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# NIABA NEWS

*Men and women sharing a common heritage in a chosen profession*

## WE CAN AGREE AND DISAGREE

By Dino Mazzone  
NIABA President

Washington, DC. A rabid fan of House of Cards, and a self-diagnosed political junkie, I can tell you from personal experience that the nation's capital is simply a most captivating venue – particularly in autumn. Yet the capitol is an enigma of sorts. It is home to some of the world's best museums, incredible architecture, and is the seat of power for these great United States of America. Kevin Spacey's character in House of Cards, the ominous Frank Underwood, derisively offers his commentary on the various politicians that swarm the capitol: "proximity to power deludes some into thinking they wield it." It is this side of coin – the cynicism, the disconnect, and the place where the nation appears trapped in endless debate and disagreement and which has fueled considerable discontent with Americans of all political stripes – that represents the dichotomy of Washington, DC.



Italian-American lawyers in the National Italian American Bar Association fully understand the benefit of constructive debate and disagreement. Italians are understood to be expressive. Growing up in Italian families, so many of us were encouraged to have and share our opinions with our parents, our siblings, our relatives, and our friends. And share we did. Those famous Sunday lunches, the great big Italian weddings, the impromptu get-togethers – Italians love a good argument and they are passionate in their beliefs. Couple this natural enthusiasm for good dialogue with the formal training required to be a lawyer and you've got one helluva combination.

And in NIABA, while we do let our voices be heard and have had our moments of heated conversation where differing positions have been brought before the organization, we also understand the fundamental need to find compromise, to respect each other, and to find value in opposing views. NIABA has done this successfully for more than 30 years. It is why so many of us are committed to our mission statement, to our long-term viability and, ultimately, to each other. And there is no greater victory than winning your argument by bettering it with the input and effective criticism of those who were initially inclined to disagree with you. That is quintessentially Italian.

NIABA will be in Washington, DC for the Fall Meeting of the Board of Directors of our organization, to take place from October 23 to 26, 2014. A full itinerary of our events is available at [www.niaba.org](http://www.niaba.org). We invite you to join us for lively conversation and a glass of wine. And while we may, at some point in our discussion, disagree, I can assure you that the experience will never be disagreeable. Ci vediamo!!

# NIABA MEMBERS HIT THE SAND IN FORT LAUDERDALE

NIABA held its Spring Meeting of the Board of Directors of the organization from May 15-18, 2014 in Fort Lauderdale, Florida. The weekend was an incredible success and included "NIABA Day" as formally recognized by Florida's Broward County Commissioner Chip LaMarca. The meeting's phenomenal success was due, in large part, to the amazing efforts of NIABA Board member and Florida attorney Paul Finizio. Paul was a fantastic host and treated us to a wonderful weekend. Grazie Paul!





# THE ITALIAN “MEDIATION EXPLOSION” WILL MANDATORY MEDIATION WORK?

By Clara Flebus, Esq.

In recent years, mediation has become widely acknowledged as an effective method of resolving disputes. Not only is mediation faster and cheaper than litigation, but it enables parties to a dispute to find creative solutions that could not be achieved in court. Mediation is also viewed as an efficient way to relieve trial court docket congestion. Domestic courts in many jurisdictions, for example New York, have the power to refer cases to mediation, irrespective of the parties' consent. Following this trend, Italy completely overhauled its mediation law in 2010, in hopes of reducing a whopping 5.4 million national backlog of court cases and shortening the average eight-year duration of civil and commercial matters. While the new law was held unconstitutional and quickly replaced by a modified but similar statute, the reform has caused an explosion of mediation proceedings throughout the country.

The current Italian mediation law provides for mandatory mediation. The concept that parties may be compelled to mediation, either by the court or as a pre-condition to bringing a lawsuit, is controversial because it appears to undermine the basic principles of the mediation process, that is, self-determination, voluntariness, and collaboration in finding creative ways of resolving a dispute by addressing each party's underlying concerns. Nonetheless, empirical studies show that mediation

can be generally beneficial, even if mandated. Mediated cases have a higher rate of settlement than cases that



were never sent to mediation, and there is a greater rate of compliance for judgments achieved through mediation than for judgments resulting from litigation. In Italy, the effectiveness of mandatory mediation will be evaluated during a four-year period that began in September 2013.

## The Mediation Reform

By way of background, the European Union issued a Directive on mediation in 2008, for the purpose of promoting and facilitating access to mediation of cross-border disputes in its Member States. Among other things, the EU Directive provided that each State enact legislation giving judges the right to invite parties to engage in mediation at any stage of civil and commercial proceedings, if deemed appropriate. Although the EU Directive addressed only cross-border disputes, it did not prevent Member States from applying its provisions to mediation in the context of domestic litigation.

In 2009, the Italian Parliament delegated legislative power to the Government – the Italian executive branch – to

prepare a new mediation law implementing the EU Directive. The Government fulfilled that mandate by issuing Legislative Decree no. 28 of March 4, 2010, which went beyond voluntary mediation and provided for mandatory pre-trial mediation in a variety of civil and commercial cases, including: condominium; property; inheritance; family agreements; tenancy; loans; business leases; damages for medical malpractice; defamation; automobile accidents; and insurance, banking and financing agreements. The decree defined mediation as a process guided by a neutral and impartial third party, aimed at resolving a dispute by reaching an agreement between the parties. It also provided that mediation must take place in professional and independent mediation centers that are listed on a roster maintained and controlled by the Italian Ministry of Justice.

