

Criminal Law And Justice Weekly [UK] website

<http://www.criminallawandjustice.co.uk/features/Brutal-Killing-Meredith-Kercher>

The Brutal Killing of Meredith Kercher

By Fred Davies. A 6-month series in 26 parts December 2014-July 2015

The Brutal Killing of Meredith Kercher - Part 1

Fred Davies on the first chapter of his critical examination of the trials and subsequent appeal hearings of Rudy Hermann Guede, Amanda Marie Knox and Raffaele Sollecito respectively

It is many years since I felt motivated to write a legal article but the events leading up to the trials and convictions of three persons: Rudy Hermann Guede, Amanda Marie Knox and Raffaele Sollecito; their successful appeals (in part) and, the subsequent reinstatement of convictions for the latter two, piqued my interest. My investigation into the said cases began long before the broadcast of a BBC3 programme on the night of February 17, 2014: *Is Amanda Knox Guilty?* Many hundreds of hours have been spent poring over court transcripts which, by necessity, included the statements of both prosecution and defence witnesses.

As will be demonstrated in this article, a review of the various court transcripts identified a number of unanswered questions. On a personal note, it is still not clear to me how successive courts concluded, for example, that the testimony of certain prosecution witnesses was reliable and therefore true; issues over forensic evidence and expert testimony still appears contentious; finally, the hypothesis put forward to explain Knox and Sollecito's motivations and complicity in Meredith Kercher's murder.

Given the morass of witness testimony, for the avoidance of doubt, I have endeavoured to focus on the more salient or pertinent parts of the evidence which, tend to prove or disprove the guilt or innocence of the aforesaid individuals. Some background evidence and tenuous testimony has been passed over having regard to its relevance (or lack of), its probative value (provenance and reliability) and/or its credibility (veracity), or simply because it went only to credit (reputation of an individual), thereby affecting the weight to be accorded to the same.

I have also chosen to make some careful observations about Italian Criminal Procedure so far as it impacted on the three persons concerned in this case. I have endeavoured to be as factually accurate as possible, being reliant in part on transcripts published on the Internet. The majority are in Italian and most documents have been translated from the Italian language into the English language. Difficulties in understanding specific words or phrases associated with the rendering have been highlighted. Some documents or reports have not been translated and thus I have had to rely on computer technology to help me while researching the case. However, despite these formidable challenges any factual errors are solely attributable to me.

Readers may recall that I undertook a survey of the trial and conviction of Louise Woodward in the late 1990s. That tragic case was very different from the present case. Louise Woodward's trial in the Commonwealth of Massachusetts (USA) was essentially an allegation of

“shaken-baby syndrome”. On appeal, Louise Woodward was eventually convicted of involuntary manslaughter. By contrast, Meredith Kercher suffered a cruel, callous and horrendous assault (digital rape and/or sexual assault), culminating in her brutal murder. Her loss was to impact directly on family and close friends alike. A sensitive, caring and talented young woman was struck down at the tender age of 21 years.

Background

Meredith Susanna Cara Kercher was born in 1985 in Southwark, South London. She had two older brothers and a sister. She was academically bright and later won a place at the University of Leeds as an undergraduate in European Studies. As part of the ERASMUS student exchange programme, Meredith went to the University of Perugia to complete her degree course. In Perugia, she shared a four-bedroom ground-floor apartment in a house at Via della Pergola 7. Her flatmates were two Italian women in their late twenties (Filomena Romanelli and Laura Mezzetti) and, a 20-year-old American exchange student, Amanda Marie Knox. Meredith Kercher arrived in Perugia on September 1, 2007. At first, she stayed in a hotel, until she found the rental house in Via della Pergola. She began to live at Via della Pergola 7, in mid-September 2007. Amanda Knox was already renting a room at the cottage having arrived in Perugia at the beginning of September. It goes without saying that Meredith was a young lady of unimpeachable character and impeccable manners.

Amanda Marie Knox was born in Seattle, Washington State, USA, on July 9, 1987. She did well at school and won a partial scholarship to Seattle Preparatory High School, a fee-paying Jesuit school. She was keen on sport, particularly soccer, and her parents have always insisted that it was from her skills on the soccer field that she acquired the nickname “Foxy Knoxy”. What is certain is that she was using the Foxy Knoxy moniker on MySpace in 2007, by which time, she must have been well aware of its connotations, other than soccer skill.

In 2005, she was enrolled at the University of Washington, studying German, Italian and creative writing. While there, Knox had her only other brush with the law when, in June 2007, the Seattle Police issued her with a citation for hosting a party, at which the attendees were causing excessive noise and throwing rocks at passing cars. She incurred a \$269 fine. In 2007, Knox decided to travel to Europe, first working in Germany for a short period and then studying in Perugia, Italy. She left the United States, with her sister, in mid-August 2007, staying initially with relatives in Germany. In September 2007, the sisters travelled to Perugia, looking for accommodation, and settled on the house in Via della Pergola. Having chosen her own room within the four-bedroom apartment block, Knox then left to spend a few days visiting an aunt in Germany.

The aforementioned women at Via della Pergola 7, each had a key to the front door of the apartment and, it has been inferred from the evidence, a key to their individual bedrooms. As far as the front door was concerned, the locking mechanism to the door was a little faulty and it was necessary to use the front door key to close it. If the door was pushed as if to close it, the door did not always click and therefore it did not always lock. There were two bathrooms within the apartment block. Romanelli and Mezzetti shared and predominantly used the larger of the two bathrooms. Amanda Knox and Meredith Kercher shared the second slightly smaller bathroom.

An architectural plan showing the layout of the premises has not been included within this work.

A crime scene composite is accessible on the internet. The author is content to make one observation. Looking at a two dimensional layout, there is a main corridor running almost from the bottom to the top of the plan. At the top of the plan, to the left of the main corridor, was Meredith Kercher's bedroom. At the top of the plan adjacent to Meredith's bedroom (on the right), was the smaller bathroom used by Meredith and Knox. Moving down the page one can see that Knox's bedroom lay next door to Meredith's bedroom. Likewise, Filomena Romanelli's bedroom was next door to Knox's bedroom.

By October 2007, Knox had secured evening work at a pub in Perugia called "Le Chic". The pub was managed by a man called Diya "Patrick" Lumumba. On October 25, 2007, Knox met Sollecito and began a relationship. Meredith met Raffaele Sollecito for the first time the following day i.e. October 26. From the time Knox and Sollecito first met, their relationship and meetings were very frequent and constant. As part of that relationship, Knox would frequently sleep at Sollecito's house. Sollecito lived at a house in a road called Corso Guiseppe Garibaldi which, judging by the geography was no more than 2-10 minutes walk from Via della Pergola. As we shall ascertain shortly, the house was located roughly half-way between Via della Pergola and Via Sperandio, the home of a Mrs Lana (see below).

Raffaele Sollecito was born on March 26, 1984 at Giovinazzo, a town on the southern Adriatic coast in the Bari province of Italy. He first went to live in Perugia in 2002 and obtained his graduation diploma that same year. He enrolled at a College in Perugia to study computer science. He boarded at the College from 2003 to 2005. From 2005 to 2006, Sollecito, as part of his computer science course, was an exchange student at a University in Munich, Germany. When he returned to Perugia, he moved into an apartment in Corso Guiseppe Garibaldi, paid for by his father. As far as can be discerned, on the night of the murder, Sollecito was essentially a man of good character.

Rudi Hermann Guede, born on December 26, 1986, originated from the Ivory Coast. When aged only five years, he came to Italy with his father with whom he settled for a while in Perugia. He had a difficult relationship with his father who eventually returned to the Ivory Coast. Rudi Guede was then put into social services care who entrusted his upbringing with various families in Umbria, until he reached the age of eighteen. After that Guede led an itinerant lifestyle spending some of his time in Perugia. Because of Guede's origins, his biological profile was held by the Italian authorities. This was to prove instrumental in helping the police investigation and to eventually establishing his part in the digital rape and murder of Meredith Kercher.

Note, there will be a slightly more detailed analysis of the character profiles of Guede, Knox and Sollecito while discussing and evaluating the evidence adduced at their respective trials (post).

On the floor below Via della Pergola 7, lived four men in a separate apartment. One of them, Giacomo Silenzi, related that he had had a romantic encounter with Meredith, which began a couple of weeks before she was killed. Silenzi also recounted that he had known Rudy Guede since the year before. They had met while playing basketball on the court situate above the house at Via della Pergola. Guede lived at Via del Canerino which lies roughly 200 metres off the road where Sollecito resided. As with Sollecito, the house in which he lived was located roughly half-way between Via della Pergola and Via Sperandio, the home of a Mrs Lana (see below).

Towards the middle of October 2007, Guede had been at the men's apartment block on several

occasions when Knox and Meredith were present. It appears that Guede was attracted to Knox, who on their first meeting was single and unattached. Based on the testimony of several witnesses, Meredith Kercher and Knox only met Guede at most on three to four occasions. Put another way, they were not well acquainted. Sollecito was even less well acquainted, if at all, with Guede.

Meredith Kercher's Murder

A timeline setting out key events in the said case is to be found at Appendix 1 - to be published on CL&J website.

The author will deal with the accounts of Amanda Knox and Raffaele Sollecito later under a separate heading. This is because the crucial parts of their evidence were disputed by the prosecution. The majority of the facts relating to them below was supported by independent evidence and as such was not contentious.

November 1 is a festive period or as better understood a public holiday in Perugia, Italy. The four young men who occupied the downstairs flat, with whom Rudy Guede was more familiar, were not at home on the evening of 1st November 2007, having returned to spend the festive period in their respective home towns, all in the Marches Region of Italy.

Amanda Knox was scheduled to work at the "Le Chic" pub on the evening of November, 2007. However, at a few minutes past 8pm, Patrick Lumumba sent Knox a text message telling her that there was no need for her to go to work that evening. Knox sent a text response to Lumumba at 8.35pm. The text was sent by a mobile telephone situated at Corso Garibaldi 30 or in the immediate neighbourhood. As for Sollecito, he had agreed to accompany Jovana Popovic to the local bus station later that evening (around midnight) to help her pick up a suitcase which had been sent by Popovic's mother. However, the driver in Milan refused to accept the suitcase and that arrangement fell through (see the next paragraph below). And so Raffaele Sollecito, like Amanda Knox came to be free of any commitment for the evening and night of November 1.

At 8.42pm the same day, the father of Raffaele Sollecito, Francesco Sollecito, phoned his son. Raffaele told him that Amanda was with him. Raffaele mentions to his father that while he was washing dishes there had been a water spillage. The fact that both Knox and Sollecito were at Corso Garibaldi was not disputed because Jovana Popovic, testified that she saw Amanda Knox at Sollecito's house around 8.40pm. Popovic called to inform Sollecito that he was no longer required to accompany her to pick up a suitcase at the local Perugia bus station.

Raffaele Sollecito owned an Apple MacBook Pro computer. Evidenced human interactions occurred at: (a) 9.12pm on November 1, 2007; (b) 5.32am on 2nd November 2007 for half an hour. It can be inferred, therefore, that Sollecito and, in all likelihood, Knox, were still at Sollecito's home up to and including 9.13pm on November 1, 2007; further, that Sollecito and in all likelihood Knox, were at Corso Garibaldi at roughly 5.30am the following morning.

During the same evening, Meredith Kercher had dinner with three English friends (Robyn Butterworth, Amy Frost and Sophie Purton). Other than Meredith Kercher, none of the girls knew Rudy Guede. Sophie and Meredith said their goodbyes to Robyn and Amy shortly before 9pm. Sophie and Meredith parted company at around 8.55pm, a short walk from Meredith's flat.

This was the last time Meredith was seen alive, other than by her killer(s) and, any other person who was a witness to the events at Via della Pergola 7.

According to expert evidence Meredith had been digitally raped and murdered some time between the late evening, very late evening or into the early hours of the following morning. Expert evidence estimated the murder could have taken place between 9.30pm and 3.30am spanning November 1 and 2. Mobile phone records disclosed that Meredith's two mobile phones were in the vicinity of her apartment up to and including 10.13pm. The same records showed that by 0.31am on November 2, 2007, her mobile phones had been left in a garden in Via Sperandio (see below). Judging by Meredith's mobile telephone records, it is reasonable to infer that she was attacked and murdered some time between 10.13pm and 0.31am the following morning, an interval of roughly just over two hours.

An elderly neighbour, Nara Capezzali, testified that she had gone to bed about 9.30pm on the night of the murder. Later that night she had got up to go to the bathroom. She said she may have slept two hours or more, she could not be precise. She stated that when she was near the window of her dining room she heard "...a scream, but a scream that was not a normal scream". The scream was that of a woman. She looked out of the window but saw nothing of note. She said she was about to return to her bedroom to go back to sleep, when to her right, she heard running on the steel staircase located below her residence followed by running on the gravel path, among the leaves and the gravel of the cottage, on the path in front of the apartment where Meredith Kercher resided. She concluded by saying that it was such a heart-rending scream it upset her and she could not get back to sleep.

A second neighbour, Antonella Monacchia, declared that she had gone to bed at 10pm. She had been woken up by the sound of two people arguing in an animated way. She looked at the clock and it was late. She could not say what the precise time was. The two people were arguing in Italian. She then said she heard an extremely loud scream. She opened a window (presumably her bedroom window) to see if there was anybody outside, but she could not see anything. She then closed the window. In addition, another neighbour, Maria Dramis reported that she had gone to bed about 10.30pm. While half-asleep she said she heard footsteps rushing along the street connecting her home to Via della Pergola as she had never heard before.

A witness Antonio Curatolo (a homeless man who spent much of his time in Piazza Grimana, close to Via della Pergola, and who knew Knox and Sollecito from having seen them on previous occasions) stated that he had noticed them on the evening of November 1, in the time period between 9.30pm and 11pm, in the little piazzetta located just a few metres from Via della Pergola 7. In particular, he remembered they were next to the low wall of the basketball court; and that when he left before midnight, they were no longer present.

A witness, Fabio Gioffredi, testified that he saw Meredith Kercher, Knox, Sollecito and a "young black man", Rudy Guede together a few days before the murder ie, October 30, 2007. This evidence was presented to show that all four persons were acquainted with each other and socialising immediately prior to the date of Meredith's murder.

A witness, Hekuran Kokomani, testified that he saw Knox and Sollecito together on the evening of November 1, 2007. His account was that while driving a motor vehicle he nearly ran Sollecito and Knox over. A fight ensued in which he claimed to have punched Sollecito. He also averred

that Knox produced a knife which she raised above her head with both hands. Kokomani then stated he drove off and immediately afterwards saw Rudy Guede standing behind a gate which was partially concealing him. Both incidents he claimed occurred in and around Via della Pergola 7.

A witness, Alessandra Formica, who testified that both she and her boyfriend were coming down the stairs of Sant' Antonio car park when, her boyfriend was violently bumped into by a person of colour, who was running quickly towards Via Pinturicchio from the direction of the steel stairwell (see the evidence of Mrs Capezzali supra). Miss Formica's testimony included reference to a pick-up truck in Via della Pergola, which was later confirmed by a witness Giampaolo Lombardo, the driver of the truck. The time of the incident was said to be shortly after 11pm.

At 11.14pm on November 1, Sollecito's father sent him a texted communication. That message was disclosed as received at 6.02am, the following day. To receive the SMS message, the mobile phone, in all likelihood, must have been turned on shortly before 6.02am. That evidence corresponded with Sollecito's computer activity (supra) which commenced at 5.32am on the same day.

Thus, the text message which Sollecito's father sent to his son at 11.14 pm on the November 1, received at 6.02am on the following day, together with Sollecito's computer activity, leads to the ineluctable inference that the latter was awake at the relevant time, having switched on his mobile phone shortly before 6 am and therefore was able to receive the text sent to him late the previous evening.

A witness, Marco Quintavalle, who was the owner of a grocery store, not far from Sollecito's house, asserted that he saw Amanda Knox at his shop at 7.45am on November 2nd. This contradicted Knox's account that she was asleep in bed with Sollecito at his house. Later on the same morning, at 9.24am, Raffaele Sollecito received a phone call from his father. The conversation related to a planned trip by Sollecito and Knox to the nearby town of Gubbio that same day. This conversation contradicted, in part, Amanda Knox's account.

On the evening of November 1, at about 10pm, a person apparently telephoned the home of a lady, one Elisabetta Lana Biscarini (Mrs Lana). The caller warned the occupants not to use the toilet of the dwelling because it contained a bomb which could explode. Later investigation by the police discovered that the strange phone call was nothing more than the imagination of a little boy and unrelated to the events which occurred at Via della Pergola 7. However, believing the threat to be true, Mrs Lana immediately notified the police who came and did a check of her premises. The police could not find anything resembling a bomb. She and her husband were asked to go to the Postal Police the next day to report the telephone call. As a point of information, the couple lived at Via Sperandio, Perugia, which on foot could be reached from Via della Pergola 7, between 5-20 minutes, depending on the route chosen.

By a singular coincidence, on the morning of November 2, the son of Mrs Lana, Alessandro Biscarini, found a mobile phone in the garden of his parents' home at Via Sperandio. The time was around 9am. Having established that the phone did not belong to a family member, Mrs Lana telephoned Police Headquarters and was told to bring the phone to the Postal Police. We are not told whether the phone was still turned on or off. It can safely be inferred that the phone had not been turned off based on the tracking technology used by the Italian authorities to

demonstrate that the phone had been abandoned in Mrs Lana's garden just after 0.31am the same day. Later that morning, around 11.45am, Alessandro's sister, Fiammetta Biscarini (it has been assumed that she is incorrectly described as Elisabetta Biscarini in a separate paragraph) found a second mobile phone in the garden of her parents' home, a short distance from where the first phone had been found. While in her parents' garden she had heard a mobile phone ringing. Having located the phone she took it into the house and placed it on a table. At that point the phone rang again. On the display field of the mobile phone, the name of the person calling was "Amanda". Having regard to the phone traffic recorded on Amanda Knox's mobile phone the earliest this call could have been made was just after 12.07pm.

The finding of the second phone and the circumstances were reported to the Postal Police who later took custody of the same. As an additional piece of information, both phones were earlier in the custody of and being used by the deceased, Meredith Kercher. One of the phones (the first phone found by Alessandro Biscarini) had been given to Meredith by her flatmate Filomena Romanelli. It enabled Meredith to make local calls within Italy. The second mobile (dubbed the "English phone") was primarily used for International calls to England, where Meredith's parents resided. As a result, the Postal Police were quickly able to trace that the owner of the first mobile resided at Via della Pergola 7. An inspector and an officer of the Postal Police of Perugia, Michele Battistelli and Fabio Marzi respectively, went to the said address. They arrived a little before 1pm on November 2. As soon as the Postal Police officers arrived they did not find Filomena Romanelli, the person they were looking for. Instead they found Amanda Knox and Raffaele Sollecito. They were sitting outside the house near the side of a wall where the window of the room occupied at the time by Filomena Romanelli is located. As soon as the officers arrived Knox and Sollecito said they were waiting for the Carabinieri whom they had called since "...coming back to the cottage in the morning because they had been away for the night" and ...finding "the entrance door open and then the window broken".

On November 1st and the crucial part of November 2nd, Laura Mezzetti was away from Perugia. She was in Montefiascone (a district of Rome) visiting her parents. On the same day, Filomena Romanelli had left Villa della Pergola 7 early and spent the rest of the day and night away from the flat with her boyfriend Marco Zaroli. The following day, she had gone in her boyfriend's car to collect her friend, Paolo Grande, who was at the house of Luca Altieri.

They planned on going to a fair. Around midday, at 10 past 12, while en route to the fair, Filomena received a phone call from Amanda Knox letting her know that there had been some strange developments at Villa della Pergola 7. Knox said she had arrived (earlier) and found the door open. She had had a shower and it had seemed to her that there was some blood. She also said she was going to Raffaele Sollecito's house. Filomena Romanelli asked Knox where Meredith was. She had answered that she did not know. Knox said she was going to ring Meredith. GSM traffic revealed that Knox had already phoned one of the mobiles owned by Meredith immediately before speaking to Romanelli (the "English phone"). After speaking to Romanelli, Knox phoned both mobiles of Meredith Kercher. By this time the Italian phone given to Meredith was already in the custody of the Postal Police. The "English phone" had just been found by Mrs Lana's daughter, Fiammetta Biscarini. She had been alerted to its presence by the first phone call made by Knox at 12.07pm.

Filomena Romanelli, disturbed by the call, had rung Amanda Knox back without receiving a reply. A little later, she rang again and succeeded in speaking to Knox. Knox told her that in her room (ie, Romanelli's room) the windowpane was broken, everything was in a mess, and that she should come back home. To cut a long story short, at about 1pm, Romanelli and her friend Paolo Grande and their boyfriends, Marco Zaroli and Luca Altieri (who had travelled separately from their girlfriends) arrived at the house in Via della Pergola 7.

Immediately prior to the arrival of the aforementioned persons, at 12.51pm and 12.54pm, Raffaele Sollecito made two phone calls to the Carabinieri.

During the course of the trial, recordings of part of those conversations were played. In the first telephone call, Sollecito was heard to say that someone had entered the house by breaking the glass of a window and the premises had been turned upside down. He did say that nothing was missing (“...no there had been no theft ...”). In the second telephone conversation a similar response was elicited (“...they have not taken anything...”).

#

As we know, Filomena Romanelli's presence at Villa della Pergola was triggered by what Amanda Knox had told her. She was therefore quite surprised when Inspector Battistelli asked her whether she knew the phone numbers he showed her, written on a piece of paper, one Italian and the other English. Filomena Romanelli knew and thus in response answered that they were the numbers of the mobile telephones used by Meredith Kercher. The information about finding the two phones in the garden of a house in Via Sperandio significantly aggravated fears and concerns about what could have happened to Meredith. Filomena Romanelli knew that Meredith was never without her Ericsson mobile phone, the one for calling England.

As a point of information, no signs of breaking and entering or of forcing the front door were seen or on forensic examination ever found. Filomena Romanelli had ascertained from a quick check of her room, even though it was in a complete mess with the windowpane broken and clothes strewn over the floor, that nothing of value was missing e.g. her computer. Nonetheless, what Amanda had told her on the telephone created a worrisome situation; all the more so because there was no news about Meredith, coupled with the discovery of her mobile phones and the door of her bedroom appeared to be locked. This last circumstance had alarmed Filomena Romanelli more. She was aware of only one occasion when Meredith had locked her bedroom door. This had occurred when Meredith had returned to England for a few days. It was in this context, full of anxiety and concern that the decision was made by the four young people - Filomena Romanelli, Paola Grande, Luca Altieri, and Marco Zaroli - to break down the door of the bedroom of Meredith Kercher.

Around 1.15 pm the door to the bedroom was broken down by Luca Altieri. Having succeeded in breaking down the door, there unexpectedly appeared a duvet completely spread out on the floor of the bedroom. This duvet covered the entire body of a person, except for one bare foot. Large blood stains could also be seen more or less all over the floor and the walls of the room. Shouts of dismay followed and the four young people who were in front of the door were ordered by Inspector Battistelli to get out of the house.

Accordingly, none of the four young people ever entered the room, other than Luca Altieri, who had ended up with a foot inside the room from the momentum of breaking down the door. Furthermore, neither did the accused, Knox and Sollecito, who were situated at a point furthest away from the bedroom door.

Inspector Battistelli also ruled out having entered the bedroom although on this point, Luca Altieri's version differed: he declared that he had seen Battistelli entering the room, right along the wall. Nonetheless, after the door was broken down all the six civilians present were required to leave the house. Inspector Battistelli then notified his own superior that the lifeless body of a girl, quickly identified as Meredith Susanna Cara Kercher, had been found. It was about 1.30 pm on November 2, 2007.

(To read the next chapters see Criminal Law and Justice weekly only online from January)

The Brutal Killing of Meredith Kercher - Part 2

The Investigation

After the discovery of the lifeless body of Meredith Kercher, Via della Pergola 7 became the centre of an intense State investigative activity. The primary agencies involved were: (i) investigative personnel of the Perugia Police; (ii) the State Prosecutor; (iii) the Coroner, who was accompanied by and assisted by a doctor; and, (iv) forensics staff from Rome. On November 4, 2007, while forensics activity was still ongoing, the house was accessed by staff from the Perugia Police, accompanied by Mezzetti, Romanelli and Knox, the housemates of Meredith. The occupants confirmed that they were not missing any knives from the house.

The days of November 6 and 7 were taken up by the searches of various properties including the house occupied by Raffaele Sollecito. During those searches various precautions were taken. For example, all persons initially entering Corso Guiseppe Garibaldi had shoe covers and wore gloves. The evidence disclosed that different teams conducted searches of Via della Pergola 7 and Corso Guiseppe Garibaldi. This aspect of the investigation is more thoroughly discussed in the forensic evidence section (below). From Sollecito's house the following, inter alia, were seized: (i) from a kitchen drawer, a large kitchen knife (Exhibit 36); (ii) in his bedroom, a second knife with a blade 8cm long.

Due to biological analysis Rudy Hermann Guede became a suspect and on November 16, 2007, the house which he occupied in Via del Canerino was raided and searched. As a point of information, Guede had already fled to Germany and was later apprehended in that country and extradited back to Italy.

Various items were removed from the bedroom of Meredith Kercher, including the blood stained bra which she had been wearing immediately prior to the attack. Finally, on December 18, 2007, some six weeks after the initial search the forensics staff from Rome accessed Via della Pergola 7; the area of focus being the room occupied by Meredith. During this search additional items were bagged, including a piece of a bra with hooks [bra clasp] which belonged to Meredith. This find was to prove crucial in the prosecution of Sollecito. It was the only evidence discovered which signified his de facto physical presence in the bedroom of Meredith during the night of November 1-2, when she was murdered.

As one can imagine various precautions were taken during this period. For example, similar to the search of other properties, all persons initially entering Via della Pergola 7 had shoe covers and wore gloves; access to the rooms was limited and there was a permanent service of guards whose duty was not to let any unauthorized person access to the premises. The posting of guards was also backed up by surveillance of the house at the request of the Perugia Police. On December 18, 2007 the forensics team wore full protective gear and a prepared van was provided in which a television monitor was installed to allow the various parties to see what was happening and what was being accomplished. As a point of information, the person who helped co-ordinate the criminal investigation, Domenico Giacinto Profazi, said he did not change his gloves for each object he touched and that for every entry to the property he used the same gloves.

Aside from the forensic examinations and tests alluded to above, the other vital component of the

investigation into Meredith's murder, involved the questioning of various suspects and witnesses including Amanda Marie Knox, Raffaele Sollecito and Rudy Hermann Guede. The author will now endeavour to summarise the various interviews, fastening on to the crucial parts which tend to support or undermine their accounts. As we shall see later, the accounts of Knox and Sollecito, coupled with their behaviour prior to and after the discovery of Meredith Kercher's body, bolstered by forensic analysis, led the State authorities to believe they were directly involved in or worse still had murdered Meredith Kercher.

Amanda Knox's Accounts

For the avoidance of doubt the following is a summary of the accounts given by Amanda Knox pre-trial and at her trial, in order to avoid duplication and/or to filter out material which was of fanciful weight or plain irrelevant.

A phone call was made by Knox at around 12.47pm on November 2, 2007, at a time appreciably earlier than the discovery of Meredith's body. The phone call was made to Knox's mother in the United States. It was accepted that local time in the US (Seattle, Washington) would have been almost 4am (3.47am-author). Knox's mother, therefore, would have been asleep in bed. This conversation was not intercepted. However, based on a later conversation (November 10, 2007), the telephone line having lawfully been tapped, the mother displayed a perplexity indicating that in the earlier phone conversation Knox had told her of circumstances which, if she was a stranger to what had transpired, she could not have known. Knox was cross-examined on this point at trial. The reader is referred to the Galati [Supreme Court] appeal section *infra* under subheading (h) Ground 8 – The presence of the accused at the crime scene. This evidence controverted Knox and Sollecito's alibi. It demonstrated that when the door of Meredith's bedroom was broken down, Knox and, by implication Sollecito, already knew what lay beyond the door.

Knox, in an e-mail dated November 4, 2007, sent to friends or acquaintances in the United States, was admitted into evidence at her trial. The email refers to Knox having seen Meredith for the last time on the day of November 1st. She was with Raffaele and they ate lunch together in the house on Via della Pergola. Meredith said goodbye to them and left the house. Amanda states it was the last time she saw Meredith alive. Soon afterwards, she and Raffaele also left and went to his house to watch a movie, have dinner and spend the rest of the evening and night at that address. The following morning she got up around 10.30am to go to Via della Pergola 7 in order to take a shower and change her clothes. She also had to get a mop, because the evening before, Raffaele, after dinner, had spilled water from the sink due to a leak and was not able to clean it up.

Upon returning to Via della Pergola 7, she noticed that the door was wide open. She thought someone had gone to take the trash out or gone to the floor below, closing the door behind them but not locking it. She asked loudly whether anyone was at home, but no one answered. The door to Meredith's room was closed, and this meant she was sleeping. She undressed in her own room and took a shower in the bathroom, nearest to her room and to Meredith's room (the small bathroom). When she got out of the shower, she realised that on the little bath mat where she had placed her feet, there was blood and also, there were drops of blood on the sink and the faucet (tap). She left the bathroom and went to get dressed in her own room. Then, she went in the other bathroom to dry her hair, where there was a blow dryer. It was at this time that she noticed faeces in the toilet, which surprised her. She then took the mop and returned to Raffaele's home,

locking the door (on the way out).

On her return to Corso Garibaldi she told Raffaele what she had seen and he suggested that she call one of her friends. She then called Filomena Romanelli, who said that she had been out with her boyfriend and that Laura Mezzetti was also away, in Rome with her family. She then realised that the only one to have spent the night in Via della Pergola 7 was Meredith, about whom, however, nothing was known. Filomena seemed worried, so Amanda told her that she would call Meredith and afterwards she (Knox) would then call her back. She then called the two phones that Meredith had, but without getting any response. She then returned to Via della Pergola, this time with Raffaele. Upon returning home, she opened the door to Filomena Romanelli's room and saw that the window was open and completely broken: there was chaos, but her computer was in its place on the desk.

Convinced that there had been a burglary, she went into the other rooms. Laura Mezzetti's room was in order, and (further) nothing was missing from her own room. However, Meredith's door was locked. She began to knock and to call out, without receiving any answer. She was then seized with panic and went on the balcony to see if she was able to see anything, but was unable to do so. She went down to the apartment below to ask someone, but no one was there. She therefore went back inside and Raffaele said that he wanted to try to break down the door of Meredith's room, but he wasn't able to.

According to Knox he had tried to break down the door with a kick which failed and he had not persisted in his effort. It was then that they decided to call the police, which is what Raffaele did. She let Filomena know about this, asking her to come home. While they were waiting, two police officers arrived (at the scene) and she showed them all that she had seen. Then Filomena arrived with her boyfriend and two other friends, and they broke down the door of Meredith's room.

Slanderous Allegation

The account recited in Knox's email was broadly corroborated by Sollecito in a statement to the police made between November 2 and November 4 (the exact date is not clear). However, on November 5, Sollecito returned for further questioning at the request of the police. This was to explore apparent anomalies in the account given by Sollecito. By then Sollecito and later Knox became prime suspects in the murder of Meredith Kercher. Knox was also interviewed by the police during the night between and November 5 and 6, 2007.

As a point of information the Supreme Court of Italy would later rule that the original statements made by Knox would be admissible against her for the slanderous allegation of falsely accusing Patrick Lumumba (Calunnia) but inadmissible for the sexual assault, murder, theft and knife allegations. The Supreme Court concluded that before being questioned Knox was a murder suspect and as such she should have been treated as a suspect with all the concomitant legal rights. For example, Knox never asked for a lawyer but under Italian law the police should have prompted her to get one. To that adjudication one caveat was placed. The Supreme Court ruled that the memoriale (written statement) which had been written down voluntarily by Knox on November 6, 2007 was fully utilizable at her trial pursuant to Article 237 of the Italian Criminal Procedure Code. As to the content of the memoriale, see immediately below.

On November 6, 2007, shortly after an arrest warrant was served on Amanda Knox, while

awaiting transfer to a local prison, she requested some blank paper for the purpose of producing a written statement for delivery to the Chief Inspector of the State Police. In that statement, Knox prefaced her explanation of the various circumstances with the following phrase: "In my mind there are things that I remember and things that are confused". She then wrote of having seen Meredith for the last time on November 1, 2007 in the afternoon, around 3pm or 4pm; they were at home at Via della Pergola 7, and Raffaele was also there. She and Raffaele stayed a little longer, and then, together they went back to his home (on Corso Garibaldi) to watch the movie Amelie. She then received a message from Patrick telling her it wasn't necessary for her to go to work at the pub, since no one was there. Therefore, she stayed with Raffaele, with whom she smoked some marijuana. They had dinner together, but quite late, perhaps 11pm.

After dinner, she noticed a bit of blood on Raffaele's hand and had the impression that it had to do with blood coming from the fish that they had cooked. Raffaele had then washed the dishes, but a break in the pipes had occurred under the sink. Water had leaked with flooding on the floor. Since they didn't have a mop, they decided that they would do the cleaning the next day with a mop that she could get from Via della Pergola 7. She added that they were very tired and it was quite late. Her next recollection was the morning of November 2, around 10am, when she awoke. She took a plastic bag in which she placed her own dirty clothing to take home. She then made reference to the statement she had made in the Police Headquarters during the night between November 5 and 6, as well as on the morning of November 6. She explained that she made those statements under stress and (in light of) the particular situation that had arisen. In her own mind, she was seeing something like flashbacks which, however, seemed unreal to her, like a dream: eg, Patrick near the basketball court, near the front door of the house: of herself crouched down in the kitchen with her hands over her ears because in her own head, she had heard Meredith scream. She added that she wasn't sure of the truth and that she was confused. She knew only that she had not killed Meredith. The declaration made by Knox was potentially damaging to her case. As a mixed statement (part inculpatory, part exculpatory), it could be used as proof that she was present in Via della Pergola 7 at the time of Meredith's murder.

Giving Evidence

At the main trial of Knox and Sollecito, on June 12, 2009, Amanda Knox gave evidence which concluded the following day. She underwent questioning, requested by the civil party Patrick Lumumba and by the defence. She said she knew Rudy Hermann Guede, although just a little. She had met him in the centre of town, during the course of an evening in which she had also met the four men who lived in the downstairs apartment at Via della Pergola. They had introduced her to Rudy. Then she had spent most of the time with Meredith and they had returned home, all together. On another occasion, she met him (ie, Rudy) at the Le Chic pub. She also remembered attending a party in the second half of the month of October 2007, together with the four men (guys) who lived downstairs. She had smoked a joint and every so often, with friends, she used narcotics, marijuana.

On the evening of November 1, 2007, she was supposed to have gone to work at the Le Chic pub, but Patrick had sent her a message telling her that she didn't have to go to work. That message was sent to her around 8.15pm-8.30pm. At that very time, she found herself in Raffaele's apartment, and when she answered that message, she thought that she had been in his apartment. The evening of November 1, she did not encounter Patrick. During the night of November 5-6, 2007, she had stated something different to the police, but that occurred because

of the persistence of the questioning and because of the situation that had been created in the course of the interrogation and it was at that time she began to imagine what could have happened.

In the questioning that occurred during the night of November 5–6 2007, she had stated that on the evening in question, after 9pm, she had gone with Patrick to the Via della Pergola 7 home, (but only) because she was under pressure and confused. Even the matter relating to the fact that Meredith, before being killed, had had sex, she had reported that, too, “under pressure” and for this reason, she had imagined many things, of which had included Meredith’s scream, and the fact of having held her ears closed, so as not to hear her. On November 5, in the evening, she had not been summoned by the police, but she went to Police Headquarters to accompany Raffaele because she didn’t want to be alone. Regarding the written statement on November 6, she remembered in the late morning of that day she had asked members of the criminal unit police for sheets of paper to write on and she wrote in English, without anyone having suggested to her what she should write. Since she was confused, she wanted to explain to the police her own confusion. That account was written completely freely and voluntarily. She remembered having said in a conversation with her mother that she felt horrible because Patrick was stuck in prison and it was her fault. She denied having accused Patrick in order to save herself. She accused him because of the particular situation that had been created during the course of the interrogations during the night of November 5-6, 2007.

