



# Trials in Opera

## The Portrayal of Lawyers and the Legal Profession

By Karen DeCrow

Los Angeles is home to the Lawyers' Philharmonic, Gary S. Greene maestro. "Greene has brought surprising harmony out of his herd of jurist trumpeters, litigator cellists, law-clerk vocalists and brought us an evening of enjoyment," wrote Marc Haefele in his review of a performance by the orchestra.<sup>1</sup> He goes on to suggest that Greene start the Los Angeles Lawyers' Opera. What could be more genuine than lawyers playing lawyers? "It seems a natural to me, since lawyers love to stand up and declaim, and plenty of operas have the law and lawyers wrapped up in their plots."

It is provocative, perhaps even enlightening, to see how our profession has been portrayed in opera. And no creators of opera, maybe no creators in any art form, have had more fun at the expense of lawyers and the legal profession than Gilbert and Sullivan – music by Sir Arthur Sullivan, words by W.S. Gilbert.

The pair portray utter contempt for lawyers, and the law. Even judges are mocked. Who knows where their attitude originated? Maybe their experience with *H.M.S. Pinafore* turned them sour on the law. *Pinafore* was very successful, but popularity didn't necessarily pay. In the absence of international copyright law they were uncompensated for pirated productions of *Pinafore* by American companies. This made them so cautious that they did not at first even publish the libretto of the *Pirates of Penzance*.

### Gilbert and Sullivan Portray the Law

While a number of Gilbert and Sullivan operas poke fun at the legal system, the pair's satirical take is epitomized in their 1875 opera *Trial by Jury*.

The story concerns a breach of promise of marriage lawsuit. The proceedings are introduced by the Usher, who tells the Jury to listen to the Plaintiff's case but also

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tells them they “needn’t mind” what the Defendant has to say. He adds, “From bias free of every kind, this trial must be tried.” When the Defendant arrives, the Jurymen greet him with hostility, even though they have no idea of the merits of the case.

The conduct of the court and its officers, alongside that of the Jury and disputing parties, is comical and goofy. All involved insist that everybody abide by proper court decorum. The somber tone of the Jurymen would lead one to believe that they take their charge seriously. They dramatically drop to one knee to take the court’s oath. They profess an overwhelming sense of justice, where “justice” is defined as a strong assumption of the Defendant’s guilt. And they are unpersuaded by the Defendant’s argument that his former bride “became a bore.” While sympathizing with his wandering eye, having also been “shocking young scamps of a rover,” the Jurymen declare that they are now gentlemen with “a virtue resplendent” and so could not possibly find him innocent.

The Jury nevertheless vacillates on the issue throughout the opera due, primarily, to the Judge’s influence. Designed to be the embodiment of state authority, the Judge is easily one of the most satirical characters in the opera. He is a spoony older man – with a roving eye of his own – who still maintains a commanding presence. One is not sure at this point whether it is the Judge or the law that is being mocked, as each of his blatantly flirtatious whims still manages to receive approving nods from all parties.

For example, the Jury derides the Defendant for leaving his bride but has little to say about the “good judge’s” own sordid past:

In Westminster Hall I danced a dance, Like a semi-despondent fury;  
For I thought I should never hit on a chance  
Of addressing a British jury –  
But I soon got tired of third-class journeys, And diners of bread and water;  
So I fell in love with a rich attorney’s  
Elderly, ugly daughter. [...]  
At length I became as rich as the Gurneys –  
An incubus then I thought her,  
So I threw over that rich attorney’s  
Elderly, ugly daughter.  
The rich attorney my character high  
Tried vainly to disparage  
And now, if you please, I’m ready to try  
This Breach of Promise of Marriage!

When the Plaintiff and her bridal party enter, the Judge is immediately taken with one of the bridesmaids, and sends her a love note. That is, he is smitten until he

spots the bride herself, at which point the Judge directs the Usher to take back the love note and give it instead to the bride. Despite her broken heart, the bride kisses the note and hides it in her bosom. The Jury also finds her to be very beautiful and warns the “Monster” to

dread our fury! There’s the Judge and we’re the Jury,  
Come, substantial damages!

The bride, feeling faint, leans against her counsel, then against the Jury, and eventually seeks solace on the Judge’s breast. All court officers find this argument especially persuasive.