The mandatory mediation provisions of the Italian decree

caused a quick proliferation of mediation centers throughout the country. Indeed, the number of the centers grew from 37 in 2008, to 843 in April 2012. Mediation proceedings also experienced an unprecedented boom. More than 90,000 requests for mediation were filed between March 2011 and March 2012. However, the number of the mediations actually carried out was smaller, since there was no obligation for the defendant to attend the process. By the end of October 2012, over 130,000 disputes had gone through the mediation process. About 50% of those cases were successfully mediated.

## Push Back By the Italian Bar

The mediation reform sparked a heated debate among members of the public and lawyers. The business community reacted positively to mandatory mediation, viewing it as a way to reduce the risk of getting mired in lengthy litigation. Supporters of the mediation law argued that notorious delays in Italian civil proceedings cost the country approximately 16 billion Euro, and contributed to Italy's drop to 158th ranking in the World Bank Doing Business Report. By contrast, the law was strongly opposed by members of the legal profession, who saw it as a potential threat to their livelihood. Italy's national lawyers union, the “Organismo Unitario Avvocatura,” called for a national five-day strike in March 2011. The union asked lawyers across the country not to appear in court for any civil, criminal, tax, or administrative proceeding, and to send letters

*Continued on next page*

# Mediation

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to their clients asking them to sign a petition protesting the new law. A country-wide strike led to the closing of Italian courts for several days.

## Italy's Constitutional Court Strikes Down the Law

The explosion of mediation proceedings came to a sudden halt in October 2012, when, upon a challenge to the constitutionality of the decree, the Constitutional Court ruled that the Government had exceeded its legislative authority by making mediation a mandatory pre-condition to trial in certain matters. The Court held that the Parliament had not granted the Government specific authority to provide for mandatory mediation. As such, the decree was declared unconstitutional on the ground that the Government had failed to abide by the guidelines received from the Parliament for drafting the mediation law. Notably, the Court did not pass on the issue of whether mandatory mediation could be introduced in the Italian legal system or whether it would violate the right of access to justice guaranteed by the Constitution. The Court held, however, that the EU Directive on mediation did not prevent national legislatures from adopting mandatory mediation.

## A New Mediation Statute

In the aftermath of the Constitutional Court ruling, the Italian Government rushed to prepare a new law on mandatory mediation, which, this time, was enacted by Law Decree no. 69 of June 2013, utilizing the Government's power to legislate in emergency situations. This

new statute, entitled "Urgent Measures to Stimulate the Economy," became effective in September 2013. It provides for mandatory mediation of certain disputes for an experimental period of four years, during which the effectiveness of implementing mandatory mediation will be evaluated by the Italian Ministry of Justice.

The statute creates a new scheme for regulating and promoting the use of mediation in civil and commercial matters. Under the statute, parties who participate in mediation are not forced to reach an agreement. The statutory scheme provides for three types of mediation: voluntary, judicial, and mandatory. In the first instance, parties are free to resort to mediation in any civil or commercial dispute. Second, a judge may order the parties to mediate at any stage of the proceedings, even in cases where mediation is not mandatory. Third, the statute provides for mandatory mediation of certain disputes, as a condition precedent to bringing a lawsuit. The list of disputes in which the parties are required to mediate before going to court has been narrowed down compared to the prior decree. For example, disputes arising out of automobile accidents are now exempted.

As an incentive to participate in mediation in good faith, the statute provides that if no agreement is reached, the parties may ask the mediator to render a non-binding proposal to resolve the dispute, which the parties may accept or reject. If a

party rejects the proposal, the attempt to mediate is deemed to have failed and any party may commence an action. However, if the judicial decision ends up being the same as the mediator's

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The statute also helps lawyers by giving them preferential treatment as mediators. Indeed, lawyers are qualified to act as mediators and may serve in cases involving practice areas in which they are competent, provided they attend mediation training.

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proposal, the court will not award the winning party all costs and expenses, as it normally would, if that party had previously rejected the mediator's proposal. Instead, the court may even direct the winning party to pay the costs and expenses of the losing party.

## The Role of Lawyers

During the legislative process, members of the Italian bar strongly advocated for a requirement that parties in mediation avail themselves of legal counsel. As a result, the current statute provides that parties must be represented by lawyers during all stages of the mediation process. Any agreement reached by the parties will not be immediately enforceable unless it is signed by the parties' lawyers, who are responsible for making sure that the agreement does not contain provisions contrary to mandatory law

or public policy. In addition, lawyers must draft and sign the minutes of the mediation meetings. The statute also helps lawyers by giving them preferential treatment as mediators. Indeed, lawyers are qualified to act as mediators and may serve in cases involving practice areas in which they are competent, provided they attend mediation training. By contrast, non-lawyers who wish to become mediators must attend a class and pass a professional exam to obtain the qualification of mediator.

## Conclusion

The Italian statutory scheme attempts to strike a balance between voluntariness and coercion. It provides that certain classes of disputes must undergo mediation. However, the parties are not coerced to reach an agreement within the mediation process, and can always litigate in court if mediation fails. Although conclusions about the effectiveness of mandatory mediation will be drawn at the end of the experimental period, it seems safe to assume that mandatory mediation will increase awareness and the usage of mediation services in Italy because it provides an opportunity to experience the benefits of mediation to those individuals who would not otherwise use mediation voluntarily.

*Clara Flebus is a NIABA member and an Appellate Court attorney in New York State Supreme Court. Ms. Flebus assists in the disposition of international arbitration related matters before the specialized part of the Commercial Division.*

# Notes from the NIABA Office

## How to Reach Us

NIABA administrator Dana Robb is available at 414-750-4404 or [dana@barefoot-marketing.com](mailto:dana@barefoot-marketing.com)

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## Member Logo Available

It's easy to show your NIABA affiliation on your firm's website or marketing materials. Contact the NIABA office and we will send you a file that is suitable for online or print use.



