

A few words from Il Presidente

As IALA President for 2008 it gives me great pride to reintroduce to the membership the Bollettino, our periodic newsletter which we hope will help our membership keep in touch with one another as well as with legal issues and current events in which we all have a common interest. We kick off this issue by profiling our Founders in conjunction with the upcoming Founders' Night on June 24 and with a discussion of an interesting issue of international law. I also encourage everyone to visit the revamped IALA website for information about upcoming events.

See you at the Casa! Cent' Anni!

--Anthony V. Salerno

Web Sites of Interest

IALA:

<http://www.iala.lawzone.com>

National Italian American Bar Association:

<http://www.niaba.org>

National Italian American Foundation, Inc.:

<http://www.niaf.org>

2008 European Soccer Championships

Group C

Netherlands: 3-0-0, 9 points

ITALY: 1-1-1, 4 points

Romania: 0-2-1, 2 points

France: 0-1-2, 1 point

Quarterfinal: Italy v. Spain, 6/22

IALA SPOTLIGHT: OUR FOUNDERS!

As IALA heads into its fourth decade and with the IALA Founders being honored and inducted into the IALA Hall of Fame on Founders' Night on June 24, we inaugurate this regular column in our reborn newsletter with a discussion of how IALA was founded and what became of the six men who created the organization.

Early in 1977, the judge and five lawyers discussed below culled the available phone directories and other lists of lawyers in the Los Angeles and Orange County areas, seeking "Italian sounding" names. Invitations to join the organization went out, and nearly fifty lawyers attended the first meeting. IALA was born.

Judge Mario L. Clinco was a very persistent man, and with the help of the five lawyers / founders below summoned to his chambers, he created IALA. He was an Attorney for the Securities & Exchange Commission in Philadelphia and Los Angeles before starting out in private practice, and was later appointed Judge of the Municipal Court and Superior Court by then Governor Edmund G. "Pat" Brown.

Recognized statewide as one of the foremost experts in the settlement of civil cases, he was cited in August 1974 by the L.A. County Board of Supervisors for his "... outstanding record in reducing the court calendar to save the County millions of dollars." Selected as the 1975 Trial Judge of the Year by the L.A. Trial Lawyers Assn., Judge Clinco was elected Fellow of the International Academy of Trial Judges in 1976, and honored

by the California Trial Lawyers Assn. as Trial Judge of the Year in 1979. Judge Clinco was President and Chairman of the Board of the American Justinian Society of Jurists; the Society includes over one thousand Judges of Italian lineage from 45 states.

Judge Clinco was also: Past-President of Italo American Voters, Inc.; Secretary of the American Committee for Italian Migration (ACIM); Executive Secretary for the American Resettlement Council Italian Refugees (ARCIR); Director and State Chairman of the National Italian American League to Combat Defamation; "Man of the Year" in the Italian Community for 1964; Executive Secretary for the American Campaign for Italy Flood Relief, Inc. So. Cal. Committee; co-Chairman Italian Red Cross Sicily Earthquake Relief Fund; Master of Ceremonies of the Columbus Day Civic Ceremonies for 20 consecutive years; patron of Casa Italiana; member Advisory Board, Villa Scalabrini; and a Director of the National Italian American Foundation. He also received four decorations from the Republic of Italy.

Judge Clinco was a prolific lecturer, guest speaker, and author. He was Acting Presiding Judge of the 22 criminal departments during the August 1965 Watts riots. Over the years, Judge Clinco successfully assisted many qualified Italian-Americans for appointments to the bench and to various boards and commissions, and he was the inspiration for the formation of the Italian-American Lawyers Association. Judge Clinco passed away in 1986, and his legacy of service and his accomplishments are outstanding

examples of achievement by an Italian-American professional in our community.

