop tentacles of government out of one's non-public life is met with stepped-up cynical probing (What are you trying to hide?), deeper suspicion and greater intrusion.

J. Edgar Hoover built his power base by violating the rights of privacy of Presidents, (JFK and LBJ, for example), and real leaders, like Martin Luther King, as well as hundreds of thousands of other Americans. Starr, with all

¹ The obligatory disclaimer: I have loved The Tigar unabashedly since the Sixties.



the subtlety and Constitutional sensitivity of the Spanish Inquisition ("Starr Chamber"), built his house of cards for impeachment and his attacks on the Presidency by systematically shredding the privacy, clothing and dignity of Clinton and Lewinsky. When the privacy of the President of the First World can be invaded by an amateur prosecutor with prurience as his moral compass, things don't look too good for the rest of us.

With all of the government and most of the judiciary incapable of understanding, let alone, protecting our liberties, the job has fallen to the likes of Michael Tigar and you of the CACJ. As you know or will learn, Tigar has done as much as anyone in this country to stem

*Williams often wished
aloud that he could
follow Michael around
with a basket to catch
his discarded ideas.*

the incessant tides of "conservative" reactions that have eroded our individual liberties to near-obsolence.

Tigar understood early on that he could never rise higher than the lowest among us. He teaches that each and every invasion of privacy reduces us all. Further, rights and liberties do not exist in a vacuum or in the abstract but only in their vigilant enforcement.

The Tigar lives, teaches and practises his thoroughly tested, yet unshakable, belief in liberty and justice for all. Since the mighty wealthy few have the means to help themselves and protect their own, the law was supposed to help those who cannot help themselves. The law, it seems, cannot help itself. Read Tigar's *Law and the Rise of Capitalism*, 1977, Monthly Review Press [with M. Levy], (translations published in Spanish, Portuguese, Greek and Chinese) and "The Right of Property and the Law of Theft", 62 *Tex.L.Rev.* 1443 (1984).

Tigar did not get his grasp of poverty, powerlessness and class bias in law school. Nor did any of us. They did not teach us to understand sadness or to side emotionally with the underdog or the underworld. Where did that come from? For Tigar, it came from his home: a father who was a union organizer and a liberal

activist mother. His father, on learning of the pre-teen's dream to be a lawyer, gave Michael a copy of Irving Stone's *Clarence Darrow for the Defense*, and told him "This is the kind of lawyer you should be. He was for the people." To this day, Tigar is "for the people".

Tigar's good sense and sensitivity came from his private readings in history and politics; from his extra-curricular activities at Cal, where he was an early leader of the Sixties' protest movements, including, disrespect for and opposition to the House UnAmerican Activities Committee, support for Fidel and the Cuban Revolution, and from demonstrating and organizing against segregation.

Tigar was steeled by the consequences of dissent. Instead of appreciation for his efforts to breathe life into liberty, he was denounced broadly as disloyal and anti-American. None other than J. Edgar Hoover, dressless at the time, led the red-baiting charge that drove Supreme Court Justice William Brennan to withdraw at the very last minute his clerkship offer to Tigar. Brennan broke Tigar's heart but did not harden it.

Brennan would later apologize and write about Tigar, "whose tireless striving for justice stretches his arms towards perfection."

Tigar knew he would have to pay a price for his politics. The bill is still coming in, but has never daunted The Tigar or caused him to wish things were otherwise. ("What price liberty? Whatever it costs! Pay it and be glad. The alternative sucks.")

In 1966, Tigar joined Edward Bennett Williams' law firm in Washington D.C. The "Super Chief" was at the height of his career as one of the great trial lawyers in American history. Williams understood and loved his young protégé. Williams often wished aloud that he could follow Michael around with a basket to catch his discarded ideas. After Williams and Tigar successfully defended former Texas Governor John Connally against charges that he had accepted \$10,000 in bribes from dairy producers ("No one would believe Big John could be bribed for a mere \$10,000."), Connally gave Tigar a prize bull, the ultimate symbol of capitalism. Tigar promptly had the bull shipped to Fidel in Cuba.

This particular bull story illustrates Tigar's personal view of power: power is to be avoided, eschewed; if you have the misfortune to get power, pass it on as fast as you can (before it burns you) by empowering those who deserve



*Tigar's daughter Katherine McQueen, M.D.
and her daughter Mary Beth*

it. In time (1988) Tigar would ascend to the Chair of the Litigation Section of the ABA. He would use his position to empower minorities and women, to help the poor by establishing a pro bono representation program and to help the powerless with an intensive agenda of affirmative actions for social justice. ("There is no justice without justice for all.")

Tigar would empower women generally. He is a feminist and anti-sexist, a role some women find incongruous in a man, but a role that Tigar has always considered to be a personal and professional responsibility. Tigar would empower women in the military: he successfully defended Major Debra Meeks against charges of lesbianism, a.k.a. witchery and heresy. He would even empower women in the U.S. Senate: Tigar and Dick DeGuerin, one of Texas' best trial lawyers, won acquittal for Senator Kay Bailey Hutchinson, whom some Texas men had the temerity to charge that she had played with funny money. Unimaginable, of course, in Texas.