She said she knew that Meredith had a romantic relationship with Giacomo Silenzi, who lived with three other men on the lower level of the very same house. In time, she revealed to Meredith that she had become Raffaele Sollecito’s girlfriend. Raffaele Sollecito had met her when she and Meredith had gone together to a classical music concert. Initially, Meredith had been with her, but after the intermission Meredith had to go home and Raffaele sat down near her. That happened eight or 10 days before November 2. When she first met Rudy, she hadn’t yet met Raffaele. In the house at Via della Pergola 7, she had a room that was near Meredith’s room. With Meredith, the relationship was good and they were on friendly terms. On November 1, after having had lunch with Raffaele and having played a little on her guitar, she and Raffaele had gone to his house on Corso Garibaldi and had watched her favourite film: *The Fabulous World of Amelie*. They ate dinner, but very late. They ate fish and salad. Then, while Raffaele was washing the dishes, from the sink, a leak was noticed. By this time it would have been around 9.30pm-10pm. She remembered that Raffaele was very upset about the inconvenience of the pipe which he told her had recently been repaired. Then they went to Raffaele’s room: she on the bed and Raffaele at the desk. He prepared a joint which they smoked together. She said they made love and eventually fell asleep.

Patrick’s message arrived before they had dinner. She had been happy to receive such a message because she didn’t want to go to work that night, and preferred to stay at home with Raffaele. The next morning she woke up around 10am-10.30am and Raffaele was still sleeping. After a bit, she told him that she was going back to her house to take a shower and change her clothes, and that when she returned they would leave. For that day, in fact, they had planned to go to the nearby town of Gubbio. When she arrived home (Via della Pergola 7), she saw that the front door was open. This situation surprised her, because usually the door was locked. She thought, nevertheless, that someone had not closed the door very well or had left quickly or had gone to look for something or take out the trash. Entering the house, she had asked if there was anyone home, without receiving an answer. She nevertheless left the door ajar, without locking it,

thinking that maybe one of the three girls had gone out and was coming back shortly, speculating one or other had gone to get some cigarettes or for some other reason she was unaware of.

She then went to her own room, undressed and went into the bathroom. She had some earrings, recent piercings which had to be washed constantly because one had become a little infected. She then saw drops of blood in the sink. At first, she thought that it was blood from her ears but when she scratched them she saw that they were still dry. She admitted to thinking this was “strange”. She next took a shower. On getting out, having forgotten a bath towel she decided to use the bath mat to go into her own room. At that moment, she noticed a blood stain on the mat. Her thought, was that this had come from a flatmate who perhaps had a menstrual problem. She used the mat to go to her own room, and then she put the mat back in its place. She put her earrings back on, she brushed her teeth, and then she went back to her room to put on clean clothes. Afterwards, she went into the other bathroom to dry her hair. Having dried her hair, she realized that there was faeces in the toilet. She admitted that she thought this was very strange, considering it was Filomena and Laura’s bathroom.

Knox testified she then went back to Raffaele Sollecito’s house, closing the door to Via della Pergola 7, because in the meantime no flatmate had returned. After they had made lunch she told Raffaele what she had seen. Raffaele suggested she should call her flatmates. She called Meredith who did not answer. She then called Filomena Romanelli who told her that Laura Mezzetti was in Rome, that she should call Meredith again and that she should return back to Via della Pergola 7 to see if anything was missing.

As requested Knox and Sollecito went to the house in Via della Pergola 7. In Filomena Romanelli’s room they saw that the window was broken and there was as she described it “...a big mess”. They thought there had been a burglary and went to check the other rooms. Nothing was missing from the various rooms. But the worrisome thing was that Meredith’s door to her room was locked. Knox said that when she called out to Meredith there was no answer. She did recall however, that the door had been locked before. She then left the house to see if the men from the downstairs apartment were home, but it was dark and when she knocked on the door no one answered. She told Raffaele to call someone and she called Filomena Romanelli telling her what she had seen and asking her to return home.

After that, they left the house, one reason being to look at the broken window from the outside; and while they were outside, two individuals from the police approached them. She thought that they had arrived (on the scene) because Raffaele had called them. She told them what she had seen. A short time later, Filomena’s friends arrived, and then Filomena. When Filomena found out that Meredith’s door was locked, she was astonished and she began to speak rapidly in Italian. Amanda could not understand, so she withdrew from the conversation and stayed with Raffaele near the main entrance. The group of people wanted to open the door to Meredith’s room; as soon as the door was knocked down, she heard Filomena scream: “A foot, a foot”. At the moment the door was knocked down Knox said she was near the main entrance and thus she did not see the inside of Meredith’s room. Afterwards, when all persons were outside the house, everyone was talking, especially about what they had seen. She recalled Sollecito had asked what they had seen in order to explain it to her.

She had returned to Via della Pergola 7 on November 4, 2007 with personnel from the Police Headquarters. Laura and Filomena were already at the house. She had a crying fit thinking of

what had happened. The police had asked her to look at all the knives and this had really affected her.

Knox was then questioned about an intercepted telephone conversation with her mother and father, in which she said: "I was there, I have no interest in lying, I'm not afraid of the truth" and later "It's stupid, I can't say anything but the truth, because I know I was there, I mean, I can't lie there's no reason to do it." Knox explained that she was referring to Raffaele's apartment that evening, not Via della Pergola.

She denied that at 7.45 am on November 2, she had been at the store of Marco Quintavalle which is located in the vicinity of Raffaele Sollecito's apartment although she did accept that she had previously been in the store with Raffaele.

She recalled that on November 1, while at Raffaele's house, a short time before they began to watch the film "Amelie" a girl, Jovana Popovic had rung the door bell. Knox did not know this girl. Raffaele explained to Knox that he had agreed to take Popovic to the station around midnight. Later however the same girl returned to tell (Raffaele) that she no longer needed to be taken to the station. Knox said she could not remember the time she returned, but she thought they were making dinner, but she was "not sure". She remembered that she had turned her mobile phone off that evening having been told she was no longer required to work at the Le Chic pub. She said that was so happy to spend the entire night with only Raffaele.

Knox added on the morning of November 2, having seen that Meredith's door was locked she had tried to climb over the balcony to see if she could see through the window and to ascertain whether Meredith was inside. Being unable to do so, Sollecito told her to come away and he tried to break down the door with a kick, and by using his shoulder to open it, because they didn't know why the door was locked.

She denied ever having gone around with a knife in her pocket or in her handbag. She recognised the knife that had been sequestered from Sollecito's house. She said she had used it for cooking but she never carried it around (in public). She denied that someone (presumably Sollecito) had been able to put that knife in her handbag without her knowledge.

She confirmed that she became aware of the broken glass when she returned home the second time, along with Raffaele. She remembered that when she called Filomena Romanelli the first time, on the morning of November 2, she was in Sollecito's house.

When Filomena called her back, she was on the way back to Via della Pergola with Raffaele.

Returning to the episode of the water leaking from the sink of Raffaele's house, she stated that the (leak) had happened after dinner. She didn't specify the time, but it was late. They had eaten around 10.30 pm, so it would have been around 11pm.

On November 1, she had left the Via della Pergola house, along with Raffaele, around 4pm, and before leaving she had been in the small bathroom and the spots of blood had not been there. Neither she nor Raffaele had seen the inside of Meredith's room after the door was broken down. As for the black lamp discovered in Meredith's room, she couldn't give an explanation. She remembered that she had an identical lamp, but she didn't know if it was still there, since she

didn't pay attention to it (to understand this aspect of the prosecution case, the reader is referred to the section entitled: Rudy Hermann Guede's accounts).

As for Meredith, she stated that on the morning of November 2 she was worried; she had thought that she might be in her room having injured herself in her house –there were some very strange things, it's possible she wasn't even at home. She didn't know what to think, but she was worried and wanted to break down the door. She denied that she wanted to break down the door to get her lamp back. Anyway, neither she nor Raffaele were aware that her black lamp was missing from her room. She confirmed that on the evening of November 1, from the time she had turned off her mobile phone until the following morning, she had been with Raffaele Sollecito the entire time, and she had fallen asleep with him.

She considered Meredith Kercher to be a friend. As for the accusation that she had made regarding Patrick, she made reference to the particular situation which had been created, as well as to her imagination. While interviewed by the police she claimed they were saying that she had to remember something else. She was therefore forcing herself so much, trying to imagine what the reality she'd forgotten was, she mixed up whether the things that she imagined really was a memory or a figment of her imagination, because (the images) were fragmented. So they were only pictures, she supposed, (of the things) that she saw in her life. For example, Piazza Grimana, she saw every day, Patrick she saw almost every day. These things were interposed, she did not know whether they belonged to that evening (November 1, 2007) and thus, not knowing what was reality or what was her imagination, attributable to her "confusion". She concluded by saying that she had never been in a similar state of confusion.

She recalled that on the morning of November 2, she had taken a shower and had used the sink; she had not used the bidet. She cleaned her ears using a cotton swab.

She didn't remember having turned on the bathroom light. As for her own room, she hadn't noticed the missing table lamp. In order to get dressed she didn't need to turn on the light because it was late morning and natural light came in from the front balcony to her room. She could not remember whether she opened the shutters. After becoming aware of the broken window, she checked in her own room to see if her computer was there and, since it was, she calmed down. She didn't check to see whether other things, like money, were missing.

Knox declared she did not have a relationship with Rudy Guede; she remembered that someone had introduced him to her and she had seen him around on a few occasions. Once he came into the Le Chic pub where she worked. She said that Raffaele Sollecito did not know Rudy Guede.

With respect to an audio surveillance of November 17, 2007, relating to a conversation with her mother, in the course of which she had said, among other things, that she was worried about a knife. She explained that while in prison she had found out via a police inspector that in a (press) article, it was claimed there was blood on a knife found at Sollecito's house. She said she was worried about it, not being able to provide an explanation for it. She accepted that Meredith had never been at Sollecito's house and she had not taken kitchen items from the Via della Pergola house to Sollecito's house in Corso Garibaldi.

On the morning of November 2, she awoke around 10am. Raffaele Sollecito was still sleeping. The previous evening, after dinner, Raffaele had sat at his desk while she was on the bed, looking

at a book. Raffaele Sollecito was at the desk rolling a joint, and they talked. They had smoked the entire joint after dinner, made love and then they fell asleep. When she woke up the following morning, she decided to go home to Via della Pergola because Raffaele was still asleep and she thought she'd have a shower before leaving. She wanted to change her clothes.

At Via della Pergola, the front door was wide open. Filomena Romanelli's (bedroom) shutters did not attract her attention. When she later returned with Sollecito the shutters were ajar (not totally closed, but not wide open, either). The house was cold and, upon arrival, she had not turned on any type of heating.

Knox confirmed that she called Filomena Romanelli around 12.10 pm. She thought she was calling from Sollecito's house, although she wasn't sure. On the first occasion when she left the Via della Pergola house, there was nobody at home, and since no one in the meantime had re-entered, obviously no one had locked the front door.

She denied that on the evening of November 1, she had been at the basketball court in front of the University, around 10pm and therefore, what the witness Curatolo had maintained about this matter, did not correspond to the truth.

The Brutal Killing of Meredith Kercher – Part 3

Raffaele Sollecito's Accounts

For the avoidance of doubt the following is a summary of the accounts given by Raffaele Sollecito pre-trial, in order to avoid duplication and/or to filter out material which was of fanciful weight or plain irrelevant. Note that at his trial, Sollecito elected not to give evidence in his own defence.

The account recited in Knox's email dated November 4, 2007 was broadly corroborated by Sollecito in a statement made to the police between November 2 and November 4 (the exact date is not clear). However, on November 5 Sollecito returned for further questioning at the request of the police. This was to explore apparent anomalies in his account. The police were troubled by Sollecito's original statement that he had phoned the Carabinieri before the two Postal Police officers arrived at Via della Pergola. As a result of that second interview, Sollecito and Knox became prime suspects in the murder of Meredith Kercher. Knox was also later interviewed by the police during the night of November 5, into November 6, 2007.

As a point of information the Supreme Court of Italy would later rule that the original statements made by Sollecito to the police would not be admissible against him at his subsequent trial for murder. The Supreme Court concluded that before being questioned Sollecito was a murder suspect and as such he should have been treated as a suspect with all the concomitant legal rights. For example, Sollecito never asked for a lawyer but under Italian law the police should have prompted him to get one. Despite the ruling, for ease of convenience I intend to summarize the later interviews of Sollecito for reasons which will become apparent shortly.

On November 5, Sollecito was re-interviewed by the police. It was put to him that his phone records disclosed he had first phoned the Carabinieri on an emergency number at 12.51pm on November 2, after the two Postal Police officers had arrived at Via della Pergola. Confronted with this inconsistency Sollecito changed his story as to what had happened on the evening of November 1. In summary he said he and Knox had gone into town at around 6pm, but he was not specific as to what they were doing. They remained in town until 8.30pm-9pm. At 9pm he went home alone and Knox said she was going to the Le Chic pub because she wanted to meet some friends. He spent the rest of the evening at home until Knox arrived at roughly 1am. He went on to say that the following morning, when Amanda Knox left for Via della Pergola to have a shower, she asked to borrow some plastic bags to put dirty clothing in. He also made it clear that he had lied in his earlier statement at Knox's request.

The contents of this interview and later statements made by Sollecito will be analyzed further on. Nevertheless, one thing is patently clear; from that moment onwards, the State authorities were convinced that Knox and Sollecito were implicated in the digital rape and homicide of Meredith Kercher, despite the lack of a motive and potential shortcomings in the prosecution evidence.

Sollecito later made an additional statement in which he modified his account as to what transpired on November 1. Thus, at a pre-trial hearing on November 8, 2007, to determine whether Sollecito could be allowed house arrest or subject to precautionary incarceration (the Matteini hearing), Sollecito made a brief statement to the Court. He told the hearing that Knox had accompanied him back to his house on Corso Garibaldi and that they dined together. He

stated that he stayed in for the rest of the evening to sleep. However, he said that he was unsure whether Amanda went out that night; he said he could not remember. It is noteworthy therefore that on several occasions, pre-trial, when Sollecito was asked to account for his movements on November 1-2, he changed his story.

By the time of his trial, Sollecito elected not to give evidence in his own defence and none of the parties requested him to be questioned. The only available testimony, which was of limited value, was the spontaneous declaration made by him at the Matteini hearing plus that of witnesses such as Robyn Carmel Butterworth (one of Meredith's English girlfriends) who declared that while they were together at Police Headquarters on the afternoon of November 2, Sollecito said in her presence that Amanda Knox was with him on the night between November 1 and 2.

Two preliminary observations can be made. First, Sollecito's decision not to give evidence at his trial was curious given the forensic evidence which the prosecution had marshalled against him. The prosecution asserted it proved his presence at Via della Pergola 7 at the material time when Meredith Kercher was murdered. Sollecito ran the risk that the Court would draw an adverse inference from his refusal to give evidence. As we shall see from the trial Court's findings (outlined later), the tribunal had no difficulty in concluding that Sollecito's limited declarations, such as they were, coupled with Knox's accounts, were false and, that the totality of the evidence proved they were guilty of being complicit, inter alia, in the digital rape and murder of Meredith Kercher.

Secondly, the disparate and changing accounts of Sollecito, which in part contradicted Knox's explanation for what they were doing together on the evening of 1st November into November 2, 2007, led the authorities, to suspect that they had been complicit in the murder of Meredith Kercher. This suspicion reached a climax with the results of the biological and forensic tests highlighted later in this article.

Rudy Hermann Guede's Accounts

For the avoidance of doubt the following is a summary of the accounts given by Rudy Hermann Guede pre-trial, in order to avoid duplication and/or to filter out material which was of fanciful weight or plain irrelevant. Note that at his trial, Guede elected not to give evidence in his own defence. He also declined to give evidence at the later trial of Knox and Sollecito (Massei), despite having been summoned to appear before that tribunal.

From the moment Meredith Kercher's body was discovered until his being taken into custody in Germany, Guede was in a different position from Knox and Sollecito. Having fled the Italian jurisdiction, he was in a position to compile a version of his involvement in the events at Via della Pergola, minimizing his criminality and pointing the finger of suspicion or guilt elsewhere. He had been able to follow the investigation in newspapers and on the Internet. He was aware that the investigators would find biological evidence which sooner, rather than later, would connect him to the digital rape and murder of Meredith Kercher.

On November 19, 2007, at the invitation of the Italian investigative team, Giacomo De Benedetti, a friend or associate of Guede, was invited to contact Guede using the program Skype. At this time Guede was still on the run in Germany. The conversation was taped. Judging by the garbled terms of the conversation, Guede knew he was a prime suspect in Meredith's murder and was

wanted by the Italian police. In summary, he claimed to have met Meredith the night before the murder (Halloween night). He said he had met her at a party in an Irish pub called the Shamrock. He claimed that she had agreed to meet up with him the following day. Guede went on to say that he saw Meredith the following day at Via della Pergola 7. He estimated the time at roughly between 9pm and 9.30pm (sources: Micheli, Hellmann and Galati Reports infra). He said that early in their conversation Meredith made reference to some missing money (“...the money is gone, the money is gone”) and that she would be talking to Amanda about the missing money (the implication clearly being that Amanda had taken the same).

He then claimed to have made a pass at Meredith in her flat, that she responded and they were intimate to the point of caressing each other. He stated they did not have intercourse because he did not have a condom.

Approximately one hour later he said that he had gone to the bathroom to go to the loo; he said that during that period he was wearing earphones connected to an ipod and he turned up the volume; while he was still in the bathroom somebody rang the doorbell and Meredith answered it. He then said that Meredith let out a really loud scream, so loud you could hear it in the street. Guede said he came out of the bathroom into what was semi-darkness to be confronted by an Italian man, who he did not recognise, but was evidently armed with a knife. He saw Meredith who was already bleeding – her throat had been slashed. There was a struggle in which the man tried to stab Guede. Guede said his hands were injured as a result of the struggle and he still bore the wounds. The man then ran away and he (Guede) tried to help staunch Meredith’s blood loss with the aid of bathroom towels, but to no avail. At no stage does Guede mention a woman other than Meredith being present at the material time. Towards the end of the conversation he claimed that because he had been in the apartment alone with Meredith and was covered in her blood, he was too afraid to phone for an ambulance for fear of being blamed for the attack. Significantly, he concluded the conversation by saying that from what he had read, someone else must have come to the house afterwards because when he left the house, none of the windows at Via della Pergola 7 were broken.

On his return to Italy on December 7, 2007, Guede was interviewed by the State Prosecutor. Guede claimed to have met Meredith on Halloween night at a party being held in a house belonging to a group of friends from Spain. It was there he said they agreed to meet the following night, at about 8.30pm. Guede said he later went to premises known as the “Domus” where a costume party was taking place. This narrative was designed to add credence to Guede’s earlier account that he had met Meredith Kercher on Halloween night and amounted to confirmation why he was legitimately at Via della Pergola 7, the following evening, the night of Meredith’s digital rape and murder.

On March 26, 2008, Guede was again questioned by the State Prosecutor. To cut to the chase Guede changed his story as to where he claimed to have met Meredith on Halloween night. He now said that they had met at the “Domus” where the costume party had taken place. He said he had spoken with Meredith for about ten minutes, the outcome of which was that he asked to meet her the following day and she had agreed. Guede added the broad agreement was to see Meredith the following night at 8.30pm. He added that Meredith had not given him her mobile phone number and he had not felt the need to ask.

Guede then went on to explain what transpired at Via della Pergola 7 on the evening of

November 1, 2007. Only in this third account does Guede introduce Knox into the scene of the crime for the first time and, providing more precise details on the wielder of the knife. One crucial part involved the ringing of the doorbell and the entry of two persons, one male and one female. He said he recognized the female voice as that of Amanda Knox. By implication the male person with Knox had to be Sollecito. As already reported in the first interview he claimed to have heard a really loud scream and on investigation he saw an individual (a man) with a knife in his left hand. As soon as he got close to the man, he saw Meredith's body hit the floor. Suffice it to say there were no changes in the previous version about the ways in which he tried to rescue Meredith, about the condition in which he found Meredith or her bedroom.

On May 15, 2008, having asked to make a new statement to the investigators, in one relevant extract, he said that he was not wearing a pair of "Adidas" sports shoes that night, but "Nike" sports shoes. He claimed to have thrown the Nike sports shoes into a dumpster during his brief stay in Germany. He went on to say that, as far as he could remember, the black lamp he had seen in some photographs of the procedural documents, placed on the ground in front of Meredith's body, as per Guede's previous accounts, was probably not there when he had tried to staunch Meredith's wounds. As a point of information, the black lamp had been recognized by Filomena Romanelli and Laura Mezzetti, as belonging to Amanda Knox, who, at the time of Meredith's murder, had no other forms of illumination in her room. This begged the question therefore as to how the black lamp came to be in Meredith's bedroom?

As we shall in another section later, Guede opted for a fast-track and separate trial from Knox and Sollecito, the one inducement being a reduced sentence if convicted, even though he continued to deny the digital rape and murder of Meredith Kercher. Guede's subsequent trial commenced on October 28, 2008 and concluded on January 26, 2009. At his trial, Guede elected not to give evidence in his own defence. The only explanation by Guede, therefore, as to what transpired leading up to and on the night of Meredith Kercher's murder, is what was said by him in the taped Skype conversation with De Benedetti and the pre-trial accounts given on three separate dates (supra).

Biological and Forensic Evidence

The forensic evidence included the analysis of DNA in various samples taken, of footprints revealed by Luminol and of foot prints and shoe prints. The author has omitted various items which added nothing to the investigation and is not suggestive of the guilt or innocence of Guede, Knox or Sollecito respectively.

The Small Bathroom

An expert witness, Dr. Stefanoni, gave precise details about these traces and about the outcome of the analyses which concerned the following items:

On the right side of the inside doorframe there was a tiny droplet of the victim's blood.

On top of the toilet-seat cover of the toilet there was blood from the victim. In the bidet there was a substance which appeared to be diluted blood, and which was shown to be a mixed trace specimen having the biological profiles of Knox and Meredith Kercher.

In the sink, there was a substance which appeared to be diluted blood, and which was shown to be a mixed trace specimen with the same result. On the front part of the tap of the sink, there was coagulated blood which was shown to belong to Knox.

Also in the sink, there was a substance which appeared to be diluted blood, and which was shown to be a mixed trace specimen with the same result as 3 above.

On the front part of the tap of the sink, there was coagulated blood which was shown to belong to Knox.

On the box of cotton buds/Q-tips sitting on the sink/wash basin there were stains and these showed the presence of blood and a mixed trace from Knox and Meredith Kercher. On the light switch in the same bathroom there was a mark which proved to be the victim's blood.

The sky-blue mat found in that bathroom was stained with blood which was shown to be from the victim.

A bare right footprint had also been found on the bathmat – see the result immediately below.

On the outcome of such tests (items 1-7 above), not only these but also others of a biological nature, carried out in observance of the provisions contained in Article 360 of the Criminal Procedure Code, no significant and specific criticisms were made.

On May 12, 2008, the Public Prosecutor charged Dr Rinaldi and Chief Inspector Boemia with a second consultancy task. The technicians were requested, inter alia, to: compare the footprints taken from the three accused with the foot print found on the bathmat (item 8 above). Analyses of the size of Sollecito's big toe led the technicians to conclude that there was compatibility between a print on the mat and the defendant's right foot (described in the Massei report as "probable identity").

Large Bathroom

Toilet paper and faeces were found in the toilet of the large bathroom. Tests on the toilet paper identified the DNA of Rudy Guede.

Traces revealed by Luminol

Various surfaces were sprayed with Luminol, which fluoresces brightly when applied to blood. The fluorescence was then swabbed and tested for DNA. Nine traces were found. Three exhibits (labelled 1, 2 and 7) turned out to be devoid of any useful biological profile. Of the remaining six exhibits, the following results were recorded:

Dr. Stefanoni stated that two traces found in the room of Filomena Romanelli had yielded one specimen from Meredith Kercher and one from Meredith and Knox respectively.

One found in the corridor, almost in front of the wall separating Knox's and Meredith's bedrooms had shown a mixed genetic profile attributable to both Meredith and Knox.

Knox's Bedroom: three traces all found in Knox's room contained Knox's biological profile;

The outcome of these investigations had not been the subject of any particular or specific criticism although one expert, Dr. Sarah Gino, observed that the quantity of DNA was compatible with what is known as "low copy number", and it did not appear that the analysis had been repeated to validate the results. Expert evidence concurred that they could not say with certainty that blood was present, since other substances may cause Luminol to glow

Shoeprints

Shoeprints made in Meredith's blood and visible to the naked eye led from Meredith's bedroom to the exit, becoming fainter as one progressed towards the main door. These were determined to be incompatible with Sollecito's shoe size 9, and to be compatible with a Nike Outbreak 2, size 11. Although the shoes were never found, a box for Nike Outbreak 2, size 11 was found in Guede's apartment. In the section: Rudy Hermann Guede's accounts supra, Guede admitted to having thrown the same sports shoes into a dumpster during his brief sojourn in Germany.

A left shoe print was found on Meredith's pillow, estimated to be between size 36 and 38. Knox wears a size 37. A defence expert (Professor Vinci) made a comparison of the sole pattern with Guede's right shoe, and argued that the print could have been made by him. The Massei Court noted the conflicting theories without expressing a specific opinion but commented that it could not be excluded that "...Guede alone tr[od] on the cushion lying on the floor, to the exclusion of Knox..." The Massei Court also observed that based on the genetic investigations that were done on certain biological traces and the positive Luminol prints, they had to attribute Knox moving around the murder scene essentially in bare feet.

Shoes belonging to Knox were later seized and sequestered as evidence from Via della Pergola 7.

Living room-kitchen corner (angolo cottura)

Bloody prints were present on the floor. In this area six cigarette stubs in an ashtray on the table above were also bagged. Three yielded the same genetic profile of an unidentified male; one contained a mixture of saliva and genetic profiles from Sollecito and Knox; the other two yielded the genetic profile of an unidentified woman.

Five samples of haematological substances were taken from the floor, belonging to the shoeprints highlighted in the section above. Tests revealed human blood belonging to the victim. The last sample, taken from a print right next to the entrance gave a negative result, according to Dr Stefanoni, probably because the quantity was too small.

Corridor flat

On the floor of the corridor going from the small bathroom to the living room-kitchen corner, samples of bloody spots were identified as the blood of the victim.

Amanda Knox's bedroom

Knox's room underwent technical testing during the second inspection on December 18, 2007. Some items sent on to forensics for tests signified no significant results. Her shoes were tested, primarily the soles, which gave a negative result.

Filomena Romanelli's bedroom

A few items were tested here because of the suspected "simulation" of a breaking and entering. A hairlike fibre found on the lower part of the window frame together with a presumed haematological substance on the wooden frame of the window, which held the broken pane, yielded negative results. The large rock and two fragments found on the floor were also tested but yielded negative results.

Meredith Kercher's bedroom

To recapitulate: when Meredith Kercher's lifeless body was discovered she was found covered by a duvet completely spread out on the floor of the bedroom. The duvet covered the entire cadaver of Meredith except for one bare foot. Blood could be seen on the floor and walls of her bedroom. The internal handle of the door was stained with blood; bloody stains and streaks, likely made by a finger, was found on the inside of the left sliding door of a closet; bloody streaks were recorded on the walls indubitably made by the fingers of a hand. Also found among various blood-stained items were two terry cloth towels, one green and one ivory; the latter was heavily smeared (or soaked) with blood. There were three bloody footprints on the ground, set in concentric circles.

Multiple elements were collected and analysed by the Scientific Police and a corps of experts, the most salient findings being:

Handprint A handprint found on a pillow in the room, on which the lifeless corpse of Meredith was found was matched to Guede.

Vaginal swab The vaginal swab of the victim contained the DNA of Meredith and Guede.

Sweatshirt The DNA of Guede was also found on the cuff of Meredith's sweatshirt found in her room.

Bra strap DNA of Guede was found on a strap of the bra that Meredith had been wearing. The bra was found cut off and stained with blood.

Purse DNA of Guede was found on Meredith's purse, which was also in her bedroom at the

material time.

Exhibit 165 (Bra clasp) Dr Stefanoni testified with reference to the trace found on Meredith's bra hooks. She stated that procedures indicated by protocols had been followed. She confirmed that the DNA which belonged to Raffaele Sollecito had been found only on one of the hooks and that the obtained amplification result was described as a "...good quality result". The doctor was testing a mixed trace, and looking under the electropherogram she was able to measure the quantitative ratio between the two DNA samples found. The ratio was assessed as 1 to 6: the DNA of the victim being six times more than the DNA of Sollecito.

It was conceded that early on the bra revealed itself to be of particular interest to the investigation since the straps were frayed and aside from a missing piece (bra strap), the bra had been sharply cut. Dr Stefanoni explained that the missing bra clasp had already been seen during the first search on November 2, 2007 having been photographed and captured on video. However, during the second search on December 18, 2007 when the bra hooks were located and bagged for forensic examination, the hooks were found in another area of the room, near Meredith's desk, under a little rug, around one and a half metres from where it had been seen during the first search. She was unable to account for the reason or how the item had been moved.

Glass fragment Found on the floor of the bedroom was a piece of glass. It was picked up by the film of the November 2, 2007 inspection, as indicated in the report of Professor Introna. The glass is quite noticeable as being close to a left print by a bloodied shoe. It is deprived of any stain which means that any injuries caused to Meredith's hands during the attack was unlikely to have been caused by the action of the glass.

Black table lamp This had been found on the ground, adjacent to and by Meredith's body. The lamp belonged to Amanda Knox. When giving evidence at her trial, Knox was unable to account for how the lamp ended up in Meredith Kercher's bedroom. The reader is also referred to the pre-trial account of Rudy

Hermann Guede supra

Bloody outline of a knife On the bed sheet in the victim's room, a bloody print was found which corresponded with a small knife.

Mop A mop was seized which was kept inside the closet in the hallway in front of Knox's bedroom. On this mop nothing in particular was found.

Sollecito's house in Corso Garibaldi

The Double DNA Knife (Exhibit 36) This was seized from a cutlery drawer in the kitchen of Sollecito's home. It was a long kitchen knife, 31cm long with a 17.2cm blade. Of the seven tests conducted only two provided a biological profile. The first test was carried out at the point where the handle of the knife ends and the blade starts. This resulted in a biological profile attributable to Knox. The second test was conducted on the side of the blade where in good light and by varying the angle, striations could be seen. Analysis gave a biological profile attributable to

Meredith Kercher.

No criticism of the analysis regarding the trace of the first test was made. The analysis of the second trace was the subject of strong criticism by both defence teams. The results will be scrutinized later.

Shoes belonging to Sollecito were later seized and sequestered as evidence from his house in Corso Garibaldi.

Pocket Knife In Sollecito's bedroom, a second knife with a blade 8 centimetres long was seized. The author cannot find any reference to any forensic tests or outcomes in the Massei Report regarding Sollecito's pocket knife. It has been assumed therefore that any such tests undertaken produced negative results.

Sollecito's Apple MacBook Pro computer As stated earlier evidenced human interactions occurred at: (a) 9.12pm on November 1, 2007; (b) 5.32am on 2nd November 2007 for half an hour.

Guede's house in Via del Canerino

During a search at Guede's house on November 21, 2007, an empty shoe box was found for a "Nike Outbreak 2" size 11. This item has been discussed under the heading shoeprints supra. Shoes belonging to Guede were also seized and sequestered as evidence.

Other evidence

The non-existent web-browsing activity according to the Postal Police.

Technical report from the Sollecito Defence Team Consultants.

[GSM] Network coverage: Via della Pergola and Via Sperandio 5.

Telephone traffic of Sollecito's mobile phone.

Telephone traffic of Knox's mobile phone.

Telephone traffic of Meredith Kercher's mobile phones and the memory of her second mobile used primarily for international calls (the "English phone").

On the morning of November 6, a knife was confiscated from the person of Raffaele Sollecito while he was at the Perugia Police Headquarters. The knife was not made the subject of any charge and it has been assumed no biological or forensic traces were found, if indeed the knife was tested. See the evidence of Monica Napoleoni, Deputy Commissioner of Police, Massei Report at p.105. She described the knife as a "flick knife". By English standards a flick knife is an offensive per se because its very manufacture and usage is designed to cause injury. It is not clear whether Napoleoni's description more neatly fits that of a "pocket knife" referred to in s.7 (b) of the Analysis and Evaluation section of the trial of Knox and Sollecito (ante) entitled: The curious case of the missing murder weapon. It is conceivable that the Massei translation may be

incorrect or the knife has been innocently labelled.

Author details

F.G. Davies BA (Hons), Barrister

The Brutal Killing of Meredith Kercher – Part 4

The Trial of Rudy Hermann Guede and the trial Court's findings (the Micheli Sentencing Report) – origins of the forbidden reasoning

As stated earlier, Guede was able to opt for a separate and fast-track trial from his co-accused. His trial commenced on October 28, 2008 and concluded on January 26, 2009. Guede was charged with sexual assault (digital rape by English law), murder and theft.

The following is a summary of the key findings made by the Court.

The central issue concerned the credibility of Guede because his presence in Via della Pergola 7 on November 1, 2007, when Meredith Kercher was murdered, was unquestionable. Guede's strategy therefore was an attempt to minimize his role in those heinous events.

At the outset, to admit being present at the scene of the crime was inevitable. There was ample evidence already leading to his identification, namely, his palm print on the pillow, followed by the equally unequivocal results of the DNA analysis relating to vaginal swab, toilet paper, bra, handbag (purse), and the sweatshirt, as well as the latest fingerprint comparisons of his model of shoes "Nike" with those imprinted on the floor of Meredith Kercher's bedroom.

When Guede decided to tell his own version of what transpired that night, almost 20 days had elapsed. From that time onwards, although the core of his story did not change, having analyzed the narratives of the accused, the Court concluded that the several accounts he gave were inherently unreliable. (Put another way, the evidence disclosed that his version of events did not happen and was not true.)

In summary, the trial Court rejected Guede's account that there was a chance meeting between him and Meredith on October 31, and, that she agreed to meet with him on November 1. This was because he changed his story to fit the facts as to where Meredith had gone on Halloween; because there was no evidence placing him in the same place as Meredith on October 31 and no evidence from friends who accompanied Meredith that Guede was seen at the relevant location and/or was seen with Meredith. There were just too many holes in his story to bear a ring of truth.

The Court also rejected Guede's account that he was let into Via della Pergola 7 by Meredith Kercher. Crucially, it was at this point that the Court was forced to speculate as to how Guede did get into the flat: because there were no signs of a forced entry following the death of Meredith. The only conclusion the Court could reach is that Guede was able to walk freely into the house.

Having regard to the biological and physical evidence the Court concluded that the sexual assault and murder of Meredith Kercher was by "multiple attackers". At the outset there was an agreed plan to satisfy sexual instincts, but then the attack escalated to a murderous intention judging by the emergence of "a knife" (my emphasis), used in the first instance for purposes of threat. The understandable reaction and resistance by Meredith caused the attackers to subdue Meredith who was eventually stabbed, on more than one occasion, leading to a very painful death. The Court said this attack lasted well beyond the appearance (and brandishing) of the [murder] weapon, and

significantly there was no evidence that one or more of the attackers “fled before the attack commenced, tried to stop the others, to solicit assistance, or expressed disagreement with the progression of the attack on Meredith” (evidence of complicity – author).

Having stated that Guede had ultimately participated in the attack and murder of Meredith, the court made a somewhat perplexing statement. Due to the absence of a physical weapon linking Guede to the stabbing, it declared that Guede was guilty even though he might not have physically delivered the fatal blow. As a pure statement of law, the Court was correct. By English and Italian law it does not strictly matter who struck the fatal blow or blows, as long as the co-accused (multiple attackers) “lent themselves” to the joint enterprise (ie, encouraged or joined in).

The author will analyse this finding later on. Of course, by implication, it added weight to the prosecution contention that Knox had let Guede into Via della Pergola 7 and, both Knox and Sollecito participated in the digital rape and murder of Meredith. As we shall a little later, the finding of fact made by the Micheli Court neatly traversed the issue as to whether one or more of the defendants had stabbed Meredith Kercher leaving it to the Massei Court to determine who was responsible. It also overlooked the fact that the stab wounds to one side of Meredith’s neck, possibly both, were not made by the kitchen knife found in Sollecito’s house. In other words, the prosecution had not located and could not adduce the sole or secondary weapon which had been used either to inflict the fatal wound (on the left side of her neck) or to stab the victim on the right side of her neck – although the Court could infer it was a small knife having regard to the blood outline found on a bed sheet in Meredith’s bedroom.