Carl Anthony Capozzola (Tony) graduated from the University of Colorado, served as a Marine fighter pilot, and later got his J.D. degree from U.W.L.A. School of Law in 1969. He discovered that he passed the bar exam when the mail arrived just as he was leaving for a wedding . . . his own! After a few years as a Deputy District Attorney (including a stint on the Organized Crime Task Force), Tony was recruited in 1973 by Berrien Moore, a Torrance criminal defense lawyer looking for a gun for hire to take as a partner. His first client? A repeat customer of Mr. Moore's who Tony had previously convicted, much to the client's surprise when he first met his new lawyer. Thus began a long and flamboyant career as one of the top defense attorneys in Los Angeles. Tony later ventured out on his own and successfully defended a number of high profile cases through the years: among others he defended a group of Iranian students arrested in Los Angeles during the height of the Iranian hostage standoff and he was a key member of Michael Jackson's successful defense team. Tony's clients also have included many other celebrities and sports figures, including hall of famers George Allen and Tommy Lasorda. However, cameo appearances on "Hunter," the hit 1980s television show, inexplicably did not result in a wave of feature film starring roles, so Tony still practices criminal defense and operates his other entrepreneurial ventures out of his office in Redondo Beach, which overlooks the ocean and is just across the street from his local watering hole, Hennessey's.

Tony also publishes the "California Looseleaf Search and Seizure Manual," and may be the only attorney anywhere whose only advertisement lists no address or phone number and actually reads, "Don't call us, we'll call you." This unusual non-ad attracted the attention of T.J. Simers, an award winning journalist for the L.A. Times, who checked out a few of Tony's cases, including an appeal in which an innocent man was released from prison, and is now writing a novel about this case and other incidents in Tony's life. Tony will be celebrating his 40th wedding anniversary in 2009 with his wife, Judy, and their five children and three grandchildren.

August G. Carloni – "Gene" or "Gino" to his friends, was born November 9, 1927 in Cleveland Ohio. He was married to his wife, Irene, for 56 years and they have three children. Gene was a veteran of WWII, serving as Military Police in Tokyo, Japan. He graduated from Kent State University and finished his JD at Cleveland Marshall Law School. He was admitted to the Ohio Bar in 1956 and California Bar in 1961. He practiced in Los Angeles for over 46 years concentrating in the areas of real estate, land development, tax, probate, and business law.

Gene was not only a founder of the IALA but also was its 16th president in 1992. This year was the 500th anniversary of Columbus' voyage to the New World, a fact Gene reminded everyone of at every meeting by telling little known facts from the voyage. He served the Southern California Italian community as a member and past-president of the Federated Italo-Americans, Unico National and was a NIAF member. He also served the community with

Vikings of Scandia and a supporter of the Veterans Organizations and Hope University. Always willing to give to others, Gene was known as mentor, father figure/counselor and advisor to many younger IALA members as well as to his clients. Gene believed in the mission and purpose of IALA, and the collegiality of its members. Gene's favorite IALA dinner meeting at Casa Italiana was when they served sausage and peppers. Gene passed away on April 9, 2007, but not without leaving a rich legacy.

Paul Caruso became an attorney in 1953. As a war veteran, he was allowed to seek and obtain admission to the bar without formally graduating from law school, which is what he did. Paul quickly established himself as a lawyer to the stars, and for decades "Call Paul" was a popular refrain among celebrities facing legal troubles. Paul also represented a number of professional athletes, and his popularity in that regard ultimately won him election to the position of President of the Los Angeles chapter of the National Football Foundation and Hall of Fame in the mid-1960s.

Best known for his criminal defense work, Paul was elected President of the Criminal Courts Bar Association in 1967 and earned a number of achievement awards from that organization throughout his practice as well. He was also known for his appearances on "Divorce Court" and the infamous 1994 observation that "Eighty percent of my practice is spent keeping my clients' names out of newspapers." Paul was born to Sicilian immigrants in upstate New York, and throughout his lifetime was boastfully proud of his Italian heritage. Thus it was appropriate that Paul hosted the first IALA meeting at his own

house and served as IALA's first President, in the process establishing the Casa Italiana as IALA's home base. Paul passed away in 2001, remembered by five children and nine grandchildren.

