

# The Music of the Law

*Frederick K. Steiner, Jr.*

A *Green Bag* reader attended a talk given by Justice Sandra Day O'Connor on October 28, 2003, at the Southern Center for International Studies in Atlanta, Georgia. Speaking on the evolving treatment of foreign and international law in American courts, Justice O'Connor closed with a reminder that the law is more than "just a business – one for which high fees can be charged and collected for the necessary services only a lawyer can provide," and an invocation of words written by "a former classmate of mine" celebrating "law's music." Moved by the description of law's music, our reader tracked down the classmate and passed on to us his name – Fred Steiner – and his melodic essay – "The Music of the Law." As Mr. Steiner explains himself and his work:

"The Music of the Law" is the title of a piece I wrote for the "Spindrift" column I write for *The Fine Print*, which is the newsletter of Snell and Wilmer, the firm with which I practiced in Phoenix from 1952 through part of 1995 before semi-retiring to solo practice. It was first published in April of 1995.

We are happy to have the chance to republish "The Music of the Law" here for a different, if not larger, audience.

– *The Editors*

**M**ARK TWAIN THOUGHT that women should not curse. He said they swear with the *words* of profanity but not the music. That may or may not be true, but, on another subject, there are those who think that some persons licensed to practice law should not be permitted to do so because they are deaf to the music of the law.

This column is my salute to those at this firm who have heard that music, among them

Jim Walsh, Perry Ling, Joe Melczer, Jr., Mark Wilmer, Tom Reilly, Brooks Wilder and Bud Jacobson. I know there are others. I'm sure there are still others who hear the music but listen only in secret, believing, rightly or wrongly, that it is prudent to lay their offerings openly only upon the altar of the God of Billable Hours.

I am equally certain that there are those who have never heard, and who never will

---

*Fred Steiner practices law and writes in Phoenix, Arizona.*

hear, the law's music, think that there is none, and think that those who claim to hear it are talking mawkish rubbish. To such persons the law is a business like any other, one which provides a service no different in kind than delivering the newspaper or mowing the lawn, albeit one for which a premium can be charged because lawyers in a complicated society provide an indispensable service deliverable only by a limited number of practitioners. They are the law's mercenaries, the gunsels and shootists who wander from range war to range war at the ready service of whichever side will pay the most. They are the ones who form the average citizen's opinion that every lawyer except his own is a self-serving, avaricious, conniving, not to be trusted, scalawag, rapscallion and rascal.

To those who do hear the law's music, the law is something else entirely. It is a music filled with the logic and clarity of Bach, the thunder, sometimes overblown and pompous, of Wagner, the lyric passion of Verdi and Puccini, Mozart's easy genius, Gershwin's invention, Brahms's calm, Handel's good manners, Rossini and Vivaldi's energy, Offenbach's boisterous panache, Copeland's folksy common sense, Beethoven's majesty, and, unfortunately, not a little of the ponderous tedium of Mahler and the sterile intellectualism of Schönberg.

It is harder to describe the song the law sings. William Congreve wrote that music has charms to soothe a savage breast. That is

the sirens' song of the law, calling out that man is not irretrievably savage, not forever "red in tooth and claw," that might is not always right, and that right can sometimes be might. The song's words are words of equality, justice, fairness, consistency, predictability, balance, equity, wrongs righted, and the repose of disputes settled without violence, without undue advantage, and without leaving either side with bitter feelings of having been cheated. It is the music sung in the world of the primitive pictures of Edward Hicks, his "Peaceable Kingdom" of childlike innocence in which the lion lies down with the lamb. It is not a world that ever was, nor ever will be, but it is a world worth living toward.

How could such music be played, on what mighty instrument? I can think of only one, one from another time, the time when it was believed that man stood on the pinnacle of creation and that the earth was the center of the cosmos, around which orbited the seven crystal globes of perfect and immaculate clarity, carrying with them the sun, moon, planets and stars, whose revolutions generated the music of the spheres and the harmonies of divine law and order.

Although it seems muted these days, and sometimes as distant and despairing as the sound to Charlemagne of Roland's horn, there has never been a time I have not been enraptured by the music of the law. May all of you share the same good fortune. *cb*