Member

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## NIABA Brochures

An electronic version (PDF) of the NIABA membership brochure is available at [www.niaba.org/brochure](http://www.niaba.org/brochure). We encourage you to share the brochure with anyone who might be interested in joining NIABA. For hard copies to distribute to your colleagues or group, please contact the NIABA office.

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## Reaching Out to Law Students

NIABA membership is free for law students and first-year attorneys. If you know of groups or events that we

should reach out to, please contact the NIABA office and we will mail brochures to the organization you recommend.

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## Make Sure We Can Find You

If you received this newsletter in the mail, it may mean we do not have your current email address. Please help us, help yourself, and help the environment by providing updated contact information. Log into your profile on the NIABA website at [www.niaba.org](http://www.niaba.org) and make sure we have your correct contact information, especially email.

Not only will we save the cost of printing and mailing, as well as the environmental resources, you'll also get your newsletter sooner and be able to take better advantage of the information and resources we offer in each issue.

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## Dues Due Soon

NIABA dues renewal will begin December 1st. Members will receive notification electronically. You can pay your dues online via Paypal, or by check to the NIABA office. Watch for your renewal notice so you don't miss any of your NIABA benefits!

## MEMBER NEWS

**Leonardo Lucchi**, a partner in O'Malley, Miles, Nylan & Gilmore of Calverton, Maryland, has been elected to a two-year term as President of the Maryland Government Relations Association.

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**Silvano D. Orsi** chaired the Abruzzese Festival in Rochester, NY in August. The festival was a fundraiser in support of the Open Door Mission, Catholic Family Center, and Alternatives for Battered Women.

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**Krista Peckyno** was appointed in-house counsel at The Denali Group's Pittsburgh office. The consulting firm specializes in outsourced procurement services. She has also recently been appointed to the Executive Women's Council of Greater Pittsburgh, and was nominated for a Young Professional ATHENA Award.

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**Shari-Lynn Cuomo Shore** received the *Connecticut Law Tribune's* New Leaders in the Law 2014 award. The award recognizes the region's most promising up-and-coming lawyers who have wielded influence in their practice areas in the region and beyond.

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Send your news to NIABA Administrator Dana Robb at [dana@barefoot-marketing.com](mailto:dana@barefoot-marketing.com). We will use items as space permits.

## BALANCING THE MUSICAL SCALES

NIABA Board member **Ray Pacia** has found time during the past 10 years to balance the scales of music by attending the Umbria Jazz Clinics in Perugia, Italy. Because of his passion for playing jazz piano and things Italian, Ray enrolled in the two-week program for his summer vacation in 2005, and he has returned every summer since.



Approximately 250 musicians, mostly Italians but others from nearly 15 countries, focus on intensive jazz courses taught in Italian during the two week program by about 10 engaging Berklee music professors, each equipped with an in-class Italian interpreter. The clinics culminate in the student jazz ensemble concerts performed during the final two days.

Ray explains "For me, it's a great groove. I love Italy, the food, the language, the culture, the history, the architecture. At night we attend the jazz festival concerts where people like Herbie Hancock, Chic Corea, Pat Martino, Tony Bennett and other great musicians perform."

"It's a real melting pot experience. A lot of magic is resonating in Perugia during the first two weeks of July," says Ray, who has recorded his concert performances onto his first CD appropriately entitled *Balancing the Scales*.



*Judge Domenic Russo was a member of the NIABA Board of Directors for many years. He passed away on May 25, 2014. The following article is excerpted from the Boston Globe. For the complete piece, visit [www.bostonglobe.com](http://www.bostonglobe.com).*

By Bryan Marquard

As he sat in judgment in East Boston District Court, First Justice Domenic J. F. Russo at times leveled a steely gaze at defendants.

“When I just look sternly,” he told the Globe in 1997, “I can see how it affects individuals, who glance down and are embarrassed.”

Looking much like the football lineman and boxer he once was, Judge Russo could be imposing without trying, which helped convey how seriously he expected defendants to take his instructions as he crafted sentences that steered some of them clear of jail. He was instrumental in launching an East Boston drug court that required offenders to undergo intensive treatment and close supervision for petty crimes.

Judge Russo was just as innovative in how he treated some juvenile cases.

“I’ll sit in judgment, and I’ll determine if you are responsive to authority,” he said in

## IN MEMORY

# HON. DOMENIC J. F. RUSSO

the 1997 interview. “If you perform well, I’ll know you’re responsive. If you don’t, I’ll know how severe to be in judgment.”

Judge Russo, who after reaching the retirement age for judges served as chairman of the Public Employee Retirement Administration Commission, died in Massachusetts General Hospital of complications of a stroke. He was 82.

“From my perspective, my father was the consummate orator, the consummate leader,” said his son David. “He really enjoyed getting up there and pulling people together through speech.”

In later years, Judge Russo was a board member of the West End Museum, which honored him last fall as part of its Italian heritage month.

On personal and political levels, oratorical agility was a family trait. Judge Russo’s father had served as a city councilor and election commissioner in Boston. Like his son the judge, Joseph Russo could tamp down discord with a glance. “He just had to look at me, and I would comply,” Judge Russo said in the Globe interview. “The unspoken word. He didn’t have to say much.”

At 17, Judge Russo enlisted in the US Naval Reserve and served more than 30 years before retiring as a lieutenant commander.

He graduated in 1953 from Boston University with a bachelor’s degree and in 1956 from the university’s School of Law,

passing the bar exam before graduation day.