Eugene C. Damiano was born and raised in Brooklyn, NY; later with his three younger brothers and his wonderful parents he lived in Sheepshead Bay. Life in Brooklyn in those days was church, family, the Brooklyn Dodgers, and sports, and he also spent five summers as a lifeguard on the New York beaches. But life as he knew it ended with his service in the U.S. Army during the Korean War. After the war he enrolled at the University of Miami and became a member of Tau Kappa Epsilon Fraternity, and received his BBA degree upon graduation.

As a teenager he dreamed of a career either in the theater or law. He became involved in the theater department at the University of Miami. After graduation he headed to New York where he had some connections. He was fortunate enough to do an off-Broadway William Inge play called "Loss of Roses." He was "discovered" by the head of Paramount Studios. He did a movie called "Miami Undercover" and then headed to LA LA Land where he appeared on many of the then-popular television shows like "Rawhide," "Bonanza," etc. But after a few years he decided becoming a movie star was a long shot, and he enrolled at Southwestern University Law School. After receiving his J.D. and passing the bar, he opened his office at 280 South Beverly Drive in Beverly Hills where for many years he had a successful general practice with an emphasis on litigation. Gene now lives in Los Angeles with his three beautiful children and one grandson.

Michael Angelo Pontrelli was born and raised in Los Angeles, graduating from Marshall High School before serving in the United States Navy Air Corps from 1948 to 1953. After his discharge he received a B.A. from the University of Southern California and in 1962 a J.D. from Southwestern School of Law. He started out in family law immediately, hired fresh out of law school by a criminal law practitioner looking for cross-marketing opportunities. Thus began an illustrious career in family law that included representation of the wives of Tony Bennett, the Lone Ranger, Zorro, and Marlon Brando. In fact, Marlon Brando was so impressed by Michael's representation of his wife that he called Michael years later and asked Michael to represent him!

Michael served as the second IALA President in 1978-1979. He was also honored in 1997 by the Italian American Golf Association. He was appointed as a "Cavaliere" in 1977 by the Italian government, was President of the Federated Italo Americans of California, and was President of the LACBA Family Law Section. He currently resides in Camarillo and enjoys spending time with his three grown children and his two grandsons.

The current Board and members of IALA thank all the Founders for creating the organization and look forward to carrying IALA proudly into the future!

The IALA Board also seeks nominations for other IALA members whose accomplishments – professional or personal, current or lifetime – merit acknowledgement in the Bollettino Spotlight. Please send submissions to dcapozzola@ebglaw.com.

INTERNATIONAL LAW CORNER:

THE UNITED STATES DOES NOT TAKE INTERNATIONAL OBLIGATIONS LIGHTLY¹

In the wake of the recent seminal U.S. Supreme Court decision in *Medellin v. Texas*², in which the Court rejected a Mexican national's attempt to use international law to escape his death sentence after being convicted of capital murder, the international press went wild by speculating that the United States "isn't serious about honoring its treaty obligations."³ The usual flurry of criticism resulted against the U.S., defaming our nation with well-known stigmas such as the 'world villain', a presumptuous bully whose "refusal to apply the Vienna Convention [...] will have consequences for U.S. diplomacy and for the way Americans are treated abroad."⁴

In reality, a closer and more attentive analysis of the decision reveals that the Court did not "suggest that treaties can never afford binding domestic effect to international tribunal judgments—only that the U.N. Charter, the Optional Protocol, and the ICJ⁵ Statute do not do so." More specifically, the Court simply

¹ Article written by Sassan S. Masserat, Esq., Member of the Board of Governors, Italian American Lawyers Association. All rights reserved, 2008.

