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# NIABA NEWS

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

## PRESIDENT'S MESSAGE

# CONNECTING THROUGH NIABA

Tanti auguri to all members for a wonderful new year of Italian heritage celebrations and growing the value of NIABA your life and practice.

Your board and officers have been at work at meetings in Philadelphia before the holidays and San Diego in January in the famous little Italy. The board meetings focused on how the NIABA platform can grow and provide more connectivity for members in the U.S. and abroad with local law associations and other members. Our website improvements and ebasts are achieving that mission.



Another important objective is creating our improved scholarship application process. Many thanks are owed to former president Frank Schiro and board member Christine Salamone for simplifying our process and connecting NIABA to the Sons of Italy and other local bar organizations to create matching scholarships and increased beneficiaries.

As we move into the spring, we prepare for the Seminar in the Sand in Las Vegas and our board meeting, to which all members are invited to attend and learn more about your NIABA and how you can be more involved.

The San Diego meeting was attended by Sonia Alioto of San Francisco and gave rise to the decision being made to hold a meeting in San Francisco in January of 2019. We have committees and program chair slots available and we hope you will attend and participate.

We recently created a category of membership titled Lifetime Member for \$1,000. This membership category shows the dedication of members and helps with the administration of NIABA. All members are encouraged to become Lifetime Members. I am hoping you will follow my lead and do so. Grazie, in advance!

This year, our annual open membership meeting will be in Washington D.C. immediately preceding the NIAF gala on October 11-13. Please watch for more details.

As my office is in Ft. Lauderdale, the Venice of America, and our chairman Domenic Lucarelli is in Naples on the west coast of Florida. We invite our traveling members escaping the winter cold to visit us for Italian friendship and of course great Italian food and drink!

*Saluti e forza!*

Paul G. Finizio

# UPCOMING EVENTS



Plan to join us for these other upcoming meetings. As more details become available, we will send them out via email and post them on our [website](#).



## Las Vegas

Reserve your room at the Wynn Hotel.

Call 866-770-7555 by April 2nd and ask for the NIABA rate of \$199 (Sun-Thu) and \$249 (Fri/Sat) plus daily resort fee.

Register now for the following events at <https://www.niaba.org/event-2653320>

### Thursday, April 19

Welcome dinner at the award-winning Ferraros.

### Friday, April 20

Preregister and attend 14th Annual Wisconsin Justinian Seminar in the Sand, featuring distinguished NIABA Past President Joe Sena on Current Immigration Law Status, and Rome, Italy Avvocato and NIABA Board member Valerio Spinaci on Italy's Comparative Jurisprudence. Register [here](#).

Brief Board Meeting. Location TBA.

6 p.m. cocktails, 7 p.m. Dinner at the iconic and authentic Italian American Club. NIABA members welcome guests and Justinians for dinner. Entertainment will be provided by opera singer and America's Got Talent finalist Carlos DeAntonis.

### Saturday, April 21

NIABA Board Meeting in the morning.

Dinner at the carefully selected Tuscany Grill in Henderson. Possible coach/limo service to be arranged.

Special thanks to our event sponsors:



# FRAN DONNARUMMA NIABA EXECUTIVE VP

Reprinted with permission from [We The Italians](#). Originally published in 2015.

One of the most important and powerful fields of the American society, what we can generally call "the judiciary system", has seen and sees a very large number of successful Italian Americans. This is very important, because it means that not only they were able to reach economic success and make money, as we've already seen; but that they also gained the trust of the American people, being lawyers or prosecutors or judges, from the local level up to the Supreme Court.

To address this topic we're meeting one of those successful Italian Americans: Francis Donnarumma is a lawyer, the Secretary of the National Italian American Bar Association [at the time of publication] and Past President of the Connecticut Italian American Bar Association

## **Fran, what's the story of your Italian family, and when did it become an Italian American story?**

My family's story really began on one mountain top, in Italy, in the province of Avellino. It is a typical story. Francesco Donnarumma, my grandfather, was born in the town of Frigento and my other grandfather, Michele Giordano, was born on the very same mountain top, in the town called Sturno. The two young men – twelve and fourteen years old – left

Italy and came to US around 1910. They had not known each other in Italy. Each arrived in Waterbury, Connecticut. Serendipity: Francesco's son, my father, Carmine, met Michele's daughter, Louise, my mother, and they married.

