

## Tigar Dazzling Courtroom Player as Jury Selection Drags

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DENVER -- Michael Tigar is living up to his reputation.

The lead attorney for bombing defendant Terry Nichols can be brilliant in court *and* he can be a show-off.

In the three weeks of jury selection, he's quoted Latin to the Latin teacher, talked landmarks in Paris with a woman who went to college there and asked fans of the novel "The Horse Whisperer" if they support that gentle approach to breaking horses.

He also kept skilled prosecutors on their toes, rattled the veteran judge and scored points with potential jurors .

The University of Texas law professor is widely regarded as one of the best criminal defense attorneys in the country, and his legal victories are legendary. And he believes in being himself in court.

"Jurors are quick to know who is being a phony and who is not," he warned in his 1993 book to fellow trial lawyers, urging them to find "your own voice ... and not a borrowed one."

"None of us is good enough to maintain pretense through a long trial," he wrote.

Tigar was appointed in 1995 to defend Nichols, who is accused of helping convicted bomber Timothy McVeigh blow up the Alfred P. Murrah Federal Building in Oklahoma City.

"He's definitely different than Stephen Jones," one bombing victim said of Tigar, comparing him with McVeigh's former defense attorney.

"To me, he seems to be more involved," said the victim, David Sykes, who was delivering mail to the Murrah Building when the bomb exploded.

True to his Texas background, Tigar, 56, typically wears the silver Western belt buckle he says his mother gave him. He walks briskly into the courtroom in the same black cowboy boots, once joking he had a bad day when he switched to another pair.

He sits next to Nichols at the defense table -- which he had scooted over to get a better view of the candidates. He often puts his large right hand on Nichols' shoulder, as if to comfort his client.

One morning, he walked to the spectator benches to kiss Nichols' mother, Joyce Wilt, on the cheek before the judge arrived.

Jury candidates are questioned one at a time, and U.S. District Judge Richard Matsch and prosecutors go first.

So Tigar, waiting his turn, makes listening an interactive exchange. Leaning toward the candidate with shoulders slumped, he holds a firm grin and bobs his head in response to certain answers.

When his time comes, he carries his imposing figure to the podium, where his baritone voice commands the room.

"My name is Michael Tigar," he tells the candidate. "And Ron Woods, sitting right there, and I are

lawyers. We were appointed ... shortly after the bombing to help out Terry Nichols.

"And I'd like to follow up on some of the things that were asked and spend a little time with you."

Tigar's folksy manner often gets results -- candidates respond more candidly.

They are engaged by his knowledge as he sprinkles in references to bioenergetics, farming, birthing methods -- whatever applies.

He also is a master of the oddball question.

"You milk the goat?" he asked one juror candidate, whose family raised a few animals as pets outside Denver.

"No. No," she said.

Tigar wants to know whether candidates choose spanking or time-outs with their children.

He asked a study hall supervisor how he decides who is right when there is a classroom fight. He asked a school bus driver how students would describe her.

From No. 52, a nursing assistant who thought death was too easy for a criminal, Tigar wanted to know what she thought a crook should contemplate while in prison.

"That they would regret what they've done and that they would know that they have committed a crime that is wrong," she replied.

He sometimes goes out of his way to not seem overbearing when he is getting unsatisfactory answers and has to ask more questions.

"Well, I hear you say, 'I think I would,' " he said softly to one candidate. "It's like if my wife said, 'Do you love me?' and I said, 'I think I do,' she'd want to ask another question."

### **Being Charming**

Tigar charmed No. 45, a substitute elementary schoolteacher who had studied in Paris, with his knowledge of France. But his attempts didn't sway her from opposing the death penalty.

"And when you attended the American College in Paris, you also worked as an au pair," he said to No. 45 using the French word for nanny. "What part of Paris is that in?"

"It's in the Seventh Arrondissement," she replied.

"So over by the Eiffel Tower?"

"Yeah."

"And you were an au pair there, what, on the Right Bank?" he continued.

"Yes. Yeah."

"And across the river to ..."

No. 45 then paused, "Well, let me see, it was 23 years ago; and I haven't been back since I was 19. The Right Bank is south of the Seine? Is that right?"

"Right," Tigar said, nodding .



"Yes, that's where I was."

Tigar impressed a Teamsters member by describing the logo on his union handbook.

"You still get a little booklet there with the two pictures of the horses in front looking at each other?" Tigar asked him.

"Right," he said.

Tigar even spoke the language of No. 763, a psychic and energy reading enthusiast who believed her karma would catch up with her if she sentenced someone to death.

"Now, much of your reading is about the energy in the human body. Is that right?" Tigar began.

"Right," she said.

"I mean, chakras are -- well, how would you define a chakra?"

"I would say the chakras are points in the body, in the energy body that interact with the physical body; and they're data centers and energy centers where we're receiving and energy is leaving our bodies," she said.

"And in your view, do they occur along meridians?" Tigar asked.

"Yes."

"So that there are meridians of energy that run in the body and along these are the chakras that are centers; is that -- " he said.

"That's correct."

"And is that based on a study of eastern medicine?" Tigar said.

"That's an ancient knowledge, yes," she replied.

### **Showing Off**

When No. 657 turned out to be a Latin teacher, prosecutors and reporters knew what to expect as Tigar approached the podium.

