

## Italian/American Trial Styles

Jerry Krase (December 13, 2009)



The recent trials and tribulations of American-Italian Amanda Fox, and Italian Americans John A. "Junior" Gotti, and Joseph Bruno raise some important questions about the differences between law and justice here (qua) and there (li).

So I was sitting at my usual post, table numero uno, at Dizzy's, "A Finer Diner," talking with my equally slow running buddy Michael The Lawyer about what constitutes justice (la giustizia) in America and I brought to his attention the recent complaints in the ever-chattering American media re: the allegedly harsh treatment of 22-year-old Seattle coed Amanda Knox, who was given a prison sentence of 26 years for murdering her 21-year-old Perugia University English-born roommate Meredith Kercher who was found half-naked in her bedroom, strangled and stabbed to death, on November 2, 2007.



During an 11-month long trial Italian prosecutors convinced a peerless jury that Amanda masterminded the murder which featured a drug-fueled menage a quatre (quattro) sex game involving both her Italian boyfriend Raffaele Sollecito, and Rudy Guede, an Ivory Coast immigrant. Raffaele sat with his amica (girlfriend) in court and got 26 years, but Rudy was sentenced to 30 years in an earlier “fast-track” trial. In addition to prison time, the newly star-crossed lovers were ordered to jointly pay five million euros restitution to the Kercher family, as well as trial costs. Knox also had to fork over another 40,000 euros to Patrick Lumumba, a Congolese bar owner in Perugia whom she had accused of the murder. It seems that just as in America, “some black guy did it” is a credible knee-jerk defense in Italy. Anyhow, Democrat U.S. Senator from the State of Washington, Maria Cantwell, had “serious questions about the Italian justice system and whether anti-Americanism tainted this trial.” No word yet about anti-Ivorian, anti-Congolese, or anti-Italian bias in the case.

Another, closer to home, claim of injustice can be found at the [SenatorBruno.com](http://SenatorBruno.com) [2] website that is “committed to shining a harsh public spotlight on a process that has led to the indictment of an innocent man. (and) ... an indictment has been handed up that charges the Hon. Joseph Bruno with a crime that would challenge a law professor to interpret. It’s not so much a miscarriage of justice as a perversion of prosecution.”

Much of the ill-informed fuss about Amanda’s tribulations (tribolazioni) is due to confusion about the concepts of “speedy trial,” “equal rights,” and “reasonable doubt.” Even [CNN's "Situation Room" guru Wolf Blitzer](http://CNN's Situation Room) [3] seems not to have been able to get it right. For example, pro-Amanda folks say that she was treated unfairly as a “foreigner;” that the Italian trial took much “too long;” and that reasonable doubt is a concept foreign to the Italian legal system. Americans hardly understand how their own system of justice works (or not), so to expect much in the way of appreciation for the Italian motto of “everyone is equal under the law” (la legge è uguale per tutti) as opposed to the American motto of “Justice is Blind,” would be too much to expect. With all the fuss, you would also think that Amanda had been a victim of an extraordinary rendition (consegna speciale).

First of all, while it is true that foreigners (stranieri) are not especially welcome in Italy either in or out of court, the situation in America is not much better.

Secondly, while in Italy Article 533 of the Criminal Code Procedure specifically refers to the “[reasonable doubt](#) [4],” in American Law it is only standard of practice. Historically speaking, “reasonable doubt”, is a formulation of the principle of “innocent until proven guilty” coined on the basis of a letter written by Pope Innocent III to the archdeacon and provost of Milan in 1207. I assume it was because some priest got arrested there.

And thirdly, “speedy trial” doesn’t refer to a quick trial but instead to the right guaranteed to defendants in criminal proceedings by the Sixth Amendment of The U.S. Constitution, intended to ensure that they are not subjected to unreasonably lengthy incarceration prior to a fair trial. Violation of the principle may be a cause for dismissal of a criminal case such as when I was arrested some years ago for a crime that not only did I not commit, but for a crime that didn’t even happen (un crimine che neppure è accaduto). The charge against me was dismissed after several months of nervously bewildered waiting, and two court appearances by me and my top-drawer attorney, at which the prosecution didn’t feel the need to show up.

This right to what Americans would consider a “speedy trial” does not exist in Italian law and some pre-trial detentions can last as long as six years (The Patriot Act might have changed all of that). Rudy Guede’s “fast track” conviction was the result of a quick trial at which he was shown the prosecution’s case and offered a “take it or leave it” sentence. Rudy took it, despite continuing to claim innocence. Americans might see this as “plea bargaining” -- the prosecution offering (usually)



a lesser charge and sentence if the defendant agrees to plead guilty and save the State the trouble and expense of a trial.

Michael The Lawyer had just completed (and lost) a much too speedy trial for a defendant (now “convict”) whom he had as a client for ten months. Defense attorneys rely on the concept of reasonable doubt and try their best to create it in the minds of jurors. In the American, as well as in the Italian systems of justice the presumption of innocence means that the prosecution must prove the guilt of the defendant, not that the defendant must prove their innocence. The more jurors think and deliberate about a case, the more likely they are to find weaknesses in the prosecution’s presentation, so the last thing the defense wants is a jury rushing to judgment.

After weeks of intense preparation, Michael The Lawyer started the trial on Monday. On the following Friday, after an allegedly (presunto) splendid summation that ended at 4:30 P.M., he expected the case to be adjourned until the following Monday. The Judge, instead ordered the jury to go into immediate deliberations despite his objections. The guilty verdict was returned at 5:15 P.M.; just in time for the judge and jury to go home for a conscience-free weekend. As Michael The Lawyer says “Speedy trials don’t mean speedy justice.”

There are other important differences between U.S. and Italian criminal justice systems. Italian juries reach majority verdicts, not unanimous ones, with the defense winning in case of a 4-4 tie on the eight-member panel. In the U.S., although no longer constitutionally required, unanimous verdicts are de rigueur in most States' criminal trials. It is interesting to note, in the poetic pursuit of justice, that non-unanimous verdicts might have saved John A. “Junior” Gotti the trouble of the four-and-still-counting trials at which jurors have been unable to reach a unanimous verdict.

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