The Court found that there was no evidence Guede had staged a break-in at Via della Pergola 7 and there was no evidence that he had taken any property, not belonging to him, from those premises. He was therefore acquitted of the charge of theft. However, having concluded Guede had participated in the digital rape and murder of Murder Kercher, due to the aggravating circumstances, he was found guilty of the sexual assault and murder of Meredith Kercher. For those offences he was sentenced, inter alia, to 30 years’ imprisonment.

Analysis and Evaluation – the forbidden reasoning

The holding of a separate fast-track trial for Guede was to facilitate precisely what the Micheli Sentencing Report alluded to during the Court’s written judgment. It provided Guede with a golden opportunity to minimize his part in the attack upon and murder of Meredith Kercher; loading the blame on to Knox and Sollecito who, by this time were suspected to be the chief architects of the attack. It is submitted that the combined circumstances, including the illicit interviews of Knox and Sollecito by the State Police had already contributed to a conscious or unconscious bias against Knox and Sollecito, which blinded the public, press and organs of the State to potential shortcomings in the motivations for the crime and/or the prosecution evidence which for convenience has been dubbed “the forbidden reasoning”.

In one sense, the Micheli Court added to the furore by speculating or deposing as to Knox and Sollecito’s complicity when that was not the Court’s function. The only issue for the Court was to determine whether there was sufficient evidence to put them on trial. On that point there was, prima facie, an abundance of untested circumstantial and forensic evidence, even witness testimony eg, Antonio Curatolo. Although the Micheli Court was careful to stress that specific

issues relating to Knox and Sollecito were to be determined at a later date eg.: "...on which the Judge of the trial also will be called upon to take decisions", the damage had already been done.

On the one hand, the motive for Guede's attack on Meredith Kercher was clear: an intention to rape based on a distorted thought-process evidenced in his pre-trial declarations *supra*. The notion that Meredith was even remotely interested in Guede was nonsensical and pure fantasy. Guede's DNA was found in Meredith's vaginal area. There can be little doubt therefore that the totality of the evidence proved he was guilty of her digital rape and by clear implication, even if another person or persons were involved, the prime mover in her murder. It did not take a leap of the imagination to infer that he was the person who subdued Meredith Kercher with a knife and struck the fatal blow. On the other hand, the motive for Knox and Sollecito being involved was far from clear. For example, their lack of association with Guede; the fact they had just begun an intimate and passionate relationship; until 8.40pm on November 1, 2007, they, unlike Guede had pre-arranged commitments.

Aside from Guede's pre-trial admissions, unlike Knox and Sollecito, there was independent witness evidence placing him at Via della Pergola 7 at the material time. The reader is referred to the evidence of Mrs Nara Capezzali, Miss Alessandra Formica and Mr Giampaolo Lombardo in the section: Meredith Kercher's murder. If one accepts the evidence of the above witnesses, even allowing for a few minutes either way, it can be inferred that the man seen fleeing the apartment was Guede. That sighting fixed the time of the murder at or about slightly after 11pm.

The reader is now referred to the testimony of Antonio Curatolo, who the prosecution called to establish that Knox and Sollecito were seen in the area of the piazzetta between 9.30pm and 11pm the same evening, but not Guede it must be added. If Curatolo's identification evidence was correct, Knox and Sollecito must have met Guede in and around 11pm, almost immediately agreed to go to Via della Pergola 7 (for what reason one is left to speculate but to force Meredith to submit to sex is likely), entered the house, located Meredith and shortly thereafter carried out a sexual and murderous attack, thereafter fleeing in separate directions. The reader is left to determine whether this scenario or hypothesis sounds feasible. One might add that the hypothesis propounded by the Massei Court, in order to explain the role of Knox and Sollecito in Via della Pergola 7, when Meredith was murdered, although similar, is subtly different. One can observe that by the time the case reached the Supreme Court (Galati) and the Court of Assizes of Appeal for the second time (Nencini), the motivations for the attack, according to the prosecution and the Judges, was markedly different!

Micheli's analysis thereafter conveniently sidestepped a number of crucial questions. These issues can be summarised as follows: (1) Guede's motivations and character (2) Why was Guede at Via della Pergola 7? (3) How did Guede gain entry to the house? (4) The absence of a [primary] murder weapon. (5) The preponderance of forensic evidence placing Guede in Meredith's bedroom at the time of the attack. (6) The paucity of forensic evidence placing Knox and Sollecito in Meredith's bedroom (the "killing zone"). (7) The rejection of the theory that Guede acted alone (the "Lone Wolf" theory). (8) The staging of a breaking and entering; Micheli's conclusion that Guede was not involved in the simulation of the burglary; and, the acquittal of Guede for theft of items from the premises. (9) Conclusions.

Dealing with the above subheadings *seriatim*

(1) Guede's motivations and character

As we shall see later the characters and mores of Knox and Sollecito came under the spotlight particularly at their trial (Massei Report). As was deposed to earlier (see: Background) Knox and Sollecito were not pre-disposed to more serious acts of criminality such as breaking and entering or handling stolen goods. Instead, the prosecution made great play on their smoking of hashish or marijuana and its likely effects on them. To level the playing field it is only right that the antecedents of Guede and his disposition to criminality are outlined.

Sometime between October 13 and 14, 2007, there was a break-in at the law offices of Brocchi and Palazzoli in Perugia. A window was smashed with a large stone (my emphasis) and a computer, cell phone, USB keys and a printer were taken. On October 29, a colleague telephoned Paolo Brocchi to tell him that a man had come into the same office to say that he had legitimately purchased some goods in Milan which had earlier been reported as stolen from those premises. That person was later identified as Guede (source: Massei Report).

On the morning of October 27, 2007, the principal of a nursery school in Milan found a stranger carrying a backpack coming out of her office. The stranger was apprehended immediately by the police and the person was identified as Guede. There were no signs of a break-in (my emphasis) and on a cursory check the only item missing was a small amount of change (money). However, on a search of Guede's backpack the police found a computer, a 40cm kitchen knife (taken from the nursery school kitchen), a bunch of keys, a small gold watch (female) and a small hammer (often used on public service vehicles [buses] to break windows). The computer was later identified as the one stolen from the law offices in Perugia. As part of his stock in trade, Guede put forward a plausible explanation for his presence at the nursery school. He was subsequently interviewed and released by the police. A charge of possession of stolen goods was eventually brought in February 2008, by which time Guede was in custody for Meredith Kercher's murder (source: Massei Report).

There is a further reference in the Massei Report to another incident involving a burglary of a dwelling in which the householder confronted the intruder who allegedly pulled out a jack-knife and threatened him. The householder only identified Guede when he saw his picture in a newspaper, after his apprehension for the murder of Meredith Kercher. The householder's identification involved a declaration that "I think it might be him". Given the fact that the date of the alleged offence was never specified, plus inherent weaknesses in the identification evidence, it would be patently unfair to rely on this incident as being credited to Guede. Nevertheless, one might say, the evidence is equally as convincing as that put forward by witnesses at Knox and Sollecito's trial *infra eg*, Curatolo and Quintavalle.

Unlike Knox and Sollecito, however, one can discern that Guede was predisposed to criminality such as burglary and theft, including the appropriation of monies, in order to fund an itinerant lifestyle. A signature of his criminality was that he apparently had no qualms about carrying bladed articles given that he was apprehended in Milan having appropriated a large kitchen knife. He was, according to friends and acquaintances, prone to excess having seen him drunk. They also claimed that he had made use of drugs although those claims were hearsay and unsubstantiated (see in particular the testimony of Vykintas Rakauaskas, Rebecca Savoy, Benedik Avital, Stefano Bonassi and Zafer Salim). And finally, a witness, Abukar Mohamed Barrow, interrogated on 11 December 2007 (and whose testimony was acquired with the

consensus of the parties at the Massei trial) stated that Rudy Guede, especially when he was drunk or under the influence of drugs (my emphasis), bothered individuals, especially young women. He blocked them off physically and tried to kiss them.

(2) Why was Guede present at Via della Pergola?

We already know that Guede was acquainted with the four young men who lived in the downstairs flat. At the material time all four were away during a holiday festival but Guede may not have known that. It is suggestive that he visited Via della Pergola the same evening only to discover the apartment block was empty aside from the upstairs flat, Meredith having returned at roughly 9pm.

(3) How did Guede gain entry to the house?

Apart from the single hypothesis put forward by Micheli/Massei ie, Knox opened the door and let Guede walk in, there are several other rational explanations outlined immediately below. Micheli/Massei never conjectured as to an alternate means of entry because, despite his pre-trial declarations ante, it rejected the proposition that Guede was acting alone.

We know that Guede was interested in Knox and seeing that the downstairs apartment was empty he turned his attention to the upstairs suite. A quick scan of the premises would have told him that in all likelihood only one occupant was at home. Guede may even have mistakenly concluded that the person at home was Knox bearing in mind his attraction to her. It mattered not as by now, if the opportunity presented itself, Guede was pre-disposed towards committing a sexual act with a woman and, as it turned out, being armed with a bladed article, to force the female occupant if she resisted. It should be stressed here that the motivation for Guede's presence was not to break-in and/or steal, but sexual.

There are many different ways Guede could have gained entry the most plausible being: (i) by picking the lock. Remember, we have just seen supra, that he was able to carry out a burglary leaving no signs of a physical breaking and entering. Furthermore, in the section Background, reference was made to the fragile nature of the front door mechanism; (ii) by knocking on the door and tricking his way into the apartment. Meredith was acquainted with Guede. It might be that on gaining entry he immediately brandished the knife causing Meredith to scream out. The reader is referred to Guede's Skyped conversation with De Benedetti. According to Guede, the attack commenced at the entrance to the cottage. Of course this description must be treated with care as none of Guede's pre-trial declarations were confirmed on oath, at his trial (Micheli) or the later trial of Knox and Sollecito (Massei).

The narrative recited by Guede could account for the reason why two neighbours clearly heard a woman scream out, not because the sound carried from Meredith's bedroom, as was first thought, but because it travelled out of the front door. As an aide-memoire, the two witnesses, on the prosecution case, apparently heard the scream emanate from Meredith's bedroom ie, from the inside of Via della Pergola 7 (whose windows were also closed) to neighbouring premises roughly some 70 metres away. The same windows (in one case) were double glazed and in both cases were closed. The prosecution and ultimately the Court's hypothesis appears a tad improbable (iii) the alternative and most plausible hypothesis, supported by the genetic traces left at the crime scene, was that Guede duped Meredith (or Knox, if present) into allowing him to

enter the cottage for the purpose of using a toilet. This would explain the faeces later detected in the large bathroom at Via della Pergola 7. If one looks closely at Guede's pre-trial declarations, which as we shall see, the various Courts placed great store or emphasis on their content, Guede admitted that Meredith let him into the cottage. He also admitted to using the toilet in the large bathroom; such usage was confirmed by his genetic traces which were later found in the toilet.

(4) The absence of a primary murder weapon

The prosecution case was that the kitchen knife (Exhibit 36) seized in the home of Raffaele Sollecito was the weapon, or more precisely, one of the weapons used to murder Meredith Kercher. The Micheli Court agreed with that conclusion *supra*, making reference to the "...emergence of the knife (note the reference to the singular tense), used in the first instance to threaten" and then, by implication, to inflict the fatal wounds. As we have seen, the Micheli Court neglected to address the seminal issue or, took the easy way out, by declining to make a finding as to who struck the fatal blow or blows and with what weapon.

It is submitted there was no objective element signifying that the kitchen knife was in fact used to commit the murder. In the first place, the said knife was not compatible with other wounds present on Meredith Kercher's body, clearly inflicted by a smaller knife, leading to the misconceived hypothesis that several knives were used coupled with the presence of several attackers (the forbidden reasoning). Crucially, on the bed sheet in the victim's room, a bloody print was found which corresponded to a smaller knife. The writer will develop these arguments when evaluating the findings of the Massei Report *infra*.

One final observation: Knox and Sollecito were charged, *inter alia*, with carrying without justified reason, a large knife (the "Double DNA Knife" or Exhibit 36). The prosecution neglected to charge Guede with the carrying of a knife. This decision presupposed that the knife seized from Sollecito's house was the only knife which, according to biological traces left on the knife and on forensic analysis, had been used during the attack upon Meredith Kercher. But as we shall see, not all the wounds inflicted were compatible with forensic analyses of the said knife and the Massei Court later deduced that two knives had been used to stab Meredith Kercher. But Micheli declined to draw an inference that Guede was carrying a knife. That did not make sense from the context *ie*, it was Guede who initiated the attack and digitally raped Meredith. The use of a knife explained how Guede was able to subdue and remove clothing from Meredith's body.

(5) Forensic evidence against Guede

To recapitulate: there was a welter of forensic evidence placing Guede both in the house and, unlike Knox and Sollecito, in the bedroom of Meredith (the killing zone), where the digital rape and murder took place. This is suggestive that he was acting alone or at the very least, the prime mover in the attack. It is also highly evocative that he stabbed Meredith Kercher including the fatal blow which caused her death.

(6) Knox and Sollecito's presence in the killing zone (Meredith's bedroom)

In addition to the weapon or weapons used to subdue and murder Meredith, it cannot be overlooked that the sole evidence physically placing Knox and Sollecito in Meredith's bedroom was Sollecito's DNA on Meredith's bra clasp and the biological evidence of Knox and Meredith

Kercher on the kitchen knife (Exhibit 36) recovered from Sollecito's house. For reasons which will become clearer later (ie, when evaluating the Massei Court's findings) these two pieces of evidence were potentially unreliable and in any event did not prove per se, that Knox and Sollecito were present when Meredith Kercher was murdered (the same goes for the bloody footprint on the sky blue bathmat in the small bathroom - more on this aspect of the case later). Another significant feature of the crime was that Guede, when fleeing the jurisdiction, had time to dispose of incriminating articles such as his Nike shoes and no doubt the remainder of the attire he was wearing that night (his clothing must have been saturated in Meredith's blood). Knox and Sollecito did not flee from Perugia.

This observation raises the conundrum: If the prosecution were right, and the latter were implicated in the digital rape and murder of Meredith Kercher, what happened to the clothing they were wearing that night? Surely there would have been Meredith's biological or genetic traces upon their attire? This enigma will be revisited a little later when evaluating the evidence against Knox and Sollecito. It also featured in the subsequent appeal against their convictions (the Hellmann Report).

(7) Was Guede acting alone? – the Lone Wolf theory

Early on in the investigation, the prosecution rejected the notion that Guede was unaccompanied by others (described as the "Lone Wolf theory"). The Micheli Report also rejected the same theory overlooking that its primary function was to decide whether Guede was guilty or not guilty. Instead, the Court was sucked into the question of Guede's participation and culpability thereby examining in detail the evidence levelled against Knox and Sollecito leading ultimately to a flawed hypothesis. This supports the writer's contention made earlier, that the holding of separate trials for co-accused was wrong in principle and in law because the prosecution were alleging that all three defendants committed the crime acting in concert.

(8) The staging of the burglary and theft of items

It is accepted that the break-in was staged. The evidence on this point is almost incontrovertible. What is not clear, however, is how the allegation initially came to be levelled solely against Knox and Sollecito. Suffice it to say that the simulation was designed to mislead investigators as to the original means of entry and by whom. As a neutral point it could have been committed by Guede alone, Knox and Sollecito alone, or more likely, if they were acting in concert, by all three defendants. Guede could not automatically be excluded from the equation when one considers the modus operandi for the break-in at the law offices in Perugia during October 13-14, 2007.

As far as the writer can discern, the only items taken from the house were the mobile phones and house keys of Meredith Kercher (the author will deal with the issue of stolen monies and credit cards later). Note: the house keys were never made the subject of a charge either against Guede or later Knox and Sollecito. In the scheme of things, a theft charge was the least of Guede's troubles or Knox and Sollecito for that matter. But the court held there was no evidence that Guede took any items, not belonging to him, from the house. The Micheli Court dismissed the notion that it was Guede who took the mobile phones when fleeing from Via della Pergola 7 and later abandoned them in Mrs Lana's garden. And yet it is significant that Guede's DNA (alone) was found on Meredith's purse, which was also in the room she occupied. If monies and credit cards belonging to Meredith were taken after the murder (300 euros and two credit cards was

specified in the charge), it was a reasonable inference that Guede appropriated those items, along with Meredith's mobile phones. To use the vernacular, Guede had "form" for purloining items including cash.

(9) Conclusions

On the totality of the evidence adduced at Guede's trial, the Micheli Court neglected to draw reasonable inferences as to the role played by Guede. In that respect the Court fell into error and added credence to what has already been dubbed "the forbidden reasoning".

The evidence proved that Guede had a motive to rape and murder, he had the opportunity (presence) and he had the means (possession of a bladed article that was never recovered - in all probability the sole or primary murder weapon). In fulfilling its secondary role, ie, to determine whether there was sufficient evidence for Knox and Sollecito to stand trial (and on this point the author has no doubts), more by omission than by a positive statement, the Micheli Court unwittingly laid the foundation stone for Knox and Sollecito's trial ie, that more than one person must have participated in the attack and as such they were suspected to be the chief architects in the digital rape and murder of Meredith Kercher, despite the absence of a credible motive.

Given the lies or half-truths told by Guede in his pre-trial declarations, coupled with his failure to give evidence, it was open to Micheli to draw reasonable inferences in accordance with the rules of evidence. For example, Guede's explanation that Meredith and he had engaged in consensual foreplay. Forensic examination of the vaginal area of the victim indicated that the digital penetration of Meredith was forced and thus non-consensual.

Furthermore, it was reasonable to infer that Guede was the prime mover in the digital rape and murder of Meredith Kercher; that he, Guede, was carrying a knife, which he initially brandished to help subdue the victim. The same knife was used by him to stab Meredith which led to or contributed to her death. That very same knife left an outline on a bed sheet in the killing zone (Meredith's bedroom). Remember, it was relatively easy for Guede to have later disposed of the knife. For some reason, Micheli was not prepared to draw that inference and yet, as we shall see shortly, at the trial of Knox and Sollecito, the Massei court was prepared to infer that Sollecito had disposed of a pocket knife after the murder. As a fallback position the court could then have gone on to rule, in the light of the evidence adduced at Guede's trial, the presence and participation of others could not be ruled out ie, Knox and Sollecito.

Furthermore, the court could have declared that even if it was in error ie, as to the identity of the person or persons who had stabbed Meredith Kercher, the totality of the evidence, proved beyond all reasonable doubt, Guede was complicit.

In conclusion, Micheli could not rule out that Guede had been responsible for or was a party to the simulation of a break-in at Via della Pergola 7; that he alone, or with others, appropriated monies (amount unknown) and two credit cards; that he alone or in concert with others appropriated and disposed of the mobile phones belonging to Meredith Kercher in Mrs Lana's garden; that he fled the jurisdiction which enabled him to dispose of, inter alia, incriminating articles such as a pair of Nike shoes, clothing and a bladed article, the latter having been used to subdue and stab Meredith Kercher.

And finally, having regard to the above findings, despite Guede's agreement to the holding of a fast-track trial and, any potential discount in sentence, the relevant article of the Italian Penal Code fairly reflected a term of imprisonment totalling 30 years.

That concludes the author's detailed examination of the trial of Guede. A summary of the author's conclusions regarding all three accused, together with the outcome of their appeal hearings is to be found towards the end of this series. (Summation and Conclusions).

(To be continued next week).

Author details

F.G. Davies BA (Hons), Barrister

The Brutal Killing of Meredith Kercher – Part 5

The trial of Amanda Marie Knox and Raffaele Sollecito and the trial Court's findings (the Massei Report) – the forbidden reasoning takes hold

The Massei trial started on January 16, 2009 and ended on December 5, 2009. Both accused faced charges of being complicit in the digital rape and murder of Meredith Kercher. A full summary of the charges is outlined and discussed later in this section.

The following is a summary of the key findings made by the Court.

From the facts the Court declared it was possible to reconstruct the events during which, on the night of November 1, 2007, Meredith Kercher was murdered in her own home on Via della Pergola 7. These facts also provided proof of the presence of Amanda Knox and of Raffaele Sollecito in the house on Via della Pergola when Meredith was killed and clarified the role that they played, outlining a framework of evidence that leads to a declaratory judgment of guilt with regard to the crimes imputed to them.

Amanda Knox declared that from the afternoon of November 1, 2007 until the late morning of the following day (10.30-11.00 am) she did not leave the house on Corso Garibaldi where she was staying with Raffaele Sollecito. He, in his turn, as was recalled by Robyn Carmel Butterworth, stated that he had spent the night together with Amanda Knox.

Not one element, however, confirmed their alibi i.e. that they were not to be found, late in the evening of November 1, in the house at Via della Pergola. No phone calls, no meetings, no interactions on the computer, nor anything else allows it to be believed that in actual fact Knox and Sollecito, having dined at the apartment on Corso Garibaldi and after the last interaction with Sollecito's computer at 9.12 pm remained there until, at the earliest, 10.30am the following morning. On the contrary, their uninterrupted presence in that apartment from the evening of November 1, to the morning of the November 2, according to Knox, not being in any way confirmed, was refuted and contradicted on various points.

Antonio Curatolo, whose declarations have already been established to be reliable, declared that he had noted both the one and the other, (whom he already knew, albeit only by sight) at about 9.30pm to 10pm on the November 1 in the little square [piazzetta] in front of the University for Foreigners.

The uninterrupted sleep which seemingly continued until 10.30am on November 2, 2007 was unusual and in contrast to the normal habits of Amanda Knox, whom her flat-mates declared as being an early riser. The late sleep-in was also incompatible with the planned trip to Gubbio, since Raffaele Sollecito's father called him at 9.24am to ascertain if they had set off. The late start is also contradicted by the witness Quintavalle, who declared that he had seen Amanda in his own store at 7.45am and is further contradicted by the interaction on Sollecito's computer which occurred at 5.32am and continued for about half an hour. In addition, the text message which Sollecito's father sent to his son at 11.14 pm on November 1, 2007, received at 6.02am on the following day, leads to the ineluctable conclusion that the latter was awake at that time, having switched on his mobile phone shortly before 6am and thus was able to receive the text message sent to him late the previous evening.

Amanda Knox and Sollecito Raffaele therefore did not spend the evening and the night of November 1 in the house on Corso Garibaldi uninterrupted and without going out until 10.30am the next morning. The declarations made on this point by Amanda Knox and which would have constituted, if they had been true, an alibi for both defendants, were shown to be false, and were aimed therefore at avoiding an investigation into the truth and are therefore considered to be evidence against them (eg, Cass. 15.12.2005 No. 5060).

With regard to Raffaele Sollecito, he did not give any statements other than spontaneous declarations, and none of the parties requested him to be questioned. It should nonetheless be recalled that Robyn Carmel Butterworth (one of Meredith's English girlfriends) declared that, while they were at Police Headquarters on the afternoon of November 2, Raffaele said that Amanda was with him on the night between November 1 and 2. For the evening of November 1, 2007, both Amanda and Raffaele had planned to go out: the one to go to work in Patrick Lumumba's pub located in Via Alessi and the other to do a favour for a young woman, Jovana Popovic.

Almost at the same time, around 8pm, both these appointments were cancelled and both Amanda and Raffaele found themselves without commitments. Once dinner had been finished at about 8.40pm (relying on the testimony of Francesco Sollecito) and the last operation of the day had been made on the computer at 9.10pm, Knox and Sollecito were therefore able to leave the house, completely free of commitments. A few minutes later they were to be found in the little square [piazzetta] in front of the University for Foreigners, where the basketball court is; a few metres from the news kiosk and from the bench which, at about 9.30pm or 10pm, was occupied by Antonio Curatolo. This witness already knew both defendants since he had come across them on previous occasions. On this night he noticed their presence at various times, when he broke off from reading his magazine. He saw them several times on that night in the square where there were other young people. All of this took place in the time-span between 9.30pm and 10pm and about 11pm. It should also be recalled that Curatolo had declared that he had seen Raffaele Sollecito go toward the railing which is to be found in that square and look down below.

The square where the defendants were was only a few metres distant from the house at Via della Pergola 7 and the little road situated at the bottom of this square would have allowed the house on Via della Pergola to be reached in a minute or slightly more, without passing in front of the bench occupied by Curatolo who testified that, when he left his bench at about 11pm, Knox and Sollecito were no longer there.

The piazzetta is just a few metres distant from the house on Via della Pergola which Rudy Guede entered that evening, and the itinerary which he took in that house has already been demonstrated and the biological traces which he left in Meredith's bedroom and on her body has also been outlined.

On the entry door, furthermore, no signs of breaking and entering or of forcing were found. The window in Filomena Romanelli's room had a broken pane but as demonstrated, Rudy Guede did not enter the house on Via della Pergola 7 through that window. The breaking of the window and the disorder which had been created in Filomena Romanelli's room formed part of the staging carried out by whoever allowed Rudy Guede to enter the house, and was done in order to divert any suspicion from whoever let him in.

Furthermore, the entry and staging could only have been by a person who had access to a key. The key to the apartment, as has already been noted, was available to the four young women who lived there. It does not seem likely that Meredith would have opened the door to Rudy Guede; for that matter, if it had been Meredith who opened the door of the apartment, there would be no explanation – as has already been observed – for the simulated burglary carried out in Romanelli's room.

With regard to the other three flatmates, it was not disputed that Laura Mezzetti was at Montefiascone at her family home while Filomena Romanelli, although in Perugia, was staying at other premises with her boyfriend Marco Zaroli. The fourth flatmate, Amanda Knox, was with Raffaele Sollecito. Suddenly free from any commitments, they were spotted together in the square in front of the University for Foreigners, together until about 11pm, no more than a few steps from Via della Pergola.

All of the circumstances just noted (Knox has access to the key; the entry door is not forced; the broken window is staged in order to mislead the investigations; the other flatmates being elsewhere; Knox and Sollecito until about 11pm were just a few steps away from the house on Via della Pergola, with no other commitments), constitute a framework of evidence on the strength of which it must be concluded that it was Knox, who accompanied by Sollecito, allowed Rudy Guede to enter the house on Via della Pergola 7, and that this happened at around 11pm, give or take a few minutes. Knox moreover, knew Rudy Guede and he knew Knox to whom he was attracted. Guede, furthermore, knew the house on Via della Pergola since he had already been there, whether by invitation or without invitation. (It was considered that the interest that Guede showed for Knox demonstrates, in fact, an undeniable appeal that Knox must have wielded towards Guede.)

It cannot be known whether Guede entered the house at the same time as Knox and Sollecito or several minutes afterwards, when the accused were already there, even if only for a few minutes. It is not possible to answer such a question since no one offered any indications on this point and no one saw the three young people enter the house.

This Court considers the first hypothesis most likely in consideration of the fact that Knox and Sollecito were in the square in front of the University, a place which Guede often frequented. Therefore, it is probable that Guede may have been in the area of the piazzetta on the same evening and, seeing Knox, stopped to speak with her, before all three went together to the house on Via della Pergola. The other hypothesis (Guede arriving at the house on his own) seems less likely because while it is true that he had previously gone to the said house without having been invited by anyone, this had happened with regard to the apartment occupied by the young men with whom Rudy was more familiar and who were not there that evening, having returned to spend the festive period in their respective home towns, all in the Marches Region.

Raffaele Sollecito's defence team placed great stress on the fact that Sollecito did not know Guede, and did so in order to rule out his complicity of sexual assault and homicide. To uphold the thesis of non-acquaintance they pointed to the unreliability of the witnesses Gioffredi and Kokomani. The Court considers reasonable what they highlighted on this point: the activity on Raffaele Sollecito's computer makes an encounter with him in the time-span indicated by Gioffredi scarcely plausible; also the red coat which he said Knox was wearing at the material time; a coat of which there was no other evidence, means the Court must reject his evidence.

The inconsistencies in Kokomani's statements are even more obvious and for various reasons the Court rejects his evidence.

But, even if it is accepted that Guede and Sollecito did not know each other, the lack of acquaintance would not rule out complicity in the hypothesized crimes. In fact, it must be highlighted that Guede knew Knox. This allowed the former to approach and greet Knox who, being with Raffaele, could quite easily have acted as an intermediary between the two and enabled an immediate and easy acquaintanceship of each other. After all, it was in this way that Knox had met Guede in the downstairs apartment at Via della Pergola.

With regard to the complicity of persons in the crime, it must be recalled that the desire to participate together does not necessarily presuppose a prior agreement and can manifest itself without distinction either as prior arrangement or as instant understanding or as simple compliance in the deeds of another who might even remain unaware [unacquainted] (cf. Cassation 15.5.2009 No. 25894 and, therein recalled: Cassation Section 11 22.11.2000, Sormani).

Therefore, even if Guede and Sollecito did not know each other until November 1, 2007 the existence of complicity in the crime cannot be excluded, since the acquaintance could have been formed that very evening through Amanda Knox who knew both persons. Therefore, Knox and Sollecito, most likely accompanied by Guede, arrived in that Via della Pergola apartment around 11pm. Meredith Kercher was already in the apartment, having returned around 9pm, having spent the afternoon and the evening with friends.

It is not possible to know why Guede also came to be in the house on Via della Pergola; perhaps to spend the night as had happened on another occasion although in the downstairs apartment; or perhaps to hang out with Knox and Sollecito for a while and to use the bathroom, and that did indeed happen, as the forensic evidence demonstrated. Maybe even to say hello to the young men in the downstairs apartment, with whom he had a friendly relationship. It must nonetheless be considered, given the relationship and his regular visits to the downstairs flat, that having arrived at the house on Via della Pergola, Guede went to check for the presence of any of the young men from downstairs, and finding that none of them were home, most likely shared that information with Knox and Sollecito.

It was not possible, however, to ask Guede any questions or receive any reply from him. Guede, who had been asked to testify, refused to reply and both Knox and Sollecito's defence teams did not consent to him testifying.

The recorded fragment of a conversation produced by Raffaele Sollecito's defence team and, which apparently took place with a certain person called De Benedetti, gives evidence of the acquaintance between Knox and Meredith and the presence of the former in the house when Meredith was killed. During that conversation mention is made of the blood and of the glass in Romanelli's room which Rudy claims not having seen that night. These references however are vague and, lacking in confirmation and details, [and] seem to be of little use. There remains, however, the fact that Guede, around 11pm on 1 November 2007, was in the house on Via della Pergola 7 and was there because Knox and Sollecito, closely united and together, had allowed him to enter. Rudy goes to the bathroom, as he had on previous occasions, although in the [large] downstairs bathroom and, just like in the previous occasions he does not flush the toilet, leaving

behind traces of his use of the bathroom (faeces and toilet paper).

The presence of Meredith in the house must have been immediately noticed. Meredith usually left her bedroom door open (as the evidence disclosed) unless she was going to be absent for a certain amount of time. That happened only once, when she returned to England for a few days. At that hour Meredith must still have been awake and in her own room, most likely reading a book which her friend had given her that very day, or busy with the homework which her own University studies called for. The forensic evidence shows that Meredith was still dressed and awake and was in an entirely normal condition having consumed neither alcohol nor drugs. Having regard to the forensic evidence and in particular the blood stains it can be deduced that Meredith was not stretched out on her own bed.

Knox and Sollecito, having arrived at the house slightly after 11pm, they went into Amanda's bedroom with the intention of being intimate together. As previous testimony had shown, Knox and Sollecito, when together, were very affectionate towards each other. Even in the Police Headquarters, during the afternoon of 2 November, the behaviour of the two young people was evident: they were very close to each other, caressed and kissed each other. Conduct which was scarcely appropriate in that environment and shortly after the discovery of Meredith Kercher's body; and yet it carried on, indicative, therefore, of the strong attraction which existed between the two even while waiting to be questioned about Meredith's murder.

It is therefore probable that Guede, coming out of the bathroom, let himself be carried away by a situation that he perceived as being charged with sexual stimuli and, giving in to his sexual urges, sought to satisfy them by going into Meredith's room, where she was alone with the door at least partly open.

As for Meredith, none of the people she frequented with and in whom she confided (her relatives and her English girlfriends) testified that she made no mention of Guede, for whom, therefore, she must not have felt any interest. Having regard to the totality of the circumstances, Meredith could only have made an outright refusal to Guede's advances sustained by a good physique and strong character.

That Guede then yielded to his lust, and tried to find sexual satisfaction with Meredith, is revealed by how her body was found: wearing only a little t-shirt, pushed up to expose her breasts and for the rest completely nude, and by the results of the vaginal swab which showed biological traces of Rudy. There can be no doubt that the part of the girl's body which Rudy had lingered over to the extent that he left his biological traces on her and even caused the bruises which have already been mentioned; having stripped her against her wishes and with the objective of sexual satisfaction.

It is not possible to know if Guede went to Meredith's room on his own initiative, almost subjugated by the situation which he interpreted in erotic terms (the two young lovers in their room and Meredith who was on her own in the room right next to it) or, whether he went to Meredith's room at the urging of Knox and/or Sollecito. The Court is inclined towards the first hypothesis because it cannot envisage the motive for such an invitation on the part of Amanda Knox and/or Raffaele Sollecito. Besides, Guede did not seem to need any encouragement. The witness, Abukar Mohamed Barrow, who was interrogated on December 11, 2007, (and whose testimony was acquired with the consensus of the parties) testified that Rudy Guede, especially

when he was drunk or under the influence of drugs, bothered individuals, especially young women. He blocked them off physically and tried to kiss them.

Nevertheless, having entered Meredith's room, the young woman's reaction and refusal must have been heard by Knox and Sollecito who, in fact, intervened, as the progression of events and their epilogue show, backing up Guede, whom they had brought into the house, and becoming themselves, together with Guede, Meredith's aggressors and ultimately her murderers.

Why, then, two young people, strongly interested in each other, with intellectual and cultural curiosity, Sollecito on the eve of his graduation, resolved to participate in an action aimed at forcing the will of Meredith, to the point of causing her death, falls within the continual exercise of choice among the range of possibilities, this Court can only register the choice of extreme evil which was put into practice. It can be hypothesized that this choice of evil began with the consumption of drugs which had happened earlier that evening, as Knox testified.

On the effects of drugs of the type used by Knox and Sollecito (hashish and marijuana), the Court heard the testimony of Professor Tagliatela who, while underlining the great variability in its effects on individuals, specified that the use of such substances has a negative influence on the cognitive capacity and causes alterations of perception and the capacity to comprehend a situation. In his turn, Professor Cingolani, who together with Professors Umani Ronchi and Aprile, also dealt with the toxicological aspect of taking drugs. Responding to the question whether the use of drugs lowers a person's inhibitions Professor Cingolani replied: "That is beyond doubt". Finally, while correlating that effect to the habits of the person taking and imbibing hashish or marijuana, Raffaele Sollecito's friends had confirmed that such substances had the effect of causing relaxation and/or stupor.

Thus, it may be deduced that, accustomed to the consumption of drugs and the effects of the latter, Amanda Knox and Raffaele Sollecito participated actively in Guede's criminal acts aimed at overcoming Meredith's resistance, subjugating her will and thus allowing Guede to act out his lustful impulses. This is considered to have happened because, for those people who did not disdain the use of drugs (Knox stated that on that evening, before making love, they had consumed drugs), watching films and reading comic books in which sexuality is accompanied by violence and by situations of fear, disregarding the concept of sexuality as an encounter of two persons moved by reciprocal and free emotion (see the comic books seized from Raffaele Sollecito and the statements on the viewing of films which had drawn the attention of the tutors of the ONAOSI College attended by Raffaele Sollecito). The prospect of helping Guede in his goal of subduing Meredith in order to sexually abuse her may have seemed to be an exciting stimulant which, although unexpected, had to be tried.

A motive, therefore, of an erotic, sexually violent nature which, arising from the evil choice made by Guede, found active collaboration from Amanda Knox and Raffaele Sollecito. That such participation, active and violent, also involved the current defendants in combination with Rudy can be derived from what has been observed in earlier discussion of the wounds suffered by Meredith, of the outcome of the genetic investigations and, of the bare footprints found in various parts of Via della Pergola 7.

The Massei Court, having formulated and announced its reasons, convicted Knox and Sollecito of all the offences which they faced (with the exception of the allegation of stealing 300 euros

and two credit cards from Meredith Kercher). Knox was sentenced to a total of 26 years' imprisonment; Sollecito was sentenced to a total of 25 years' imprisonment.

Analysis and Evaluation – the Forbidden Reasoning

The trial Court's findings for convenience have been divided into several component parts: (1) Witness testimony. (2) The accounts, if any, of the two accused contrasted with the account of Guede. (3) Inferences to be drawn from inconsistencies in the accounts of the accused. (4) Biological and forensic traces. (5) The charges and the evidence adduced to prove those charges. (6) Whether the alibi of Knox and Sollecito was a lie and corroborated the prosecution case (7) The Court's hypothesis as to how the digital rape and murder of Meredith Kercher occurred. The author will deal with each of these sub-headings seriatim.