After a decade in private practice, he was appointed first assistant clerk magistrate of Brookline Municipal Court. In 1980, he was appointed an associate district court justice. Over the next 14 years, he served as a managing justice or a first justice in Milford, Lynn, Lawrence, and Peabody before moving to the first justice position in East Boston. “He used to say, ‘Have gavel, will travel,’” his son said.

Having initiated computer use for data and dockets in his district courts, Judge Russo also taught courses in colleges and through legal organizations, and he served as an officer in organizations for judges. In 2001, he received an award for excellence from the Massachusetts Judges Conference.

“I hope my legacy is not that I was an easy judge or even a fair judge, but that I was a good judge,” Judge Russo told the Globe in 2002.

When Judge Russo stepped down from the bench upon reaching 70, he was not ready to stop working. “If you knew anything about my dad, you knew that wasn’t possible,” David said.

At the time of his death, Judge Russo was serving his third consecutive term as chairman of the Public Employee Retirement Administration Commission, which oversees public pension funds in Massachusetts.

“He worked 30 hours a week at 82,” David said. “There was no such thing as retirement with my father.”

## COLUMBUS: FACT VS. FICTION

*Excerpted from a study published by the Order Sons of Italy in America, Commission for Social Justice. For the full report, visit <http://bit.ly/1mv00tz>.*

### **Fiction: Columbus did not discover the Americas, the Vikings did.**

In 1950, a map surfaced in Europe that shows the “Island of Vinland” in the northwest Atlantic Ocean. The map’s text in Medieval Latin explains that Leif Erickson and his Vikings found Vinland in the year 1000 A.D.

The Smithsonian Institution in Washington, D.C. dates the map’s parchment to around 1434 A.D. – nearly 60 years before Columbus’ first voyage. But when researchers at London’s University College used a laser technique to test the map’s ink, they found it contained a chemical substance called anatase, which was not synthesized until 1923, proving that the map is a forgery.

Did Columbus “discover” America? In every significant way, he did. Even if others vis-

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## Columbus

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ited the continent sporadically before he did, their voyages had no historical significance.

Columbus' voyages, however, marked the end of thousands of years of isolation between the Western Hemisphere and the rest of the world. The recorded history of the Americas and the Caribbean starts with Columbus.

### **Fiction: Columbus found sophisticated native civilizations**

Most of the native tribes Columbus found were hunter-gatherers who engaged in bloody tribal wars and, in the case of the Arawaks, Caribs and Canibs, slavery, torture and cannibalism.

To survive, the native populations depended on "slash-and-burn" cultivation of the land along with hunting, fishing and collecting edible wild plants, seeds and shellfish. They had no written language, history or literature. In their struggle for survival, these peoples were not the champions of the environment that they are often portrayed as today.

### **Fiction: Columbus was a slave trader**

Columbus never owned any slaves or brought any to the Western Hemisphere from Africa. During his first voyage in 1492, Columbus landed on the island of Hispaniola (now Haiti and the Dominican Republic). There, with the help of a tribe of friendly Taino Indians, he built a fort called Navidad and left 40 of his crew there when he returned to Spain in January 1493.

On his return to Hispaniola in November 1493, he learned



that all his men had been massacred by another Taino tribe. Columbus and his men fought with these Indians, capturing about 2,000 and in 1495, sent 500 of these prisoners of war (POW) to Spain to be sold as slaves, as was the custom in 15th century Europe. He sent another 30 Indian POWs to Spain the following year, but the Spanish monarchs ordered him to stop the practice and he never again sent Indians to Europe to be sold as slaves.

It is important to note that slavery was not unique to Europe. Columbus found it practiced in the Caribbean by the Caribs and Canibs who made slaves of the tribes they conquered and also ate their victims. (Hence the word "cannibal".)

Later Spanish explorers in Mexico and Central America found that even the more advanced civilizations of the Aztecs, Incas and Mayans kept slaves. These civilizations also practiced torture, ritual murder and the human sacri-

fice of their own women and children as well as of prisoners of war.

Such practices horrified the Spanish and caused them to look down on native cultures. In fact, the Spanish arrival in the New World was the decisive factor that eventually ended human sacrifice and cannibalism there.

### **Fiction: Columbus was a racist**

No evidence indicates that Columbus thought the islanders he met were racially inferior in any way.

In fact, in the journal of his first voyage, Columbus describes the Tainos and other tribes as "well-made with fine shapes and faces... their eyes were large and very beautiful... straight-limbed without exception and handsomely shaped." He praises their generosity, innocence and intelligence, saying they could "readily become Christians as they have a good understanding."

Initially, Columbus had friendly relations with the five Taino tribes he met during his first voyage. These relations soured with four of the five tribes after he found the colony of men he had left behind in the fort Navidad had been slaughtered.

He became good friends, however, with one tribe of Tainos led by Chief Guacanagari, who helped Columbus build his fort and fought alongside Columbus against the Taino tribes that wanted to kill the Europeans. Guacanagari paid heavily

for his friendship with Columbus. His village was burned; he was wounded in battle and fled to the mountains where he died.

### **Fiction: Columbus committed genocide**

The destruction of the native populations of North and South America over the centuries is a complex historical tragedy. No one knows exactly how many people were here when the Europeans arrived. The numbers vary from 8 million to 145 million. Many researchers believe the number to be around 40 million.

Columbus made four voyages to the Caribbean in a twelve-year period (1492-1504), spending from only seven months to two years and nine months (including the year he was shipwrecked on his fourth voyage.) It is inconceivable that he could have killed millions of people in so short a time.