² 552 U.S. ___ (2008), No. 06-984, March 25, 2008.

³ March 26, 2008 Los Angeles Times, "Supreme Court Doesn't Mess with Texas".

⁴ Id.

⁵ ICJ: International Court of Justice.

analyzed whether a treaty underlying a judgment (in this case the ICJ judgment affecting Medellin under the Vienna Convention on Consular Relations) is self-executing so that the judgment is directly enforceable as domestic law in our courts.

This critical opinion by our highest court is indeed a complex one, resulting in a final product that extends for almost 80 single-spaced pages of time-honored tradition of ruthless dissection of every relevant legal issue that leaves no room for little –if any– objective criticism.

To be sure, the Medellin decision was the Court's second involvement with this matter. Medellin, a citizen of Mexico, was convicted of capital murder in Texas state court and sentenced to death. He filed a petition for a writ of habeas corpus arguing that the state violated his rights as a foreign national to consular access under the Vienna Convention on Consular Relations (a so-called Optional Protocol). His petition was denied in the lower courts, despite a ruling by the International Court of Justice that Medellin and others were entitled to review of their convictions based on violations of the Vienna Convention. While Medellin's case was pending in the U.S. Supreme Court, the Bush administration filed a brief urging the Court to rule that Medellin had no private right to seek enforcement of the Convention, but also announced that the U.S. Government would comply with the ICJ decision and directed state courts to reexamine the claims of Medellin and other similarly situated Mexican nationals. Accordingly, Medellin filed a new state habeas petition and asked the Supreme Court to stay its consideration of the case pending state review. The Supreme

Court in a 5-4 decision dismissed Medellin's petition and allowed the state habeas case to go forward⁶. The Texas Court of Criminal Appeals denied Medellin's habeas petition because Medellin had not raised the issue at his trial, as required by Texas law. It held that the ICJ decision was not binding federal law and, thus, did not preempt the state procedural rule requiring petitioners to raise issues at trial, and furthermore, that under the separation of powers doctrine, President Bush had no authority to order the state to reconsider Medellin's conviction.

While Medellin's application was pending in the Fifth Circuit, the ICJ⁷ held that the United States was obligated "to provide, by means of its own choosing, review and reconsideration of the convictions and sentences" of the foreign nationals, without regard to state procedural rules. The Fifth Circuit denied a certificate of appealability, and the Supreme Court granted certiorari. In the interim, on February 28, 2005, President George W. Bush determined that the United States would comply with its international obligation to give effect to the judgment by giving those 51 individuals review and reconsideration in the state courts. However, the Texas Court of Criminal Appeals held that the

⁶ The State court held that the Vienna Convention claim was procedurally defaulted because Medellin had failed to raise it at trial or on direct review. More substantively, the trial court rejected the Vienna Convention claim on the merits, finding that Medellin had failed to show that any non-notification of the Mexican authorities impacted on the validity of his conviction or punishment.

⁷ *Case Concerning Avena and Other Mexican Nationals* (Mex. v. U.S.), I.C.J. No. 128 (judgment of Mar. 31, 2004).

President's determination exceeded his powers, and it refused to give effect to the *Avena* judgment or the President's determination. The Supreme Court again granted certiorari.

The Court's final holding is anything but cryptic: neither *Avena* nor the President's Memorandum constitutes directly enforceable federal law that preempts state limitations on the filing of successive habeas petitions. In other words, the ICJ decision is not (automatically) binding domestic law.

The first part of the ruling is rather logical: the *Avena* judgment is not directly enforceable as domestic law in state court. The Court clarified that while a treaty may constitute an international commitment, it is not binding domestic law unless Congress has enacted statutes implementing it, or the treaty conveys an intention that it be "self-executing". In this case, the *Avena* judgment, an ICJ decision, is not meant to be enforceable in domestic courts. The Court went as far as showing that no other nation treats an ICJ judgment as binding domestic law⁸, which the international press conveniently forgot to mention, casting the light on the U.S. as the recidivist violator of international law.