All came to Waterbury because of the factories that were begging for workers at that time. Waterbury's population total was maybe 30,000 people. In the course of twenty to thirty years about 10,000 emigrants came from Italy, just to Waterbury. It was a phenomenal attraction here, perhaps, led by poverty in southern Italy and emerging industry here in the States. Francesco became a butcher, Michele became a school custodian, and they had their children, my mother and father.

My father, Carmine, was an academic natural. He studied in New York and was hired with the initial faculty at the Jesuit Fairfield University. He enjoyed his whole career there, until he retired. Upon retirement, the University memorialized him, naming "Donnarumma Hall", the faculty office building. Almost all the other buildings are named after saints, so it was really a wonderful honor.

The coincidence is, again, Giordano and Donnarumma were from the same little mountain top: in Italy, they did not know each other and, yet, their lives intersected, somehow.

**At the beginning of the mass emigration, Americans had a very low consideration of the Italians immigrated to the US. Now we have two Italian Americans Judges in the Supreme Court, and other important Italian Americans all over the US are successful judges, prosecutors and lawyers. How did this 180-degree turn happen? How did those people realized and succeeded to become that important and recognized?**

I was given a great book about the earliest Italians in Boston, *The Boston Italians*. The author is Stephen Puleo. He tracks another Italian who arrived from Salerno before 1900, James Donnarumma, who founded a newspaper called *La Gazzetta* which is still published by his granddaughter, Pamela Donnarumma. The author chronicles the abusive rhetoric directed to our ancestors, upon arrival in the States. Newspapers described them as similar to monkeys and chimpanzees. Public officials of the time spoke about their propensity to violence. In response, I believe, the Italians who came in that generation were driven to work harder than anybody, to preserve cohesive families, and to be assimilated into the US. During World War II, Italian Americans proportionally served in the US armed forces in far greater numbers than any other immigrant group. After the war, the young men who survived spread out all over the US and became successful in every field of endeavor.



My grandfather, Michele Giordano, fought in the World War I in the US Army. He was driven by the will to become American. He did not lose his Italian identity, but was driven to serve his new land. Later he became a national leader among Italian American war veterans as the vice president of the National Association of Italian American War Veterans.

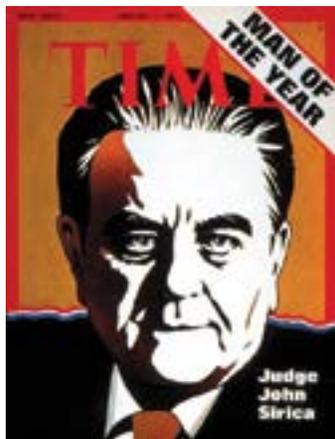
## **Is there an Italian American who - according to you - can perfectly represent the contribution of the Italian Americans to the American judiciary system?**

There is a quality of humanness and openness which I think is really distinctive among Italian American judges. Here, in Connecticut, in our own CIABA organization, we have several judges; Richard Marano, Salvatore Agati and Alice Bruno. I think that their Italian heritage gives them a great opportunity to identify with the litigants who are before them. There is the willingness to see the reality beyond the facts represented, obviously applying the law to the facts before them, but, also, seeing into someone's soul a little bit.

*continued on next page*

There is one historical figure, to answer your question: Honorable John Sirica. He was born in 1906, in my town, Waterbury, Connecticut. In those years, there were not many Italians able to study and, then, to become lawyers. He became an attorney and, later, was appointed as a U.S. District Court Judge in Washington, DC. He handled criminal matters. When President Richard M. Nixon engaged in what everyone ultimately recognized as grossly illegal conduct, some of the earliest associates of Nixon were presented before Judge Sirica. He was much criticized for his very aggressive questioning of the witnesses.