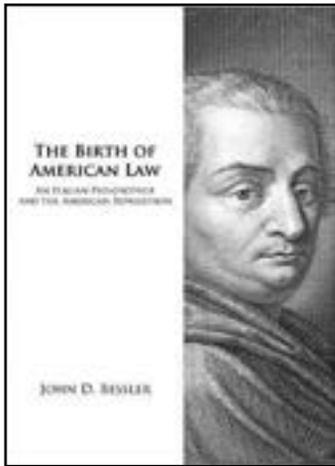
Responsibility for the deaths of many thousands of natives can justly be attributed to the Spanish conquistadors and other Europeans who followed Columbus here. But even in this case, since there were more natives than Europeans, the loss of millions of lives could not have been caused by the Spaniards' warfare and forced labor alone.

In fact, most of the native populations perished because they lacked immunity to such diseases as small pox, typhoid and diphtheria as well as the non-fatal childhood diseases of measles and mumps that they caught from the Spanish explorers. These diseases were not transmitted deliberately and cannot be considered a tool of genocide. Scholars es-

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## NEW BOOK

# AN ITALIAN PHILOSOPHER & THE AMERICAN REVOLUTION



*The Birth of American Law: An Italian Philosopher and the American Revolution* by John D. Bessler tells the untold story of the origins of U.S. law.

Before the Revolutionary War, a 26-year-old Italian thinker,

Cesare Beccaria, published *On Crimes and Punishments*, a runaway bestseller that shaped the Declaration of Independence, the U.S. Constitution, and early American laws. America's founding fathers, including early U.S. Presidents, avidly read Beccaria's book—a product of the Italian Enlightenment that argued against tyranny and the death penalty.

Beccaria's book shaped American views on everything from free speech to republicanism, to "life, liberty and the pursuit of happiness," to gun ownership and the founders' understanding of "cruel and unusual punishments," the famous phrase in the U.S. Constitution's Eighth Amendment. In opposing torture and infamy,

Beccaria inspired America's founders to jettison England's Bloody Code, heavily reliant on executions and corporal punishments, and to adopt the penitentiary system.

The cast of characters in *The Birth of American Law* includes the usual suspects—George Washington, Thomas Jefferson, John Adams and James Madison. But it also includes the now little-remembered Count Luigi Castiglioni, a botanist from Milan who—decades before Alexis de Tocqueville's *Democracy in America*—toured all thirteen original American states before the 1787 Constitutional Convention in Philadelphia.

Also figuring in this dramatic

story of the American Revolution: Madison's Princeton classmate William Bradford, an early U.S. Attorney General and Beccaria devotee; John Dickinson, the "Penman of the Revolution" who wrote of Beccaria's "genius" and "masterly hand"; James Wilson and Dr. Benjamin Rush, signers of the Declaration of Independence and fellow Beccaria admirers; and Philip Mazzei, Jefferson's Italian-American neighbor at Monticello and yet another Beccaria enthusiast.

In documenting Beccaria's game-changing influence, *The Birth of American Law* sheds important new light on the Constitution, the Bill of Rights, and the creation of American law.

## Columbus, *continued from page 8*

estimate that 80% of those who died were infected without ever seeing a white man.

Tragic as this epidemic was, it bears remembering that, prior to the Europeans' arrival, the Western Hemisphere was no Garden of Eden. New medical research on pre-Columbian mummies in Peru, Chile and remote areas far from the early European colonies reveals that tuberculosis, long thought European in origin, was rampant among Indian tribes before the arrival of Columbus.

Arthritis, periodontal disease and significant bone erosion also afflicted the native populations well before the voyages of Columbus and other Europeans. Most adults, only in their 20s and 30s, had terrible teeth or none at all. Very

few lived past age 40. The native populations gave the early explorers syphilis, which they brought back to Europe.

Clearly, blaming Columbus for the extermination of the native populations is as fair as blaming the native populations for killing people who die from using tobacco and cocaine, which the natives introduced to the Europeans.

### **Fiction: Columbus destroyed the balance between man and nature**

Columbus and the other Europeans brought with them Old World agricultural techniques, including crop rotation and animal breeding. They also introduced new tools (including the wheel) as well as new plants and domesticated animals, including the horse.

These imports led to improved farming methods, greater diversity of crops and a more dependable food supply that benefited the native populations. Perfected over the centuries, they have helped make the nations in the Western Hemisphere a significant source of food for the world.

### **Fiction: Columbus and other Europeans stole the native's land**

A sad fact of human civilization is that powerful nations usurp the land of the vanquished. The Spanish conquistadors who followed Columbus in the 16th and 17th centuries were establishing an empire through military conquest. They did what Egypt, Persia, Rome and China did before them in the Middle East, Europe and Asia.

They also did what the Aztecs, Mayans, Incas and many North American Indians did in the Americas. "The Iroquois Federation in North America subjugated so many Indians," writes Richard Gambino, "that historian Francis Parkman calls them 'the Romans of the New World.'" But Columbus himself had no part in this.

It is worth pointing out that the Europeans brought considerable benefits to Latin America. Their arrival gave the entire continent a common language. In North America, land taken from the Iroquois and other tribes eventually became the United States, a haven for the poor and oppressed from all over the world, who find opportunities and freedoms here that their countries deny them. It all started with Columbus.

# Affiliate Highlights

## Connecticut Italian American Bar Association

On May 21st, the Connecticut Italian-American Bar Association (CIABA) held its annual "Festa della Primavera" at the Quinnipiac Club in New Haven, CT. Keynote speaker Justice Lubbie Harper (Connecticut Supreme Court, retired), delighted the crowd of approximately 75 with a spirited address on the importance of diversity in the legal profession. He blended both eloquence and humor in commenting on his numerous connections to Italian culture, as well as the important role that CIABA is playing in advocating for diversity and camaraderie in the legal profession. Justice Harper's remarks were published in the September, 2014 edition of the *Connecticut Lawyer*, the Connecticut Bar Association's primary publication.