The Court engaged in basic block-building, starting from the notion that the interpretation of a treaty – like the interpretation of a statute – begins with its text. A treaty (like the Optional Protocol of the Vienna Convention in this case)

⁸ The Court notes that "there are currently 47 nations that are parties to the Vienna Convention. Yet neither Medellin nor his amici have identified a single nation that treats ICJ judgments as binding in domestic courts."

when ratified represents an agreement among sovereign powers; as a signatory to the Optional Protocol on Consular Relations, the U.S. agreed to submit disputes arising out of the Vienna Convention to the ICJ. But the most natural reading of the Optional Protocol is merely a bare grant of jurisdiction, without saying anything about the effect of an eventual ICJ decision, as signatory nations like the U.S. are not committed to comply with an ICJ judgment. The Protocol is similarly silent on compliance and enforcement mechanisms⁹.

The second part is basically self-intuitive. The Court held that the President's Memorandum does not independently require the States to provide review and reconsideration of the claims [of the foreign nationals] without regard to state procedural default rules. The holding is simply a result of basic Constitutional principles: the President's sources of authority "must stem either from an act of Congress or from the Constitution itself."¹⁰ In other words, absent Constitutional or Congress-given authority, the President cannot transform non-self executing treaties into binding domestic law, and this was precisely the issue at

⁹ In reality, Article 94 of the United Nations Charter is the one that specifically addresses the effect of ICJ decisions, providing that "each Member of the United Nations undertakes to comply with the decision of the ICJ in any case to which it is a party." Note the language: it does not say "must" or "shall"; the words of "article 94 call upon governments to take certain action", turning the U.N. Charter into a "compact between independent nations that depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it."

¹⁰ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585.

stake: the responsibility for transforming an international obligation arising from a non-self executing treaty into domestic law falls to Congress, not the Executive, and that explains the President's impotence in this context.

However unpopular the Court's decision, one must consider – particularly a foreign audience – that the Court's holding did not come from a vacuum, but was the result of a careful review of a finite set of tools at its disposal. The Court could not have closed its eyes vis-à-vis clear limitations within our Federal versus State legal systems¹¹, and aside from matters of international comity and/or a desire to appease other countries, a certain modicum of respect is in order for our internal set of laws, which cannot be contravened by foreign decisions such as the ICJ's, absent a clear intent by the nation's legislature to impose such an obligation on our domestic courts.

In the end, if any blame is to be apportioned, it seems that the Protocol itself is the culpable party, as it appears to function as a toothless mechanism without any real provisions for compliance and enforcement matters. But again, perhaps that is precisely what the signatories envisioned, reflecting a reciprocal desire to control a potentially dangerous weapon that could be used indiscriminately.

¹¹ Another reason why ICJ decisions cannot be left for State or Federal courts to apply as domestic law is that sensitive foreign policy decisions cannot be transferred to state and federal courts, where "the conduct of foreign relations of our Government is committed by the Constitution to the Executive and the Legislative Departments".

As members of a distinguished association mostly comprised of second or even first generation immigrants (such as the author of this article), we have to be cognizant (and thankful) of the innumerable advantages offered by this great country, which is what attracted our families and ourselves to its shores in the first place. I, for one, do not claim to live in a perfect democracy; what I can proudly and confidently state, however, is that the United States offers a well-balanced legal and political system that guarantee many liberties that cannot be taken for granted. Our Supreme Court has been at the forefront in securing many of these privileges, with often unpopular and controversial decisions such as the one briefly analyzed in this article.

Upcoming Meetings

June 24, 2008:

**Founders' Night, w/
Keynote Speaker
Attorney General
Jerry Brown**

July 16, 2008:

**Keynote Speaker:
Daniel Petrocelli, Esq.**

**For further information
go to the IALA website:**

www.iala.lawzone.com