The Defendant, sensing the hostility behind his new nickname, begins to craft an alternative argument: he cannot marry the Plaintiff because he is already married, and it is a crime to have two wives. The damages for the breach would also have to be small. According to the Defendant:

I smoke like a furnace – I’m always in liquor, A ruffian  
– a bully – a sot;  
I am sure I should thrash her, perhaps I should kick her,  
I’m such a very bad lot!  
I’m not prepossessing, as you may be guessing, She  
couldn’t endure me a day;  
Recall my professing, when you are assessing  
The damages Edwin must pay!

The wise Judge proposes an experiment: the Court will get the Defendant “tipsy” to see if he ends up thrashing and kicking the Plaintiff. All but Edwin, who is enthusiastic about testing the Judge’s hypothesis, object to this.

The opera finally concludes when the Judge, tiring of the proceedings, decides to marry the Plaintiff himself. Despite previous objections to multiple wives and insistence of damages, everybody is satisfied with this ending.

*Trial by Jury* began as a one-page illustrated comic piece for *Fun* magazine. Titled “Trial by Jury: An Operetta,” the piece drew on Gilbert’s training and brief practice as a barrister in the 1860s. It detailed a breach of promise trial going awry, in the process spoofing the law and the legal system.<sup>2</sup>

Gilbert read the *Trial by Jury* libretto to Sullivan on February 20, 1875. Sullivan was enthusiastic, later recalling, “Gilbert read it through . . . in the manner of a man considerably disappointed with what he had written. As soon as he had come to the last word, he closed up the manuscript violently, apparently unconscious of the fact that he had achieved his purpose so far as I was concerned, inasmuch as I was screaming with laughter the whole time.”<sup>3</sup>

The original production of *Trial by Jury* was sent abroad from London. It went as far as Australia. Unauthorized pirate productions quickly sprang up in United States, taking advantage of the fact that U.S. courts did not enforce foreign copyrights.<sup>4</sup>

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*Trial by Jury* is performed extensively and is even cited in law cases, such as *Askew v. Askew*.<sup>5</sup> That decision includes an extensive reference to *Trial by Jury* as an introduction to its discussion of suits for breach of promise and the potential for abuse inherent in such lawsuits.

### Gilbert and Sullivan and the U.S. Supreme Court

*Iolanthe* by Gilbert and Sullivan concerns a band of immortal fairies who find themselves at odds with the House of Peers. This opera, which satirizes the legal system, and indeed the entire British government, was cited by then Associate Justice William H. Rehnquist in his dissent in *Richmond Newspapers, Inc. et al. v. Commonwealth of Virginia et al.*<sup>6</sup> Rehnquist was a great Gilbert and Sullivan fan. When he became Chief Justice of the U.S. Supreme Court, he added four golden stripes to the sleeves of his judicial robes, imitating the costume worn by the Lord Chancellor in a production of *Iolanthe*.<sup>7</sup>

In *Richmond*, the majority held that absent an overriding interest articulated in the findings, the trial of a criminal case must be open to the public. Rehnquist dissented.

In his dissent, he ironically quoted the Lord Chancellor: “The Law is the true embodiment/Of everything that’s excellent/It has no kind of fault or flaw/And I, My Lords, embody the Law.” Then he argued:

[T]o rein in, as this Court has done over the past generation, all of the ultimate decision-making power over how justice shall be administered, not merely in the federal system but in each of the 50 States, is a task that no Court consisting of nine persons, however gifted, is equal to. Nor is it desirable that such authority be exercised by such a tiny numerical fragment of the 220 million people who compose the population of this country . . .

However high-minded the impulses which originally spawned this trend may have been, and which impulses have been accentuated since the time Mr. Justice Jackson wrote, it is basically unhealthy to have so much authority concentrated in a small group of lawyers who have been appointed to the Supreme Court and enjoy virtual life tenure. Nothing in the reasoning of Mr. Chief Justice Marshall in *Marbury v. Madison*, 1 Cranch 137, 2L.Ed. 60 (1803), requires that this Court through everbroadening use of the Supremacy Clause smother a healthy pluralism which would ordinarily exist in a national government embracing 50 states.<sup>8</sup>

He also quoted Mr. Justice Jackson: “We are not final because we are infallible, but we are infallible only because we are final.”<sup>9</sup>

The plot of *Iolanthe* begins with the fairy queen commuting the sentence of Iolanthe, who was banished for life because she would not leave her human husband. At

the time, fairy law criminalized mixed marriages between fairies and humans.