On November 5th, CIABA will host its Annual Heritage and Awards Dinner at Aria in Prospect, CT. Last year, keynote speaker Justice Peter Zarella (Connecticut Supreme Court) delivered a scholarly address, to a crowd of approximately 150, on the Sacco and Vanzetti case and its impact on his Boston, Italian-American family. This year, Assistant U.S. Attorney William J. Nardini, who recently returned to the United States from a four-year term as the Department of Justice's attaché in Italy, will give the keynote address. CIABA will bestow Italian-American Legal Achievement Awards on attorney Garrett Moore of Cheshire, CT., and Father Anthony J. Bruno, who

is the Director of Religious Services for the Connecticut Department of Correction. Father Bruno also serves as CIABA's Chaplain.

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## Italian American Bar Association of Michigan



Macomb County Circuit Court Judge Peter Maceroni, out-going IABAM president Caterina Amaro and Michigan Court of Appeals Judge Pat M. Donofrio.

The Italian American Bar Association of Michigan (IABAM) celebrated its Justinian Night recently at the Detroit Athletic Club. Michigan Court of Appeals Judge Pat M. Donofrio was presented with IABAM's 2014 Justinian Award by Macomb County Circuit Court Judge Peter Maceroni. Donofrio also administered the oath of office to the 2014-2015 IABAM Board of Directors.

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## Italian American Lawyers Association - Los Angeles

The Italian American Lawyers Association - Los Angeles (IALA) has launched their revised website at [www.iala.info](http://www.iala.info).

On July 23rd, the group hosted Power of Persuasion Night. IALA welcomed Decision-Quest CEO Phil Anthony, USC Psychology Professor Miranda Barone, and actor Vincent Spano to share some outside-the-box ideas on effective persuasion in the courtroom and in the conference room.

On August 27th, IALA held a general meeting featuring lecturers on Italians in cinema and photography in Italy. IALA was very pleased to welcome two members from Lex Romana – the Italian American Lawyers Association of Orange County (being rebranded as IALOC) – founder and past-president Joe D'Antony and board member Anthony Modarelli. Joe helped open the evening with introductory remarks explaining the history of IALOC as an offshoot of IALA, and both organizations look forward to a renewed and ongoing relationship.

\* \* \* \* \*

## Justinian Society of Lawyers, Chicago

During Judge Robert Bertucci's term as president, the group held a very successful scholarship dinner. The Society was able to grant \$36,000 in scholarships. The John Marshall Law School and Loyola University matched the dollar amounts to those students. The association is very proud of their scholarship efforts, which began in the 1950s with a single \$500 scholarship.

The next event was a dinner celebrating the past presidents, a night focused on "living history." John Spatuzza, the oldest past president, has been practicing law for over 60 years. He is an amazing role model for young and old!

The next event was a joint venture with the organization's

*Continued on next page*



IALA participated in the San Pedro Bocce Club Tournament in September. Los Angeles city councilman Joe Buscaino (third from right) and port commissioner Anthony Pirozzi, Jr. (far right) helped the IALA competitors – (L-R) past-president Hon. Chris Frisco, president Damian D. Capozzola, Glen Underhill, and board member Margherita Underhill – unveil the IALA banner during the opening ceremonies.

brothers and sisters from the DuPage Chapter.

In the spring, the group focused on the younger Justinians with their annual Bocce Tournament. After that, they turned their efforts to raising money for the Justinian Children's Endowment Fund. They also gave a \$5,000 grant to the Ronald McDonald House.

The 2014-2015 officers were installed on September 10th. These include: Anita M. DeCarlo (daughter of Vito D. DeCarlo, president 1970-1971) as President; Jessica DePinto as VP; Frank A. Sommaro as 2nd VP; Michael Bonamarte as 3rd VP; Vince Vidmer as Treasurer; and Natalie M. Petric (granddaughter of Anthony J. Fornelli, president 1969-1970) as Secretary.

\* \* \* \* \*

### Massachusetts Justinian Lawyers



Richard Bardi, president of the Justinian Law Society of Massachusetts, joined NIABA president Dino Mazzone (and his sons), past president Anthony Gianfrancesco, and New England regional vice president Dan Elliott at a dinner at Prezza Restaurant in Boston's North End. Bardi reported on the vibrancy of the Italian-American legal community in Massachusetts, and discussed opportunities for collaboration between NIABA and the Massachusetts Justinians.

### Sons of Italy Foundation

The Sons of Italy Foundation held its 26th Annual National Education & Leadership Awards Gala at the National Building Museum in Washington, D.C. in July. The event welcomed over 700 guests, including the 2014 national scholarship winners. The gala was a representation of the best of Italy and the United States, showcasing achievement and leadership at the highest levels. The event also paid tribute to America's military men and women and their families who serve and sacrifice for our nation. Transport Workers Union International President Harry Lombardo accepted the SIF Humanitarian Award.

\* \* \* \* \*

### Wisconsin Chapter of the Justinian Society of Lawyers

The Wisconsin Chapter of the Justinian Society of Lawyers announced their 2014 Columbus Day Celebration Honorees: Hon. Mary Triggiano was named Jurist of the Year; Mario and Cathy Costantini were named Italians of the Year; and John Constantine is Citizen of the Year. The event will take place October 17 at the prestigious Wisconsin Club in Milwaukee. For reservations or information, contact President Joseph G. Alioto at 414-688-2333.

Stay tuned for their Eleventh Annual Seminar in the Sand Legal Symposium in beautiful Las Vegas during the spring of 2015. For information, contact President Joseph G. Alioto.