1. Witness testimony

One should always be cautious about criticizing a trial court's assessment as to the credibility and weight to be accorded to witness testimony, because an appellate court, or in this case the author, does not have the benefit of context e.g. observation of the demeanour of a witness when under oath. However, it still behoves a trial court to carefully examine latent or material inconsistencies in the account of a witness and to properly weigh his or her evidence.

(a) Antonio Curatolo

The presence of Knox and Sollecito in the piazzetta, just off Via della Pergola between the hours of 9.30pm and 11pm on November 1, 2007, was reported only by the one witness Curatolo. Despite the Massei Court's finding that Guede probably met Knox and Sollecito in the area of the piazzetta, it is odd that Curatolo makes no mention of seeing them together. Since Guede was a Black man, he would have been more distinctive for identification or recognition purposes. It is suggestive that the Massei Court accepted Curatolo's evidence without proper evaluation or critical examination.

At no stage after making a statement to the authorities was Curatolo asked to identify/recognize the accused by way of some form of identification parade. It is significant that the first time Curatolo was asked formally to pick-out the accused was in court. Dock identifications are notoriously unreliable per se and in the case of Knox and Sollecito it was a near certainty that Curatolo would point to the two accused – bearing in mind their pictures had featured in the local and national press for some considerable time. English law generally disapproves of dock identifications and the reader is referred to case law beginning with *R. v. Cartwright* (1914) 10 Cr App R 219.

Although Sollecito had resided in Perugia on and off for several years, Knox had only resided there for the best part of six to eight weeks and had only been going out with Sollecito for eight days. Curatolo's claim that he had seen the two accused together previously appears suspect. He certainly could not have seen them frequently in each other's company. As will be established later, they were not in the piazzetta the previous day ie, October 31.

The evidence also disclosed that many students frequented Piazza Grimana in the relevant time period and the chances of a convincing witness such as Curatolo being mistaken were all too

apparent. These dangers have been highlighted time and again by English jurisprudential practice culminating in *R. v. Turnbull* [1976] 3 All ER 549. This explains why in England and Wales, the Police and Criminal Evidence Act 1984 together with the Codes of Practice, place fairly strict obligations on the police regarding eg, the recognition and identification of suspects; even where some form of identification procedure, at first blush, appears to serve no useful purpose (such as where the witness declares he knows the person concerned): see *R. v. Forbes* [2001] 1 AC 473, HL.

The trial Court also neglected to examine more closely the date on which Curatolo purported to see Knox and Sollecito in the piazzetta. It is significant that in his statement he said there were "...a lot of masks, young people that were joking about, it was a holiday period..." Even if Curatolo had become confused as to the date, with so many young people being present in that location the chances of a mistaken identification was high. It is also noteworthy that when asked to describe what the two defendants were wearing the best description Curatolo could muster was that both were wearing "dark clothes".

In conclusion, it is submitted that Curatolo's testimony was unreliable and probably not true. The Massei Report's finding therefore that Knox and Sollecito were seen in the area of the piazzetta between 9.30pm and 11pm on November 1, 2007 was not supported by credible, independent and accurate eye-witness testimony. The author would also pose the following question: Why did the two accused go to the piazzetta for such a protracted period? In the context of their original commitments that evening followed by Knox's sworn testimony that both were at Corso Garibaldi, the presence of Knox and Sollecito, in Piazza Grimana did not make sense. It is also an amazing coincidence that despite the length of time (9.30pm-11pm inclusive), no other person came forward to say they had seen Knox or Sollecito in the piazzetta that evening. Consistent with their alibi, the answer is that they were not seen in the piazzetta as claimed by the witness Curatolo.

(b) Fabio Gioffredi

The trial Court (Massei Report) accepted the contention put forward by the defence teams that Gioffredi's evidence was unreliable. The witness described Knox as wearing a red coat at the time. But there was no evidence that Knox ever owned a red coat. Further, the activity on Sollecito's computer made an encounter with him in the time-span scarcely plausible and the circumstances in which he saw Guede, accompanied by Sollecito, Kercher and Knox was just not credible and incapable of belief.

(c) Hekuran Kokomani

The Massei Report expressed even greater misgivings about the testimony of Hekuran Kokomani. The inconsistencies in his statements were even more glaring and in comity with the trial Court, one can conclude that his evidence was totally unreliable and patently not true.

(d) Nara Capezzali

Mrs Capezzali was clearly an honest witness who was doing her best to recount what she heard on the night of November 1, 2007. It would have been a tactical blunder and ethically wrong to have attacked her credibility. It can be inferred therefore that she heard a woman (in all

likelihood Meredith Kercher) scream out. However, this did not mean that her testimony could not have undergone a more careful and sensitive scrutiny.

In the writer's experience, witnesses are often hard-pushed to be precise about the exact time of an incident. Mrs Capezzali said she had gone to bed about 9.30pm and based on previous experience as to the effects of medication she was taking, she often woke up in and around 11.30pm. Nevertheless, the Court should have been careful not to have placed undue weight on the precise time she heard a woman scream out.

Another point worthy of clarification was the exact distance between Mrs Capezzali's dining room window and the entrance door to Via della Pergola 7. The writer was only able to find two such references, one being 70 metres, the other being 70 feet. This has been assumed that the 70 metre estimate is a more precise and reasonable distance. It has also been inferred that the weather was clear on that fateful evening and little breeze or wind to distort the sound of a scream emanating from Via della Pergola 7. Account must also be taken of the fact that the windows of both premises, as far as the writer can discern, were closed and there is a reference to Mrs Capezzali's windows being double glazed.

The fact that Mrs Capezzali heard a scream is beyond peradventure but it would have been useful to explore whether the "heart-rending scream" could have permeated from the inside of Meredith Kercher's bedroom (with the bedroom door fully open or partially open) as far as Mrs Capezzali's dining room. The Court should have considered whether the scream might have issued from elsewhere e.g. at the entrance to Via della Pergola 7, and/or with the front door ajar. The evidence has a direct bearing on the trial Court's hypothesis (the Massei Report) as to how Rudy Guede gained entry to the said premises and where Meredith was initially attacked.

Another aspect of Mrs Capezzali's evidence concerned the time period between the hearing of the scream and the sound of separate footsteps both on the steel staircase and the gravel path. Given the nature of the attack on Meredith and the number of injuries inflicted (43 separate wounds), it does not seem likely that the attacker or attackers took flight from the premises so soon after Meredith screamed out.

To be fair, Mrs Capezzali's evidence that she later heard footsteps on the steel staircase is supported by other evidence. Alessandra Formica testified that she was with her boyfriend on the evening of November 1, 2007. She said they were coming down the stairs to Sant' Antonio car park, when a person of colour, who was running quickly towards Via Pinturicchio, bumped violently into her boyfriend. This testimony, which included a reference to the presence of a pick-up truck in Via della Pergola, allowed the witness Formica to connect the event with the testimony of Giampaolo Lombardo, the driver of the pick-up truck, who put the time as being after 11pm. One can deduce therefore that the person running up the steel staircase was Guede.

(e) Antonella Monacchia

To avoid duplication, some of the observations made in relation to Mrs Capezzali apply equally, *mutatis mutandis* to Mrs Monacchia. But of course, Mrs Monacchia's account differs slightly from Mrs Capezzali's account. Another critical feature of Mrs Monacchia's testimony is that she admitted on oath with great sincerity that she only presented herself to the investigators about a year after the murder because she was repeatedly encouraged by a young trainee journalist named

Antioco Fois (the same person who persuaded Marco Quintavalle to give a fresh statement to the police (infra)).

Let us put her evidence under the microscope. First, she heard two people outside her premises arguing in Italian. It is reasonable to infer that the two persons concerned could not, on the prosecution case, have been Knox and Sollecito, because they were alleged to be inside Via della Pergola 7 at the time Meredith Kercher screamed. Second, if this testimony was accurate, according to Mrs Capezzali's account, those witnesses might have seen either Guede, Knox or Sollecito. The failure of the prosecution to trace two potential witnesses leads one to speculate as to whether Mrs Monacchia became confused about the chain of events. Like Mrs Capezzali this is hardly surprising as she had just woken up. Finally, the same witness made no mention of hearing the sound of running footsteps shortly after the scream.

For the Massei Court to ignore the fact that a witness's memory fades with the passage of time, runs contrary to all current scientific theory. It is also an affront to common sense principles. One is left to speculate therefore as to how much weight could be attached to the testimony of Mrs Monacchia.

(f) Maria Dramis

To recapitulate, another neighbour Maria Dramis reported that she had gone to bed about 10.30pm. While half-asleep she said she heard footsteps rushing along the street connecting her home to Via della Pergola as she had never heard before. Suffice it to say that this testimony in no way supports the evidence of Mrs Capezzali that she heard separate footsteps on the steel staircase and gravel path after she heard a woman scream. Even if the account was true, the witness was also unable to be precise about the time she heard the footsteps and whether those steps were consistent with one person or more than one person.

(g) Marco Quintavalle

Quintavalle was seen by an investigating police officer within days of the murder. He made no mention in his first account that he had seen Knox at his grocery store the morning of November 2, 2007 (at 7.45am). The first occasion on which Quintavalle made this claim was about one year after Meredith Kercher's murder. Nevertheless, the Massei Court (p.84) reached an astonishing conclusion. It declared:

“Consequently, the fact of not telling Inspector Volturro about seeing Amanda on the morning of November 2 and the fact of having come forward only after having been convinced by Antioco Fois about the possible significance of this event, do not reduce the reliability of the witness, since these facts do not affect the genuineness of the memory” (my emphasis).

The explanation put forward to account for the delay in reporting his sighting of Knox to the police was disingenuous. The fact that Quintavalle had been chatting with another, an enthusiastic trainee journalist about a highly-publicised murder was nothing more than local “tittle-tattle”, consistent with the forbidden reasoning theory adumbrated earlier. For a witness to forget or to neglect mentioning to the police a vital piece of evidence within days of a brutal murder, in the absence of a cogent and compelling reason, is highly suggestive that Marco Quintavalle's testimony was wholly unreliable and in all likelihood not true. In addition, for the

Massei Court to assert that a witness's memory does not fade with the passage of time, runs contrary to all current scientific theory. It is also an affront to common sense principles. Suffice it to say that Quintavalle's account was to be the subject of close scrutiny on appeal: see the Hellmann and Galati sections *infra*.

(h) Witness testimony - Summation

One can conclude therefore, that unlike Guede, the prosecution were unable to call a single witness who could provide credible eye-witness testimony which contradicted the alibi of Knox and Sollecito. They were not seen in the vicinity of Via della Pergola prior to or shortly after the murder of Meredith Kercher. The significance of that omission will be developed later in this article.

(To be continued next week)

Author details

F.G. Davies BA (Hons), Barrister

The Brutal Killing of Meredith Kercher – Part 6

The accounts of Knox and Sollecito

a) The alibi

Amanda Knox declared that from the afternoon of November 1, 2007 until the late morning of the following day (10.30-11.00 am) she did not leave the house on Corso Garibaldi where she was staying with Raffaele Sollecito. He, in his turn, as was recalled by Robyn Carmel Butterworth, stated that he had spent the night together with Amanda Knox. To break that alibi some physical or eye-witness testimony was necessary to show that they were not at Corso Garibaldi.

As far as their accounts were concerned the Massei Court started from the wrong premise. The Court's opening gambit ("Not one element, however, confirmed their alibi...") implied that it was for the accused to confirm their alibi when in fact it was for the State Prosecutor to disprove it. Fortunately the Court corrected itself moments later when it declared: "On the contrary, their uninterrupted presence in the apartment..., not being in any way confirmed, was refuted and contradicted on various points.

But was the alibi refuted and/or contradicted? As previously demonstrated, there were no eye witnesses placing Knox and Sollecito (unlike Guede) at the scene of the crime either immediately before or after the fact. Antonio Curatolo's evidence was patently unreliable as was the testimony of Fabio Gioffredi, Hekuran Kokomani and Marco Quintavalle respectively.

It will be recalled that by the time of his third pre-trial statement to the State Police, Guede only then apparently refuted Knox and by implication, Sollecito's alibi, by placing them at Via della Pergola 7. Aside from questioning the reliability of this revelation in March 2008, it is important to stress that an account given in interview by an individual is not, per se, evidence against another person ie, Knox and Sollecito, it is evidence against the maker only ie, Guede. This is because Guede never gave evidence on oath at either his own trial or that of Knox and Sollecito. Neither the State nor the other parties were given an opportunity to test Guede's veracity. Although the Supreme Court was to later rule (see the Galati appeal *infra*), that Guede's pre-trial declarations should have been evaluated under Article 192, para.3 of the Italian Criminal Procedure Code, the only rational outcome was a rejection of the premise that Guede's account corroborated other parts of the prosecution case or, vice versa, by way of illustration, Knox's accounts affirmed Guede's pre-trial declarations placing her or Sollecito at the scene of the crime. This is also an important consideration when, a little later, the author examines the evidence levelled against Knox and Sollecito for the allegations of theft of Meredith's mobile phones and likewise 300 euros and two credit cards.

The Massei Court concluded that entry to Via della Pergola 7 could only have been achieved by a person who had access to a key. The author is content to stand by his analysis and evaluation of Guede's trial *supra* under the heading: (3) How did Guede gain entry to the house?

Consistent with the alibi, the prosecution had to concede that both Knox and Sollecito's mobile phones became inactive relatively early during the fateful evening of November 1, 2007, both defendants being released from their prior commitments. Sollecito's mobile phone was inactive

from 8.42pm on November 1 until 6.02am the following day. Knox's mobile phone was inactive during the same evening from 8.35pm. Her next recorded use was 12.07pm the following day (more on that later). It is only fair to surmise therefore that the mobile phones were not turned off for a nefarious reason. By implication, this fact casts some doubt on the Massei Court's hypothesis that only a relatively short time later ie, after 9.13pm, both defendants were to be found in the piazzetta, where by chance they eventually met up with Guede and then proceeded to Via della Pergola 7. There was no tangible reason for them to leave Corso Garibaldi so soon after 9.13pm. Their presence in Sollecito's house was consistent with two young lovers wanting to spend time together alone. They had only been going out for eight days by that time. Curiously if either defendant had left Corso Garibaldi it is also odd that he/she did not take his/her mobile phone and/or turned the mobile phone on. Bizarre behaviour indeed, suggestive of leaving Corso Garibaldi with criminal intent. But that was not what the prosecution maintained and the reader is also referred to the findings of the Massei Court supra.

It is noteworthy that the primary evidence to controvert Knox and Sollecito's alibi was forensic or biological traces. Discussion on this aspect of the prosecution case will follow shortly. Only one brief observation remains: Biological samples physically placing Knox and Sollecito in the "killing zone" as it will be dubbed (ie, Meredith's bedroom), unlike Guede, was markedly absent. By the time of their trial, the State alleged that the two physically assisted Guede in the commission of the digital rape and murder of Meredith Kercher; that by implication, both helped Guede subdue Meredith and that during the course of the unmitigated attack upon Meredith Kercher, Knox stabbed Meredith while Sollecito cut Meredith's bra strap (and also stabbed Meredith). And yet where was the forensic evidence to support this contention? No palm prints on the pillow, vaginal swab, toilet paper, purse, and the sweatshirt, as well as the latest fingerprint comparisons of the model of their shoes with those imprinted on the floor of Meredith Kercher's bedroom. In point of fact, no incriminating evidence to place them in the killing zone at the material time other than a minute blood trace on a kitchen knife recovered from Sollecito's house, a DNA profile on the bra clasp, the outline of a footprint found on a blue bathmat in the adjoining [small] bathroom and three mixed blood samples containing Knox and Meredith's traces in the small bathroom.

As a bare minimum one would have expected the State, at the very least, to have found some biological traces upon the clothes they were wearing that fateful evening. None were found. What was the Massei response to this conundrum? Knox and Sollecito must have cleaned up the flat (and presumably their attire) after the murder. To remove virtually all of their traces while leaving those of their accomplice (Guede) was a remarkable feat. The cleaning of the apartment will be examined in detail a little later.

(b) Character and behaviour

Knox and Sollecito were relatively young. At the time of the murder, Knox was only 20 years old and Sollecito 23 years old. Both were relatively immature for their ages demonstrated in part by their behaviour. As far as Sollecito was concerned, he was reckless enough to carry a knife on his person when attending the Perugia Police Headquarters (for a second time) on November 5-6 (see Massei: p.105). Neither disputed that they smoked hashish and/or marijuana but not Class A drugs such as heroin. As we have just seen in the Massei Report summary, the trial Court found that a contributory factor to their participation in the events at Via della Pergola 7 was that the use of such substances had a negative influence on their cognitive capacity together with

alterations in perception and their capacity to comprehend a given situation.

Knox was also rather feckless, irresponsible or reckless some would say. Furthermore, although there would be some inevitable tensions in a house shared by four persons (eg, Knox's less than satisfactory contribution to the cleaning arrangements), the input of the two more mature Italian women (Romanelli and Mezzetti) appeared to maintain cordial relations between the four housemates. Certainly there was no direct evidence of a rift between Amanda Knox and Meredith Kercher on or about November 1 and no suggestion that Knox was experiencing any financial difficulties. In summary, no apparent motive for Knox to steal monies and credit cards from Meredith's purse. On one interpretation, this was nothing more than a plausible suggestion put forward by Guede in order to deflect the State Police and the Micheli Court from reaching the conclusion that, having regard to the totality of the evidence, he might well have perpetrated this heinous crime on his own; or at the very least, it was he, armed with a knife who fatally stabbed Meredith.

Once Knox and Sollecito met, their behaviour could be characterised as "normal" for persons of that age who had only just begun to engage in a passionate affair. They were besotted with each other which explained why Knox was happy to stay at Sollecito's flat returning only to Via della Pergola 7 to shower and freshen up. This was not unusual behaviour and consistent with a couple who had only been going out for eight days.

The Massei Court drew an inference from the fact that Knox and Sollecito were due to travel to Gubbio early on the morning of November 2, 2007. On Knox's account she only returned back to Via della Pergola 7 at roughly 10.30am to change her clothes and take a shower. The Massei Court thought that for a scheduled trip it would have been advisable for Knox to have brought a change of clothing for the next day and if necessary to take a shower at Sollecito's house. The weakness in this observation or assumption is that it is based on the perception of a mature disciplined adult, not that of a feckless young person still in her late teens (aged 20 years), who had only just commenced an intimate relationship some eight days previous. There was nothing inherently sinister in two young lovers, absorbed with each other to the exclusion of the world (or Sollecito's father), from remaining flexible about the timing of their plans on November 2, 2007.

Further, the Massei Court later contradicted itself by declaring that Knox had tried to delay the discovery of Meredith Kercher's body. If Knox was indeed implicated in the murder and had sought to delay the discovery of Meredith's body, what better way than to travel to Gubbio safe in the knowledge that her flatmates were away from Via della Pergola 7. In all likelihood the earliest the body would then have been found was late that evening (November 2) or the following day (November 3). Visiting Gubbio would have served to secure or reinforce Knox and Sollecito's alibi.

According to the State, the two had (admittedly) imbibed marijuana or hashish the previous evening, which has the tendency to cause relaxation or stupor. It might partially explain (despite Sollecito being awake for some period between 5.30am-6.02am) why they were lacking in energy and relatively slow to get out of bed, despite Knox being described as an "early riser".

The most damaging evidence levelled against Knox (and by implication Sollecito) was the phone call made by Knox to her mother in the United States at 12.47pm, prior to the breaking down of Meredith's bedroom door and the discovery she had been murdered (see Amanda Knox's

accounts supra). This evidence was a strong piece of circumstantial evidence demonstrating that Knox had not told the truth and contradicted the joint alibi. It is submitted the evidence was capable of two interpretations. First, that Knox was not a stranger to what had occurred at the material time and was a party to Meredith's murder; or secondly, she had been present in the flat at the material time but had not participated in Meredith's digital rape and murder. Having regard to the totality of the evidence the Massei Court deduced that Knox and Sollecito had been complicit in the brutal killing of poor Meredith, along with Guede.

The Court sought to draw inferences from Sollecito's telephone calls which had been made to the Carabinieri at 12.51pm and 12.54pm on November 2. Particular emphasis was placed on the fact that he had told the police officers answering the said calls that nothing was missing (in the first call "...no, there has been no theft" and, in the second call "...they have not taken anything"). Instead, one would have expected Sollecito to say ..."no, nothing appears (my emphasis) to have been taken". The Massei Court (at p.88) was unable to comprehend therefore how Sollecito "...could rule out that something (money, jewellery or valuables) had not been appropriated from Romanelli's bedroom or elsewhere for that matter. More important, in contradistinction to what Sollecito had told the Carabinieri above, when two Postal Police officers spoke to Knox and Sollecito outside Via della Pergola 7 they told the officers "...they were awaiting the arrival of the Carabinieri because there had been a burglary inside the house". Sollecito had also commented to Officer Fabio Marsi in Romanelli's room that it was "...very strange, nothing has been taken, there's still a portable computer and a digital camera".

The weakness in this analysis can be demonstrated. First, there appeared to be no dispute that Knox and Sollecito had made a cursory search of the premises to ascertain whether anything had been taken. If Sollecito was formally questioned on this point by the investigating authorities we will never know because his pre-trial responses were ruled inadmissible and he chose not give evidence at his trial. However, we do have Knox's account. To recapitulate one part of her evidence was that in Filomena Romanelli's room they saw that the window was broken and there was "...a big mess". They thought there had been a burglary and went to check the other rooms. "Nothing was missing from the various rooms". The author can detect no inconsistency here.

Secondly, and as the Massei Court observed, if Sollecito and Knox (together) had simulated a burglary why say that nothing had been taken? The elegant solution is to be found in a lay person's perception or understanding as to what constitutes a "burglary". In the confines of Via della Pergola 7 there appeared to have been a burglary because a window had been broken and the person or persons breaking the window had sought to gain entry to the premises for illicit purposes. If one or more items had actually been taken it is a reasonable supposition that a lay person such as Knox or Sollecito would have said (separate from the entry to premises) there had also been a "theft". Many individuals are understandably ignorant of the legal connotation or elements of the various forms of a "burglary" eg, entry of premises belonging to another and stole therein.

The author recognizes that it would have been open to the Massei Court to have drawn inferences from Knox and Sollecito's accounts, particularly if there was other independent and probative evidence to support the Court's deduction. The reader is thus referred to section 4: Biological and forensic traces below. But to conclude that Knox and Sollecito had been "tripped up" for want of a better word and to draw appropriate inferences therefrom, is suggestive of a conscious or unconscious bias towards the accused (the forbidden reasoning).

From the moment Sollecito and Knox met they were constantly in each other's company. An apt English expression to describe their relationship was that they were "joined at the hip". The Massei Court described their relationship as a form of "symbiosis". Statements from witnesses eg, Laura Mezzetti, indicated a particularly intense and frequent relationship: "...they were constantly hugging each other...to me he seemed at times almost a bit possessive; it would have annoyed me, to say the least...(he was) very attached to Amanda". This behaviour came under the spotlight both at the Police Headquarters and elsewhere. By modern standards one would have expected some exhibition of grief on the part of both defendants especially Knox; she was after all one of Meredith's housemates and the murder had been committed inside Via della Pergola 7. The Massei Court thought their demeanour "inappropriate", a good example being that of a video, apparently taken on November 2, showing the two in each other's arms followed by a kiss. Judging by the Massei Court's observations one can detect some moral obloquy directed at Sollecito and Knox. Having viewed the video of Knox and Sollecito, it is submitted that it is impossible to draw any inferences from their apparent "inappropriate" behaviour. It was equally consistent with two lovers comforting each other in the light of a horrific crime.

The same can be said for Knox's presence at the Police Headquarters on November 5. The Massei Court observed that she had not been summoned to the police station. But Sollecito had. Bearing in mind their "symbiosis" and Knox's explanation that she did not wish to be left alone it was unfair and wrong in law to draw an adverse inference from her accompanying Sollecito to the police station.

And finally, much was made of Knox's quirky behaviour. After Sollecito had resumed his second interview with the police on November 5, Knox was observed doing "the splits" or a "cartwheel" presumably within the precincts of the Police Headquarters. Knox later explained that the [yoga] exercises were used by her as a method of relaxation. This action could hardly be construed as a murderess celebrating the killing of a housemate. These were stressful times for all concerned in the investigation, the police included. Viewed in isolation or in combination with all the crucial elements of the case, neither Knox's conduct, nor Sollecito's actions, led to the irresistible affirmation that their behaviour was a conscious or unconscious reaction to their complicity in a senseless, barbaric and heinous crime.

There were one or two other unexplained circumstances which the Massei Court was required to evaluate. For instance, there was the issue of Meredith's locked bedroom door. Massei concluded that after the window of Filomena Romanelli's window had been broken and the shutters pushed back, both Knox and Sollecito went back into Meredith's room, taking care not to put their feet in any of the splashes of blood that were present in the bedroom, to take the mobile phones. They also decided to cover Meredith's body, which was almost completely nude, with a duvet and then they left, locking the bedroom door behind them with the bedroom key. But the Massei Court could not rule out that the person responsible was Guede given the fact that he was wearing Nike shoes that evening. Close to the duvet and adjacent to a bloody footprint (which, it is suggested, was left by Guede), a shard of glass was found. Massei inferred that this could have ended up hypothetically, in a fold of the clothing being worn by whoever broke the glass (Knox or Sollecito). Having entered the room, the shard of glass then fell onto the floor. It is submitted that this thesis is capable of modification. It is just as likely that it was carried into the bedroom via the sole of the person who left the bloody footprint next to where the piece of glass was found. Knox can be discounted because according to Massei she was not wearing shoes. That leaves either Sollecito or Guede. It is a singular coincidence that the piece of glass was found

close to a bloody footprint belonging to Guede. Viewed in isolation, to plump for Sollecito in place of Guede was akin to tossing a coin. One could not predict whether the coin would land “heads” or “tails”. Of course, this all occurred at a time, according to Massei (pp.381-5), when Knox and Sollecito were in the course of an extensive cleaning operation in order to purge their incriminating traces from the cottage. It is odd that they missed the shard of glass.

If one accepts Knox had gone back to Via della Pergola 7 on the morning of November 2 at roughly 10.30am (as she claimed), she would not have been overly concerned by Meredith’s bedroom door being closed (as opposed to its being locked). Although the author cannot point to any testimony dealing specifically with the point, it is a reasonable assumption that Meredith closed the door when retiring to bed to sleep; otherwise she would have been disturbed by any flatmate or other person within the premises eg, when using the small bathroom, which was opposite her bedroom. However, Knox should have sensed something was wrong given that the front door was open and judging by the condition of both bathrooms. There is also a slight hint from Massei that Knox ought to have been alerted to there being “something wrong” on her return to the cottage that morning. The Massei Court was entitled to draw inferences but it is not clear whether it did so - having already rejected her account that she returned to the cottage; instead the triers of fact were content to draw inferences from what they perceived to be “other cogent factors” eg, the false accounts of the accused. As we shall see later, the Nencini Report had more to say about this aspect of the case.

There were one or two other suspicious circumstances highlighted during the trial and/or referenced in the Massei Report. For example, the cleaning of Via della Pergola 7 after the murder; likewise Sollecito’s house (hence the reference to Knox’s visit to Quintavalle’s shop and/or Via della Pergola 7 to obtain cleaning materials or a mop head). Likewise, whether Knox and/or Sollecito had sought to wash off blood stains on the clothing they had worn during that fateful evening. As to the latter, no solid evidential foundation or conclusions were made. Evidently the Massei Court decided that close analysis was superfluous given what it regarded as a mass of cogent evidence signifying the accused’s guilt. Finally, there was innuendo directed at Sollecito that his efforts to break down Meredith’s bedroom door were either concocted or deliberately frail in order to delay the discovery of the victim’s body. Again, no concerted analysis of the circumstances or firm conclusion for the same reason.

The Brutal Killing of Meredith Kercher – Part 7

3. Inferences to be drawn from inconsistencies in the accounts of Knox and Sollecito

During the course of her witness examination Knox indicated that she and Sollecito had dinner around 9.30pm to 10pm; then she put the time as slightly later, at or about 11pm. But this was contradicted by the declarations of Francesco Sollecito who spoke with his son at 8.42pm. There was the reference to his washing dishes and the water spillage (*supra*). This fact was also mentioned by Knox who linked it to the need to fetch a mop [head] to dry up the floor. This allowed the Court to fix the time of the dinner as being around 8.30pm and before the telephone call at 8.42pm. A logical deduction bearing in mind that prior to roughly 8.15pm, Knox was scheduled to work at the “Le Chic” pub that evening. The Massei Court made a finding (of fact) that Knox’s statements constituted an attempt to mitigate insofar as possible, the prosecution allegation that the two were elsewhere i.e. at Via della Pergola 7, when the murder of Meredith Kercher was being perpetrated. This is a perfectly reasonable conclusion to draw except that when one reads the transcript of the Massei Report, great emphasis was placed on the supporting eye witness account of eg, Antonio Curatolo, to contradict Knox’s account. As we have already seen, Curatolo’s evidence was unreliable and therefore the prosecution were unable to break Knox and Sollecito’s alibi by eye witness testimony alone. One can infer, therefore, that although the telephone conversation casts doubt on the accuracy or truthfulness of the time Knox and Sollecito ate their evening meal, viewed in isolation, the Court could not infer guilt. Much more cogent and persuasive evidence was required. See also the analysis of the Hellmann Report *infra*. Hellmann inferred that the washing of dishes by Sollecito did not necessarily imply that the two accused had already dined. Another reasonable explanation was that Sollecito was washing up dishes left from an earlier meal.

The focus of attention then shifted to the computer and mobile telephone activity of Raffaele Sollecito which was documented earlier. Massei observed: “...these circumstances, while they indicate the peculiarity of that night due to something very unusual happening..., it does not seem possible that they may have escaped from Amanda Knox’s attention, who instead makes no mention of them, and she claims her waking up was at 10am in Raffaele’s arms as already mentioned”.

It is submitted that the Massei Court erred. These were questions by necessity which had (initially) to be put to Raffaele Sollecito. But they never were. The fact that Knox was unaware of the computer and SMS activity is explicable by the fact that she was unconscious. It is reasonable to infer that Sollecito got up at 5.30am and returned back to bed after 6am. The same can be said of the telephone call at 9.24am made by Sollecito’s father. There was no inconsistency here. In summary, the reason why Knox had no knowledge of the computer and telephone activity was not necessarily because she had already left the house at Corso Garibaldi, as erroneously claimed by Quintavalle, but due to her being asleep in bed (as related to the State Police and at her trial).

A strong piece of circumstantial evidence against Knox concerned the sequence of events after she had returned to Sollecito’s house from Via della Pergola on the late morning of November 2, 2007. To recapitulate: “Amanda, after seeing the door open, the blood stains, the bigger bathroom dirty, returned to Raffaele’s house and he (according to what Knox explains in her email dated November 4, 2007) suggests that she call one of her housemates. So it was that she

called Filomena [Romanelli], who was worried. Amanda told her then that she was going to call Meredith and then she would call back. So Amanda called Meredith on both cell phones (see email op.cit). Filomena Romanelli, in recalling the first phone call..., does not say that Amanda told her she had already called Meredith...”

There is a discrepancy here. The chronological order should have been: phone call to Romanelli and next, Meredith Kercher. In point of fact the actual order was Meredith Kercher first (one mobile phone, not both), Romanelli second. There is also a second discrepancy. Knox told Romanelli she was on her way back from Via della Pergola to Sollecito’s house. This was either a mistake on her part or an untruth. The GSM traffic indicated the call was made from the area of Corso Garibaldi.

If those were the only discrepancies the variation in accounts could have been attributed to a failure of recollection on the part of either Romanelli or Knox (or both). But the cellular traffic also revealed that Knox only telephoned the mobile registered to Meredith Kercher’s English subscriber line (the “English phone”), not both mobile phones as she later claimed in the email dated November 4. The Massei Court concluded therefore that Knox had lied (see s.6 below). The Court reasoned that Knox (and by implication Sollecito) knew very well that Meredith could not answer; their concern and interest was not for Meredith, but to check if the phones, which they had disposed of together in Mrs Lana’s garden, had been found by someone.

The Massei Court’s reasoning appears impeccable but consider this proposition: The said tribunal was prepared to assume that it was Knox and, by implication, Sollecito, who disposed of the mobile phones. We can assume that the mobile phone used by Meredith to make international calls to England (the “English phone”) was not turned off by the person or persons who disposed of it. Of course the phones could have been abandoned while the murderer or murderers were in a state of panic and not thinking straight. But in all probability they would have known if the phones had been switched off. They could also have removed the SIM cards and abandoned those items elsewhere. By phoning one of Meredith Kercher’s mobile phones Knox would have run the risk that the ringing of the phone would have alerted any passer by or the owner of the property to the presence of the mobile phone. And that is precisely what happened. Under the third section entitled “Meredith Kercher’s murder” the reader is referred to the evidence of Fiammetta Biscarini. So, as far as Filomena Romanelli is concerned, Knox was consistent when she assured her flatmate she would immediately ring Meredith. As the GSM traffic discloses, that is precisely what Knox did. It is conceded that the second anomaly remains ie, Knox’s claim in her email dated November 4, 2007. The writer has concluded that the falsity of Knox’s later claim was a further attempt to reduce, so far as possible, her connection to the digital rape and murder of Meredith. It is circumstantial evidence, but viewed in isolation or in the round, it is hardly conclusive.

One surprising omission was the failure of the Massei Court to draw inferences from the phone call made by Knox to her mother at 12.47pm (Italian time) prior to the discovery of Meredith’s body. Based on Knox’s replies during cross-examination at trial, Massei was entitled to infer that Knox had revealed details which, if she was a stranger to what had transpired, she could not have known. But the Massei Court did not trouble to include it in its primary reasons for convicting Knox and/or Sollecito. This aspect of the case will be scrutinized in considerable detail when evaluating the findings of the Supreme Court in the Galati appeal *infra*. However, as indicated previously, the crucial evidence which was advanced to controvert Knox and Sollecito’s alibi

was forensic or biological traces. Let us now turn our attention to this crucial aspect of the prosecution case.

4. Biological and forensic traces

This subject has already been catalogued earlier in the section entitled Biological and Forensic Evidence.

At the outset one must observe this was not a case where either defendant sought to minimize his or involvement or criminality to the detriment of the other or to run what is colloquially known as (forgive the innocent association with Meredith's murder) a "cut-throat" defence. The cases against both defendants stood or fell together.

The prosecution case was that following the commencement of their relationship Knox and Sollecito were almost inseparable which probably accounted for Sollecito having adopted Knox's alibi. At a pre-trial hearing on November 8, 2007, (the Matteini hearing), Sollecito told the hearing that Knox had accompanied him back to his house on Corso Garibaldi and that they dined together. He stated (conveniently some would say) that he stayed in for the rest of the evening to sleep. However, he related that he was unsure whether Amanda went out that night; he said he could not remember. In the light of Amanda Knox's pre-trial statements and her trial court testimony, the case proceeded on the basis that either both accused were complicit in Meredith Kercher's murder or both were innocent. Effectively this meant that any damning evidence against Knox, including biological traces, implicated Sollecito and vice versa.

The first thing that caught the author's eye, so to speak, was the marked absence of genetic traces attributable to Knox and Sollecito in the "killing zone" (Meredith's bedroom). The absence of fingerprint evidence in Meredith's bedroom is also striking. Had Knox and Sollecito been complicit in the attack upon Meredith Kercher including her stabbing, similar to Guede, one would also have expected a good deal more incriminating vestiges in or around Via della Pergola 7. True, the authorities suspected the two had attempted to clean up after the heinous crime, hence the reference to the mop and bleach, but nothing concrete was adduced to bolster this suspicion (the author is unable to point to any expert testimony on this point). This did not seem to trouble the Massei Court though who at one stage (p.269) commented: "Certainly it can be observed that every single place in the house [Via della Pergola 7] was not tested, and one might think that Raffaele Sollecito's DNA might have been located in some other places". Precisely, but it was not. This went to the very heart of the case i.e. contradicting and refuting the alibi and proving their complicity. As we shall, it is also significant that until the later search of Via della Pergola 7 on December 18, 2007 no biological or forensic traces of Sollecito had physically been located within Meredith's bedroom (the killing zone).