From my understanding, it was akin to the inquisitorial style of the Italian judiciary, where the judges were very active at examining witnesses. That was not the norm here, so Judge Sirica would often be criticized for stepping too far and being too involved. In the Watergate criminal trials he was very aggressive, as was his typical manner, because he knew the truth was not being revealed. Ultimately, he made the critical decision in the case known as *United States v Nixon*, wherein he ordered the White House, the Nixon White House, to turn over the secret tapes that ultimately broke open the case. His decision was immediately appealed to the United States Supreme Court, which upheld Judge Sirica's courageous decision. This is the beauty of the Italian history on the United States: the Sirica family from Italy arrives in Waterbury, Connecticut, their son goes to school, does good honest work, and finds himself in a



political and legal storm that consumed our country. He acted boldly and successfully asserted the law against the most powerful man in the nation. He is really a heroic figure.

**You are the Secretary of the National Italian American Bar Association. How many Italian American lawyers are members of this institution, and which are your main activities? Do you have local committees?**

NIABA has existed for more than 30 years now. Our numbers are changing, what I can say is that the people with whom we are regularly communicating certainly are at least five thousand. We have wonderful constituencies all over the country. It was designed to be a freestanding association. We do not have branches throughout the country, but, we coordinate with other associations: the CIABA in Connecticut; the Italian Lawyers of Los Angeles in Southern California, and we are going to meet soon with an association in the San Francisco area, and another in Orange County, California.

Our directors come from the US - California, Florida, New England, Illinois, from many cities - but, also, Canada and Italy. What we do is promote Italian American lawyers: networking is our most direct benefit. We work with law schools, we publish a newsletter that gives information about Italian American lawyers and judges. We have a scholarly publication called *The Digest*, published with the assistance of Professor Robin Malloy at the Syracuse Law School in New York.

We bring lawyers together. We move our board meetings around the country. We had our first seminar in Rome in October this year, and there were 25 American and 18 Italian lawyers present.

**You also are Past President of the Connecticut Italian American Bar Association, CIABA. Are there many Italian judges, prosecutors and lawyers in the Constitution State?**

I was president for three years recently. I am the first lawyer from Connecticut to become one of the four national officers, so I left being president in Connecticut. It is not only the law, not only the business networking opportunities: it is the kinship among the participants, what really is unique.

In Connecticut, among our directors is a lawyer, Louis Pepe, a very distinguished lawyer in our State, amongst our highest regarded lawyers. He is a past president of the Connecticut Bar Association and a member of 9 different

lawyer associations. He always tells us: "No matter how many associations I am part of, the most fun is being part of CIABA." It is not just a professional association where you get seminars, knowledge, improve your particular skills, do what you have to do to move up the legal ladder of success: it is really more about coming together in a safe, relaxed environment, not competitive with the other members. During our meetings, there is something that has become a tradition. The first time it happened we did not know that it would become a tradition. One of our members, Mark Iannone, put a brown paper bag on the table and said "I'd like to discuss something with the board." I had no idea what he was getting at, and I said "Sure, Mark." He opened the bag and took out beautiful garlic, which he grows, a particular kind of garlic and he shared it, and somehow we look forward it year after year: "When is Mark bringing the garlic?"

And I am not saying it to play any stereotype, of course... but we do not only talk about law, we talk about food, we have wonderful meetings all focused around food and wine, who is travelling to Italy, and we develop so many wonderful relations. In Italy, I visited the family of one of our members, Lorenzo Agnoloni, in Tuscany, and it was fantastic. I, also, went to Naples and met with the Neapolitan lawyer Giancarlo Pezzuti: he cleared his schedule and spent the whole day bringing us through Naples, and it was tremendous.

