

TAIC - Ambassadors to Roman Justice

Submitted by: Honorable Cynthia M. Rufe, United States District Court, Eastern District of Pennsylvania, Past President Temple American Inn of Court and Scott P. Sigman, Esquire, Master and Executive Committee member

Twenty-six TAIC judges, attorneys, professors and their guests were hosted by the Italian Supreme Court, the *Corte Suprema di Cassazione* and the *Roman Tribunale* as part of their March, 2011 Ambassadorship to Rome. The trip, organized by Honorable Cynthia M. Rufe included Inn members and their guests along with faculty from the Temple Beasley School of Law. The itinerary included meetings with representatives of the local Italian Bar Association, individual practitioners and law firms in Rome, and also included a morning of lectures at La Sapienza, Rome's largest university where members of the group instructed Italian law students on various aspects of American jurisprudence, such as jury selection, administrative review and appeals, electronic discovery and state and federal jurisdiction issues.

Our visit to the Italian Supreme Court, which is located in il *Palazzo di Giustizia* was the highlight of our trip. The Italian Justices prepared for their American visitors a gracious reception, and made a formal presentation explaining the Italian judicial system and the current issues which it confronts. The Justices exchanged ideas with TAIC judges, which included Temple Inn President, Honorable Annette Rizzo, and Honorable Teresa Sarmina from the Philadelphia Court of Common Pleas, the undersigned federal judge from the Eastern District of Pennsylvania, the Honorable John J. Rufe from the Bucks County Court of Common Pleas (a Bucks County Inn *Emeritus* member) and Honorable Faith M. Angell, Magistrate Judge from the

Eastern District of Pennsylvania, practitioner members of the Inn. As a Director of the Federal Judges Association, Judge Rufe had utilized her contacts with the International Judges Association to develop a program for the Inn with the Italian Courts. Italian Supreme Court Justice Antonio Mura, also Secretary - General of the IAJ, and his staff provided the opportunity for multiple exchanges in both her court and the Roman Tribunale.

In addition to an interesting exchange of ideas, members were escorted to several appellate courtrooms to observe oral arguments. These appeals were premised on alleged errors of law and were heard by the Italian Justices sitting in three-judge panels. Primary among the Italian Justices' concerns was the backlog of cases pending appeal. In the Italian legal system, any case may be appealed for any reason by any party. From the lowest to the highest court each Justice prepares his or her own opinions and generally does so without assistance from law clerks. Although all decisions and rulings must be entered in writing, the Italian legal system does not recognize *stare decisis*. Nevertheless, lower courts tend to follow the guidance of prior rulings which are utilized as advisory.

The Italian Justices were very interested in case management techniques of American courts. TAIC judges were happy to share their respective experiences in case management with the justices. One of the useful tools to reduce the number of pending cases in any legal system is alternative dispute resolution. Shortly before our trip, the Italian justice system was modified to permit mediation and, in some cases, arbitration for the first time in 2010. In fact, the *Decreto Legislativo* now mandates mediation in civil lawsuits related to real property, inheritance, leases, contracts, indemnification and defamation. Consequently, Italian lawyers were most eager to

learn more about our more multi-faceted ADR options, both private and court-sponsored.

The Italian judges and practitioners shared with us their concerns related to their legal system - funding, separation of powers and independence of the judiciary, case management, limitations of appeals. However, Italy has additional responsibilities to the European Union which mandates, *inter alia*, speedy trials in both criminal and civil cases. Under the current status of insufficient funding, and with a large and growing backlog of cases, many court systems in the EU are not able to comply with such stringent standards and are sanctioned by being compelled to pay plaintiffs in civil cases a percentage of monies that they seek as interim relief in civil cases are left unresolved over five years.

Following the gracious and informative presentation at the Italian Supreme Court, the group was hosted by the President Judge and Vice President Judge of the *Tribunale Penale*, Rome's Criminal Court, where we exchanged ideas with Criminal Court judges and observed a criminal trial. Again, the judges expressed their concerns about a lack of funding and resources for the ever-growing caseloads, and generally observed the bulkiness of a system that requires hearings and trials before three- to five judge panels in every case. Judges are designated senior or junior by the color of ropes on their robes and are educated and trained to be judges as a career, requiring them to take a specific bar examination. The judges, who had reviewed the Inn members' biographies, asked particular questions of our members, such as speedy trial concerns and how the American court systems deal with family and child welfare matters. They informed us that few criminal cases require juries. Only for the most serious criminal cases involving "blood crimes", the Italian system permits a jury to decide the matter, but in contrast to the

American legal system, the Italian jury is comprised of two judges and six citizens. Juries are not sequestered until deliberations and verdicts need not be unanimous, as a simple majority is all that is required for conviction. A jury must also file a statement of reasons to support its decision within ninety days of verdict.

The Amanda Knox case is a timely example of substantive and procedural due process in the Italian criminal justice system. If convicted after trial, a defendant has an automatic right of appeal from the *Tribunale* or the court of first instance to the *Corte de Appello* or the court of second instance. In the appellate court a panel of three judges hear the appeal which, in stark contrast to the American legal system, may include new evidence as well as testimony. In the most serious cases, the appellate court may include an eight-member jury (two judges and six citizens) as it did in the Amanda Knox murder case. On appeal, Amanda Knox and her co-defendant boyfriend, Raffaele Sollecito were acquitted of murder, the appellate jury finding that the accused were innocent and, in fact, did not commit the crime. The appellate jury also had an option to acquit on insufficient evidence. Nevertheless, the public prosecutor has a right to appeal the acquittal to the Italian Supreme Court, another stark difference with the American constitutional concept of double jeopardy.

We learned that the Italian system of justice abandoned the inquisitorial system of justice after 1988 when rules were created that required public prosecutors and police to conduct criminal investigations and interrogations, thus permitting judges to remain impartial. While Italian courts continue their efforts to modernize and to acquire effective ways to address issues of administration as well as justice, they are each affected by common problems. All judges that

we conferred with on our trip as Ambassadors for the Inns of Court were concerned about assaults on the independence of the judiciary. The very day that we visited with the Italian Supreme Court and the Roman Tribunale, then - Premier Silvio Berlusconi introduced a bill in Parliament to dismantle and revamp the Italian Court System. We observed with great humility a plaque displayed in the ceremonial chambers of the Italian Supreme Court listing names of judges who had been assassinated. This fear for personal safety is more reminiscent of the prior attacks on judges by the Red Brigade and organized crime.

The trip was planned with the goal of promoting civility, collegiality and professionalism abroad. Italy has only recently been exposed to the Inns of Court movement, yet its Justices, Judges and lawyers strive daily to learn better ways to improve their legal system and to provide fair and impartial, as well as timely decisions by their tribunals. The Ambassadors from the TAIC left Rome believing that the Italian Bar and the Courts were eager to grow from our shared experience, and we are each willing to continue the collaboration for mutual benefit.