To overcome the absence of biological and forensic traces Massei deduced that Knox and Sollecito must have performed a clean-up of the cottage after the murder. The thesis begins at p.381:

"The taking of the mobile phones... Such a requirement may be explained by the need to check that no compromising traces had been left behind [in the cottage] and by the consequent need to eliminate any possible remaining traces. What has just been said is confirmed by the circumstance by which, on the morning of 2nd November at 7.45am, Amanda was in

Quintavalle's shop and just after leaving was seen travelling downhill along Corso Garibaldi, most likely therefore in the direction of the house of Via della Pergola where, moreover, she might already have been prior to 7.45am.

Further confirmation is constituted by the fact that, after Meredith's murder, it is clear that some traces were definitely eliminated [and] a cleaning activity was certainly carried out. In fact, the bare foot which, stained with blood, left its footprint on the sky-blue mat in the [small] bathroom, could only have been reached that way by taking steps which should have left other footprints on the floor, also marked out in blood just like (in fact, most likely, with even more [blood], since they were created before the footprint [im]printed on the mat) the one found on the mat itself. Of such other very visible footprints of a bloody bare foot, on the contrary, there is no trace... Even the drip of blood left on the internal edge of the [small] bathroom door (see photos 141 and 143...) seems to be the remainder of a much larger trace... Moreover, this cleaning activity seems to fit in with the planning carried out by taking the telephones, which were then immediately thrown away, and by locking the door of Meredith's room; otherwise one cannot see what other significance these behaviours could have".

Massei would have one believe that Knox and Sollecito, calculating and Machiavellian as ever, spent the majority of the night and a good proportion of the morning (of November 2, 2007) working hard to expurgate their incriminating traces from Via della Pergola 7. Purely an observation but none of the witnesses who entered the cottage later the same day reported the smell of cleaning agents such as bleach. And further, no rational explanation was provided as to how (with the exception of the bra clasp and Double DNA Knife), they succeeded in wiping clean all of their traces in Meredith's bedroom while at the same time leaving the traces of Guede untouched. Knox and Sollecito were not possessed of the scientific expertise to achieve this outcome.

And what of the prints that were actually found such as those in the small bathroom? Massei appeared to have an answer for every defence objection. At the bottom of p.386, the Report stated: "In this regard, it can in fact be hypothesised that the cleaning action was not particularly careful or else - and this second hypothesis is held to be more probable since the shoe prints, as has been recalled, were fairly evident - that such an omission was intentional, in the knowledge that, having been in Meredith's room, when the latter was killed, with bare feet as has already been noted, the shoe prints in blood would have constituted an exonerating element in their defence".

So Massei would have one believe that Knox and Sollecito calculated that if their shoe prints were found in the more communal parts of the cottage eg, in the entrance and corridor to the cottage, this would explain the presence of their traces. An astounding deduction.

Massei found as a fact, that this action of checking and cleaning was carried out, therefore, in the very early hours of the morning. And this circumstance constituted a clue to the actions of the accused; they may have divided their activities because to have been seen together they would have been far more noticeable; and hence why the task of going to the store was entrusted to Amanda (who had only been there once before). The problem with this hypothesis, as we have already seen, is that Quintavalle's evidence was patently unreliable.

But having carried out such an efficient purging of the killing zone, why, by comparison, was the

tidying up of the small bathroom so sloppy? After all, according to Massei, both defendants had taken the trouble to use the shower to wash away all of the bloody traces of Meredith upon their respective bodies. They must have later washed all of their clothing because no doubt, in both cases, the same was covered in blood. Further, assuming it was Sollecito's bloody imprint on the sky-blue bathmat he would have been aware of that fact. The mat could have been removed and washed, even later replaced because there was sufficient time to complete the task, despite a slight risk that either Romanelli or Mezzetti could, unannounced, return early. And yet in spite of the thoroughness of the accused in removing their obvious traces from Meredith's bedroom, taking care to leave Guede's traces undisturbed, the same amount of diligence was not accorded to the small bathroom. Massei's response was scholarly (at p.387):

“We believe that the small blood stains in the bathroom were not considered to be significant [by the accused] as to require specific cleaning and the same goes for the stains on the mat which could be explained either by referring to wounds which the criminal would have sustained when entering the house by breaking the glass, or by referring to a loss of blood attributable to menstruation (since the house was occupied by four women)”.

Two small observations should suffice. The break-in was simulated and if Knox and Sollecito were responsible, as Massei had concluded, the defendants would have known that there was no loss of blood on effecting entry to the house because the burglary was a fiction as was the intruder. Secondly, to assume that Knox told Sollecito not to worry about the blood stain on the bathmat, on the pretext it could be explained away by reference to eg, menstruation, was pure conjecture and plain ridiculous. Of course, the Court of Assizes placed reliance on Knox's later declarations on this point, even though it did not believe (and subsequently found) that she had not returned to Via della Pergola 7 at 10.30am, as she had claimed.

Moving on, at trial, the defence of both accused and their consultants disputed the manner in which the evidence had been collected, the methodology for performing genetic analyses and the reliability of the conclusions thereby formulated. A defence request to have their objections on these seminal points resolved via an independent technical expert examination was rejected. The Massei Court ruled:

“...it must be observed that with respect to the various interpretations given by each side, this Court could have decreed an expert review and appointed suitable experts, as was in fact requested by the defence. However, on closer inspection, we would then simply have found ourselves confronted with yet another interpretation, which would have fully or partially confirmed one or other of the interpretations already presented, and the main problem of interpretation would still remain; for this reason, it was decided not to have recourse to an independent review...”

(As we shall see, this decision was to be reversed at a later hearing ie, the Hellmann appeal.)

(Part 8 of this series, next week)

Author details

F.G. Davies BA (Hons), Barrister

The Brutal Killing of Meredith Kercher – Part 8

Examining The Forensic Evidence Against Each Defendant Seriatim

Sollecito

The only cogent items attributable to Sollecito were: (1) A print on a mat left by the defendant's right toe in the small bathroom. (2) DNA on Meredith's bra clasp (Exhibit 165(b)).

(1) A print on a mat left by the defendant's right toe in the small bathroom.

In addition to the bra clasp, there was additional circumstantial evidence pointing to the presence of Sollecito at the material time: a print left on a mat in the small bathroom.

On May 12, 2008, the Public Prosecutor charged Dr Rinaldi and Chief Inspector Boemia with a consultancy task. The technicians were requested, inter alia, to: compare the footprints taken from the three accused with the footprint found on the bathmat. Analyses of the size of Sollecito's big toe led the technicians to conclude that there was compatibility between a print on the mat and the defendant's right foot (described in the Massei report as "probable identity"). As a point of information the technicians arrived at a finding of non-compatibility of the print with Guede's right foot.

The purported compatibility by the two technicians did not represent accepted scientific theory. Rinaldi and Boemia had asserted (correctly) that because of the lack of highly individualizing elements represented by the minute details of the papillary ridges, the print on the bathmat should only be considered useful for negative comparisons ie, Guede, but not for positive comparisons ie, Sollecito (Massei Report, p.362).

These same conclusions were vehemently opposed and contradicted in the expert report prepared by Professor Francesco Vinci. Nevertheless, influenced by the number of footprints revealed by Luminol, the totality of the evidence, including the finding it had made in regard to the bra strap, the Massei Court determined that the said footprint belonged to Sollecito. The Court surmised that after Meredith's murder, the two defendants (unlike Guede who, it was presumed, immediately fled the scene), coolly or cold blooded it has to be said, washed themselves off in the small bathroom. Sollecito apparently went first, which accounted for most of his blood stains later being washed away by Knox. These actions do not totally account for any blood stains which must have been on the clothes they were wearing.

(2) The bra clasp (Exhibit 165b)

At the time the bra clasp was bagged, roughly six weeks (December 18) after the murder (November 1-2), it was noted that the location of the bra clasp had changed. Following a review of the phases, entries and operational methods adopted by the investigative agencies, the Massei Court ruled out the possibility of contamination.

The focus of attention then shifted to the suspect-centric method that may have invalidated the

interpretation of the trace which was applied to the bra clasp (p.294). In particular, the consultant for Sollecito's defence, Professor Adriano Tagliabraca, in examining some of the gene loci, offered different interpretations from those put forward by Dr Stefanoni during the course of the various hearings (see p.202 of the Massei Report). He maintained that the interpretation offered by Dr Stefanoni and considered to be wrong was derived from the suspect-centric method applied. He also maintained that because mixed traces were involved, the ratio between the major contributor (Meredith Kercher) and the other contributor or contributors were of 1 to 8 (corrected from earlier testimony of 1 to 10), so that it fell within the category of "low copy number" with the necessity, in order for the result to be considered reliable, of repeating the test – which was not done.

Speaking of the Y haplotype, which was also found in Exhibit 165b, the Professor made no criticism of the reading/interpretation, but stressed that such analysis could only exclude, not establish, the presence of a given male subject.

[Haplotype: A combination of DNA sequences at adjacent locations (loci) on a chromosome that are inherited together. A haplotype may be one locus, several loci, or an entire chromosome depending on the number of recombination events that have occurred between a given set of loci, if any occurred.]

The formula offered by Dr Stefanoni was a ratio of 6 to 1 which, looking at the height of the various peaks and making the consequent comparison, seemed to the Court to be more in accordance with the truth. Consequently, the Massei Court rejected the contention that the calculations of Dr Stefanoni were "low copy number". The Court then ruled that the peak heights appeared suitable to provide a result that was completely reliable according to the interpretative criteria mentioned above.

Turning next to the interpretation according to which Exhibit 165b should be attributed to Sollecito's genotype, the Massei Court determined that despite the interpretative disagreement regarding the non-compatibility of Sollecito's profile with the loci that had contributed to forming trace 165b, for the greatest number of loci at least, the peaks were so clear and the interpretation so sound, they were incontrovertible. Consequently the overall result was reliable even though the tests were not repeated. As a footnote, the Massei Court added that during her testimony, Dr Stefanoni had offered suitable explanations and answers to the concerns posed which were equally acceptable.

Consequently, the match between Sollecito's Y-haplotype and the trace found on Exhibit 165b lead the Massei Court to conclude that the biological trace found on the bra clasp Meredith was wearing when she was killed, was left by Sollecito. This conclusion was fortified by the recognised match between the genetic profile of Sollecito and that yielded from the trace, a match which, for a considerable number of loci, was uncontested.

The Massei Court's finding cooked Sollecito's goose, so to speak. It helped negate the alibi advanced by him (and by implication Knox) and almost inevitably lead to a finding of guilt for the digital rape and murder of Meredith Kercher, together with the associated offences.

Evaluation of the Forensic Evidence Implicating Sollecito

(1) The print on the mat

The best the prosecution could hope for was that the footprint left on the mat in the small bedroom did not exclude Sollecito. On its own, the print, as a piece of circumstantial evidence was nothing more than suggestive; but as we have seen from the Massei Court's conclusions, when combined with other cogent pieces of circumstantial evidence, the prosecution case appeared strong and irresistible. Massei also ruled out the possibility that if the footprint was that of Sollecito it could have been made at some time a little after the murder (this finding will be reviewed in the Summation and Conclusions section *infra*).

Reliant on Rinaldi and Boemia's expertise, the Massei Court's conclusion was equivocal. One example should suffice to expose the imperfect reasoning of the Court. In their report, the authors objectively emphasised some points of considerable discrepancy associated in the dimensions of the bathmat print and Sollecito's reference [foot] print. Those measurements contradicted their conclusion of "probable identity". It follows that, even without considering the eminent findings of Professor Vinci, the bathmat print had little value as a piece of circumstantial evidence against the accused Sollecito. This also scuppered the notion that Sollecito had washed himself in the small bathroom at Via della Pergola 7, immediately after Meredith Kercher's digital rape and murder.

(2) The bra clasp (Exhibit 165b)

Aside from his close relationship with Knox and the associated evidence levelled against her (more on that later), the only other strong piece of circumstantial evidence suggestive of Sollecito's physical presence in the "killing zone" was the bra clasp. The first question to dispose of is this: On November 2, 2007, why was the bra clasp not bagged for forensic analysis? The answer is simple: because the investigative authorities did not believe that the clasp lent weight to or was material to the case. If it had been it would have been collected and bagged on November 2.

Secondly, by the time the clasp was bagged six weeks later (December 18), despite the careful machinations of the Scientific Police to avoid contamination, the net result was that the clasp had been moved from its original location by others who did not necessarily adopt the same precautions. No assurance could be given that the person or persons who moved the object unwittingly contaminated the clasp using old gloves which were probably stained at the fingerprints. There is evidence to support this contention. First, the evidence of, Domenico Giacinto Profazi, referred to in the earlier section:

Investigative activity. Secondly, Professor Conti produced a photographic still from the film of the operations performed by the Police. It showed that when the bra clasp was collected and bagged for scientific examination during the search of 18 December 2007, the gloves worn by the technicians of the Scientific Police already showed traces of stains located at the tips of the fingers which were used to pick up the bra clasp.

But the clinching argument to demonstrate that Exhibit 165b had probably been contaminated was the finding made by Massei that Sollecito had been fully complicit in the crime; more specifically, that he cut the bra strap, that he helped subdue and stab Meredith Kercher. If this was true, it is inconceivable *ie*, it is almost scientifically impossible, that no other traces of his

DNA were found in the room and/or on Meredith's sweatshirt and clothing (the same goes for Knox).

In conclusion, it could not be ruled out that the bra clasp had been contaminated unwittingly between November 2, 2007 and December 18, 2007; either prior to or on the date the bra clasp was collected and bagged. The evidence therefore had to be considered "unreliable".

But similar to the footprint on the blue bathmat, assuming the bra hook had not been contaminated and did contain a small trace of Sollecito's DNA that did not by itself prove that Sollecito took part in the crime. It was equally as consistent with his presence after the murder.

Knox

The only cogent genetic traces attributable to Knox were: (1) The Double DNA Knife (Exhibit 36). (2) Traces revealed by Luminol. (3) Blood traces in the small bathroom. (4) The Black table lamp.

(1) The Double DNA Knife (Exhibit 36)

To avoid duplication, the reader is referred to s.5 immediately below, which summarises the Massei Court's hypothesis as to the part played by both individuals and more crucially s.7 (b) *infra*, entitled: The curious case of the missing murder weapon.

(2) Traces revealed by Luminol

It was during the second inspection of Via della Pergola 7, on December 18, 2007, carried out by trace search experts of the Scientific Police, that spraying with Luminol was performed on the floor of the corridor, of the kitchen/living room, Knox and Romanelli's bedrooms and the large bathroom. In addition, Chief Inspector Ippolito took photographs of the traces of bare footprints detected (only) in the corridor/living room. While taking the pictures he did not use fluorescent metric ribbons, which would have assisted the subsequent measurement of the photographed footprints.

(3) Blood traces in the small bathroom

These traces have already been catalogued earlier in the section entitled Biological and Forensic Evidence. At Knox and Sollecito's trial, no significant and specific criticisms were made of the accuracy and results of the tests.

The small bathroom in question was used predominantly by Knox and Meredith Kercher, while the other housemates used the larger bathroom. It goes without saying that the DNA of the two women was found on the sanitary fixtures of the small bathroom.

Knox testified that she visited Via della Pergola 7, some time after 10.30am the following morning ie, November 2, 2007. If Knox showered in the small bathroom after the fact ie, after Meredith's murder, it stands to reason that Knox's DNA would have been found mixed with traces of Meredith Kercher's blood. Knox's explanation therefore is partially consistent with an innocent explanation for the mixed blood traces found in the said bathroom. Massei ruled out

contamination, however, because it rejected Knox's testimony that she had visited the cottage (alone) at 10.30am.

(4) The Black table lamp

This had been found on the floor in the killing zone, adjacent to Meredith's body. The lamp undoubtedly belonged to Amanda Knox. When giving evidence at her trial, Knox was unable to account for how the lamp ended up in Meredith Kercher's bedroom. The reader is also referred to the pre-trial declarations of Rudy Hermann Guede supra.

Evaluation of the Forensic and other Evidence Implicating Knox

(1) The Double DNA Knife (Exhibit 36)

In the light of expert opinion summarized in ss.5 and 7 (b) infra, it is submitted that Exhibit 36 (the Double DNA Knife) could not have been used to inflict all or some of the injuries found on Meredith Kercher's body.

There remains the equally vexed question as to how a sample of Meredith's DNA came to be on Exhibit 36? This much discussed question appears even more taxing when one considers that, according to the prosecution, the Knife was carefully scrubbed before being put back into the kitchen drawer at Corso Garibaldi. It is equally curious that Knox's DNA was detected on the handle and/or at the top of the blade of the Exhibit. Without even bothering to challenge the propriety of and/or the accuracy of the results, the author is deposed to the view that there are only two possible ways in which Meredith's blood could have gotten on to the knife: (a) innocent contamination (b) deliberate contamination.

One can conclude therefore that Exhibit 36 went a long way to refuting the allegation that Knox and/or by implication, Sollecito, was responsible for stabbing Meredith Kercher. The forensic trace attributable to Knox and Meredith Kercher on Exhibit 36 was "wholly unreliable".

(2) Luminol

The Massei Court concluded that Knox was barefoot and that the footprints had been created by Knox treading on Meredith's blood in "the killing zone" (Meredith's bedroom) and then carried by her into other parts of the house.

But the quantity of DNA was compatible with what is known as "low copy number", and it did not appear that the analysis had been repeated to validate the results. Expert evidence also concurred that they could not say with certainty that blood was present, since other substances may cause Luminol to glow.

It is submitted therefore that the footprints found in Via della Pergola 7, had limited evidentiary value against Knox and/or by implication Sollecito.

(3) Blood traces in the small bathroom

There were at least two conundrums which confronted the Massei Court. Assuming that

Meredith's blood traces were carried by a person from her bedroom (the killing zone) to the small bathroom (a reasonable deduction, at least as far as the light switch is concerned), who carried them and when? At first blush, the forensic traces did not support the assertion that Guede visited the small bathroom after the murder. The Massei Court therefore reasonably inferred that they were carried by some other person either immediately after the murder or some time later.

The finger of suspicion inevitably pointed towards Knox and/or Sollecito. Since several mixed trace samples of Knox and Meredith's blood were found in the bathroom, this represented circumstantial evidence of Knox's involvement in the crime which, when combined with several other elements, convinced the Massei Court she was complicit and/or by implication Sollecito. But this does not adequately answer the second conundrum which flows from the Massei Report. If Sollecito had also used the small bathroom to wash off traces of Meredith's blood on him why were no other traces of Sollecito found in that part of the house or anywhere else for that matter? Having already concluded that the footprint found on the sky blue mat was Sollecito's, the Massei Court endeavoured to solve the paradigm in the following manner (p.379):

“Also from this viewpoint it must be excluded that the print left on the sky blue mat in the little bathroom could be attributable to Rudy... That there were no biological traces found in this bathroom also attributable to Raffaele Sollecito as there were biological traces attributable to Meredith and to Amanda, does not diminish the validity of what has been said. Raffaele Sollecito could have washed himself in the shower stall, in a different way and with an abundance of water, so that, either for one reason (use of water in large quantities), he did not leave his own biological traces while he was washing himself, or rather, he could have washed himself before Amanda, so that the water used by her immediately afterwards could have carried away the preceding traces”.

The above statement as far as Sollecito is concerned is unscientific and therefore unsatisfactory. When one considers the paucity of forensic evidence placing him at the scene of the crime, it is submitted that part of the Massei Report's conclusion is flawed. There was little or no evidence to suggest that Sollecito was present at Via della Pergola 7, at the time when Meredith Kercher was digitally raped and murdered.

This outcome does not by itself exonerate Knox. The supposition is that she was present even if Sollecito had remained at Corso Garibaldi. The only other rational hypothesis is that Guede did go into the small bathroom after the murder even if the visit was transient or momentary. There is some tentative evidence to support this assertion. The Massei Court could not adequately explain how a shard of glass was carried from Romanelli's bedroom into the killing zone. The shard of glass could not have been carried by Knox as she was bare foot. Sollecito can be discounted because no traces of bloody footprints consistent with the size of his shoe were ever found in Romanelli's bedroom or Meredith Kercher's bedroom (the killing zone). A reasonable assumption is that the bloody footprints found, compatible with the Nike shoes worn by Guede, did not disclose all of the Guede's movements after he had murdered Meredith.

The Massei Court inferred Guede immediately exited the premises after he left Meredith's bedroom. The shard of glass suggests otherwise because the same was found close to a bloody left footprint which must have come from the sole of Guede's Nike shoes. This is suggestive that he went into Romanelli's bedroom. It is also conceivable therefore he also visited the small

bathroom, adjacent to Meredith's bedroom. And to that end we have Guede's pre-trial declaration made to De Benedetti i.e. as poor Meredith lay dying in her bedroom he (Guede) tried to help staunch Meredith's blood loss with the aid of bathroom towels, but to no avail. Where did he get the towels from? It is significant that Meredith's bedroom was immediately adjacent to the small bathroom. This would also account for traces of Meredith's blood being found in that part of Via della Pergola 7. The weakness in this hypothesis, it has to be conceded, is that aside from Professor Vinci's evidence concerning the footprint on the blue bathmat (see the Hellmann Report infra), no other traces of Guede were ever found in the small bathroom. It is highly unlikely that he used the small bathroom to clean himself and/or to take a shower and the author does not support such a hypothesis.

(4) The Black table lamp

No satisfactory explanation was given for how the said lamp came to be in Meredith Kercher's bedroom. The most likely hypothesis being that Meredith took (borrowed) the lamp out of Knox's bedroom in order to provide additional illumination while studying or reading a book for pleasure. This conclusion is affirmation of the relatively cordial relations between Knox and Meredith. An alternative theory is that Knox took the lamp into the bedroom after the murder to help illuminate the room in order to check for incriminating traces left by her or Sollecito and/or to facilitate the cleaning of the room. Thereafter, she or Sollecito locked the room forgetting about the lamp. Another hypothesis is that Guede went into Knox's room and took the lamp into Meredith's bedroom. This latter thesis seems highly unlikely because none of Guede's biological traces were found in Knox's bedroom.

Knox was questioned about the lamp when she gave evidence at her trial. She was unable to account for how the lamp got into the bedroom. It is submitted the first hypothesis is the most likely. How it came to be on the floor is uncertain. As a single component of the circumstantial evidence levelled against Knox, it is of very low evidentiary value and the Massei Court did not trouble to include it in its reasons for convicting Knox and/or Sollecito.

(To be continued next week.)

About the author

F.G. Davies BA (Hons), Barrister

The Brutal Killing of Meredith Kercher – Part 9

5. The charges and the evidence adduced to prove those charges

For the avoidance of doubt, all but one of the offences which Knox and Sollecito were charged with were alleged to have taken place between the of November 1 and 2, 2007. The one exception being the charge of Calunnia which was alleged to have occurred between November 5 and 6, 2007, the time during which Knox was interviewed by the State Police and later (while being transferred to prison), Knox wrote a statement (memoriale) for the Chief Inspector of the State Police.

Theft of two mobile phones, 300 euros and two credit cards (Knox and Sollecito)

Knox and Sollecito faced a number of charges. The first alleged that they were complicit in the theft of 300 euros, two credit cards and two mobile phones belonging to Meredith Kercher. Having scoured the witness statements and the Massei Report, the author can find no reference to any evidence regarding the theft of approximately 300 euros or two credit cards. Where did the allegation come from? It came from Guede and the reader is referred back to the section, the trial of Rudy Hermann Guede coupled with the analysis and evaluation undertaken immediately thereafter. It serves to demonstrate yet again that the prosecution were convinced of Knox and Sollecito's complicity (part of the forbidden reasoning); and hence, the charge. As for the 300 euros and credit cards the Massei Court recognized that the crime was not made out. But in doing so the tribunal reached an unexpected conclusion:

“All of the elements put together, and considered singularly, create a comprehensive and complete framework without gaps or incongruities and lead to the inevitable and directly consequential attribution of the crimes to both...accused, for which therefore they have penal responsibility, with the exception of items listed under Heading D (euros and credit cards) other than the cell phones (my emphasis), with regard to which no evidence emerged against the accused [elementi a carico], who are therefore absolved for the relative and residual charge because it was not proven that the crime was committed [il fatto non sussiste]. The stealing of the mobile phones complements the crime of theft due to the benefit which has been mentioned ... a benefit that... does not necessarily have to be of a financial or a property-related nature...”

The offence of theft in Italy therefore resembles English law. Assuming the prosecution are able to prove that a person has dishonestly appropriated property, it matters not that the offender derives no benefit from the theft, so long as he treats the property as his own, to dispose of regardless of the owner's rights (the Theft Act 1968 defines this element as: an intention to permanently deprive). Leaving the phones in a garden is proof of the said intention.

There is however a conflict with the finding made by the Micheli Court. To recapitulate: The [Micheli] Court found that there was no evidence Guede had staged a break-in at Via della Pergola 7 and, there was no evidence that he had taken any property, not belonging to him, from those premises. He was therefore acquitted of the charge of theft. But similar to Guede's trial there was a lack of forensic evidence to show that Knox and Sollecito simulated the burglary and/or appropriated and dumped the mobile phones in Mrs Lana's garden. It can only be inferred that the reasoning of the Massei Court placed great reliance of the remainder of the circumstantial evidence eg, the phone call made by Knox to Meredith's “English phone” at

12.07pm on November 2.

But to infer that Knox and Sollecito were responsible for the theft of the mobile phones (unlike Guede) leads indubitably to what English law would term “mutually inconsistent verdicts”.

Exhibit 36 - carrying of a kitchen knife (Knox and Sollecito)

Knox and Sollecito were also charged with being complicit in the carrying out of Corso Garibaldi, without justified reason, a large [kitchen] knife 31cm long with a 17.2cm blade.

The reader is referred to the Massei Court’s hypothesis below (section 7) and subs.(b) The curious case of the missing murder weapon. Having regard to the findings of the Massei Court, outlined in subs.(b): the author was puzzled as to why Knox and Sollecito were not charged with possession of a second bladed article ie, a pocket knife with a blade [roughly] 4 cm long. The only rational explanation is that the prosecution were not alleging that Sollecito was physically carrying a second knife which was used to subdue and stab Meredith on that fateful evening.

Having regard to the incompatibility issue highlighted in that section, one is left to speculate how traces of Meredith’s DNA were found on Exhibit 36? One point which had occurred to the author while writing this critique was the absence of any forensic traces of Meredith’s blood in Knox’s handbag. If the Double DNA Knife was the murder weapon and had been carried by the accused to and from Corso Garibaldi how could the prosecution account for no additional traces being found? The answer is suggestive: Exhibit 36 was not the murder weapon. And thus, assuming the correct forensic procedures were followed to confirm the accuracy of the results, one is left with only two possibilities: (i) unwitting contamination; (ii) deliberate contamination. During the case, the defence did not suggest that the agents of the State acted with any form of deliberate impropriety. The author therefore is disposed to the first theory.

Simulation of an attempted burglary (Knox and Sollecito)

The Massei Court concluded that Guede had no motive to simulate a burglary (despite being a person with a criminal disposition eg, breaking and entering); that the scenario could only have been carried out by someone who had free access to the house ie, a key, in this case Knox. The question of the simulation has already been discussed in some detail while analysing and evaluating the evidence adduced at the trial of Rudy Guede viz: (3) How did Guede gain entry to Via della Pergola? (8) The staging of the burglary and theft of items. The author stands by the observations made earlier. But consider this proposition: If Knox and/or Sollecito staged the burglary where is the forensic evidence to support this proposition?

To remind the reader, a few items were tested in Filomena Romanelli’s room because of the suspected “simulation” of a breaking and entering. A hairlike fibre found on the lower part of the window frame together with a presumed haematological substance on the wooden frame of the window, which held the broken pane, yielded negative results. The large rock and two fragments found on the floor were also tested but yielded negative results. An expert, Dr Stefanoni stated that two traces (footprints) found in the room of Filomena Romanelli had yielded one specimen from Meredith Kercher and one from Meredith and Knox respectively. But the quantity of DNA was compatible with what is known as “low copy number”, and it did not appear that the analysis had been repeated to validate the results. Expert evidence concurred

that they could not say with certainty that blood was present, since other substances may cause Luminol to glow. To answer the rhetorical question, there was no forensic evidence that Knox or Sollecito simulated the burglary.

Aside from that aspect of the case we have the mystery of the shard of glass found in Meredith Kercher's bedroom close to a bloody left footprint (in the light of the forensic evidence, it has been inferred that this was a footprint left by Guede). As noted earlier, Massei concluded that whoever broke into Romanelli's room, the fragment could have lodged in the fold of the clothing of the person responsible and later fell on the floor of Meredith's room when he/she entered the bedroom. It is more likely the shard of glass attached itself to the sole of a foot. It could not have been carried by Knox as she was not wearing shoes. Sollecito can be discounted because no traces of bloody footprints consistent with the size of his shoe were ever found in Meredith Kercher's bedroom (the killing zone). The only other sensible explanation is that it was Guede which is suggestive that he simulated the burglary in order to throw the State authorities off the scent as to his motivations for committing this heinous crime. This might explain why Guede during his skyped conversation with De Benedetti claimed the windows were still intact when he left Via della Pergola 7. If it was a ruse, Guede succeeded admirably. Finally, it is a mystery as to why the shard of glass was present on the floor given that Knox and Sollecito were alleged to have carried out an extensive cleaning operation after the murder.

(iv) Calunnia (Knox only)

The first part of Amanda Knox's allegation, to the effect that Diya "Patrick" Lumumba had been responsible for Meredith's digital rape and murder, was made at a time when she was a suspect. The State Police, for a variety of reasons, chose not to advise Knox of her legal rights. The outcome was an account which was nothing more than a tissue of lies. The Supreme Court of Italy ruled the evidence was inadmissible in her trial for being complicit in Meredith Kercher's digital rape, murder and associated offences.

But the Supreme Court also decided that the evidence obtained during Knox's interview was admissible to prove Calunnia. This placed Knox in an almost impossible position. Looked at in isolation, Knox may well have had to concede that she was guilty of this offence. The reader is referred back to the section entitled "Amanda Knox's accounts". There was supporting evidence to sustain the conviction. To recapitulate, on the morning of November 6, Knox voluntarily made a written statement (memoriale). Although she prefaced her remarks by saying she wasn't sure of the truth and she was confused, she continued to place Lumumba at the scene of the crime eg, "Patrick near the basketball court, near the front door of the house: of herself crouched down in the kitchen with her hands over her ears because in her own head, she had heard Meredith scream".

Based on those facts and consistent with Italian law, Knox was therefore guilty of Calunnia and the best outcome for her was a plea in mitigation associated with the illicit actions of the State Police. But for Knox to have pleaded guilty at her joint trial for being complicit in Meredith's digital rape and murder was a bridge too far (and unjust). It would have lent weight to the prosecution allegation that she had admitted a Black man (Guede, not Lumumba) to Via della Pergola 7; that she was present at the material time and, thus, she was a principal or secondary offender involved in the digital rape and murder of Meredith Kercher. The author has previously suggested that the prejudice flowing from the Supreme Court's decision could have been cured if

it had ordered the offence of Calunnia to have been severed and tried separately (at a later date) from the principal allegations levelled against Knox and Sollecito. It is fair to observe that by implication, Sollecito's defence was also compromised or handicapped by the Supreme Court ruling.

Digital rape (Knox, Sollecito and Guede)

The charge alleged that the three accused, constrained Meredith Kercher to submit to sexual acts, with digital and/or genital penetration, by means of violence and threats, consisting of restraining actions productive of lesions, in particular to the upper and lower limbs and the area of the vulva, and in the use of a knife as in charge (b) above. The charge presupposed that at the very least Knox and Sollecito helped to subdue Meredith in "the killing zone" (Meredith's bedroom).

One must not forget that the Massei Court was entitled to infer the presence of Knox based on her written declaration made to the Chief Inspector of Police on November 6, 2007 (see Amanda Knox's account ante). By that declaration one interpretation was that Knox had physically placed herself at Via della Pergola 7 at the time Meredith was brutally attacked. The only issue was how much weight to attach to the declaration – whether viewed in isolation and/or in the context of the totality of the credible evidence adduced at trial. Having regard to the foregoing and the analysis enunciated below, it is submitted that it might be unsafe for a court to draw an adverse inference against Knox and, by implication, Sollecito.

At the risk of repetition, there was a paucity of forensic evidence to establish that Knox and/or Sollecito took part in what has already been referred to as the digital rape of Meredith Kercher. In the "killing zone" ie, Meredith's bedroom, the only direct evidence against Sollecito was the DNA found on Meredith's bra clasp. That has already been evaluated in section 4 above: Biological and Forensic Traces. As for the "Double DNA knife" see charge (ii) immediately above and the Massei Court's hypothesis in s.7 (b) infra: The curious case of the missing murder weapon.

It should perhaps be noted that the only other forensic evidence placing Sollecito in Via della Pergola 7 that fateful night was compatibility between a print found on the mat in the small bathroom and the defendant's right foot (described in the Massei report as "probable identity"). Viewed in isolation, or in tandem with the DNA found on the bra clasp and/or the remainder of the forensic evidence adduced at trial, there is a surprising and marked absence of scientific evidence to establish that Sollecito was complicit in the digital rape of Meredith Kercher. Massei, therefore, had recourse to the remainder of the circumstantial evidence adduced against Knox and Sollecito, including, the unreliable or mistaken eye-witness testimony.

As for Knox, detailed consideration of the forensic evidence levelled against her was evaluated in section 4 above: Biological and Forensic Traces.

Finally, the author rejects the hypothesis that the injuries inflicted on Meredith Kercher were consistent with an attack which could only have been perpetrated by two or more persons. See s.7 (a) immediately below. As for Guede there was an abundance of evidence to demonstrate that he had sexually assaulted Meredith Kercher and had digitally raped her. A reasonable deduction is that he alone digitally raped Meredith Kercher, not in tandem with Knox and Sollecito.

Murder (Knox, Sollecito and Guede)

It was alleged that the three were complicit in the killing of Meredith Kercher. The charge alleged that the killing was achieved by means of strangulation with consequent fracture of the hyoid bone, and deep lesions to the left anterior-lateral and right-lateral regions of the neck, caused by a bladed weapon (Exhibit 36). As a result the victim suffered haemorrhagic shock with an appreciable asphyxiatic component secondary to blood loss (derived from the wounds from the bladed weapon present in the left anterior-lateral and right-lateral regions of the neck, and the abundant aspiration of haematic material in that context). The charge alleged that Knox and Sollecito's motive for committing the crime was for trivial reasons (*motivi futili*), while Guede, in concert with the Knox and Sollecito, committed what is described as the felony of sexual assault upon Meredith Kercher.

Only one other observation needs to be made and by reference to the injuries and cause of death. Having reviewed the expert testimony, for the avoidance of doubt, the cause of death (asphyxiation) does not appear to have been brought about by strangulation in the conventional sense ie, by throttling alone. The cause of death was blockage of the respiratory passages by constriction of the neck with consequent fracture of the hyoid bone (either by manual pressure or via the fatal stab wound): see eg, the evidence of Professor Introna. The outcome of these severe criminal actions caused Meredith Kercher to effectively drown in her own blood.

The evidence to prove Guede's guilt has already been outlined in the section entitled "The trial of Rudy Hermann Guede and the trial Court's findings (the Micheli Report)". The evidence was nothing short of overwhelming albeit, Guede offered plausible accounts to the State Police to minimise his killing of Meredith Kercher. It is submitted that Guede misled or lied to the State authorities as to what transpired. A reasonable inference being that he alone murdered Meredith Kercher.

As for Knox and Sollecito, as set out in this entire section: "Analysis and Evaluation – the forbidden reasoning", Micheli's finding that Meredith's murder must have been committed by two or more persons is rejected. Further, that the totality of the circumstantial evidence, did not combine to demonstrate Knox and Sollecito's complicity and did not create a comprehensive and complete framework without gaps or incongruities (in contradistinction to the remarks of the Massei Report outlined earlier). And finally, the Massei Court's finding (*ante*) that it was first Sollecito, with a pocket knife, followed by Knox, who stabbed Meredith with the Double DNA Knife, is, to say the least, a misconceived theory. This finding is critically analysed and evaluated in section 7 (b) *infra*.

The Brutal Killing of Meredith Kercher – Part 10

6. Whether the alibi of Knox and Sollecito was a lie and corroborated the prosecution case

In its closing remarks the Massei Court declared: “Amanda Knox and Raffaele Sollecito therefore did not spend the evening and the night of November 1, in the house on Corso Garibaldi uninterruptedly and without going out until 10.30am the next morning. The declarations made on this point by Amanda Knox and which would have constituted, if they had been true, an alibi for both, were shown to be false, and were aimed therefore at avoiding an investigation into the truth and are therefore considered to be evidence against [them]: see Cass. 15.12.2005 No. 5060.