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**If you should mention one aspect of the American judiciary system that you'd like to bring into the Italian one, what would it be?**

I confess I do not know so much about the Italian system. I do know that many Americans were perplexed about the Italian criminal system as we observed it through the eyes of American reporters in the Amanda Knox

case. Then, I talked to Italian lawyers who spend work, as well, in the US, like Valerio Spinaci and Giancarlo Pezzuti. Both of them are sure we had a misimpression of the judicial system in Italy because, again, our knowledge comes through the glasses of American journalists reporting.

What I should emphasize is that in the American criminal justice system, the

overarching goal is to protect the individual, at the expense of law enforcement, at the expense of the system. The protection of the individual rights is supreme, not to say that it is not in Italy. We have a much spoken explanation that "it is better that ten guilty persons go free than one innocent person being wrongly convicted." I think that is the trait of the American system. Certainly, in our system, we

have many people who have been wrongly convicted; but the nature of the system is to focus on the individual and his rights. This emphasis sometimes causes public upset and, even, outrage; nonetheless, as lawyers, we must do as Judge Sirica did before us and follow the law as it leads us.

# Notes from the NIABA Office

## Directory Coming Soon: Order Printed Copies Now

We're just putting the finishing touches on our 2018 Directory. All NIABA members will receive a digital copy in PDF format. Limited quantities will be printed. Pre-orders for printed copies are strongly encouraged! Cost is \$25 each and you can buy yours easily on our website at <https://www.niaba.org/merchandise>.

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## Find Us on Social Media

NIABA is on Facebook at [www.facebook.com/groups/niabagroup](http://www.facebook.com/groups/niabagroup). Join us to share news, referrals, and discussions with other NIABA members all over the world.

We're also on YouTube at <http://bit.ly/2pubGxM>, where you can watch videos from our Rome CLE program.



## Writers Needed

The newsletter needs you! We're looking for articles that focus on the "overlap" of Italian culture or history and the law. If you have an experience or area of expertise that you'd like to share with our NIABA membership, contact Dana Robb at [dana@barefoot-marketing.com](mailto:dana@barefoot-marketing.com). We publish three issues per year, so there's always one just around the corner!

\* \* \* \* \*

## Can We Refer You?

Is your profile up-to-date on the NIABA website? If not, you may be missing valuable referrals! Members of the public use the Lawyer Search function, and sometimes contact us directly, looking for an attorney. The more information in your profile, the more likely they will choose you. Don't miss

valuable opportunities. Login and update your profile now.

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## NIABA Brochures

An electronic version (PDF) of the NIABA membership brochure is available on our [website](#). 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 [niabagroup@gmail.com](mailto:niabagroup@gmail.com) and we will provide brochures or other information to the organization you recommend.

\* \* \* \* \*

## Member Logo Available

It's easy to show your NIABA affiliation on your firm's website or marketing materials.



Member

Contact the NIABA office at [niabagroup@gmail.com](mailto:niabagroup@gmail.com) and we will send you a file that is suitable for online or print use.

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## How to Contact Us

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# THE ROLE OF TRUTH IN ITALIAN VERSUS AMERICAN DEFAMATION LAW



Reprinted with permission from the blog [Fulbright Year Italy](#). Originally published in 2015.

By Janna Brancolini

In American defamation law, truth reigns supreme.

American law defines defamation as false speech that harms a person's reputation. If the speech is true, it's not defamatory, and the plaintiff will be limited to other theories of recovery, such as invasion of privacy or misappropriation. The key issue therefore becomes which party has the burden of proving truthfulness: the plaintiff or the defendant?

In Italian law, truth plays a much more complicated and subtle role. Information can be defamatory even if it's true, meaning truth is only a defense in certain situations, and the burden of proof generally falls on the defendant.

## Evolution of the American View

Under the original common law of most states, speech that hurt a plaintiff's reputation was presumed to be false. Truth, however, was an affirmative defense; if the defendant could

prove the speech was in fact true, he or she was not liable for defamation.