## INTRODUCING LUCA ARNAUDO NIABA DIGEST'S EUROPEAN EDITOR



Professor Robin Paul Malloy, Editor-in-Chief of THE DIGEST, kindly asked me to introduce myself to the members of NIABA as European editor of THE DIGEST. This is a much delighted duty so here I offer, first, some thoughts on the

chain of events that brought me to write these lines.

My name is Luca Arnaudo, I was born in 1974 in Cuneo, a small town in northern Italy. In 1998 I graduated both at the law faculty of the University of Pisa and at the Sant'Anna School of Advanced Studies (SAS). SAS is a public institution devoted to social and applied sciences, shaped on the French model of the École Normale Supérieure, with the aim to select every year a few students who will follow a kind of doubled course of studies along their university careers. The main campus of the SAS is an old

monastery right in the center of Pisa – the tower leaning steadily very nearly – where most students still live together and the academic activities are carried on.

After graduation I moved to Milan first, then to Turin, working in an Italian law firm with strong connections to the U.S., Pavia e Ansaldo, focusing on competition and commercial law. Stefano Grassani, one of the best Italian antitrust lawyers, has been a tough, yet friendly master during my training. I owe him much praise for having shown me the beautiful

*Continued on page 14*

# WELCOME NEW NIABA MEMBERS

Welcome to the following members, who joined NIABA between April 23 and September 18 2014.

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# A JOURNEY THROUGH ITALY'S OVERCROWDED PRISONS

By Giancarlo P. Pezzuti

Prisons across Europe are facing an overcrowding crisis, a manifestation of at least three trends: tougher sentencing by judges (particularly for drug-related offenses), a painfully slow justice system, and lack of money to build and manage new facilities to accommodate the excess number of inmates.

This crisis is particularly acute in Italy, where correctional facilities are extremely crowded with a daily avalanche of convicted men and women.

Almost 67,000 inmates are housed in Italian facilities that were designed to hold only 45,000 – meaning they are at a capacity of more than 140 percent, among the highest rates in the European Union, with some individual prisons at 268 percent capacity, where the average capacity is just under 100 percent.

The prison overpopulation in Italy has its roots in different reasons. The Italian correctional system is currently based on a criminal code that dates back to 1930, since it was enacted during the Fascist period. It is basically aimed at the restriction of physical freedom, detention or arrest, flanked by fines.

In 1948, when the Republican Constitution came into force, the so called “Rocco Code” had to be interpreted according to a supreme principle introduced into the Italian system: the purpose of the punishment is the social rehabilitation of the inmate and, consequently, the detention must have a probation order.



Article 27 of the Constitution states: “Punishment shall not consist of treatments against the sense of humanity and shall be aimed at the re-education of the sentenced person.” So the penalty must be a path for the sentenced who suffers not to repair the damage, it must be a path to rehabilitate him.

In Italy, although recently there have been major steps forward, there is certainly a massive use of the most extreme precautionary measure, despite several times the jurisprudence stated that the precautionary detention measure must be an “extrema ratio,” when it results as the only measure that could paralyze the immediate effects of a crime: dangers of absconding, risk of recurrence, danger of interfering with evidences.

Regarding the time of justice in Italy, waiting for an inmate can be long, even if the Parliament made progress in this matter, because several limits on the use of pre-trial detention in prison now are fixed by law.

Prison population in Italy has had a sharp increase in recent years, a phenomenon generally due to the crisis of the welfare

state, together with the lack of social supports, and, on the other hand, the corresponding - fair or unfair - criminal answers made in relation to security issues.

Numbers show a gloomier picture: according to the Council of Europe, Italy stands third in the list of the most overcrowded prison systems with 147 detainees for every 100 available places. Doing worse are only Serbia and Greece.

A delegation composed of four members of Euro Parliament, Juan Fernando López Aguilar (S&D), Frank Engel (EPP), Kinga Göncz (S&D) and Salvatore Iacolino (EPP) visited the prison facilities of Rebibbia in Rome and Poggioreale in Naples from March 26-28, 2014.

Mr. Aguilar criticized the Italian government and the lack of political commitment to renew existing facilities while prisons such as Poggioreale date back to more than one hundred years ago (Poggioreale was built in 1908).

The delegation was also informed of the alleged existence of the so called “cell zero” where prisoners would be beaten by the police, an

issue currently under judicial investigation.

The situation that the Commission found in the prison facilities of Rebibbia in Rome was also rather negative. It houses 385 prisoners (although the official capacity is 240) of which 195 are Italians and 190 are foreigners, mainly originating from Romania, Bosnia and Herzegovina, and the former Yugoslavia. The basic problem in this prison is the presence of very young babies in jail with their mothers, confined in a cell since their birth.

Ultimately, the European Court of Human Rights took the decision to reject the final appeal advanced by Italy and, consequently, obliged the Italian country to rapidly resolve prison overcrowding and recognized a compensation for the prisoners who are victims of that situation.

The Strasbourg Court ruled that Italy's woefully overcrowded prisons violate the basic rights of inmates, fined the government euro 100,000 (US \$131,000), and ordered it to make changes within a year of May 27, 2013.

The Strasbourg Court ruled on a case (Torregiani vs Italy) brought in 2009 by seven inmates in two separate prisons, who complained that they each were forced to share a 97 square foot cell with two other people, giving each inmate 32 square feet of personal space. The men also complained that they didn't have regular hot water or lighting.

*Continued on next page*

## Prison, *continued from page 13*

The Court found that the reported conditions violated the European Convention on Human Rights' prohibition against torture and inhumane or degrading treatment. While saying there was no indication that Italy intended to humiliate the prisoners, the Court did find that the inmates' conditions subjected them to excessive hardships.