Tigar empowers his students. Through pro bono anti-death penalty and anti-racism clinics at the University of Texas Law School (Joseph D. Jamail Centennial Chair in Law, 1987-1998, and UT law faculty member, 1983-1998) his students were actively engaged in actual cases

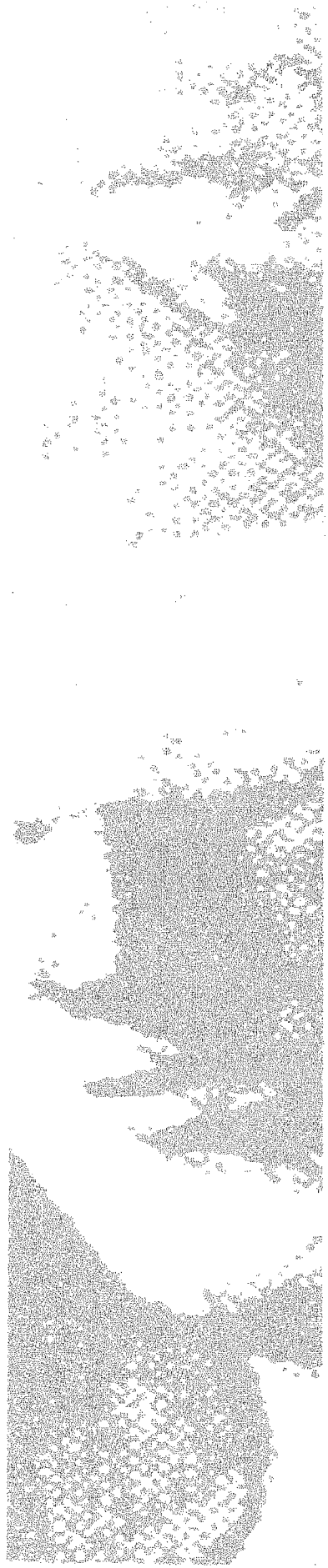
calculated to reduce the sway of racism and institutionalized cold-blooded murder. He continues this work today as a Professor of Law at Washington College of Law, American University. Indeed Tigar has taught student and client empowerment at the State University of New York at Buffalo (1976-77), at Georgetown University Law Center (1975-76, 1977-78), at UCLA (supra) and at the Faculte de Droit et de Sciences Politique de Aix-Marseille since 1994.

Tigar has taught and lectured at dozens of law schools in the United States and internationalized his teachings with courses, conferences and lectures, particularly for lawyers in the public service, in Latin America, Europe and Africa. Michael has made several trips to South Africa, where he worked with Black lawyers engaged in the struggle to end apartheid and to train lawyers to defend civil rights cases. After the release of Nelson Mandela from prison, Tigar has been invited back to advise the African National Congress on human rights issues and the drafting of a new constitution.

Tigar empowers those of us practitioners in the trenches by his extensive writings on law and procedure. Don't even try to do a Federal appeal without reading Tigar's definitive work, *Federal Appeals: Jurisdiction and Practice* (2nd ed. 1993) (3rd Edition in progress) or question a witness without studying *Tigar's Examining Witnesses*, ABA Press, 1993. But see also the myriad of practical how-tos and stunning insights into the practise of law contained in Tigar's scores of law review articles and book reviews; easily available with a WESTLAW search.

Anxiously awaited is Michael's next book on advocacy, *Persuasion*, which will be out this year from ABA Press.

Michael Tigar has always been "because". Demonstrating against the war in Vietnam was never enough. Tigar wanted to use the law to defeat the draft. In 1968 he wrote a practice manual called the *Selective Service Law Reporter* which taught thousands of lawyers in the United States and Puerto Rico how to fight and avoid the draft. Tigar's *SSLR* contributed significantly to the ultimate demise of the draft. That's the good news. The bad news is we have since been cursed with a "technologic", mostly non-white mercenary, military specializing in drug interdiction, spying on and controlling our citizenry and engaging in the odd imperial adventure in Iraq, then Sudan, Afghanistan or any other powerless friends of our "enemies".



As a dissenter, Tigar is, not surprisingly, pro-dissent. In 1968 the biggest pro-dissent case in decades was the trial of the "Chicago Seven". It was actually "Eight", until the bound and gagged Black Panther, Bobby Seale, was severed from the trial by Judge Julius Hoffman, who had paid real money for his judgeship in the Fifties and didn't want the rabble soiling the marble and oak that encased his heart and courtroom. Hoffman did have the wit and good judgment to jail Tigar and a few other shaggy lawyers for contempt of court-- an undeniable allegation, that was met nevertheless with a thundering: "I deny the allegations and despise the alligators!" History will note that the "Eight" in Chicago were merely the foam atop a great wave of millions of Americans who would end the war abroad and bring it home, where it festers still.