Beginning in the 1960s, however, the truth of the matter asserted stopped being an affirmative defense and shifted more toward an element of the plaintiff's *prima facie* case. [i] Instead of the defendant needing to prove truth to avoid liability, the plaintiff needed to prove falsity as one of the elements of a successful case.

In 1964, in the landmark case *New York Times Co. v. Sullivan*, the Supreme Court held that false speech should not only be allowed — i.e. not censored — but afforded constitutional protection. The Court's reasoning was that without the freedom to make mistakes, true speech would also be suppressed.

"Erroneous statement is inevitable in free debate," the Court wrote. "It must be protected if the freedoms of expression are to have the 'breathing space' that they need to survive."

Otherwise, would-be critics of official conduct "may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court of fear of the expense of having to do so. They tend to make only statements which 'steer far wider of the unlawful zone.'"

In order to avoid this "chilling effect" on speech, the *Sullivan Court* held that a public official

suing for defamation could not recover damages unless he proved the statement was made with "actual malice" — that is, with "knowledge that it was false or with reckless disregard of whether it was false or not." In order to prove the speaker was reckless as to the falsity of the statement, the plaintiff must also prove the statement is false.

Three years later, in *Curtis Publishing Co. v. Butts*, the Court applied the same standard to "public figures" — people who do not work for the government but, like public officials, "often play an influential role in ordering society." Finally, in 1986, the Court in *Philadelphia Newspapers, Inc. v. Hepps*, held that a private citizen suing for defamation has the burden of proving falsity if the speech relates to a matter of public concern.

"There will always be instances when the fact-finding process will be unable to resolve conclusively whether the speech is true or false; it is in those cases that the burden of proof is dispositive," the Court wrote.

In other words, if something can be proven neither true nor false, the legal party tasked with proving the truthfulness of the matter will lose. In those cases, the First Amendment instructs that the law should favor the speaker, and the burden is on the plaintiff to prove falsity.

Thus the constitutional guarantee of freedom of speech

requires the plaintiff to prove falsity when the plaintiff is a public official, public figure, or private figure bringing a defamation lawsuit on matters of public concern.

States can then decide whether private figures bringing defamation suits about information that is not a matter of public concern must prove falsity as an element of the claim, or whether truth is just a defense to the lawsuit. Most states seem to fall in the former category, requiring the plaintiff to prove the speech was false.

## Italy Resembles the Traditional U.S. Standard

The Italian Penal Code of 1948 defines defamation (*diffamazione*) as, "Damage to the reputation of a person through communication with other persons" (Codice Penale, Art. 595). In general, truth is only a defense to defamation in three situations: when the defamed person is a public official and the fact alleged relates to the exercise of his or her official functions; if criminal proceedings are pending or brought against the defamed person concerning the alleged fact; or if the claimant formally requests that the judgment should extend to ascertaining the truth or falsity of the alleged fact (Codice Penale, Art. 596).

But Italy, like the U.S., recognizes a constitutional law component of defamation that complicates the role truth plays in the proceedings.

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## Defamation Law, *continued*

In the U.S., freedom of speech and the press is enshrined in the First Amendment, which reads, “Congress shall make no law... abridging the freedom of speech, or of the press.” In Italy, Article 21 of the Italian Constitution of 1948 states, “Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication. The press may not be subjected to any authorisation or censorship.”

A plain-language reading of these clauses suggests that the American conception of freedom of speech is much broader than its Italian counterpart. The promise that Congress shall make “no law” could apply to pretty much anything, be it prior government approval, copyright, defamation, or prosecution of journalistic sources. The Italian clause, by contrast, only prohibits “authorisation or censorship,” meaning the government can’t require newspapers to submit their articles for prior approval before publishing.