The limited declarations of Sollecito pre-trial, together with the primary evidence of Knox concerning their movements on the night of November 1-2, 2007, were found to be lies and as such corroborated the prosecution allegation that they, in tandem with Guede, were guilty, *inter alia*, of digital rape and murder.

English law has a similar rule. The rule can be traced back to the decision of the Court of Appeal in *R. v. Lucas* [1981] QB 720. The rule stipulates that the lie must: (a) be deliberate; (b) relate to a material issue in the case; (c) be motivated by a realization of guilt and fear of the truth; (d) be proved to be a lie by admission or independent evidence.

In appropriate cases a trial court should be mindful that people lie for a variety of reasons. A defendant may, for instance, be innocent, but think that his or her case needs embellishment. He or she may be ashamed of something done and seeks to conceal that fact. If the defendant has lied for reasons other than the fear that he will be rightly convicted of the offence charged, those factors must be weighed by the court.

Without rehashing what has already been said in earlier sections of this article let us consider the following: (a) The prosecution had no credible independent witness testimony placing Knox and Sollecito outside of Corso Garibaldi during the night of November 1-2, 2007 (opportunity). (b) No tangible murder weapon (means). (c) No motive (unlike Guede). (d) No independent evidence to contradict Knox’s assertion that she was asleep at Corso Garibaldi until 10am the following day (November 2). (e) No forensic evidence to place Knox within the “killing zone” (Meredith’s bedroom) on the said night. (f) A paucity of forensic evidence to prove Sollecito’s complicity (see section 4: Biological and Forensic traces immediately above). (g) No independent forensic evidence to confirm that either defendant simulated a burglary, as distinct from Guede.

The one concession to the above is the two separate pieces of circumstantial evidence (previously highlighted) which relate to Knox (not Sollecito). The first is the phone call made by Knox to her mother at 12.47pm on November, coupled with a later telephone conversation with her mother (November 10) while Knox was remanded to prison custody. The second is the voluntary written statement (*memoriale*) made by Knox on November 6. Suffice it to say that both elements are heavily analysed later in the Galati appeal section entitled: The presence of the accused at the crime scene.

The author could continue to develop these arguments but suffice it to say those elements have already been highlighted earlier in this article and/or will form the basis of a critical summation

at the conclusion of this work.

7. The Massei Court's hypothesis

(a) The Lone Wolf theory

One vital conundrum that plagued both the Guede (Micheli) and the Knox/Sollecito (Massei) trials was the question as to whether the injuries inflicted on Meredith Kercher were consistent with an attack perpetrated by one individual or two or more persons. This was another factor which militated against separate trials. All three accused should have been tried together. It would have removed the danger of the latter court (Massei) attempting to shore up deficiencies in the prosecution case, in a vain effort to avoid mutually inconsistent verdicts flowing from the Micheli judgment. As has already been demonstrated, this was an inevitable outcome starting with the conviction of Knox and Sollecito for stealing two mobile phones belonging to Meredith Kercher.

To recapitulate, the prosecution alleged that the injuries and forensic evidence was indicative of Guede acting in tandem with others; put another way, he could not have subdued the victim on his own. The Massei Report finding on this aspect of the case (as with others) was expressed tersely and to the point:

“That such participation, active and violent, also involved the current defendants in combination with Rudy can be derived from what has been observed in earlier discussion of the wounds suffered by Meredith, of the outcome of the genetic investigations, [and] of the bare footprints found in various parts of the house”.

Some emphasis was placed on the fact that Meredith Kercher was an athletically fit and strong young woman who participated in several sports or pastimes including karate. Put another way, that her karate training imbued her with some extra defensive resources in the event of her being attacked. True, her karate training would have helped her in certain situations, but the evidence does not suggest that she had undertaken karate training for a number of years or that she was possessed of exceptional skill eg, a black belt. Guede wore size 11 shoes. It is safe to assume he was a fairly tall individual. The notion that Meredith would have been able to fight off the illicit advances of a 20-year-old young man, armed with a bladed article, while she was cornered in a confined space is highly unlikely. A young man such as Guede, armed with a knife, could easily have subdued a young woman such as Meredith Kercher.

However, before evaluating or reaching provisional conclusions as to this aspect of the case against Knox and Sollecito, let us first outline the opinions of the experts who considered this moot point.

We start with Professor Bacci. He indicated that the biological data did not allow for a determination of whether the injuries were caused by one person or by several people, claiming they were compatible with both possibilities because: “...one person could have acted and hit at [different] times in a kind of struggle;... [it] might have been one person acting alone..., or it could be with the *avvicendamento* [joining or alternation] of several people and this also would work”.

Professor Gianaristide Norelli could not exclude the hypothesis that all the actions were carried out by one person acting alone. However, having regard to the small number of wounds, consistent with Meredith trying to defend herself, coupled with the lesions indicative of a sexual assault, he observed: "...if the subject is not in a position to defend herself in a determined manner, in a marked manner, in a specific manner, it is clear that the necessity of grasping her to hold her still is much less with respect to another. Thus, if we actually had to do a ranking of the assault, while yet remaining in the sphere of subjectivity, this is one of the reasons for which, personally, I am not convinced that there was only one person carrying out the combined damaging/detrimental/wounding action".

Professor Francesco Introna was of the opinion that the evidence was consistent with that of a single attacker. One important factor being the size and layout of Meredith's bedroom in which the entire episode took place; not forgetting the presence of furniture in the room. He stated that the free space was very small, so that "...there was no possibility for three attackers to have accomplished the homicide together" [with the victim in the position where her body was subsequently found].

Professor Introna's opinion was challenged and he was asked to explain how a lone assailant would have been able to subdue Meredith while at the same time managing to cut the back of her bra strap with a knife. Professor Introna's reply was that in spite of these difficulties, one had to bear in mind the likely scenario was that the victim was on the floor and could not get free since the aggressor had immobilized her using his legs. He further affirmed that the aggressor had intervened in the victim's room with sexual aims and he had the knife to cajole and threaten.

The cutting of the straps, he reaffirmed, would have been undertaken from the back, with the assailant on the victim who was on the floor on her hands and knees. Thus, "... he pulls the bra, he cuts the bra which, nonetheless, remains because the bra is however covered at the level of the shoulders by two cotton t-shirts which the victim was wearing; it does not fall off on its own; a bra cut from the fastener of the straps must be taken off from the front..."

Professor Torre focused on the bruises found on Meredith's nape. He emphasized their importance, maintaining that they were "...due to bumping into a flat surface, but not from a fall by a standing person, because if I am standing and I fall down and hit my head from behind, I will easily get a wound of laceration-contusion type [una ferita lacero contusa]; but if I am already sitting or leaning back, I hit the ground and get exactly that beautiful bruise in the region of the nape, and this is the other element which,...indicates to me an action from the front".

The consultant opined that the victim might well have screamed, observing: "If I see a person in my house I could very well scream; a hand placed on my mouth could prevent me from screaming, and likewise a wound like the one on the neck..." In any event he maintained that there was nothing to lead him to think there was more than one attacker".

Finally, Professor Cingolani had noted there were a disproportionate number of lesions suffered by the victim as compared with other [defensive] lesions, consistent with Meredith attempting to get away from her attacker. He was unable to provide an explanation for such a disproportionate number. His opinion was that the number was compatible with the presence of more than one person, but he also conceded that it might be consistent with the action of a sole person who acts in a progressive manner.

We have just seen that the experts asserted, from the point of view of forensic science, the injuries could have been caused by a single attacker, because the bruises and the wounds from a pointed and cutting instrument were not incompatible with the actions of a single person. How did the tribunal of fact reconcile these differing opinions? The Massei Court was rather disdainful or dismissive of the technical and expert assistance put forward to determine this vexed question. It is possible the Massei Court was influenced by what has already been coined “the forbidden reasoning” or better still they became too engrossed in an adversarial process rather than a jurisprudential search for the truth. True, the experts made the task of the Massei Court more difficult. If the experts had clearly outlined the subtle differences between their reports and opinions they could have assisted the court in reaching a balanced decision. Here is a summary of the Massei Court’s opening remarks (p.368):

“The answer given above...was given in relation to these specific duties and questions, which belong precisely to the domain of forensic science, and the meaning of this answer was thus that there are no scientific elements arising directly from forensic science which could rule out the injuries having been caused by the action of a single person. But to actually answer this question, of whether the criminal action which determined Meredith’s death was the action of one person alone or several people acting together, it is necessary to take into account, not only the contributions of forensic science, but also other elements which have emerged and which are relevant to this point, and to evaluate the situation in a way which takes the comprehensive picture into account”.

The Massei Court was obviously influenced by a number of factors. It alluded to Meredith’s physical build, that she was strong for a woman and had taken a course in karate. The autopsy disclosed few defensive wounds on her hands and arms contrasted with an impressive number, distribution and diversity, specifically of the bruises and wounds, on the face and neck of Meredith.

Given Meredith’s physical and personality characteristics it seemed inevitable to the Court that the criminal action was carried out by several people acting together. The diverse morphology of the injuries and their number and distribution lead the Court to conclude more than one person was involved in this criminal action. For example, the breaking of the bra alone (more accurately the cutting) would occupy both hands of the attacker; the absence of any trace of defensive or fleeing action by Meredith (who by now would have had both hands free) was explicable by the presence of more than one attacker.

Despite the evidence of eg, Professor Introna, the Court could not envisage the manner in which a single individual could have removed the clothes that Meredith was wearing. Many injuries appeared to have been caused by an activity of restraining; others were inflicted by a pointing and cutting weapon diverse in its dimension and harmfulness. Crucially, considering the neck wounds sustained, the Court determined that Meredith remained in the same position, in a standing position, while continuously exposing her neck to the action of a person striking her, from the left and from the right. It was inconceivable therefore that only one person was able to subdue and stab Meredith.

It is submitted that the Massei Report’s analysis was ambiguous and incoherent. There were simply too many unanswered questions to support the Court’s hypothesis as to the sequence of events in the killing zone. From the evidence, it is reasonable to assume that Meredith was

[initially] stood up and dressed (or partially dressed) when the attack commenced. Because the original motive was sexual and since Meredith was not willing to consent to sex, the first act of the aggressor or aggressors was the subjugation of the victim. To imply that the undressing of the victim took place while she was stood up or after she was stabbed is a bridge too far. The author deposes to a different hypothesis: the subduing of the victim, by use of brute force ie, the grabbing of the throat or jaw coupled with the threat of the knife. It is more likely that Meredith was forced to her knees or to the floor as a precursor to her digital rape. The description by Professor Introna, in the context of the attack makes perfect sense. In one scenario, with the victim prone, facing downwards, a single attacker (such as Guede) sitting on top of her, could easily have cut the bra strap with a knife. Sadly, the attacker had by all accounts only limited success in undressing Meredith and digitally raping her. He evidently did not satisfy his sexual cravings and Meredith's continued resistance tipped the scale: In frustration, Guede, it is suggested, resorted to stabbing her. This evidently did not subdue poor Meredith leading to the fatal blow. By this stage Guede had gone too far in any event and a secondary motive for Meredith's brutal murder was to prevent her from later identifying the attacker to the police.

Massei would have one believe that Guede initiated the sexual attack upon Meredith on his own account while Knox and Sollecito were canoodling and cuddling next door in Knox's bedroom. Having heard the commotion Knox and Sollecito go to investigate. Fuelled by hashish and/or marijuana Sollecito joins in, eventually helping to subdue Meredith with his pocket knife, while Knox returns to her bedroom to fetch the kitchen knife (Exhibit 36) which she just happens to be carrying in her handbag. A little later, Sollecito cuts Meredith's bra strap and then stabs Meredith (with a pocket knife according to Massei) who screams out immediately before or at the time of the stabbing. At some stage afterwards, Knox stabs Meredith (fatally) on the other side of her neck with the kitchen knife (Exhibit 36).

After the attack, all three flee the premises. Guede immediately, Knox and Sollecito a little later – having attempted to wash off Meredith's blood in the small bathroom and either then or later, attempt to clean the rest of the flat and/or to simulate a burglary. Knox and Sollecito apparently remained lucid and cool after the event, since they had the presence of mind to dispose of Meredith's two mobile phones (without removing the SIM cards or turning off the cell phones) and Sollecito's pocket knife. This does not adequately explain why they chose to return the kitchen knife (Exhibit 36) to its rightful place in Sollecito's kitchen drawer, after one or other defendant had scrubbed the knife, presumably with a cleaning agent. This scenario just does not ring true.

Naturally one must observe that the Massei Court based its verdict on the totality of what it regarded as reliable and credible evidence levelled against Knox and Sollecito respectively. However, as the author has already demonstrated there were substantial shortcomings in the majority of that evidence which leads to the following outcome: Having regard to the expert testimony outlined above, the Court could not have been sure that the attack on Meredith Kercher was carried out by Knox and Sollecito acting in concert with Guede (the prime mover). The expert testimony, coupled with the evidence as a whole, was equally as consistent with the digital rape and homicide being carried out by Guede acting alone.

(b) The curious case of the missing murder weapon

The focus now shifts to consideration of the weapon or weapons used to subdue, stab and kill

Meredith Kercher from which, it has to be said, proved to be the low water mark of the prosecution case against Knox and Sollecito.

To recapitulate, from Sollecito's house the following were seized: (i) a large kitchen knife (described as Exhibit 36); (ii) in his bedroom, a second knife with a blade eight centimetres long.

As far as Exhibit 36 was concerned, genetic analysis taken from a scratch on the blade of the knife revealed the biological profile of Meredith Kercher. It also had Amanda Knox's DNA profile on the blade where it meets the handle which explains why Exhibit 36 was colloquially dubbed "the Double DNA Knife". The writer has already outlined and evaluated the forensic and biological results (see section 4 supra). Nevertheless, the first outstanding issue is whether Exhibit 36 could have been used to inflict all or some of the injuries found on Meredith Kercher's body. Here is a synopsis of the expert testimony:

Dr Liviero testified that in order to carry out the assignment commissioned by the Public Prosecutor, video photos were used as well as the consultancy report of Dr Lalli.

She argued that the knife seized and shown as Exhibit 36 was to be considered "clearly compatible" with the deepest wound inflicted on the victim. She noted that when the blade enters flesh, the part where the blade fixed to the handle hits [the surface] it causes a bruise on the tissue so that one should be able to find an ecchymotic area around it (purple discolouration of the skin) but, in this case, there was no discolouration. With reference to the exhibited knife, she noted that it had some fine scratches on the blade, at a distance of two, four and 11 centimetres.

Professor Bacci also addressed the question of the genus of knife that could have caused the injuries observed and, given that it would have been a sharp instrument with a cutting edge, he answered questions concerning compatibility with the knife that was seized and shown as Exhibit 36.

He said that Exhibit 36 was a kitchen knife with a very voluminous blade. In relation to the largest wound on the left hand side, compatibility was deemed to exist on the grounds that although he was aware of the arguments against such an assessment, it was not possible to be certain in terms of attribution or exclusion "...because the lesività [wounding phenomenon] is dependent on too many factors; the moment in which the events took place, the force that the sharp/cutting object has, movements of the victim, of the perpetrators, their physical positions". On this specific point, he concluded substantial compatibility.

He accepted that the knife could not have caused the wound on the opposite side (the right side) because of the size of the wound (1 and a half cm and a half with a depth of 4cm) and the fact that at 4cm from the tip, the width of the blade of the knife is about 3cm and therefore much larger than the width of the 1.5cm wound just highlighted.

While answering questions from the defence, he explained he had been shown only one knife, Exhibit 36, but he had not examined it because it was handled only by police and he did not perform scientific measurements or examinations. It was enclosed in a plastic bag and shown to him at a distance of more than a metre.

In examining the various wounds, Professor Norelli confronted the problem relative to the compatibility of the most important wound on the left-hand side: the 8cm-long wound, with the sequestered knife, Exhibit 36. He pointed out that a wound inflicted by a pointed and cutting weapon might have a length greater than the width of the blade because as it enters and above all when it exits, the wound lengthens with respect to its width. For example, a weapon which has a width of 3cm might easily cause an 8cm-wide wound. Accordingly, the depth of the wound being less than the width of the blade did not impose an assessment of incompatibility since a blade is not always plunged into flesh right up to the handle; the blade may only enter up to a certain portion of its length.

Professor Norelli excluded compatibility between the sequestered knife (Exhibit 36) and the 4cm-deep wound inflicted on the right latero-cervical part of the neck. He continued: "...if we consider the knife in judicial attachment, in order to have a depth of four centimetres, the wound would have had to be wider than the... two centimetres which characterizes it". With reference to the manner in which the wounds on the neck were caused, it was not possible to establish this since it was possible, that there was an active movement by someone on the victim when the wound was inflicted.

Professor Francesco Introna testified that the victim also had injuries inflicted by a cutting instrument; a large stab wound in the left part of the neck and a second, smaller stab wound whose path crossed the path of the larger wound. He described the path of the large wound as being from left to right, upwards, and back to front; the same inclination as the fracture of the hyoid bone. The path of the wound stopped there, and the blade entered entirely into this wound, and there was a harmful interaction between the attacker and the victim due to the persistence of the attacker with the knife stuck into the neck and the movements made by the victim trying to free herself from it.

The second stab wound on the right-hand side was much smaller, with a path that crossed the larger wound. He noted the presence of a reddish, scraped area, indicative of the fact that "...there was an impact on this region of skin by the rear part of the handle of the knife, and, (with emphasis) this is the sign that the knife blade penetrated completely". He observed that there were abrasions present only around the lower edge of the wound, and this signified the impact against the skin of the lower edge of the knife handle, and thus (as previously described by Dr Lalli), the path of the wounds must necessarily incline upwards. If the blade had entered perpendicularly to the skin, one could have expected to find scrape marks on both edges of the wound.

In relation to the main wound on the left-hand side he opined that penetration must have been occasioned by a knife with a blade of at most 8-9cm in length: He said: "If the blade had been longer, it would have gone through the neck and come out the back and there would have been an exit wound from the blade in front of the hyoid bone; the hyoid bone is not a suitable structure to stop the path of a knife...the hyoid bone is so easily broken and so small, so important but still so fragile that it could not possibly stop the thrust of a knife blade or a knife point. So the knife actually sectioned the hyoid bone, which means that this wound, the main wound in the left part of the neck, was caused by a knife with a 9cm blade".

The stab wound corresponding to the injuries on the right side of the neck was indicated as being a little wound of very small dimensions with a very small path.

The path of the wound was 4cm long and only 1.5cm wide. He concluded the blade used to inflict this wound must have had a width of 1.5cm at 4cm from the point. This blade only entered 4cm into the neck "...because it encountered the angle of the jaw".

There was another small wound on the left cheek; this was a tiny wound which could have been caused by the point of a knife simply to threaten the victim at some point during the attack.

A knife of the brand Marietti Stiles was then shown to the consultant; a knife of a total length of 31.2cm with a single-edged blade of length 17.5cm; a knife which had the same characteristics as the sequestered knife (Exhibit 36). Having previously described the wound inflicted on the left side of the neck, the Professor reasoned that the wound inflicted was incompatible with a knife sharing the same characteristics of a kitchen knife such as Exhibit 36. He said that it was impossible that such a knife could have caused the injury on the left side of the neck, since that injury must have been caused by a knife with a blade at most 8-9cm long and 1.5cm wide at a distance of 4cm from the tip, with a regular and homogeneous spine. His conclusion was that the sequestered knife (Exhibit 36) was not compatible with the main wound because the bruising was consistent with a blade which had completely entered the victim's neck.

Forensic pathologist Professor Carlo Torre, consultant for the defence of Amanda Knox, testified at the hearing of July 3, 2009. He stated that he had not been able to attend the autopsy, but qualified the documentation from the autopsy as excellent, and specified that he had been able to examine and participate in the various hearings of the trial on aspects concerning forensic pathology.

During his evidence he considered the knife identified as Exhibit 36. He observed that the knife had a blade 17.5cm in length, with a thickness of 1 - 1.5mm throughout, and a maximum height of 3cm. He excluded the compatibility of this knife with the largest wound above because of its dimensions. His opinion was that a smaller knife, which caused the second main wound, 4cm in depth, on the right-side of the neck, may have caused the more serious wound. This could have been achieved "...by sawing back and forth, mangling the deep tissues and this [could] make an 8cm wound".

He confirmed that the main wound could not have been caused by the sequestered knife, because in that region "...there is nothing resistant, only the hyoid bone which is just a fragile little thing... [è roba proprio da poco]". Thus, not encountering any resistant structures, especially during an incision, the use of a knife with a blade 17cm long would "...certainly have gone right through the neck".

Also the other wounds could be absolutely compatible with a pocket knife with a blade 8cm in length and 1cm or 1.5cm in height.

Further questions were put to the consultant on the compatibility of the wounds inflicted with Exhibit 36. Professor Torre stated that whereas in the case of the smaller wound there was absolute material incompatibility, with regard to the larger wound it could not be excluded that it could have been caused by a kitchen knife such as Exhibit 36, but no more so than by a myriad of other knives. He added that the exhibited knife was compatible with the morphology of the wound but not with the depth of the path of the wound, since "...with a knife with that cutting edge and that length, it would be impossible for it to have entered so little, because in that region

of the neck it would only encounter soft parts”. Moreover there had been “a back and forth motion of the knife” which implied that a tenacious attacker would not have stopped pushing in a knife every time at a depth of 8cm.

Professor Vinci testified at the hearing of August 18, 2009. He considered the subject of the "bloody stains" found on the undersheet in Meredith Kercher's room. In relation to these stains, on the basis of graphics given in the report dated June 30, 2009, he asserted that the knife print found on the undersheet in Meredith's bedroom could have been made either by an 11.3cm knife blade, or by a 9.6cm knife blade together with a mark 1.7cm long left by the handle of the same knife. In either case, the blade could not be wider than 1.3/1.4 cm.

He emphasized that all the wounds inflicted by a cutting instrument would be compatible with a single knife.

At the hearing of September 18, 2009, Professor Vinci was heard. He also dealt with the aspect relative to these haematic stains found on the mattress cover in the bedroom of Meredith Kercher and in relation to them, on the basis of graphic elaborations which he reported in the statement given on June 30, 2009, he affirmed that the prints found on the mattress cover found in the bedroom of Meredith Kercher could have been in relation to the dual placing of the blade of a knife 11.3cm long, or of a knife blade 9.6cm long and with a section width (of 1.7cm) at the top of the same knife.

The Brutal Killing of Meredith Kercher – Part 11

Professor Vinci testified that in each case the blade must have had a maximum width of 1.3 / 1.4cm. He stressed as well that all the wounds of a stabbing and cutting weapon were compatible with the use of a single knife.

Professor Giancarlo Umani Ronchi: As far as the knife which had been seized (Exhibit 36), he declared that he had seen this knife, but from a certain distance, without holding it in his hand or gauging its weight. He had not seen the streaks. He recalled the opinion expressed in the expert report where the absence of significant elements to establish whether one or more knives had been used was affirmed, “...the only possible judgment being that of the non-incompatibility of the wounds with the knife under judicial seizure”, an opinion that he confirmed. In this regard, he stated that the judgment of non-incompatibility had been based on the fact that the knife was single-bladed. As far as the discussion about the length or the width of the blade, compatibility could hardly be established from the length and the width of the blade for one very simple reason: because of the human factor ... of the person who has the weapon in hand to exert the pressure, the direction ... the going backwards and forwards...”

Just stopping there for one moment, as previously stated, the author has been reliant throughout on translations from the Italian language to the English language. It is difficult therefore to draw any precise conclusions from what Professor Ronchi meant by the use of the double negative “non-incompatibility”.

Professor Cingolani: On the point regarding compatibility of the wounds with the seized knife (Exhibit 36), he affirmed that this had to be ruled out for the lesion on the right, 4 cm deep and 1.4cm wide. Recalling the assessments made, he stated that at 4cm from the point of the blade,

the blade is wider by 1.5cm, and therefore a blade of those dimensions penetrating for 4cm would have had to cause a bigger breach. Accordingly he concluded it could not have been the blade of the knife which was labelled as Exhibit 36.

In confirming the judgment of the non-incompatibility between Exhibit 36 and the major wound, he repeated that the abrasion under the wound could have been caused by the impact of the handle of the knife on the skin, but also by other causes having equal validity. That the abrasion was present only lower down could have depended on the angle at which the knife penetrated: “On one side, the handle can compress more while on the other side, it may not compress. Therefore, the wound is consistent with the signature of half the handle of the weapon which inflicted the injury”.

He clarified that irregularities present on the blade, on the edge of the blade, could have created the rippling in the wounds.

In the course of the examination, Exhibit 36 was shown to the expert. The Professor testified that he could not see any irregularity on the face of the blade and that it seemed to be “smooth”.

At the hearing on September 25, 2009, Dr Patumi, a consultant for the defence of Amanda Knox, gave evidence. He recalled that the victim presented three wounds in the region of the neck: two on the victim’s left side, one on the right side. In relation to the two on the left side of the neck, the more cranial one, ie, the one positioned higher, was the more important one because combined with other factors, it had caused the victim’s death. This wound was 4cm wide, 8cm long, with a cut 8cm deep. The superior rim, the upper margin, of this wound presented two accessory incisions, signifying that the victim was struck by multiple blows, being not fewer than three blows.

On the lower edge he noted the presence of excoriated contusions which, in all likelihood, was consistent with the anterior face of the knife that was used to inflict the wound. In other words, at the moment the anterior part of the knife came into close contact, in strict contiguity with the skin, pushing it [the skin] inwards, the rubbing against the skin created “this type of image”. Consequently, Exhibit 36, with a blade length of a good 17cm, could not have caused a cut of 8cm.

The final factor supporting incompatibility was confirmed by the repetition of blows and their violence, deducible from the fact that a bone was directly pierced (the hyoid bone). Although not having the consistency of eg, a femur, it did possess a bony component which rendered it resistant to an implement such as a knife. Thus, he submitted, the great violence used, excluded the possibility that the full length of the blade did not penetrate the victim. This was not a case where the assailant, for whatever reason, wished to limit the ferocity of the attack and the depth of the cut [to 8cm].

As for the possibility that the victim could have made an attempt to “...distance her head and thus her neck from the cutting implement, which could have reduced the blade penetration”, he observed that “...the head of the victim and especially the mandibular region were subjected to a strong grasping action: the victim presented the characteristic signs of a hand which gripped and violently blocked the mandible”.

Moreover, observed the consultant, "... she [the victim] did not have much chance of distancing herself and fleeing from the cutting implement at the time of the aggression". The hypothesis of the complete penetration of the cutting implement therefore remained quite valid.

Examination of the wound on the right part of the neck demonstrated that Exhibit 36 was absolutely incompatible with the instrument that caused this wound. The dimensions were incompatible: 1.5cm long and 0.4cm wide with a depth of 4cm. The cutting implement seized would have produced a depth of 4cm and a height of 2cm. He specified there was no correspondence between the length of the blade and the depth of the cut.

That concludes the key parts of the expert testimony on this issue. We now turn to the Massei Court's evaluation as to the description of the weapon or weapons used to subdue and stab Meredith Kercher and, just as pertinent, who possessed or owned the said weapon or weapons. To recapitulate: the primary issue was whether the "Double DNA Knife" (Exhibit 36), inflicted the fatal stab wound to the left side of Meredith Kercher's neck. Based on the forensic evidence, a finding of [partial] compatibility would presuppose the presence of at least two bladed articles to inflict the lesions described earlier.

We start with p.264 of the Massei Report. In summary, the Report concluded that the DNA from Meredith Kercher found on the "Double DNA Knife" (Exhibit 36), could not be traced back to any contamination occurring in the house in which it was found (Corso Garibaldi), or to the method of acquisition of the Knife on the part of Inspector Finzi, or even to the collection and delivery of the Knife by Superintendent Gubbiotti to the Forensic Police in Rome (in this case Dr Stefanoni). The Court also ruled out the possibility that either Knox or Sollecito transferred Meredith's DNA from Via della Pergola 7 to Corso Garibaldi because that would entail either Knox or Sollecito going directly to Corso Garibaldi without touching any other object in the meantime. The Court inferred therefore that Exhibit 36 was the knife that caused the most serious and fatal injury to Meredith Kercher. The Court's hypothesis will be examined shortly.

At p.372, the Massei Report set out the result of the genetic investigations. The author will now endeavour to highlight the key points.

The cutting of the piece of bra, on which the clasps were to be found, appeared to have been done with a cutting implement. It had previously emerged that Sollecito was in the habit of carrying upon his person a small knife and indeed Sollecito carried one in those days for, on November 6, 2007, a pocket knife came to be found and seized. Aside from Sollecito's father, three other character witnesses for Sollecito added what the Court construed to be significant details. Mariano De Martino recalled that Sollecito always had the pocket knife with him and the blade must have been around 4cm long. Saverio Binetti described the pocket knife as rather thin and pointed with a blade about 4cm in length. The third witness, Corrado De Candia, recalled that the pocket knife had a length of around 6-7cm and a width of 1cm or less.

The Massei Court brushed aside the opinions of the experts outlined above. Based on the biological trace attributable to Raffaele Sollecito on Exhibit 165b (the bra clasp), the Court determined that Sollecito, being actively present at the scene of the attack, coupled with the evidence of his character witnesses concerning the pocket knife, was the person who pulled on Meredith's bra with violence and then decided to cut it using his pocket knife. By this stage, the Court found that Guede [digitally] penetrated the unfortunate victim, who had been almost

completely stripped naked. Having cut the bra, the description of the knife neatly fitted the 4cm wound found to have been inflicted on Meredith. The Court determined that this wound was inflicted immediately after the cutting of the bra and that it was Sollecito who stabbed Meredith.

The fact that the knife used by Sollecito on that occasion had not been found was an irrelevant circumstance declared the Court. The availability of bladed weapons [arma bianca] and the ability of individuals to easily conceal them (or, a fortiori, abandon or destroy them) did not prevent the Court from drawing reasonable inferences or conclusions from the evidence: cf Cassation, June 30, 2004, No 48349.

It was at this stage ie, the infliction of the first wound that Meredith screamed out in pain and also in terror. One or other then clamped a hand over Meredith's mouth so that she could not scream out again. During the struggle Meredith tried to withdraw the part of her body that had been attained, but she ended up being driven back towards Sollecito's pocket knife that still remained in the wound itself, which led to a second incision on the epiglottis, almost as if it were a case of a second blow being inflicted upon her.

This progression in violence and group dynamic required the presence of a second attacker and of a second knife. The Court held that the second attacker was Knox and the knife was Exhibit 36. The knife had for various reasons been carried by Knox in her handbag to Via della Pergola and that it was Knox who delivered the most serious and fatal wound to Meredith.

Evaluation

The finding against Sollecito that it was he who inflicted two of the three wounds to Meredith Kercher using a pocket knife which was in his possession at the material time is deeply flawed, offensive and wrong in law. It could not have been part of the prosecution case that Sollecito used a pocket knife to subdue and stab Meredith Kercher. If it had, why was Sollecito and/or Knox not charged with carrying the said pocket knife without justified reason? To recapitulate, the charge alleged that the killing was achieved by means of strangulation with consequent fracture of the hyoid bone, and deep lesions to the left anterior-lateral and right-lateral regions of the neck, caused by a bladed weapon (Exhibit 36) (my emphasis). The reader is referred to Section 5 supra. The Massei Court's finding strikes against basic principles of fairness which applies to all criminal proceedings. Put another way, a criminal court is not generally entitled to bring in a verdict which differs markedly from the basis on which the prosecution puts its case. This is because the defence would not be able to adequately prepare and meet such an unexpected contingency. In plain English, the defence would be ambushed or taken by surprise. In this case, the defence were ambushed and the defendants' rights (Knox and Sollecito) were fundamentally infringed.

To infer that Sollecito had a pocket knife at Via della Pergola 7 on the fateful evening of November 1-2, based on the character evidence of four witnesses called for the defence, was to say the least highly unusual. Their descriptions as to the make and dimensions of the knife varied. Even if Sollecito was present at the scene of the crime (as distinct from being complicit), the Court could not have been sure that any pocket knife in his possession, which incidentally was never recovered, had inflicted all or some of the injuries, the most cogent rationale being: (1) The prosecution could not prove the dimensions and character of the knife were consistent with the injuries inflicted upon Meredith Kercher. (2) The Court paid scant regard to the totality of

expert opinion as to the type of bladed weapon (or weapons) which had been used to stab the victim. (3) The Court paid scant regard to the dimensions of the bloody outline of a knife found on Meredith's pillow. (4) Consequently, the Court could not have been sure that any pocket knife and, a fortiori, Exhibit 36 (the Double DNA Knife) had been used to stab Meredith that fateful night.

Consistent with English law, the Massei Court's findings should be struck down as *Wednesbury* unreasonable. Where there is no evidence to support a finding of a court or the court has reached a conclusion which is irrational or perverse, in the light of the evidence adduced at trial, a conviction based on that part of the evidence cannot be sustained: *Associated Provincial Picture Houses v. Wednesbury Corporation* [1948] 1 KB 223. The Massei Court also appears to have violated article 6 of the European Convention on Human Rights (the right to a fair trial).

Turning to the "Double DNA Knife", eight of the experts agreed that the wounds caused to the right side of Meredith's neck could not have been caused by the sequestered knife for a multitude of reasons. This conclusion left only one of two hypotheses: Either there was only one knife or there were at least two different knives used to subdue and kill Meredith. The other expert, Professor Vinci focused his attention on the bloody outline left on Meredith's bedsheet. What we know is that the bloody outline was left by a knife with a blade 11.3cm long or a knife with a blade 9.6cm long and a handle 1.7cm long. These measurements were incompatible therefore with either Exhibit 36 or the pocket knife length which supposedly inflicted the wounds as the Massei Report maintained. Contrary to the Massei Court hypothesis therefore we are left with three knives! The latent contradiction here is that if all three accused were present (as alleged) Guede must have been armed as well, but that is not what the Micheli Court found. One can deduce that the totality of the expert evidence is more consistent with one knife being used to subdue and stab the victim (see Professor Vinci's hypothesis *supra*).

And if that were not enough, of the eight experts who gave evidence on the point, two (Dr Liviero and Professor Bacci) opined that Exhibit 36 could have caused the fatal wound to Meredith's left side; Professor Norelli could not rule out exhibit 36 caused the fatal wound; Professor Ronchi's opinion is not clear due to the use of the "double negative" (non-incompatibility) – it will be assumed he supported the prosecution contention; but in any event all the remaining four experts (Professors Introna, Torre, Cingolani and Dr Patumi) opined that Exhibit 36 could be ruled out as the weapon that caused the fatal wound to the left side of Meredith's neck.

Bearing in mind the burden and standard of proof one is left wondering how the Massei Court reached the conclusion that it did? The problem was, aside from the unconscious bias syndrome (the forbidden reasoning), Massei was looking at the case through rose-tinted glasses. By a flawed process of deduction it had erroneously found that the case against Knox and Sollecito was cogent. The reality was that nothing could be further from the truth. On this aspect of the case one can speculate as to whether the prosecution had actually been able to satisfy the civil standard (proof on a balance of probabilities) never mind the criminal standard (proof beyond a reasonable doubt). As the writer has already demonstrated, therefore, Exhibit 36 was not the weapon or one of the weapons used to subdue and murder Meredith Kercher.

And one final thought. If the defendants (Knox and Sollecito) were sufficiently *compos mentis* to dispose of the pocket knife (as well as the mobile phones), why did they not dispose of Exhibit

36? By a process of deduction and logical synthesis, the answer is plain of all to see: Exhibit 36 never left Corso Garibaldi and was not the murder weapon.

That concludes the author's detailed examination of the trial of Knox and Sollecito. A summary of the author's conclusions regarding all three accused, together with the outcome of their appeal hearings is to be found towards the end of this work (Summation and Conclusions).

The Brutal Killing of Meredith Kercher – Part 12

The first appeal of Rudy Hermann Guede (the Borsini-Belardi Motivations Report) – the forbidden reasoning unchallenged. On November 18, 2009, shortly before the conclusion of the trial of Knox and Sollecito (Massei), Guede's appeal hearing began. Following completion of the Knox and Sollecito trial on December 4, 2009, two weeks or so later, on December 22, 2009, Guede's appeal hearing was concluded. By the time the Borsini Court delivered its findings, it already had the benefit of reading the conclusions of the Massei Report.