Tigar has spent a lion's share of his life battling one of the most pernicious cornerstones of our Republic: racism. Tigar has struggled not only politically but legally. Beginning in the Seventies with the representation of Angela Davis in California and H. Rap Brown in Louisiana, with Rosalio Munoz, leader of the Chicago Peace Movement, and Fernando Chavez, draft resisting son of Cesar Chavez; and then through the Eighties with Truong Dinh Hung and Leonard Peltier et al, and to date with people whose color is their main offense to justice. Thank God for Nelson Mandela and the ANC, because almost nowhere else but South Africa can an anti-racist point with pride and hope. The American people's puny efforts at Black empowerment and Affirmative Action are being systematically rolled back by a Supreme Court with "original intent" notions originating in the Dark Ages and a complacent populace impaired enough to actually buy into the argument that affirmative action is racist and not reparative.

Tigar's life-long opposition to the death penalty has recently peaked in his noble defense of Terry Nichols. Tigar was appointed by the court to defend Nichols, because Tigar remains one of the very few lawyers in the country sufficiently committed to bear the personal sacrifices of such a monumental defense and sufficiently smart to master the deadly complexities and absurdities of the new anti-terrorism and federal death penalty laws. Not only did Michael Tigar save Nichols' life but also saved us from the responsibility for yet another state-sponsored, ritualistic, serial mur-

der. In the process, Tigar, who had been broadly applauded by judges and lawyers as probably the best appellate lawyer in the country, established himself as a pre-eminent criminal trial lawyer. The Nichols jury loved him.

Tigar has argued two death penalty cases to the U.S. Supreme Court (*Johnson v. Texas*, 113 S.Ct 2658 and *Graham v. Collins* 113 S.Ct 892, both in 1993) and many others in the Courts of Appeal and District Courts. He has written and taught extensively on the fundamental racism and unfairness of the death penalty (e.g. "Lawyers and Death Cases", 16 *Litigation* 1 (Winter 1990) and "Judges, Lawyers and the Penalty of Death", 23 *Loyola L.R.* 147 (Nov. 1989).

If one believes, as Tigar does, that we judge a criminal justice system by the way it treats the despised, the pariahs, then a criminal defense lawyer worth her salt must represent the unpopular, even the loathsome. Tigar has had his share, but most notably was John Demjanjuk. Israel accused Demjanjuk of being "Ivan The Terrible", one of the worst of the Nazi war criminals, and sought his extradition. Tigar ultimately won his exoneration by showing, through U.S. files what our government long knew, that he was not "Ivan the Terrible", but at worst "Ivan the Awful".

Tigar understands the universality of guilt and the abstraction of innocence. Hence, his appreciation of the genius and value of the Fifth Amendment privilege against self-incrimination and the best advice any lawyer can ever give any client: "Shut the fuck up!" This advice is so profoundly antithetical to the unnatural nosiness of government prosecutors that they had to create a legal fiction to destroy one's right to "hold your mud". That fiction is euphemistically called "immunity". There is in law, as in nature, no such thing as immunity.

As Tigar teaches, those in government know that its citizens will never without force or bribery give them the time of day *U.S. v. Singleton*, 144 F.3d 1343 (10th Cir. 1998). Consequently, what information government has is either concocted in self-service or gotten by coercion, thereby rendering both the information and the informant suspect. Immunity is the lever by which the incredible is pried from a hapless opportunist and used to prove the prosecutor's point of view and improve her career prospects. Once the probing proctologist has sucked the marrow from the witnesses' bones and the witness finally swears there is

**"If there is no struggle, there is no progress."
Frederick Douglass**

CONGRATULATIONS TO

Michael Tigar

The Kaczynski Defense Team

Susan McDougal

Marcia Morrissey and Barry Tarlow

nothing more to give, the definitionally insatiable prosecutor will turn on the witness for not being co-operative and threaten with obstruction of justice.

As Tigar teaches us about justice, prosecutors teach us about obstruction of justice. Neither lesson should be lost. Witness, as we must, Starr's corruption of our dearly departed due process. With little more than a formidable dirty mind, an unlimited budget and timely assists from the Supreme Court and Congress and the Media, Starr has managed to permanently alter the Republic's delicate balance of power by crippling the Presidency, to reduce the attorney/client privilege, to obliterate any semblance of privacy in both high and low places, while simultaneously giving hypocrisy, conflict of interest and obstruction of justice real respectability.

All of which make Tigar's passions for cooking and sailing all the more comprehensible. The "natural error of things" in law and politics cause Tigar to work even harder for justice, while relying more and more on the teachings and realities of his three children, three grandchildren and wife, Jane.

As Dickens wrote, "If there were no bad people, there would be no good lawyers." So in honoring Tigar, it is well to remember the debt we owe the scoundrels in and out of government without whom the likes of a Michael Tigar might never have been realized.

**Mike Tigar,
Come Back. We Need You!**

**Texas Criminal
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or who they are.

Rickard Santwier
Board Member
1990-1996

Mike Tigar early made significant contributions to criminal justice as a Boalt student intern at Meiklejohn Civil Liberties Institute and as an activist in the National Lawyers Guild. As a fellow member of the NLG and a Meiklejohn supporter, I am especially pleased to join in honoring him.

Doris Brin Walker

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