But just as “no law” in the First Amendment does not really mean the U.S. is a bastion of unfettered free speech, the Italian Constitutional Court has held that Article 21 guarantees more than just freedom from authorisation and censorship. Instead, Article 21 establishes a more general *diritto di cronaca*, or freedom of the press, that goes beyond formal censorship.[ii]

In 1984, Italy’s Supreme Court of Cassation established three criteria under which journalists can be “justified” in publishing defamatory information in

accordance with the Article 21 *diritto di cronaca* (Cassazione civile, sez. 1, Oct. 18, 1984). “Justification” is a broad criminal defense that applies to more than just defamation (Codice Penale, Art. 51). The Court of Cassation held that if the information is true, socially

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The Court of Cassation held that if the information is true, socially useful or socially relevant, and “restrained,” meaning the journalist communicated it in a way that respected the subject’s dignity, the journalist is “justified” in damaging the person’s reputation.

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useful or socially relevant, and “restrained,” meaning the journalist communicated it in a way that respected the subject’s dignity, the journalist is “justified” in damaging the person’s reputation.

Critically, the Court held that when raising the defense of justification, the truthfulness of the information can be presumed if the journalist has seriously verified his or her sources of information. This is called *verità putativa*, or putative (presumed) truth.

“Serious verification of sources” is actually quite similar to the American standard for actual malice. American journalists are expected to exercise reasonable care in reporting, but are permitted to trust sources that seem reliable unless confronted with something concrete that would make them question the information obtained. And in cases where truth can neither be proven nor disproven, the Italian presumption of proof would seem to provide crucial protection to journalists.

This is not to suggest that it’s equally easy or difficult to bring — or win — a defamation lawsuit in Italy versus the U.S. There are many other issues at play besides truth, and as I wrote previously, Italy is notorious for frivolous defamation suits.

But when it comes to the role that truth plays in the proceedings, in certain situations, Italian and American law end up in a surprisingly similar place — despite taking very different routes to arrive there.

*Janna Brancolini is an American writer and attorney based in Italy, where she consults for corporate clients and covers international law for Kheiro Magazine.*

### Notes

[i] This evolution was in many ways a natural development of the “marketplace of ideas” theory, which was first articulated in American jurisprudence in 1919 in Justice Holmes’ dissent in *U.S. v. Abrams* and went on to become the bedrock of American free speech law.

Holmes wrote that determination of the truth is “better reached by free trade of ideas,” and that “the best test of truth is the power of the thought to get itself accepted in the competition of the market.” He was saying don’t censor speech; let people write and say what they want, and only the strongest, most truest ideas will survive. Sullivan recognized that the only way to have a robust market is if speakers will not be legally liable for reasonable mistakes.

[ii] *Diritto* means “right” and *cronaca* literally translates to “news” or “news report.”

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# WELCOME NEW NIABA MEMBERS

Welcome to the following members, who joined NIABA between October 17, 2017 and March 18, 2018.

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## MEMBER NEWS



**Linda Leali**, founding shareholder of Linda Leali P.A. in south Florida, has announced her candidacy for Broward County Circuit Court Judge. Leali concentrates her practice on bankruptcy, creditors rights, and receivership. She frequently lectures to both attorneys and judges on both bankruptcy and receivership law.

\* \* \* \* \*

**Lydia Liberio** was elected to the Board of Governors of Project Management Institute's Orange County chapter. She recently presented "Chapter Harmony: Engaging Students and Military as Next Generation Leaders" at the PMI Region 7 Leadership Summit in Honolulu.

\* \* \* \* \*

**Caterina Ranieri** has recently joined Bousquet Holstein PLLC in the fields of Immigration and Litigation. Along with her colleague, **Attorney Casey Johnson**, Ranieri assists clients with obtaining court orders directing the release of NYS issued birth certificates, and obtaining "one and the same person" court orders. Ranieri is a dual citizen of the U.S. and Italy, a member of the American Immigration Lawyers Association, and is admitted to the Bar of the United States Supreme Court.



\* \* \* \* \*

Send your news to NIABA Administrator [Dana Robb](#).  
We will use items as space permits.