When Iolanthe introduces her son, Strephon, she tells them that he is fairy from the waist up, and human from the waist down. As if on cue, Strephon falls in love with Phyllis, a full-blooded fairy and ward of the Lord Chancellor. Unfortunately for Strephon, the Lord Chancellor – and the bulk of the House of Lords – have similar feelings for Phyllis. Strephon is thus legally denied the opportunity to pursue any marriage proposal for Phyllis.

The Lord Chancellor, much like the Judge in *Trial by Jury*, fancies pretty young ladies to whom he has some legal obligation or responsibility. When Rehnquist quoted the Lord Chancellor as the “embodiment of the law,” he left out the remainder of that stanza:

The constitutional guardian I

Of pretty young Wards in Chancery, All very agreeable girls – and none

Are over the age of twenty-one. A pleasant occupation for

A rather susceptible Chancellor!

Two others in the House of Lords – Lord Tolloller and Lord Mountararat – are especially keen on marrying Phyllis, to the point where they misinterpret a hug between Iolanthe and Strephon as something more romantic rather than familial. This so-called betrayal forces Phyllis to seriously consider the marriage proposals of the two lords. Being unable to decide, she leaves it up to them to hash out. They ultimately decide against marrying her altogether, as that would require one man to duel the other, and they deem their friendship to be more important.

In the midst of all this, the Fairy Queen grants Strephon membership in Parliament and the ability to pass any bill. By Act II, Strephon is advancing a bill to open the peerage to competitive examination. The peers ask the fairies to put a stop to this, because the House of Peers is not susceptible of any improvement.

Strephon tells Phyllis the truth about his origins, and Iolanthe agrees to plead Phyllis’s case before the Lord Chancellor. This dispute is quickly rendered moot, as the rest of the fairies have chosen mortal husbands, the punishment for which is death. The Queen has no desire to kill virtually all fairies. Thankfully, the Lord Chancellor, being a man of the law, comes up with the solution:

Allow me, as an old Equity draftsman, to make a suggestion. The subtleties of the legal mind are equal to the emergency. The thing is really quite simple – the insertion of a single word will do it. Let it stand that every fairy shall die who **doesn’t** marry a mortal, and there you are, out of your difficulty at once!

The Queen, to save her own life, marries a nearby sen-try, and the opera concludes with everyone going away to fairyland.

### Other Operas

*The Marriage of Figaro* (1786), with music by Wolfgang Amadeus Mozart and a libretto by Lorenzo da Ponte, was and is a huge success. The opera was first banned in Vienna because it satirized the aristocracy. This was in the period before the French Revolution, and there was much hesitation about making fun of the ruling class.

In the opera, there is a brief trial about whether a contract should be enforced. Bartolo, who is depicted as arrogant, is a doctor from Seville who is also a practicing lawyer. He is hired by Figaro's former housekeeper, Marcellina. Figaro had promised to marry her if he should default on a loan she had made to him, and she intends to enforce that promise.

Figaro's trial follows, and the judgment is that Figaro must marry Marcellina. Figaro argues that he cannot get married without his parents' permission, because he was stolen from them when he was a baby. At this point one should advise readers to enjoy the beautiful music, and not take too seriously the muddled, sometimes silly, plot.

*The Devil and Daniel Webster*, music and libretto by Douglas Stuart Moore, however, depicts the legal profession in a positive light. The opera was based on a short story by Stephen Vincent Benet. Benet's story, published in 1937, centers on a New Hampshire farmer who sells his soul to the Devil. When the farmer wants to break the contract, he hires Daniel Webster, a fictional version of the famous lawyer and orator.

The farmer, Jabez Stone, is plagued with endless bad luck, and finally swears that "it's enough to make a man want to sell his soul to the devil!" Stone is visited the next day by a stranger, one "Mr. Scratch," who offers Stone seven years of prosperity in exchange for his soul. Stone agrees. After seven years, Stone bargains for an additional three years. After the three years pass, Mr. Scratch refuses any further extension of time. Stone convinces Daniel Webster to accept his case.