The following is a summary of the key findings made by the Court. There were several principal grounds of appeal. At least three challenged Guede's conviction for digital rape and/or murder. Additional grounds of appeal sought to challenge the totality of the sentence imposed (30 years) having regard to his complicity; the lack of aggravating circumstances and, the apparent failure of the Micheli Court to give due credit for various mitigating circumstances.

Guede continued with his strategy of denying responsibility for Meredith's digital rape and murder. As a fallback position, he sought to minimise his involvement in the crimes and he continued to point the finger of blame at Knox and Sollecito (a subtle form of cut-throat defence with the added benefit of being tried separately and prior to his co-accused).

The first part of the Report focused on whether Meredith Kercher had been sexually assaulted by Guede. From the evidence submitted at the Micheli hearing, the Borsini Report noted that various incontrovertible facts had emerged: (1) The defendant was present at the scene of the crime. (2) On the body of poor Meredith Kercher there were found traces of digital penetration by Guede. (3) On the victim's bra and on the sleeve of her sweatshirt other biological material was identified as belonging to Guede. (4) On the body of the victim, 43 significant cuts were revealed which were caused by violent actions and made by pointed and sharp knives or with strong pressure of the hands and limbs.

The motive initially was sexual and it was the refusal and unexpected resistance of the victim, overwhelmed but not subdued, by minds already altered by the admitted (via Knox) consumption of drugs in the throes of excitement, which triggered the murderous rage.

Borsini addressed the vexed question as to how Guede gained entry to Via della Pergola 7. The Court rejected Guede's contention that he had met Meredith the previous day and that was the reason for his visit to the house. Further, it was improbable that Meredith, whose reserved character was well known within her circle of friends and acquaintances, could have opened the door to Guede, appearing there without any apparent reason. The Court therefore adopted the Massei hypothesis that the defendant's entrance into the apartment was achieved with the help of Amanda Knox. The Court signified that one circumstantial element which supported this theory was Knox's slanderous allegation (*Calunnia*) towards Lumumba. The Court observed that on closer examination, if one replaced the figure of Lumumba with the figure of Guede, that version made perfect sense.

As to the staging of the burglary in Romanelli's bedroom, Borsini certified that in essence it agreed with the version put forward by Guede ie, it happened after he (and, a fortiori, Knox and Sollecito) had left the apartment. Put another way, the staging of the burglary must have occurred some time later (*ex post facto*); the motive for the simulation being to divert attention

away from Knox and by implication Sollecito.

The Court observed that while on the run in Germany and, after his arrest and extradition, the half-truths that evolved over that period, resulted in a version of events put forward by Guede which was completely incompatible with the reality of facts perceived and heard. For this reason alone, Guede's reconstruction of events as to what took place prior to and during the murder in Via della Pergola 7 was treated with circumspection.

The second part of the appeal concentrated on the defendant's contention that there was a lack of intention, on his part, to murder Meredith Kercher. Alluding to what had already been observed supra, the Court opined that the second ground had already been partially answered. The poor battered body of Meredith exemplified the most obvious refutation.

The third ground of appeal contended that there was no proof the defendant held the knife considered to be the murder weapon and, that consequently, there was no proof he voluntarily participated in the victim's murder.

The Court said if there was no premeditation before the trio entered the house and, if the homicide was the final act in an escalation of violence, then Guede participated fully, not only for being the author of the sexual assault, but also for having helped subdue the victim while she was receiving the fatal blow. Based on the blood sample found on Meredith's left sleeve the Court determined that there was evidence from which it could reasonably be inferred that the appellant held down the left hand of the victim while she was stabbed on more than one occasion; the stab wound on one side of Meredith proving fatal. For those and other reasons the third ground of appeal was rejected.

Having had the appeal against his convictions dismissed, the appellant sought a reduction in sentence on two distinct but separate grounds: (a) an absence of aggravating factors to the offence of murder; (b) the availability of mitigating circumstances not given sufficient weight by Micheli.

As to the former, Borsini stated that the murder, combined with the multiple sufferings inflicted upon the victim prior to her death, appeared to be out of all proportion with the need to satisfy a sexual impulse, which was in no way encouraged by Meredith. Given the "disturbing seriousness" of the combined actions compared to the aim this ground of appeal was summarily rejected.

As to the latter, however, that various other elements sought to mitigate the sentence viz: (a) After the stabbing, the eventual late change of heart demonstrated by his use of towels to staunch the blood (on his own or with the others); (b) the lack of previous convictions at the time the crime was committed; (c) the fact that it was not him (Guede) who had stabbed Meredith Kercher; (d) the voluntary return to Italy after fleeing to Germany; (e) his relative young age; and, (f) the "acute stress disorder" that would justify his lack of aid to the victim and the subsequent fleeing of the jurisdiction.

Borsini indicated that taking into account the above elements, such mitigating circumstances could be accepted. In addition, the Court noted he was the only one of the defendants to apologize to Meredith Kercher's family, even if referring only to his lack of help [in her dying

moments], as was recognized by the lawyers of Meredith's relatives who participated in the Micheli trial as a civil party. Finally, apart from the attempt to staunch the flow of blood from her wounds, Guede was the only one, even if in a somewhat fanciful reconstruction of events, to indicate the perpetrators.

Taking into account the elements and the circumstances of the crime and the unspeakable suffering inflicted on the victim, the Court judged the aggravating and mitigating circumstances to be of equal value. As a result, the appropriate sentence was that provided for by Article 575 of the Penal Code; in this case 16 years. The appeal was allowed to that extent ie, a reduction from 30 years to 16 years' imprisonment.

Analysis and Evaluation – the forbidden reasoning unchallenged
The injustice to Meredith Kercher's memory was the holding of separate trials. The Borsini tribunal approached Guede's appeal wearing rose tinted glasses ie, it had access to the Massei Report and, therefore, convinced the evidence against Knox and Sollecito was compelling, it lent support to the hypothesis that all three accused had been involved in killing Meredith Kercher. Nothing could be further from the truth.

Guede failed miserably as far as his appeal against the allegation of digital rape was concerned. No doubt his lawyers prepared him for such an eventuality having regard to the biological and forensic traces referred to in the Micheli and Massei Reports (and despite his fictitious claim that Meredith consented to any intimate foreplay). But in relation to the murder charge, similar to the Micheli Report, Borsini placed far too much emphasis on Guede's false account, which despite its plausibility was unsworn and entirely self-serving. For the offence of murder, all three tribunals unwittingly ended up treating Guede as a secondary rather than as a principal offender. By being permitted to opt for a fast-track trial Guede was allowed to distance himself from Knox and Sollecito. Thus, even though the Massei Court was convinced that Guede was a primer mover in the initial attack upon Meredith Kercher, Guede's case was that it was Knox and Sollecito who attacked Meredith after he (Guede) had gone to the large bathroom. That it was Knox and Sollecito who, unbeknown to him, were armed and produced the knife (or knives) to subdue and stab Meredith. As a fallback position, even if the Court found Guede was complicit in the sexual assault upon Meredith, he was unaware that Knox and Sollecito were carrying knives and did not contemplate or foresee that weapons would be used to subdue and ultimately stab Meredith, which was the eventual cause of her death.

Having regard to those latter circumstances, Guede would, ab initio, have a defence to murder: for English law see *R. v. Powell and another*; *R. v. Daniels* [1999] AC 1. Guede's defence failed at trial and on appeal however, because there was a surfeit of evidence to demonstrate that he continued to help subdue poor Meredith after the production of the knife (or knives) and, at the critical juncture, when she was stabbed. As far as the offence of murder was concerned therefore Guede was equally culpable. Put another way, it mattered not as to which offender stabbed Meredith Kercher.

For the avoidance of doubt, it is submitted that it was Guede who stabbed the poor and unfortunate victim. The reader is referred back to the section in which the author analysed and evaluated the evidence adduced at Guede's trial (Micheli). It is submitted that the Borsini tribunal gave too much credence to what was declared by Guede pre-trial. The Court also neglected to draw proper inferences from eg, his failure to give evidence. In reality, Micheli and

Borsini fell into the trap of “cherry-picking” Guede’s pre-trial accounts. His pre-trial declarations were simply not credible and unworthy of belief as far as they sought to incriminate others. The beneficiary of this unwitting analysis was Guede, all to the detriment of Knox and Sollecito (the forbidden reasoning).

And furthermore, as previously highlighted, the Court was not entitled to treat Guede’s pre-trial ramblings as evidence against Knox and Sollecito.

Borsini had adopted the Massei hypothesis that the defendant’s entrance into the apartment was achieved with the help of Amanda Knox. The Court referred to one specific circumstantial element: Knox’s slanderous allegation (Calunnia) towards Lumumba. The Court observed that on closer examination, if one replaced the figure of Lumumba with the figure of Guede, that version made perfect sense. It is submitted that it was pure co-incidence that Lumumba and Guede happened to be Black and of African descent. The reason why Knox initially accused Lumumba was because the police had found a message on Knox’s cell phone, sent by her to him on November 1, “ci vediamo dopo” (see you later), which could signify the intention of actually seeing each other later to go somewhere, perhaps to Via della Pergola 7. This also served to explain why Knox, when improperly questioned by the police, falsely put forward Lumumba’s name as a potential suspect, not because he was of African descent. So, as a matter of logic, Borsini could not rely on the allegation of Calunnia made by Knox; further, because the Supreme Court had already ruled that the evidence of Calunnia was not admissible to prove her complicity for the substantive offences ie, digital rape and murder.

However, we have Knox’s “memoriale” (written on November 6) in which she imagined Lumumba as being present at Via della Pergola at the material time. The memoriale contained a declaration or admission against Knox’s interests ie, that she was present when Meredith was attacked and murdered. The Supreme Court had already ruled that the memoriale could be used at her trial for murder. Accordingly, Borsini determined that Knox’s admission, to all intents and purposes corroborated Guede’s pre-trial declaration that he was present at Via della Pergola 7 (or vice-versa). As will be demonstrated later (Overview of the Galati-Costagliogi judgment), Borsini was not entitled, in law, to treat Knox’s memoriale as corroborative of Guede’s account or, a fortiori, as a piece of circumstantial evidence ie, tending to show that Guede gained admittance to the cottage with Knox’s help.

Discussion of the evidential considerations arising from the cases of Knox, Sollecito and Guede serves to highlight that (a) all three accused should have been tried together and, (b) the offence of Calunnia should have been severed and tried at a later date.

It is submitted that the reason put forward for reducing Guede’s sentence was flawed. Let us examine this aspect of the case in a little more detail.

Elements and aggravating circumstances of the crime and the subsequent criminal proceedings

- A brutal and unremitting attack on Meredith Kercher, the initial motive being sexual (Guede alone).
- The unspeakable suffering inflicted upon Meredith.

- Guede was the prime mover in the offence (Massei)
- The nature and number of injuries sustained (43 significant wounds).

As the prime mover in the offence, it could reasonably be inferred that he (Guede) continued to help subdue Meredith while she was being digitally raped and stabbed.

A lack of remorse (not guilty plea)Guede's fleeing of the jurisdiction to escape arrest [and the disposal of incriminating articles such as the Nike shoes].

- The lies told in his pre-trial accounts.
- A refusal to co-operate properly with the authorities including a refusal to give evidence subsequently at the Massei trial.

Guede's failure to give evidence at trial due to the strength of the prosecution case; the permissible inferences that could be drawn from his decision not to testify.

Elements and mitigating circumstances of the crime and the subsequent criminal proceedingsThe eventual change of heart demonstrated by his use of towels to staunch Meredith's blood.

The lack of previous convictions at the time the crime was committed.

His relative young age.

The fact it was not Guede who stabbed Meredith (it has previously been argued this was a perverse finding by the Micheli Court).

Not contesting the extradition hearing (one wonders if Guede had much of a choice).

The "acute stress disorder" that would justify his lack of aid to the victim and contributed to the fleeing of the jurisdiction (the author is unable to locate any medical evidence to substantiate this fact at the time of the offence or shortly thereafter).

Apologizing to the victim's relatives for his lack of assistance to Meredith in her dying moments (see below).

It must be observed that each aggravating and mitigating factor attracts a different degree of weight having regard to its relative importance in the case as a whole and, when evaluating the appropriate level of sentence. One or two additional observations can be made. First, Guede's apology for his conduct towards Meredith was not mitigation. Guede had been convicted after trial. This was not a demonstration of remorse and the best that could be said on his behalf was that he regretted the outcome of his offending. The concession made by Meredith's lawyers regarding his assistance to Meredith in her last moments (given the barbaric attack and the

absence of human compassion) ought not to have been made.

Secondly, when one weighs the relevant factors outlined above, even making allowance for the several elements erroneously taken into account by Borsini and, putting into the equation the benefit attaching to Guede's decision to opt for a fast-track trial, the disparity between the general starting point or level of sentence imposed on the three co-accused was perverse in the Wednesbury sense. The author's overriding impression is that far too much weight was attached to Guede's version of events; those pre-trial declarations did not constitute evidence which was admissible against Knox and Sollecito. As indicated previously, to constitute probative testimony, Guede had to give evidence on oath, both at his own trial (Micheli) and that of Knox and Sollecito (Massei), to guard against fabrication and to ensure that his account was properly tested.

One can conclude therefore that the totality of sentence imposed upon Guede was unduly lenient and disproportionately so when contrasted with Knox and Sollecito's sentences, taking into account his complicity in what was an inhumane and horrific crime.

That concludes the author's examination of the Borsini-Belardi Motivations Report.

The Brutal Killing of Meredith Kercher – Part 13

The second appeal of Rudy Hermann Guede (the Giordano Sentencing Report) – the forbidden reasoning continues

On December 16, 2010 Guede's case was considered by the Italian Supreme Court (Corte di Cassazione). As a point of information, Knox and Sollecito's first appeal had begun on November 24, 2010. The appeal court (Hellmann) did not conclude its deliberations until October 3, 2011. From an objective standpoint, therefore, the Supreme Court, similar to Micheli, Massei and Borsini, approached the case on the basis that the conviction of Knox and Sollecito, not just Guede, had a solid foundation in law.

The following is a summary of the key findings made by the CourtThe Supreme Court's opening statement made under the heading, "1. The Sentences", makes interesting reading. Giordano declared: "Rudy Hermann Guede was found guilty and sentenced by a ruling issued on October 29, 2008 [Micheli]...in a fast-track trial, to... 30 years' imprisonment... aggravated by [a finding of] trivial reasons and hindering self-defence, (ex art.61 no 1 and 5), with denial of requested mitigating circumstances. The Court of Appeal [Borsini], upheld the guilty verdict for an aggravated crime as above, but reduced the sentence of imprisonment to 16 years, after finding the mitigating circumstances to be equivalent to the alleged aggravating circumstances and thus, re-applying the reduction for the [fast-track] trial to the maximum penalty for a non-aggravated murder".

Thus, Giordano confirmed what the author contended in his review of the Micheli and Borsini hearings. Those tribunals erroneously regarded Guede as if he were a secondary offender to the killing of Meredith Kercher and imposed what has already been described, in the latter case, as a derisory sentence. Giordano then outlined what had been discovered in the aftermath of Meredith's brutal killing followed by the results of the scientific investigations. The summary of the latter was as follows:

a) Traces not attributable to GuedeIn Sollecito's house, a knife was found containing traces of DNA on the handle belonging to Knox and on the blade, traces of biological material attributable to Meredith Kercher. On the bra hooks [clasp], traces attributable to Sollecito, although they had been contested.

b) Traces attributable to GuedeA palm print in blood found on the pillow case lying under the victim's body – attributed with absolute certainty to the defendant by its correlation to papillary ridges as well as 16-17 characteristic points equal in shape and position; from Y haplotype on the vaginal swab where no traces of semen were found; DNA on the toilet paper in the large bathroom, where unflushed faeces were found. DNA on the bag found on the bed, on the left cuff of Meredith's blue sweatshirt (previously described as a "zippered shirt" in the first search of Via della Pergola 7, discovered smeared with blood near the body and partly underneath it); and, DNA on the right side of the bra found by the foot of Meredith's cadaver. Finally, near the body, a shoeprint made by the same Nike brand as that worn by Guede.

As has been stated in previous sections of this work, the traces found in Meredith Kercher's bedroom (the killing zone), attributable to Guede, as opposed to Knox and Sollecito were striking and significant.

The Supreme Court then reviewed the several pre-trial statements or interrogations conducted with Guede. His presence at the apartment was established on his own evidence. The rest of his accounts, it is submitted, were self-serving, a tissue of lies and constituted, evidence against Guede only. Guede was cunning enough however, having gone on the run, to hatch a story which, as we have already seen (Analysis and Evaluation of the trial of Rudy Hermann Guede), pointed the finger of suspicion elsewhere and/or to minimise his involvement. One significant sentence pronounced by Guede to Giacomo De Benedetti on November 19, 2007 was: "I was scared that they would say I was the only guilty person". That is a significant statement for two reasons. First, it is capable of being treated as an admission of guilt by Guede to the digital rape and murder of Meredith Kercher. Secondly, and more important, it reinforced in the investigating authority's mind (and later, unwittingly, the Massei Court), that more than one person helped subdue and ultimately kill Meredith. It is a singular illustration of "the forbidden reasoning".

Having reviewed the basis on which the sentence was imposed at first instance (Micheli), the Supreme Court observed that the appellate court (Borsini) posed the problem of a possible participation of Guede exclusively aimed at sexual violence, not murder. Borsini ruled this out, emphasising Guede's active participation in the continuing violence. His presence at the moment of the appearance of [a] knife and of its use was beyond peradventure. Guede was given the chance to exhibit behaviour demonstrating abhorrence aimed at preventing or distancing himself from the more serious acts then perpetrated which must have been predictable by him, even if just as a possibility. But he did not desist, oppose or disassociate himself from the actions of the others (Knox and Sollecito) as Borsini ruled.

It is interesting to observe the Supreme Court's usage of the singular term "knife" bearing in mind the findings of the Massei Court. And yet the Supreme Court had no doubts as to the complicity of Knox and Sollecito and the production and use of two knives (by them).

There were three grounds of appeal. Only the first had any merit and is worthy of further elucidation. On Guede's behalf it was claimed that the appeal Judges (Borsini) violated art.606, paras.1 (b) and (e) of the Code of Penal Procedure. It was submitted that Borsini gave undue weight to elements of the circumstantial evidence against Guede which did not carry the requisite probative value best described as gravity, precision or agreement. Put another way, it was contended that Borsini rejected Guede's account and reached conclusions forged from the factual circumstances which were distinctly ambiguous.

Without going through all of the elements of this ground of appeal, Guede ingeniously sought to make use of the very same conundrum raised by the author when analysing and evaluating the trials of Guede (Micheli) and Knox/Sollecito (Massei) supra. To recapitulate: On the one hand, the motive for Guede's attack on Meredith Kercher was clear: an intention to rape based on a distorted thought-process evidenced in his pre-trial declarations supra... On the other hand, the motive for Knox and Sollecito being involved was far from clear. For example, their lack of association with Guede; the fact they had just begun an intimate and passionate relationship; until 8.40pm on 1st November 2007, they, unlike Guede had pre-arranged commitments.

Guede argued that the reconstruction by Borsini of a joint crime of Knox, Sollecito and Guede, because e.g. traces of all three were found in the locus commissi delicti [scene of the crime] was based on conjecture and on indices which were ambiguous and not supported by the facts.

Guede did not know Sollecito and there was the merest acquaintance between Guede and Knox which was insufficient to demonstrate a course of conduct by all three acting together at the material time. Guede stuck to his story of being in the bathroom at the moment of the fatal attack upon Meredith. This was no proof of conception, preparation and participation on his part in Meredith Kercher's killing, the icing on the cake being the simulated burglary by Knox and Sollecito.

The submissions made on Guede's behalf brokered no sympathy with the Supreme Court. The contradictions and improbability of Guede's version of events leading up to what took place inside Via della Pergola 7, merely confirmed Borsini's firm conviction that Guede was complicit in Meredith Kercher's killing. The combined wounds and blows on Meredith's body, before the fatal stabbing took place, would have occupied the attacker for some time while he confronted the victim's resistance; whereas, according to Guede's account, none of this was noticed by him after he had exited the large bathroom. For those and other reasons the Supreme Court decided that Guede's submissions were unfounded and dismissed the appeal.

Analysis and Evaluation Although Guede ultimately failed to persuade the Supreme Court that he had been the victim of a miscarriage of justice, he persisted with his cut-throat strategy of heaping all of the blame on to Knox and Sollecito while being wholly or partly reliant on self-serving pre-trial declarations. Of course, this was not a case where the Supreme Court was being asked to critically examine or test the Micheli/Massei Court hypothesis as how this heinous crime was committed and by whom. It could safely assume that all three defendants were present at the material time. The single point at issue was whether one or other defendant was complicit and the extent of their participation in the digital rape and murder of Meredith Kercher. Finally, the Supreme Court alluded to the simulated burglary. It adhered to the findings made by the Courts at first instance (Micheli and Massei) and, the appellate Court (Borsini), that the simulated burglary must have been perpetrated by Knox and Sollecito acting alone.

As for Guede, this was the end of the road. All of his appeal avenues were exhausted and he would be required to serve out the remainder of his sentence which would end in 2023. Note, however, Guede could be released at an earlier date as he will be eligible for parole roughly half way through the sentence. According to the author's calculations, Guede would become eligible for consideration of parole in 2014.

That concludes the author's examination of the Giordano Sentencing Report.

The first appeal of Amanda Marie Knox and Raffaele Sollecito (the Hellmann Sentencing Report) – the forbidden reasoning challenged Knox and Sollecito's first appeal before the Court of Assizes of Appeal in Perugia (Hellmann) began on November 24, 2010. By December 16, 2010, as we have already seen, the Supreme Court of Italy (Giordano) had dismissed Guede's final appeal. The appellate Court (Hellmann) did not conclude its deliberations until October 3, 2011.

The following is a summary of the key findings made by the Court For the first and only time one can observe that an Italian criminal tribunal challenged some (not all it has to be said), of the judgmental pre-conceptions made about Knox and Sollecito connected with their alleged complicity in the digital rape and murder of Meredith Kercher. The Court's opening gambit, which was later to form the benchmark for criticism of its decision, was to the effect that the only

fact that was objectively certain was that on November 2, 2007 the body of a young woman (Meredith Kercher), had been discovered in the house on Via della Pergola in Perugia and that she had been digitally raped and murdered. The Court stressed that in the light of its reasoning, it was not necessary to examine further all of the remaining circumstantial evidence on which the Massei Court based its guilty verdicts. Put another way, consideration of the remaining circumstantial evidence was otiose because the appellate court (Hellmann) had by now formed a reasonable doubt as to the guilt of the two appellants.

Hellmann chose instead to focus on certain aspects of the prosecution case some of which the author has already highlighted supra, while analysing and evaluating the strength of the circumstantial evidence levelled against Knox and Sollecito in their first instance trial (Massei) viz: (i) the absence of a credible motive based on the respective profiles and background of the accused; (ii) the absence of means with which to commit the crime ie, the failure of the prosecution to prove to the requisite standard that Exhibit 36 (the Double DNA Knife) was the murder weapon; that it was carried by Knox from Corso Garibaldi and used to inflict at least one of the stab wounds found on Meredith's body; associated with that failure, the implicit oversight of Micheli to reasonably infer that Guede was the person who stabbed Meredith with a bladed article, roughly 9.6cm-11.3cm in length which, along with other articles, was later disposed of by Guede, ex post facto, ie, after the murder; (iii) the failure of the prosecution to discredit Knox and Sollecito's alibi by credible witness testimony, forensic or biological traces or other forms of compelling circumstantial evidence. Thus, the opportunity for Knox and Sollecito to have committed the heinous deed was patently not proven.

Having reviewed what it regarded as fundamental aspects of the case and the reasons given principally by the Massei Court, Hellmann allowed the respective appeals of Knox and Sollecito against all of their convictions save for the offence of Calunnia (Knox only).

Reasons for decision(a) Findings made by MicheliHellmann went out of its way not to be perceived as being overtly critical of the Micheli Report. Hellmann observed that because Guede's trial had proceeded under the fast-track procedure, Micheli did not have at its disposal, the acquisitions of evidence available at the later trial of Knox and Sollecito (Massei) and/or on appeal which, as we shall see shortly, included the results of an independent expert review which was sanctioned by the appellate Court (thereby overruling an earlier adjudication made by Massei ante). This last observation lends weight to the author's assertion made earlier, that is, Italian Criminal Procedure should not permit a fast-track procedure for co-accused, where the prosecution are alleging complicity on the part of all defendants and, their respective roles or complicity in the offence or offences are yet to be established. The potential for mutually inconsistent verdicts is legion of which the Micheli, Massei and Hellmann Reports is regrettably another illustration.

To summarize, the Hellmann Report concluded that the evidence adduced at Guede's trial did not lend support to the hypothesis that more than one person was necessarily involved in the crime.

The complicity theory was based on various individual elements, that is: (1) The DNA recovered from the bra-clasp (Exhibit 165b) and that it had been left behind during the occasion of the murder. (2) The DNA recovered from Exhibit 36 (the Double DNA Knife) which had been sequestered from Corso Garibaldi; that it had been used to stab Meredith during her digital rape

and murder (thereby causing a fatal injury). (3) The wounds on Meredith's body, their number (43) and their directions, plus their characteristics, lent support to the multiple aggressor theory. (4) The absence of defensive wounds on Meredith's hands and arms confirmed participation by more than one aggressor. (5) Ingress to Via della Pergola 7 had been facilitated by a person with a key, that is to say, Amanda Knox and, the staging of a burglary was no more than a mise-en-scene to falsely mislead investigators.

As we shall see shortly, the Hellmann Court's analysis of most of these crucial elements lead the appellate Court to declare that the Micheli judgment was not determinative of this issue and had no probative relevance as to Knox and Sollecito's criminal responsibility.

(b) CalunniaHellmann upheld Knox's conviction for Calunnia. The appellate Court's reasoning appears impeccable.

First, when she made a voluntary written statement on November 6, 2007 Knox's state of mind was such that she understood fully what she was doing: she continued to accuse Lumumba of a serious crime for which she knew him to be innocent. (Strictly speaking this is not correct. Knox knew that Lumumba had not been present with her at Via della Pergola 7 that evening and the rest of her statement about seeing "Patrick" when Meredith screamed was utterly false. But she did not actually know if he was innocent, unless she herself was present at the material time and, presumably, knew the identity of the murderer or murderers.)

Secondly, this was a criminally slanderous allegation by either naming or indicating to the police that Lumumba was the murderer. But why did Knox accuse Lumumba? To recapitulate: Because the police had found a message on Knox's cell phone, which could have signified their intention to see each other later on November 1, and to go somewhere, perhaps to Via della Pergola 7. By feeding the name to her interrogators, Knox hoped to put an end to her own pressure after many long hours. In conclusion, even though Knox was culpable, the crime did not contain all of the aggravating features, as the prosecutor maintained, in accordance with the Italian Penal Code. Put another way, the punishment (a sentence of imprisonment or the length of the sentence) did not necessarily fit the crime.

From a practical standpoint, by the time the appeal was heard, Knox had already been incarcerated, as part of her gaol sentence, for several years. She had, therefore, already served that part of her sentence. Aside from the compensatory elements, little was to be gained by dwelling too long on this offence. It was a distraction from the crucial issue ie, Knox and Sollecito's alleged complicity in the digital rape and murder of Meredith Kercher and the associated offences of theft and simulation of a burglary.

(c) Statements by GuedeTo recapitulate: At his own trial, on appeal and, more important, at the trial of Knox and Sollecito, Rudy Guede had never been questioned about the facts which took place on the night spanning November 1-2, 2007 (as we shall see later, Guede was summonsed as a witness to Knox and Sollecito's trial but he declined to give evidence, in accordance with his Constitutional rights). The first time, therefore, that Guede made an appearance to be questioned under oath was at Knox and Sollecito's appeal. The irony was that Guede was not called by the defence or the prosecution so that he could testify as to what transpired on the night of the crime. He was called by the prosecutor to rebut a defence assertion (only) that he had made certain disclosures to fellow prisoners. One witness Aviello, claimed to have direct knowledge about the

death of Meredith Kercher. Aviello had written three times to the President of the Massei trial and had later made a formal statement claiming that he knew who had murdered Meredith Kercher, while in the process exonerating Knox and Sollecito. Four others, (Alessi, Castelluccio, De Cesare and Trincan) claimed Guede made disclosures to them while in prison about the non-involvement of Knox and Sollecito. Suffice it to say that the Hellmann Court, a posteriori, decided that all of the five witnesses' testimony was unreliable due to a lack of any objective corroboration of the claims made by each prisoner. Aviello's testimony was declared unreliable because of the lack of any objective confirmation (as became clear from the testimony of a witness, Dr Chiacchiera).

All five witnesses had been called at the behest of the defence. A little later in the proceedings the Prosecutor General requested that Aviello be recalled, in order that he could retract his previous account, having done so already directly to the prosecutor. Because Hellmann already considered Aviello's evidence unreliable it rejected the prosecutor's application on the grounds that any new testimony by Aviello (ie, his retraction) would be completely irrelevant for the purposes of the trial. This decision will be revisited later (see the Supreme Court [Galati] hearing *infra*).

The upshot was that the defence of Knox and Sollecito respectively, were no further forward in seeking to demonstrate that Guede alone had committed the evil deed (the "Lone Wolf" theory) and that they were innocent as charged.

Guede's presence and testimony ultimately was to prove superfluous. But it did provide the appellate Court with the opportunity to gauge Guede's demeanour, his reliability as a witness and, more important, the role played by him in this heinous crime (either alone or in concert). Guede was a convicted felon who, on his own pre-trial accounts, was present when Meredith was attacked and murdered. A person who indicated in his later pre-trial declarations that Knox and, by implication, Sollecito were present and, therefore, sought to minimise his responsibility while pointing the finger of blame at Knox and Sollecito.

There were other legal hurdles to overcome. Because Guede was being called as a rebuttal witness it was not permissible to ask questions directly of him regarding the facts of that fateful night. Such questioning was not permitted under various Articles of the Italian Constitution. Further, Guede indicated that he did not intend to answer questions concerning the murder.

Despite these formidable obstacles Guede had (apparently) waived legal professional privilege by having read out, a letter, which he had sent to his own defence counsel. Guede confirmed to the prosecutor that he had written the letter himself, in which the accused Knox and Sollecito were indicated as the perpetrators. He explained that he had written the letter as a reaction against the revelations about the alleged – and according to him non-existent – disclosures made in prison – to Alessi and the four other prisoners.

Yet again, Guede's account was just as implausible as the pre-trial accounts considered by Micheli (and Massei); crammed with surreal lies – even on the smallest detail. Within the limits of permissible cross-examination, defence counsel sought to expose the falsity behind the contents of Guede's letter while endeavouring to provoke him into testifying as to what really happened on the night of Meredith Kercher's murder. The strategy was risky as the contents of Guede's letter were not evidence against Knox and Sollecito: see arts.111 and 526 of the Italian

Constitution. From his own lips Guede might have inadvertently revealed his own complicity in the crime but, at the same time, he might have gone on to name Knox and Sollecito as his accomplices and to repeat (under oath) that they were the persons who stabbed Meredith Kercher. This adversarial oversight would have provided the prosecution with a heaven sent opportunity to prove its version of events. Guede's narrative therefore had the potential to scupper Knox and Sollecito's respective appeals. With the benefit of hindsight, counsel for Knox and Sollecito would have done better to suggest to Guede that the reason he wrote the letter to his lawyer was to try and cover up for his own criminality and his later admissions to serving prisoners. Guede, no doubt, would have denied the insinuation but it would have avoided the inherent danger of incriminating both himself and the two appellants.

Here is a truncated extract of Guede's testimony:

Defence counsel: "...when you write...it was a 'horrible murder of a gorgeous, marvellous girl...by Raffaele Sollecito and Amanda Knox' what exactly do you mean? Had you ever said this?Guede: Well I have never said it explicitly in this way, however, I have always thought it.Defence counsel: Well why did you write it?Guede: I wrote it because it was a thought which has always been in my mind.Defence counsel: But therefore it is not true.Guede: No, it is absolutely true.Defence counsel: And can you elaborate that? What do you mean?Guede: It is absolutely true.Defence counsel: Do you confirm this circumstance? As a party?Guede: Well, I...this is a thought that has always been in my head,... It's not for me to decide who killed Meredith... I have only put in writing my thoughts and I have made them tangible, that's all. Therefore, I don't see to what other question I must answer..."

Hellmann's analysis was that from a substantive point of view, the indication of responsibility contained in the letter represented (only) the expression of a personal conviction, based on unknown facts, given the absence of sworn testimony by Guede as to what transpired during the evening of November 1-2, 2007. Hellmann concluded that the testimony of Guede, together with the letter written by him and sent to his defence lawyer, was unreliable.

In one other respect, Knox and Sollecito's appeal was assisted by the appearance of Guede. It reminded the Court of the conversation (via the program Skype) between Guede and Giacomo De Benedetti. The reader is referred to the section: Rudy Hermann Guede's accounts (ante). In the course of that conversation, Guede did not in any way identify Knox and Sollecito as the perpetrators of the crime. As a mere historic fact, this could be construed as favouring Knox and Sollecito's defence. Being abroad and at that moment in a relative place of safety, believing he was in conversation with his friend alone, knowing the identity of the assailants, why would he keep quiet about that fact? It was therefore one curious circumstance which, if supported by other evidence, entitled the Court to infer that Knox and Sollecito were not present and/or complicit in Meredith Kercher's digital rape and murder. Remember, as previously stated, Guede's later pre-trial declaration indicating the presence of Knox and Sollecito at Via della Pergola 7 on the night of November 1, 2007 was evidence against the maker only ie, Guede. It did not constitute evidence against Knox and Sollecito.

(d) CuratoloHellmann began its analysis by stating that the presence of Knox and Sollecito in Piazza Grimana, between the hours of 9.30pm-11.30pm on November 1, 2007 constituted circumstantial evidence against the accused, as it revealed their alibi to be false (a lie) and therefore, through this false alibi, corroborated the heinous crimes which they faced (other than

Calunnia). On its own, however, such circumstantial evidence was insufficient to prove guilt because an explanation for the lie was explicable by reason of other purposes or motives.

The presence of the accused in the piazzetta was reported solely by one witness Curatolo. Straight away the appellate Court expressed doubts about the reliability of this witness, revealed by his answers before the Court of Assizes of Appeal on March 26, 2011. He was a tramp living on the streets. By the time of the appeal he was serving a sentence for dealing in drugs and when questioned as to why he had chosen that way of life he replied that he was a Christian anarchist. His understanding as to his criminality was exposed in one recorded passage. When asked to clarify whether he knew he was being detained and why, he replied in this way: "I don't know, I haven't yet understood anything about it, but I think so...they arrested me and took me to prison".

The crucial issue for Hellmann however was whether Curatolo actually saw the two accused and if he did, on which night, October 31 or November 1. In the hearing on March 28, 2009 (Massei), Curatolo stated he saw the accused lingering in Piazza Grimana, discussing intently with each other, between 9.30pm and before midnight, when, once the buses had left, which were taking the young people to the nightclubs (discos), he himself left. To clarify Curatolo's narrative, he reported that he saw the two accused at least up until 11.30pm or later. He did not indicate the day referring to the calendar (October 31 or November 1) but accompanied what he reported by referring to the circumstances which enabled him to determine the date.

There were two crucial factors that persuaded the Hellmann tribunal to determine that Curatolo's evidence was unreliable, even if he was right about seeing Knox and Sollecito. First, he declared that on the very same evening there were lots of masked, young people making a din as it was holiday time. Secondly, his reference to the buses taking the young people to the discotheques. The defence were able to demonstrate that practically all the local nightclubs open on the night between October 31 and November 1, precisely because it was Halloween, understandably remained closed the night after ie, between November 1 and November 2, due to a lack of clientele. For that and associated reasons, Hellmann concluded that Curatolo's statements and purported identification of the two accused on the fateful night were unreliable.

(e) Quintavalle According to the prosecution, Quintavalle's evidence (supra) proved that, contrary to the alibi given by Knox, she did not sleep at Sollecito's house until late in the morning of November 2. Instead she went very early to the witness's store, as she urgently needed to acquire a product containing bleach in order to clean the house in Via della Pergola. Knox's imputed motive was to remove her own traces and those of Sollecito, before the police could intervene and take samples, since Meredith Kercher's body would inevitably be discovered. In reality, working on the assumption that Quintavalle's testimony was true, it was a weak piece of circumstantial evidence, incapable of establishing Knox's complicity (and by implication Sollecito) in the digital rape and murder of Meredith Kercher.