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*In the case of Italian prisons' overcrowding, there were several hundred complaints in front of the court.*

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The Court used what's known as a pilot judgement for the case, a procedure used when there are many similar complaints before the court that enables it to not only determine if a violation has occurred but also to offer ways to face the root of the problem. In the case of Italian prisons' overcrowding, there were several hundred complaints in front of the court.

Initiatives taken by Italy to comply with the Court's ruling and international law standards on human dignity were issued in April-August 2014.

Italian procedure code now provides a fair set of temporary and precautionary measures that can replace the "extrema ratio" of pre-trial detention in prison. There are "house arrest," "prohibition to stay in the place of residence," "mandatory residence," "restraining orders" or "orders of protection," depending on the offender, and according to the offence committed. Those are much more effective

measures to begin the path to rehabilitation, which could result in a definitive sentence of execution.

Alternative measures to detention (post-trial) include: assignment of the offender to the probation service, special probation for drug addicts or alcoholics, home detention/house arrest, semi-liberty, conditional release and early release.

When the imprisonment term is lower than three years and the crime is not a great wrong (eg. excluding mafia, paedophilia, armed robbery etc.), the Prosecutor's Office who perform these penalties send a warning notification to the defendant to claim an alternative measure to restriction.

Often it happens that social services are able to understand the personal situation of the inmate, their capabilities and needs, and often find job opportunities during the execution. Some of them are opportunities which stretch over time and allow the inmate to retrieve a social economic situation.

Concerning the blameworthy habit of the pre-trial detention, the new arrangement prohibits a custody measure when the indicted risks a penalty lower than two years, so to benefit the suspension of the conviction. Moreover, the most invasive custody measures (jail detention/house arrest) can be adopted only when the indicted risks a penalty higher than three years.

Moreover, according to the law 117/2014 inmates still

in prison will have their sentences discounted by one day for every 10 spent in cells of less than three square metres, while former inmates will receive eight euros for every day spent in such inhumane conditions.

The Council of Europe praised the "significant results" of Italy's prison reform, following a damning report by the European Court of Human Rights 18 months before.

The Council's decision-making body, the Committee of Ministers, in its ruling

## Arnaudo, *continued from page 11*

intricacy and relevance of the field. In 2001 I took the plunge, so to speak, and quit the law firm for a position with the Italian Competition Authority in Rome, where I am still serving as senior investigative officer. The last case I dealt with related to an alleged illicit agreement between two pharmaceutical groups for boosting the sales of an expensive ophthalmic medicine called Lucentis. This case gained wide media coverage including in the U.S. It was a remarkable corroboration of the intricacy and relevance that antitrust can reach.

Since last June, I have been on a temporary leave from the competition authority to serve as a visiting professor at the SAS, where I am working with professor Giovanni Comandé, one of the very few Italian members of the American Law Institute. As I turned forty recently, the opportunity to come back to the Pisan

praised the "authorities' commitment" and said "significant results" had been achieved in recent months.

The ministers reported "an important and continuing drop in the prison population, and an increase in living space" for prisoners in Italy.

The Council of Europe backed the reforms, noting "an important and continuing drop in the prison population," down from around 68,000 people in 2012 to 59,000 today.

monastery subtly sounded to me as a ring of life happily closing.

In fact, together with my professional career, I never quit academic research and also earned a Ph.D. at the LUISS University in Rome under the guidance of professor Roberto Pardolesi, specializing in law and economics. This is also having some interesting family side-effects as, due to my at-home mumbling related to the topic of competition to which I devoted my last book, my two-years-old son Fedro eventually started to spell the word 'monopoly'.

Research is also what brought me in contact with THE DIGEST and a visit to the Syracuse University College of Law. All this happened thanks to the generosity of its editor-in-chief, professor Malloy, who identified a paper I wrote

*Continued on back page*



# National Italian American Bar Association - Application for Membership

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I certify that I am at least one of the following: a lawyer of Italian birth or extraction; a lawyer related by marriage to a person of Italian birth or extraction; a lawyer who is willing to support the purposes and objectives of NIABA. I further certify that I have been admitted to practice law and am in good standing in any country or jurisdiction; or have been granted and possess a law degree from a college of law in any jurisdiction and would qualify for admission to practice law; or am currently a law student in an accredited law school in any country or jurisdiction. All information I have provided is true and accurate to the best of my knowledge.

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Please mail this form along with your membership dues and any other amounts listed above. Make checks payable to NIABA.

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**Arnaudo**, *continued from page 14*

on cognitive law and picked it up for publishing in issue 19. The month I spent as a visiting scholar at Syracuse, a radiant September in 2011, has been a true discovery to me, having the opportunity to carry on my research within a challenging intellectual environment in all comforts: Robin has been a true master and a magnificent host, something I will always remember with gratitude.

The idea to develop stronger connections for THE DIGEST with Europe, and more specifically Italy, also came from Robin's vision. He proposed to me, with

my great pleasure, that I assist in selecting every year some contributions from the Old Continent that may be of interest to the NIABA members. The 2015 issue will be the third of this kind, trying to provide fresh insights on practical issues as well as more theoretical contributions in the form of original essays.

I am happy to disclose that this same issue will feature, among other writings, an essay expressly written for the review by professor Rodolfo Sacco, emeritus professor at the University of Turin and a true monument of European

law scholarship. The aim is therefore to leverage on the already established tradition of THE DIGEST in order to further elevate its relevance as a rare, and much privileged, bridge among legal communities that may be geographically far, but, as the same motto of the review states, share a common heritage.