This is no easy task: the signature and the contract are clear. Webster demands a trial, and says Mr. Scratch can select the judge and the jury. The jury turns out to be composed of the damned, "with the fires of hell still upon them." The judge is John Hawthorne, the executor of the Salem witch trials. The trial is thus rigged against Webster.

Daniel Webster's oratory is so compelling: ". . . the freshness of a fine morning . . . the taste of food when you're hungry . . . the new day that's every day when you're a child" and how "without freedom, they are sick-ened" that it moves the jury to "find for the defendant, Jabez Stone." "Perhaps 'tis not strictly in accordance with the evidence, but even the damned may salute the elo-

quence of Mr. Webster." Mr. Scratch congratulates Daniel Webster and the contract is torn up.

Webster extracts the promise that Mr. Scratch is "never to bother Jabez Stone nor his heirs or assigns nor any other New Hampshire man till doomsday!" It has been said that the devil never did come back to New Hampshire.

*Gianni Schicchi*, a 1918 opera by Giacomo Puccini, libretto by Giovacchino Forzano, involves a family trying to find a way to void a will after the death of its patriarch.

When old Buoso dies, and the will is located, it turns out Buoso has given his considerable fortune to the monastery. The relatives are, as expected, furious. One of the cousins, Simone, calls on the lawyer Gianni Schicchi for advice.

Realizing that no one outside of the relatives presently gathered knows that Buoso has died, Schicchi gets the idea of impersonating Buoso and making a new will. With the wholehearted support of the relatives, Schicchi changes into Buoso's clothes, climbs into Buoso's bed and signs a new will, redistributing the estate. He makes the bequests conditional on Simone's distributing the estate within 15 days, otherwise everything will go to charity. Unbeknownst to the relatives, Schicchi has left a considerable chunk of the estate to himself, which they find out when the reading of the will takes place. Part of Schicchi's purpose is to supply a dowry for his daughter, who wants to marry one of Buoso's nephews.

The opera was developed from a few lines in Canto 30 of Dante's *Inferno*. Dante condemns Schicchi to Hell for this trickery, but in the opera Schicchi asks the audience to find extenuating circumstances.

In 2008, Woody Allen made his operatic directing debut with *Gianni Schicchi*, starting the production with a montage of old film clips. (This should come as no surprise.) He also changed the ending – dispensing justice by having one of the cousins stab Schicchi to death.<sup>10</sup>

Perhaps an entertaining *Journal* article could be written about the image in the movies of legal systems, lawyers, and trials. One can see Atticus Finch now. But that is for another article. Another day. ■

1. Marc Haefele, *Grand New Opera*, Metro. News-Enter. (May 10, 2012), at <http://www.metnews.com/articles/2012/snip051012.htm>.

2. W.S. Gilbert, *The Bab Ballads*, Fun, Apr. 11, 1868, at <http://math.boise.state.edu/gas/bab-ballads/html/trial.html>.

3. Michael Ainger, Gilbert and Sullivan: A Dual Biography 109 (2002).

4. Kurt Ganzel, *The British Musical Theatre*, Vol. 1: 1865-1914 95 (1986).

5. 22 Cal. App. 4th 942 (4th Dist. 1994).

6. 448 U.S. 555 (1980) (Rehnquist, J., dissenting).

7. John Q. Barrett, *A Rehnquist Ode on the Vinson Court*, *The Green Bag*, Vol. 11, No. 3, Spring 2008, available at [http://www.greenbag.org/v11n3/v11n3\\_barrett.pdf](http://www.greenbag.org/v11n3/v11n3_barrett.pdf).

8. *Richmond Newspapers, Inc.*, 448 U.S. at 606.

9. *Brown v. Allen*, 344 U.S. 443 (1953).

10. Anthony Tommasini, *At the Los Angeles Opera, Puccini With a Sprinkling of Woody Allen Whimsy*, N.Y. Times, Sept. 7, 2008, [http://www.nytimes.com/2008/09/08/arts/music/08trit.html?\\_r=1&pagewanted=all](http://www.nytimes.com/2008/09/08/arts/music/08trit.html?_r=1&pagewanted=all).

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