## GRAZIE TO NIABA'S SUPPORTERS

*Our special thanks to those members who are supporting NIABA beyond their regular membership dues this year.*

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# WINTER MEETING IN THE SUNSHINE

NIABA enjoyed a tremendous Winter Board meeting in America's Finest City over the weekend of January 18-21.

After months of anticipation and planning by NIABA President, **Paul Finizio**, NIABA West Region VP, **Damian Capozzola**, and incoming San Diego Italian American Bar Association President, **Fausta Albi**, the events kicked off with a wonderful Thursday night dinner in San Diego's Little Italy at Monello, a timeless Milanese restaurant. The downhill walk back to the terrific Hotel Republic was welcomed by those who

hoofed it back to walk off some of the delicious pasta.

The Friday board meeting (graciously hosted by **Christine De Santis** of Higgs, Fletcher & Mack) was productive, and was followed by a walking tour of Little Italy. The day's full slate of activities worked up an appetite for the Friday night "local culture" dinner at Roy's, an outstanding seafood restaurant with terrific views of the waterfront. The group convened back at the hotel bar afterwards for a fun evening of socializing before retiring to be ready for Saturday, which opened with another

productive board meeting, where (among other things) it was decided that the January 2019 board meeting would be in San Francisco!

After the Saturday board meeting, the group had the afternoon free to dine again in Little Italy and rest up for the gala event at the Birch Aquarium at UC San Diego. NIABA was proud to welcome to this event the San Diego City Attorney, **Mara Elliott**, and the San Diego District Attorney, **Summer Stephan**, among many other lawyers and law students from throughout Southern California, all of

whom enjoyed the stunning voice of NIABA's in-house opera star, **Carlos De Antonis**.

Those who didn't need the morning to rest up were welcomed to a farewell breakfast in Little Italy, and some intrepid souls made their way up to Los Angeles for the IALA Installation Ball to welcome and celebrate incoming President **Alice Salvo**. All in all, it was a tremendous weekend of business meetings and networking, and we look forward to more of the same in Las Vegas in April!





*With thanks to our event sponsors.*



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# Affiliate Reports

## Italian American Lawyers of Orange County



As the new year turned over, the Italian American Lawyers of Orange County (IALOC) installed its new Board of Directors (photo at left), with Joseph Ferrucci sitting as President, Anthony Modarelli as Vice President, Michelle Ghidotti as Treasurer, Kate Santon as Secretary, Mike Santoni as Historian, Diana Cimino as Parliamentarian, and Joseph D'Antony, sitting as Consigliere.

IALOC is forever grateful for our Immediate Past President, Dominic Rainone, who served as President in 2017 and continued the momentum in membership growth and participation, while coordinating exciting monthly meetings centered around good food, good wine, and good company.

The beginning of 2018 was jammed packed with events. IALOC honored one of their founders, Frank Barbaro, an attorney in Santa Ana, CA who has dedicated his life to his heritage and the profession. In March, IALOC held a CLE event centered around the implications of the new tax laws, both personally and on law firms. In April, they will again hold their wine tasting event, where they will showcase wines from across the different regions of Italy.

They are also hosting a CLE program in Sorrento this October 12-18. NIABA members are invited to attend. Full details are available at <http://ialoc.org/event-2815840>.

If you find yourself in Southern California email them at [info@ialoc.org](mailto:info@ialoc.org) to stop by one of their events, which are held on the second Tuesday of the month.

## Tampa Chapter of NIABA



Anthony Fantauzzi, of The Fantauzzi Law Firm, recently presented on behalf of the Tampa Chapter for NIABA at the Hillsborough Association for Women Lawyers Luncheon. (photo above) Mamie Wise, Vice President of Programs, is on Anthony's left, and on his right is Sarah Kay, President.

## Italian American Bar Association of Los Angeles



IALA members celebrated the holidays with members of the California Supreme Court, the Big Band of Barristers, and their latest scholarship winners and new admittees.