He didn't disappoint.

"Have you ever heard the expression, 'Abi societas ibi jus' " he said, then gave the translation. " 'Wherever there is society, there is this idea of justice.' ... My pronunciation is wrong, please don't grade my paper; but there's this social structure within which we all live that defines ... what the rules are?"

"Uh-huh," No. 657 said.

### **Making A Point**

Tigar sometimes slips in a point during his questioning -- kind of to get potential jurors thinking ahead to his defense.

Jurors are expected to hear testimony that Nichols set off small explosives with his son in Kansas and a brother in Michigan. The defense will contend they were just having fun.

So, Tigar took special notice when a school bus driver wrote on her questionnaire that she had a

friend with a homemade cannon.

"Made a big noise?" he asked.

"Yeah," she answered.

"Did everybody enjoy that?"

"Yeah," she said. "I guess so. Sometimes it was pretty loud."

"Well, you wouldn't jump to the conclusion that some fellow that wanted to set off things that made a noise on the Fourth of July was a bomber, would you?" the defense attorney said .

"No," she said.

"Wouldn't be logical?" he asked.

"No," she said again.

Point made.

It doesn't always work.

Tigar tried to use a construction superintendent's work experience to turn him around from his belief that someone who intentionally kills many people deserves the death penalty.

"Did you ever have a situation where you had a worker out on a job and you looked at him and you thought, 'Gee, you know, that's probably not going to be a very good worker,' and it turns out they just really do a great job?" Tigar asked.

"Yes," the candidate answered.

"You know, the situation (where) somebody kind of doesn't look like they're too coordinated and you put them in a house and you tell them, 'Go take and float that drywall,' and you come back and, whew, they've got a lot of square feet done?"

"Uh-huh."

"So in your life, ... you have been able to withhold judgment until you've seen how it worked out?" Tigar said .

"Sure. As the old saying goes, you can't judge a book by the cover. I don't know how anybody can judge from the outside what's on the inside."

Still, No. 667 was adamant about imposing the death penalty.

### **Not All Impressed**

A few jury candidates have been put off by Tigar's manner -- and said so.

A Fort Collins scientist said he had seen that manipulative behavior from attorneys when he was on previous juries. He complained of how Tigar smiled and nodded as the judge spoke to candidates Sept. 17.

"It appeared to me that he was smiling and nodding not necessarily because he was in agreement with the judge but because he was signaling to the rest of us his agreement with the judge," the scientist said.



Another candidate, No. 848, complained, "I felt very uncomfortable with the defense. I would not want to be in a dark alley, a light alley, day or night with them."

Tigar at first had no questions, but jumped to his feet as the candidate got ready to leave .

"Excuse me, your honor. May I just put one question?" he asked.

"Yes, you may," the judge said, then joked, "In self defense? Is that name-clearing?"

But Tigar was serious.

"Ma'am," he asked, "Have you shared your views -- to which you are entitled -- with any of the other jurors riding in the van or in any other context?"

"No, sir," she replied.

The judge turned serious, too, telling Tiger he appreciated that question "because I didn't think of it."

### **Small Victories**

Victories come in small doses.

The judge is trying to find 64 acceptable potential jurors, weeding out those who could never vote for the death penalty and those who automatically would.

Then he will let prosecutors and defense attorneys make cuts, until 12 jurors and six alternates are left. Each side gets to knock off 23.

Defense attorneys try to save their cuts for the most objectionable candidates and try to force prosecutors to waste the government's strikes.

So, defense attorneys end up trying to persuade opponents of the death penalty to consider voting for the punishment. If that happens, the judge will accept the candidate and frustrated prosecutors will have to use a strike they might have saved for someone worse.

Tigar has won admirers for his skill in swaying potential jurors to be open-minded.

It happened most dramatically with No. 474, who said, "I think that's something that should be left up to God and not for me. "

Prosecutors didn't ask any questions -- certain the judge would remove No. 474.

But Tigar switched the business manager's opinion by first asking if she would defend herself if foreign troops invaded American soil. By the time he was finished, she agreed to consider both life and death sentences.

### **Taking on the Judge**

Tigar has not been reluctant to take on Matsch, despite the judge's reputation for keeping tight control of his courtroom and having little patience with presumptuous attorneys.

He asked the judge to stop telling potential jurors it was OK to change in court any answers they had given under oath on written questionnaires Sept. 17. Jurors might get the impression it is permissible for government witnesses to give testimony that conflicts with previous statements, Tigar complained.

The judge agreed to change his remarks.

Tigar also complained about the "tone and content" of the judge's questioning of a computer software consultant, who thought computers might be better jurors than humans.

"Your honor raised his voice, put him on the spot ... we think ... that it would be better to reward him for his honesty," Tigar said.

But Tigar has gone too far, at times.

The judge became irritated the first week as defense attorneys flooded him with legal briefs criticizing what candidates were asked.

"We don't do this by a script, none of us," the judge complained. "And I don't think that it is helpful to say this question or that question may not be asked or should be asked. This is 'It all depends.' ... I think we're doing all right."

An extensive history of the Oklahoma City bombing and daily trial transcripts are available on Connect Oklahoma at [www.oklahoman.com/bombing](http://www.oklahoman.com/bombing).