## BEST PRACTICES

# A TIMELY SITE INSPECTION MAY CLINCH THE CASE

*Best Practices features articles that we feel will be helpful to those who are engaged in the practice of law. Unlike the rest of this newsletter, they may not have a specifically Italian or Italian-American focus. If you would like to contribute to this column, contact niabagroup@gmail.com with your idea.*

By Andrew P. Sutor

If your client is seriously injured while a guest at a facility in the hospitality industry, there is the possibility that the defendants in the case may not have provided a reasonable standard of care for the safety of customers and guests. How do you establish that and how do you prove it to a judge or jury? According to John Leighton, Esq., author of *Litigating Premises Security Cases*, it requires the services of a competent and able security expert to support your case and assist you in bringing it to a successful conclusion.

The typical analysis begins with looking for previous similar crimes or previous similar incidents. A quick study of risk management tells us that if a type of incident has occurred in the area previously, there is a higher probability of it happening again. It also means there is a higher standard of security/preventive action, etc. required to be in place. It will be hard for the defendants to support

a position that no additional security was required if there is a history of problems that are relevant to the new incident.

An astute investigator is going to search for what is termed: Spoliation of Evidence. If the defendant organization is good at managing their data, surveillance footage, etc. the case may come to a crashing halt at this point. The material that would substantiate the incident or document it will have disappeared and not be traceable. To say time and technological expertise is 'of the essence' for your investigator, is an understatement.

For a moment, assume that your expert is able to establish that there is a significant level of foreseeable risk prevalent at the time of this specific incident. Next the expert has to develop evidence that the defendant's security measures were inadequate and unreasonable at the time of the incident.

Inspecting the scene and the vicinity of the incident (crime or accident) at a time and under similar conditions [although obviously on another day/night] will help establish and support your expert's opinion about the adequacy of security measures at the premises. What may be the norm weekdays might be different than what is in place say, early on Sunday around 2:00 a.m.

Time is definitely a factor in performing a meaningful, competent and relevant site inspection that will support your case. Crime scenes change over time. Many crimes and incidents in the hospitality industry occur on weekends and the early morning hours. It is very helpful to walk the path and time frame of the plaintiff and/or his witness to obtain insight as to what happened and the security measures in place at that time interval. Expect your expert to take photographs, video... you know the drill.

Aside from the timeliness of the inspection it is also helpful to perform it on a covert (unannounced) basis if the subject of concern is located a public area. For back-of-the-house areas and security camera monitoring room inspections, the defendant is going to have to give pre-approval. If the defendant's attorney accompanies the inspection it would be wise for the plaintiff's attorney to do so as well. In any event, the site inspection is a crucial part of any negligence case.

Furthermore, in order to determine how your defendant deviated from industry security standards it could prove useful to conduct a security survey of similar properties in that venue. And if the defendant owns or operates other properties in the area -your expert should be surveying them as well.

Sometimes, even when the corporation's management knows there is need for more robust security, they just don't spend the money. I was involved in a casino negligent security case where a novel concept of "Abatement of Security" was raised. It went to the heart of the matter. Corporate management "cut too many corners" on security and surveillance. In other words, the defendants once had reasonable security performed by professionals but decimated it in order to save bucks!

Assume now that you are being hired as the expert, the approach summarized above, along with accurate crime and foreseeable risk data, can significantly contribute to winning negligence cases by showing the totality of the circumstances involved. It can help in determining negligence levels and help prove the proximate cause of your client's injury.

*Andrew P. Sutor is Principal at Sutor & Associates, LLC, which provides professional security consultation and expert witness services for attorneys pursuing premises liability and negligent security cases. Reach Andrew at: [apsutor@comcast.net](mailto:apsutor@comcast.net) or at 609.822.2626.*



# National Italian American Bar Association - Application for Membership

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How did you learn about NIABA?  Local Association  Web Site  The Digest Law Journal  Referral  Other

Would you like to make a contribution to the NIABA Scholarship Fund?  \$100 or more  \$50  \$25  Other

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.

Signature \_\_\_\_\_ Date \_\_\_\_\_

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

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