The Brutal Killing of Meredith Kercher – Part 14

The Court of Assizes of Appeal focused on five key areas of Quintavalle's purported identification of Knox: (1) When interviewed in the days immediately following the crime, Quintavalle did not mention that Knox was outside his store on the early morning of November 2. Nor did the witness come forward in the following days or months. In fact, he presented himself to the police only a year later, following intense urging on the part of a young apprentice journalist (Fois). (2) This was a witness who took a year to convince himself of the precision of his perception, marrying up the identification of Knox with the girl that he claimed to have seen. A delay of a year despite his appreciation of the relevance of his testimony in the days immediately following the murder. (3) According to Quintavalle, he only caught a glimpse of the girl (allegedly Knox), first, out of the "corner of his eye" and then from a bit nearer for a few moments, but only side on and never from the front. (4) The witness described the girl as wearing a grey coat. There was no evidence adduced that Knox ever owned a grey coat (this is analogous to the Massei Court's rejection of the testimony of Fabio Gioffredi supra). (5) It seemed strange that Knox, according to the prosecution, urgently needed to purchase a bleaching agent in order to clean Via della Pergola 7. And yet, according to Quintavalle, the girl who went to that part of the store where the cleaning and house products were displayed, which was surely well stocked, left without having purchased anything.

For those reasons Hellmann went on to hold that Quintavalle's purported identification of Amanda Knox that morning was not very reliable and, in any case, represented an extremely weak piece of circumstantial evidence.

(f) Time of death

The Massei Court had acknowledged the difficulty in fixing precisely the moment of death based on the time lapse between the heinous deed and the discovery of Meredith's body. Hellmann decided to review the findings made at first instance.

The results of the autopsy revealed that Meredith had been digitally raped and murdered some time between the late evening, very late evening or into the early hours of the following morning. Expert evidence estimated the murder could have taken place between 9.30pm and 3.30am spanning November 1 - 2.

However, in reconstructing the sequence of events other elements suggested that the murder had taken place some time around 11pm-11.30pm. According to Hellmann, Curatolo's evidence was patently unreliable while Mrs Capezzali was unable to pinpoint the exact time, not having checked a watch (by implication the same reasoning applied to the witness Monacchia); it was an approximate indication based on her usual night-time awakenings in order to go to the toilet. As for the witness Dramis, she said she had gone to sleep at around 11pm-11.30pm and that she woke up later, without being able to specify how much time had elapsed.

The focus of attention then shifted to Meredith's mobile phone activity: (a) 8.56pm Meredith called her home in England but she did not receive an answer. (b) 9.58pm the number 901, used to access the answering machine was dialled, but the call was interrupted before the voicemail

message could end and then the telephone immediately stopped. (c) 10pm a number was dialled, which was the number of a bank (it was the first number in the mobile's phone book, Abbey) but nobody was called because the requisite country code was missing. (d) 10.13pm A GPRS (internet) connection was established lasting nine seconds which could be explained as an involuntary connection or a sudden interruption. The Massei Court did not attribute any significance to these occurrences and did not seek to elucidate why Meredith did not attempt to call her family again eg, 15-20 minutes after the first attempt, a natural human reaction.

The dialling of the other three numbers was, according to Hellmann, inexplicable. She had no reason to dial the bank number (Abbey) at that time of night and without the country code being inserted. It was also strange that she did not try to access her voicemail. Another oddity was that if Meredith was attacked some time after 11pm, why in the meantime ie, before 11pm, did she not attempt to contact her family again? A final significant factor, or so Hellmann thought, was the Skyped conversation between Guede and De Benedetti (supra). In that conversation Guede admitted being at Via della Pergola 7 between 9pm and 9.30pm. That approximation cast doubt on the timings of the various witnesses including, inter alia, Curatolo and Capezzali.

Via the application of deductive reasoning and logic, Hellmann concluded that the attack could have taken place earlier ie, at around 10pm. Assuming that the timings given by witnesses such as Curatolo and Capezzali were correct (and contrary to the assessment of Curatolo's reliability), Knox and Sollecito were at the material time in Piazza Grimana and not in the house on Via della Pergola.

Suffice it to say that the author does not accept or share the same conclusions as those postulated by Hellmann. This will be explained in the Analysis and Evaluation section post.

(g) Murder weapon

As recounted in the narrative section of the Massei Court's Sentencing Report supra, it was postulated that Exhibit 36 (the Double DNA Knife) sequestered from the home of Raffaele Sollecito was the murder weapon, or more precisely, one of the weapons used to commit the murder. It was relatively clear that the very cornerstone of the Massei Court's reasoning was based on the genetic investigations undertaken by the police, coupled with its consistency to the remainder of the circumstantial evidence. Massei found as a fact that the sequestered knife was compatible with the larger wound inflicted on Meredith Kercher and thus explained how it came to be in Via della Pergola 7.

Hellmann set about exposing the flaw in the Massei Report's assumption based on an accumulation of several factors. First, the said knife was incompatible with other wounds found on the victim, clearly inflicted by a smaller knife. Secondly, on the bed sheet in the "killing zone", a bloody print was found which corresponded with a smaller knife. Thirdly, the large (and fatal) wound on the left side of the neck would not, according to four defence consultants have been caused by Exhibit 36. Hellmann thought these arguments more convincing than those developed by the remaining four consultants called for the prosecution. For example, it was difficult to explain how a knife with a 17.5cm blade was introduced several times to a depth of only 8cm.

And then there was the hypothesis as to how the knife of those dimensions came to be carried by

Knox in the first place. No proof had been given of Knox having such habits and, as Hellmann observed, it seemed really strange that a young woman would have waited until she arrived in Perugia, having met Sollecito only one week earlier, to decide to carry a knife in her own bag for personal defence. Further, having had the wherewithal to dispose of the second murder knife (a pocket knife with a 4cm blade) attributed to Sollecito, having participated in such a barbarian murder, one or other attempted to clean the knife and then put it back with the other cutlery in Corso Garibaldi. The chain or thread of reasoning adopted by Massei did not make sense.

Hellmann then turned its attention to the results of the genetic investigation performed by the Scientific Police. By a decree dating from December 18, 2010, Hellmann ordered an independent expert review of the results derived from Exhibit 36 and, as we shall see shortly, Exhibit 165b (the bra clasp), explaining the reasons underlying the need for this measure. The expert review was entrusted to a team of university professors at the Faculty of Forensic Pathology, one of Italy's most prestigious universities. The two professors entrusted to carry out this task were: Professor Vecchiotti, whose particular expertise lay in the domain of forensic genetics; and, Professor Conti, who as a pathologist was also an expert in the domain of forensic pathology. Because of the complicated nature of the material under review, it was necessary to ensure competence in forensic pathology as well as genetics.

In view of the absence of DNA in the extracts that the said Professors obtained, they proceeded to examine the record and relevant documents in order to report the following conclusions regarding the laboratory analyses performed on Exhibit 36:

- Relative to the genetic analysis performed on the handle of the knife, they agreed with the conclusion previously reached that the genetic profile obtained was attributable to Amanda Knox.

- Relative to the trace found on the blade of the knife (attributed to Meredith Kercher), the Professors found that the technical analyses performed were not reliable for the following reasons:

- There was no evidence that scientifically confirmed the trace found on the blade of the knife was the product of blood.

- The electrophoretic profiles revealed that the sample indicated by the blade of the knife was a "low copy number" sample and, as such, all of the precautions indicated by the international scientific community [i.e. re-testing] should have been applied.

Taking into account that none of the recommendations of the international scientific community relative to the "low copy number" samples were followed, they did not accept the conclusions regarding the certain attribution of the profile found on the blade to the victim. The genetic profile, as obtained, appeared unreliable insofar as it was not supported by scientifically validated analysis.

International protocols of inspection, collection and sampling were not followed.

It could not be ruled out that the result obtained from the blade of the knife was derived from contamination at some phase of the collection and/or handling and/or analyses performed.

The key debate concerning the trace found on the blade of Exhibit 36 was the quantity found. The International Society of Forensic Genetics Journal has taken an overall position that was taken in one of the latest articles in that Journal (presumably 2010-2011), in which it is asserted that a DNA trace below certain quantities or levels can still be considered, as long as it is tested more than once, so as to obtain a result which is confirmed by repeated amplifications.

In essence, Hellmann decided that the results obtained were not reliable because from a scientific standpoint the results had been obtained via a flawed methodology. In particular, two amplifications (tests) were not carried out, bearing in mind the quantity on the sample was small (a “low copy number”). The result of a genetic finding could be accepted merely for orienting purposes in a 360 degree investigation, but it could not be accepted when, in a criminal trial, it was a question of establishing proof beyond a reasonable doubt. It was necessary for the prosecution to find confirmation in other elements independent of the scientific analysis. And even if the sample were genuine, the prosecutor could not demonstrate that adequate precautions were taken guaranteeing that the result was not the product of contamination.

(H)The bra clasp (Exhibit 165b)

Relative to the bra clasp (attributed to Raffaele Sollecito), the Professors found that the technical analyses performed were not reliable for the following reasons:

- There was no evidence scientifically confirming the presence of supposed flaking cells on Exhibit 165.
- There was an erroneous interpretation of the electrophoretic profile of the autosomal STRs loci. NB: STRs are short fragments of DNA.
- There was an erroneous interpretation of the electrophoretic profile relative to the Y chromosome.
- The international protocols for inspection, collection and sampling of the exhibits were not followed.
- It could not be ruled out that the results obtained were derived from environmental contamination and/or contamination in some phase of the collection and/or handling of Exhibit 165.

Hellmann adopted the conclusions formulated by the expert team for juridical and logical reasons. Concerning the genetic profile of Raffaele Sollecito, indicated by the Scientific Police as being on the bra clasp, the expert team could not extract from the hook (or from the other hook, as there were in fact two hooks) any DNA useful for analysis. This was probably a consequence of the manner in which the clasp was stored. The expert team went on to evaluate the procedures followed by the Scientific Police. They revealed both errors in interpretation of the results (represented by a graph) and the lack of precautions considered necessary to avoid any possible contamination.

The identification of a genetic profile is quite different from and more complicated than say, reconstructing a photograph. Here, it is a matter of transforming via complex technologies and procedures the components of the DNA in the trace, characterised by peaks of various heights (alleles) placed in various positions, so as to be able to “pair” peaks having a particular height and position, thus obtaining a profile for comparison with a particular individual. One finding made by Hellmann was that the mixed nature of the trace should have necessitated a different biostatic calculation. While accepting that a profile attributable to Sollecito was present, the failure to take other peaks into account, present on the graph, overlooked the fact that it was possible to arrive at a different conclusion.

But the clinching factor was the failure of the Scientific Police to guarantee the purity of Exhibit 165. Hellmann accepted the hypothesis of probable contamination because during its collection none of the precautions necessary to guarantee purity were respected. It also seemed odd to the appellate Court that Sollecito only left his DNA on the bra hook without having left any other DNA on Meredith’s bra or clothing; if Sollecito (and, a fortiori Knox), participated in the attack, it was difficult to explain why no traces on any other parts of Meredith Kercher’s body, objects or clothing were found. In conclusion, Hellmann determined that the evidence was not reliable and did not prove the presence of Sollecito’s genetic profile on the bra clasp at the time Meredith was attacked.

(i) The bathmat footprint

On November 2, 2007 the Scientific Police took samples from the small bathroom, the one adjacent to Meredith Kercher’s bedroom. It was noted that the sky blue bathmat appeared stained with a haematic substance containing an impression of a shape which morphologically could resemble a foot. According to Dr Stefanoni, the haematic traces on the bathmat belonged to the victim. On May 12, 2008, Dr Rinaldi and Pietro Boemia, following comparisons with Raffaele Sollecito’s footprint, reached a judgement of probable identity.

Hellmann noted that the Massei Court adopted the conclusions of the consultants, in spite of their assertion that because of the lack of the highly individualising elements represented by the minute details of the papillary ridges, the print on the bathmat should only be used for negative comparisons, but not for positive comparisons. And this in spite of the fact that these same conclusions were logically opposed in the expert report compiled for Sollecito’s defence by Professor Vinci.

Professor Vinci’s report highlighted a number of morphological differences between the bathmat print and the foot of Sollecito. Here is a flavour of his report: At p.45, the consultant took care to line up the footprints, taking as a line of reference the base of the forefoot, as it is particularly clear and visible in the bathmat print. This made it possible for him to observe the different width of the point of contact of the first metatarsal bone and the different width of the whole forefront: “...shown in Sollecito’s print by the projection outside of the first yellow reference line of the salience of the metatarsophalangeal articulation of the second toe...[the different position of the tip of Sollecito’s big toe] which goes well over the second yellow reference – lined up with the tip of the trace of the big toe visible on the bathmat print”. Later, the different axial angle of inclination on the big toe on the bathmat print from that of Sollecito was brought into relief and further on the different position of all the toes.

Hellmann noted that Massei completely avoided not just examining all of these findings but even mentioning them. Further, at p.19 of their report, Rinaldi and Boemia emphasised some points of considerable discrepancy in the dimensions of the bathmat print and Sollecito's reference print, which contradicted their finding of "probable identity". None of this appeared in the Massei Report. Since Rinaldi and Boemia opined that the print was useful only for negative but not for positive comparisons, coupled with the morphological differences in the dimensions of the print, the Court found it impossible to accept the evaluation of "probable identity". Expressed another way, the bathmat print made with the victim's material traces had no value as a piece of circumstantial evidence.

(j) Traces revealed by Luminol

(i) Positive profiles

Prints of bare feet were detected in Filomena Romanelli's bedroom, in Knox's bedroom and in the corridor. A generic test for blood was performed on these footprints which gave a negative result. The genetic investigations conducted by Dr Stefanoni thereafter yielded the following results: 176, a trace belonging to Meredith; 177, a mixed trace of Meredith and Knox; 178, 179 and 180, biological profile of Knox; 184, mixed genetic profile of Meredith and Knox. During the trial of Knox and Sollecito, Dr Gino pointed out that the quantity was compatible with a "low copy number" of DNA and that the analysis had not been repeated to validate the result. Further, that there were peaks indicated in the graphic results which had not been considered which could indicate the presence of other contributors [substances].

Hellmann noted that Massei, while acknowledging the number of substances which react to Luminol is rather large, in its reasons (p.304), it presented arguments to exclude the possibility that the material covering the floor at Via della Pergola 7 shared such characteristics. With regard to bleach, although it was accepted that such product had been used in the whole house during ordinary cleaning, the trial Court (Massei) concluded that there was no proof that such pervasive and extensive cleaning had been carried out recently and nobody entering the house in and around November 2, claimed to have noticed the smell of bleach. Further, if bleach had been used recently many more Luminol traces should have been detected. Notwithstanding, Massei concluded that the footprints had necessarily been left in the victim's blood, trod on by Knox in the killing zone and then transported by her into other parts of the house.

Hellmann observed that the Massei Report's conclusions on this aspect of the case faced insurmountable contradictions, both logical and factual. First, the generic blood test had yielded a negative result. Professor Tagliabracci specified, without being refuted, that the tetramethylbenzidine test is very sensitive, so much so as to give a positive result even if only five red blood cells were present. Dr Stefanoni herself clarified that while a positive test could be deceptive due to the chemical reactivity of other substances, a negative result indicated that no blood was present. Secondly, it was reasonable to assume that the four women shared the cleaning arrangements, concentrating on the more common and shared areas, more prone to getting dirty. Thus, given the limited number of footprints detected and their location, Hellmann surmised that Massei had arrived at an implausible explanation at p.360: "... [Knox] with bare feet, washed off Meredith's blood, but on the soles of which some residue of blood must have remained, went into her own room, into Romanelli's room and passed through the corridor, [and in doing so] she left the traces that were detected".

Hellmann went on to provide further reasons as to why the footprints in issue had no evidentiary value. It is perhaps sufficient to observe that the Hellmann Report noted the absence of blood-stained clothes either in Via della Pergola 7 or Sollecito's apartment. By a process of logic and the application of a little common sense, the appellate Court concluded that the traces revealed by Luminol did not prove that Knox and/or by inference Sollecito were present in Meredith's bedroom at the moment she was sexually assaulted and killed.

(ii) Negative profiles

Discussion then centred on the three prints revealed by Luminol without a useful biological profile: Exhibit 1, present in Knox's bedroom, was a print of a right foot compatible with the one obtained from Knox. Exhibit 2, present in the corridor directed towards the exit, was a print of a right foot compatible with the one obtained from Sollecito. Exhibit 7, detected in the corridor in front of Meredith Kercher's bedroom door and orientated towards the entrance, was a right footprint compatible with the one obtained from Knox.

The author concurs with the conclusions reached by Hellmann. First, Knox lived in the house and could have left the traces at any time. Secondly, the absence of a biological profile meant the trace was not imprinted with blood and therefore, Sollecito's frequent visits to Via della Pergola 7, signified that his trace could have been left at any other time – before or after the commission of the crime.

(k) Blood traces in the small bathroom

The blood of Meredith Kercher was found on the light switch, the toilet switch and the door frame, while samples taken from the bidet, the wash basin and a box of cotton buds revealed human blood which had a mixed profile of Meredith and Knox. Sampling carried out on the front of the basin tap revealed human blood bearing the genetic profile of Knox alone. The defence counsels of the accused sharply criticised the method of collection used with respect to the basin and the bidet. Part of the video relative to this procedure was screened in the Court room. The police officer can be seen several times passing and passing again the same swab of absorbent paper from the edge of the sink down to the drain opening and vice versa, on both sides, with a wiping motion.

Gathering samples by repeated rubbing from edge down to the drain and vice versa, on both sides of the swab, contrary to what Dr Stefanoni claimed, was the least advisable method for obtaining a credible result. Bearing in mind both women used the sanitary fittings in that bathroom, by using a method which gathered up the entire DNA, it was not possible to date a trace and to establish which trace had been deposited before another. Consequently, it appeared to Hellmann entirely irrelevant, that Knox's DNA was found mixed with the victim's DNA on the sanitary fittings. Put another way, the evidence gathered was not probative of Knox's partnership in the attack upon Meredith Kercher.

The result from the genetic samples on the box of cotton buds was considered even more suspect. Dr Stefanoni opined that a third person, of the female sex, may have been present because the alleles were very uniform in height and one could envisage pairings other than those attributed to Knox and Kercher. The result suggested the overlap of separate traces at different times, the box containing the buds having passed through several hands, rather than having contact only with

the alleged murderer. This opinion was shared by Dr Torricelli, a consultant for the civil party, Meredith Kercher's family (Massei, p.243.).

According to the Massei Report, the two defendants, soiled by the victim's blood, went into the small bathroom where they were supposed to have washed themselves (the hypothesis apparently being supported by Sollecito's right foot on the bathmat). Hellmann stated that if this incident had happened, it did not explain the absence of any genetic traces of Sollecito. The action of rubbing caused by the clean-up, must have led to the loss of flaking cells as stipulated in the Massei Report. From that starting point Hellmann concluded: (1) There was no evidence to support the Massei hypothesis that Sollecito went into the small bathroom after the murder of Meredith Kercher. (2) As a result of inappropriate forensic collection by the police, mixed samples were created attributable to Knox and Meredith. For the purposes of a decision adverse to Knox, the methodology used by the police to collect the samples rendered the evidence irrelevant and/or unreliable.

(l) Simulation of an attempted burglary

Massei determined that the staging of a burglary was designed to deflect suspicion from the only person, other than Meredith Kercher, who could conceivably have gained access to the premises that terrible night using a key, that is, Amanda Knox. Massei ruled out Guede as having an interest in faking a burglary because as a person who had previously broken into premises illegally, it did not seem feasible that he would have gone to the trouble of simulating a criminal activity which could be described as his stock in trade.

Hellmann by contrast, set out at great length to demonstrate that it was perfectly conceivable entry could have been gained to the premises via Filomena Romanelli's bedroom. Ingress it concluded could have been facilitated by the hurling of a rock through the window thereby breaking the pane followed by the intruder climbing up (using a nail located half way up the outside wall to support one foot) and easing his way through the broken window. The feasibility of this activity was later staged on behalf of the defence. As a result the accused were acquitted of the crime because the Court found the actus reus (act) did not take place. The author disagrees with this conclusion. The reader is referred to the Analysis and Evaluation section below.

(m) Alibi

As we have already seen (Massei), the alibi put forward by the two accused was found not only to have been false but regarded as a serious element of proof of guilt (corroboration). The Court at first instance found the alibi had been negated by virtue of several key constituent parts, standing either on their own or considered as a whole: (i) witness testimony between roughly 9.30pm-11.30pm; (ii) the time that Knox and Sollecito ate their evening meal; (iii) human interaction on Sollecito's computer; (iv) Sollecito's cell phone activity; (v) the planned trip to Gubbio; (vi) the phone call at 9.24am by Sollecito's father; (vii) Quintavalle's testimony.

Similar to the author's Analysis and Evaluation of the Massei trial (supra), Hellmann determined that none of the above elements was of sufficient value, either alone or in relation to each other, to prove the falsity of the version advanced by Knox or Sollecito. Hellmann put forward the following propositions:

The unreliability of the witness Curatolo had already been demonstrated.

Just because Knox and Sollecito may have dined before 8.42pm (the time Sollecito's father called him) was not decisive, but the mere fact that Sollecito was washing the dishes did not necessarily mean the two had already dined - they could have been washing up dishes from an earlier meal. Certainly no mention was made of the two having already dined (although in fairness why would Sollecito tell his father during their conversation?). This aspect of the case did nothing to advance the cause of the prosecution and/or to verify the alibi of the accused.

The lack of human interaction on the computer between 9.12pm and 5.32am did not demonstrate that the accused had left the apartment at Corso Garibaldi. It was obvious that staying at home could not be characterised by a continuous interaction with a computer. In reality, the trace of an interaction at 5.32am was more surprising but that fact could easily be explained by Sollecito waking up without being noticed by Knox. Hellmann observed that it would be strange for a young man, unaccustomed to crime, on the next morning, if he had been involved in such a serious murder, to have the desire to entertain himself e.g. by listening to music on the computer as though nothing had happened.

It was not logical to infer that the turning off of the cell phones, once any premeditation has been excluded, was indicative of the two having left the house on the evening of November 1. And in any case, the presence in Corso Garibaldi of a landline (as ascertained by the police) guaranteed the possibility of receiving any phone calls for urgent reasons.

Further, the fact that Sollecito's cell phone was turned off between 9.10pm and 6.02am led the police to deduce that the goodnight message sent by Sollecito's father at 11.14pm only reached the son at 6.02am, yet no anomaly was observed in the functioning of the network. Hellmann concluded that the reception of the message at 6.02am was not a directly proven circumstance because a defence consultant ascertained that the signal did not always reach every point of the house which could have explained the delay in the reception of the message (an occurrence which is by no means rare).

As for the planned trip to Gubbio, this did not imply the necessity of getting up really early, since Gubbio can be reached from Perugia in about 45 minutes, so the accused could easily have left as late as say, 11am. And also, it was not at all unlikely that Knox would have showered and changed at Via della Pergola 7 before leaving, since her underwear and clothing were at those premises where she resided.

Not being aware of the phone call (or, a fortiori the computer activity at 5.32am) did not imply that Knox's account was untrue, as it could be explained in several ways, the most obvious being that she was asleep.

Quintavalle's testimony had already been shown to be unreliable, or at the very least so weak, that on its own it did not prove that Knox was outside of Corso Garibaldi at 7.45am on the morning of November 2.

Of course, the forensic evidence was another element which the prosecution relied upon to disprove the alibi. The various constituents of the biological and forensic traces found at Via della Pergola have already been outlined above.

(n) Behaviour following the murder

The Massei Court gave circumstantial value to Knox and Sollecito's behaviour on the morning of November 2 and, after Meredith Kercher's lifeless body had been discovered at 1.30pm that day.

As for the call made by Knox to one of Meredith's cell phones at 12.07pm on 2 November 2007, the Court said there was nothing suspicious about that action. It was clear that if Knox was innocent and, therefore, alarmed by the strange things she had noticed at Via della Pergola 7, having spoken to Sollecito, she decided to contact Meredith Kercher to ensure that nothing had happened to her. It was not logical, the Court said, to deduce that the only purpose of the call was to ascertain whether the cell phone had been recovered (the inference being Knox and/or Sollecito had disposed of the mobile phones), since the ringing of the cell phone would facilitate its recovery (which in fact was what happened).

On the one hand, Hellmann could not comprehend how two young people, according to the prosecutor and the Massei Report, were so Machiavellian as to stage a burglary, in order to distance themselves from suspicion; on the other hand, caused themselves to be found at the scene of the crime, as well as returning the weapon of the crime to Corso Garibaldi (having disposed of the pocket knife - author); somehow neglected to remove the SIM cards and batteries from Meredith's cell phones before throwing them away, so as to make it practically impossible to recover them.

Then there was the issue of the arrival of the two Postal Police officers and the reporting of a break in to the Carabinieri. In short, Hellmann said that the sequence of events was irrelevant because by 12.08pm, Knox had already made a telephone call to Filomena Romanelli, certainly before the unexpected arrival of the Postal Police. By this point Knox had already informed a third person that they (Knox and Sollecito) had already entered Via della Pergola 7, and had noticed a situation that gave cause for alarm.

Another piece of evidence regarded as of circumstantial value was what was said by Sollecito during his calls to the Carabinieri and what was later said to the two Postal Police officers at the scene of the crime. The accounts have already been outlined in the section dealing with the trial of Knox and Sollecito and more specifically the subsection entitled: Character and behaviour. Hellmann did not agree with the conclusions drawn by Massei because it credited Knox and Sollecito, unqualified as legal experts, with changing the version of events as given to the Carabinieri, out of a fear that the statement "...no nothing has been taken" might reveal their culpability in the matter of the staged burglary. In fact, for those not legally qualified, the expression "...there's been a burglary inside the residence" corresponded to a succinct portrayal of what they had observed. Accordingly, the Court of Assizes of Appeal concluded that no contradiction could be inferred from the descriptions given by the two accused, to the extent that it constituted circumstantial evidence against them. As for their behaviour at the Perugia Police Headquarters, Hellmann did not believe that one could attribute any circumstantial value to the behaviour described, even if true, since there are innumerable ways in which human beings confront tragic situations. The sharing of affection and the gymnastic [yoga] exercises could be rationally explained by the need to regain a modicum of normality in the context of a tragic situation. Looked at from 360 degrees, even the Massei Court could not believe that two young persons, supposedly being involved in a heinous and barbaric crime, could maintain the desire to kiss and cuddle and to perform yoga exercises.

Hellmann added that it was dangerous to take into account facts which are not objectively measurable because the individual reactions of human beings, even in the most shocking of tragedies, were infinite. Therefore, no inferences of guilt could be derived from the behaviour of Knox and Sollecito in the period following the digital rape and murder of Meredith Kercher.

(o) Concluding remarks

Hellmann declared that once the existence of guilt against the accused had been ruled out (for the reasons summarised above), it was not the duty of the Court to propose how the events might have unfolded, or to establish whether one or more persons perpetrated the crime; further, if there were other investigative hypotheses to rationally explain the crime that were subsequently neglected. What was relevant for the purposes of the appellate Court's decision was the lack of proof against Knox and Sollecito. Aside from the offence of Calunnia against Knox, the defendants were acquitted of the charges of sexual assault, murder, theft of two mobile phones and the carrying of a large kitchen knife (Exhibit 36). They were also acquitted of the charge of simulating a breaking and entering on the basis that the crime did not in fact and in law occur.

The Brutal Killing of Meredith Kercher – Part 15

Analysis and Evaluation

Although the author agrees with the broad approach adopted by the Hellmann tribunal and ultimately its primary conclusion ie, the totality of the circumstantial evidence disclosed there was a reasonable doubt as to the complicity of Knox and Sollecito, it behoved the appellate Court to examine more closely the assumption made by both Micheli and Massei that more than one person was complicit in the crime. Hellmann eschewed discussion concerning the injuries inflicted upon Meredith during the attack. For example, the number of wounds (43), their directions and their characteristics. The absence of defensive wounds on Meredith's hands and arms also suggested participation by more than one aggressor. This was one crucial aspect of the circumstantial evidence levelled against Knox and Sollecito and it was incumbent upon Hellmann to refute the conclusions reached by both Micheli and Massei.

It is also noteworthy that Hellmann was loathe to put forward an alternative hypothesis as to how the crime was committed and by whom. For example, that it was Guede alone who by one means or another, had entered Via della Pergola 7 and had digitally raped and murdered Meredith Kercher. The Hellmann Report did say that the evidence adduced at Guede's trial did not necessarily support the hypothesis that more than one person was involved in the crime.

Nonetheless, it was understandably nervous about reaching what would be perceived as a "mutually inconsistent verdict" ie, a judgment which contradicted the findings of not just one but two tribunals (Micheli and Massei). However, by endeavouring to steer some form of "middle course", so to speak, the appellate Court left itself wide open to criticism from various quarters including the prosecution and, as we shall see shortly, the Supreme Court of Italy.

What the author found perplexing was Hellmann's conclusion that a simulation of a breaking and entering had simply not happened. Hellmann proposed that it was theoretically possible for a person to have lobbed the large rock (which was later discovered), through Filomena Romanelli's bedroom window, thereby breaking the pane; that due to the presence of a nail located half way up the outside wall, it was possible (the event having later been staged) for a person to scale the wall and to enter through the window. Having regard to those and related factors, Hellmann surmised that a simulated burglary had not taken place. But the Court's reasoning is an affront to common sense. We know that Meredith Kercher was to be found at Via della Pergola 7 at around 9pm that evening. Given the time of death, it is reasonable to infer that the breakage of the window took place after 9pm. Assuming she was still alive, Meredith would have been alerted to the sound of the window breaking and had ample time to phone the police using one or other of her cell phones. Since the only reasonable assumption is that the breakage etc took place after the murder, the appellate Court's reasoning appears imperfect. The crucial issue was to determine who was responsible for simulating the burglary and why.

The eventual discrediting of the purported identification evidence of both Curatolo and Quintavalle was surely correct, albeit the author is content to rely on the reasoning outlined earlier. For example, in relation to the former, without replicating what was said in the Analysis and Evaluation section of the Massei trial ante, it is curious that throughout the time period 9.30am-11.30am, the witness never saw Guede. As it is, the adoption of the guidelines adumbrated in *R. v. Turnbull supra*, would have exposed the frailties in Curatolo's purported

recognition of Knox and Sollecito during the evening of November 1.

As for Quintavalle's evidence, according to Hellmann, in essence he said that he had only caught a glimpse of the girl (allegedly Knox), first, out of the "corner of his eye" and then from a bit nearer for a few moments, but only side on and never from the front. If this statement is correct the momentary encounter with the girl (a maximum of 60 seconds) is often referred to by English law as a "fleeting glance". When combined with a description of a girl in a "grey coat", the quality of the identification evidence was so poor, the Massei Judges should have excluded the same from consideration. It was also ironic that the prosecution were suggesting Knox was at Quintavalle's store in order to buy certain products to aid the clean up of incriminating traces left at Via della Pergola 7. But the girl left without purchasing any items. One must also remember that even the Massei Court conceded that if there had been pervasive and extensive cleaning after the murder, it was odd that none of the witnesses who later entered the apartment claimed to have noticed the smell of bleach. The only rational conclusion therefore is that Quintavalle's evidence was unreliable and incapable of belief.

Hellmann then sought to put forward an alternative proposition as to the time of death. Bearing in mind Curatolo's evidence was regarded as unreliable the Court observed that the witnesses Capezzali, (by implication Monacchia) and Dramis were unable to be precise about the time they heard the scream and the running footsteps respectively. As we have already seen the focus then shifted to the phone records of Meredith's two cell phones. But the Court neglected to mention the evidence of Miss Alessandra Formica and Mr Giampaolo Lombardo (highlighted in the section: Meredith Kercher's murder). To recapitulate: Miss Formica, testified that she and her boyfriend were coming down the stairs of Sant' Antonio car park when her boyfriend was violently bumped into by a person of colour who was running quickly towards Via Pinturicchio from the direction of the steel stairwell. Her testimony included reference to a pick-up truck in Via della Pergola, which was later confirmed by a witness Giampaolo Lombardo, the driver of the truck. The time of the incident was said to be shortly after 11pm. So the murder must have taken place in and around or a little after 11pm.

As for Guede's declarations on the point (the time of his arrival and the events thereafter), those were not made under oath and thus remain untested. Given that both the author and Hellmann had significant doubts about the reliability and credibility of Guede's accounts other than admissions against his interests (eg, the concession to being present at Via della Pergola 7 when Meredith was attacked), the finding of the Massei Court that the murder took place after 11pm appears unimpeachable.

Hellmann then went on to examine certain key features of the biological and forensic traces said to have incriminated Knox and/or Sollecito. Let us start with the alleged murder weapon ie, Exhibit 36 or the "Double DNA Knife" as it has become known. The alleged carrying and use of this weapon remains a mystery. Knox was not in the habit of carrying a bladed article but to be fair Sollecito was. The evidence disclosed that a knife found on Sollecito's person was confiscated on November 5-6. In addition, when Corso Garibaldi was later searched, an 8 cm pocket knife belonging to Sollecito was sequestered.

Finally, it should not be forgotten that the Massei Court found that Sollecito had cut Meredith's bra with a pocket knife and immediately thereafter he stabbed Meredith with the knife. Such a knife was never recovered and the trial Court (Massei) inferred that Sollecito had subsequently

disposed of the same. But consider this proposition: If Guede had a minimum of three bladed articles in his possession, one or other being carried for protection, why did he or Knox select a large knife from the kitchen drawer in Corso Garibaldi? There is no rational solution to this riddle other than to declare the Double DNA Knife was not carried by Knox from Corso Garibaldi and thereafter used to stab Meredith Kercher. This implicitly supports the conclusions of the independent expert assessment that the blood trace of Meredith Kercher found on the blade of the kitchen knife could not be relied on as being probative of Knox or Sollecito's complicity in the crime. If there was a trace of Meredith's blood on the blade, it must have gotten there by contamination.

As for the bra clasp it also seemed odd to Hellmann that Sollecito only left his DNA on the bra hook without having left any other DNA on the remainder of Meredith's bra or clothing; if Sollecito (and, a fortiori Knox), participated in the attack, it was difficult to explain why no traces on any other parts of Meredith Kercher's body, objects or clothing were found. The simple answer was that the purity of the sample found on the bra hook could not be guaranteed; in other words, the sample had been contaminated and there was evidence to support this finding: see the Analysis and Evaluation section of the trial of Knox and Sollecito (Massei). If the sample was untainted an alternative solution, which is more logical, is that Sollecito left his traces on the bra strap some time later ie, after the murder.

In comity with Hellmann, the author had earlier suggested that the print found on the sky blue bathmat did not lead to the ineluctable inference that it was Sollecito's foot and therefore "probable identity". Accordingly, the bathmat print found with the victim's material traces had no value as a piece of circumstantial evidence. However, this inevitably led to the rhetorical question: If it was not Sollecito's print found on the bathmat then whose was it? The concluding remarks of the appellate Court were somewhat surprising and represented a bold assertion:

"...the police discovered the presence of bloody and clearly visible footprints... starting from Meredith's room... However there were no visible prints of bare feet (Massei p.186). These [foot]prints were confirmed to have all been made by Rudy Guede's left shoe. Now, it was seen that the footprint on the bathmat was on the other hand made by a right foot. Even without entering into comparisons which are not within the competence of this Court ... the possibility that the bathroom print was made by Rudy Guede's right foot remains open and to all intents and purposes unexplored".

If Hellmann had stopped there all well and good but the Report continued:

"As a result of the different metric evaluation of the latter, based on the well-founded observations of Professor Vinci, the dimensional elements of Guede's foot are no longer incompatible with the ones left with Meredith's blood on the textile of the bathmat. Thus, it cannot be excluded that Guede, after having left the print...on the pillow...suddenly lost his right shoe during the violent aggressive manoeuvres to which he subjected Ms Kercher, thus staining his foot with blood, which he took care to wash in the small bathroom located immediately to the left of the door of Meredith's room. Otherwise, his right shoe should also have left some haematic trace during his exit which in fact it is likely that he made along the corridor, however with his right foot unshod, but now washed free of blood".

It was inevitable that the prosecutor and later the Supreme Court would latch on to this obiter

dictum. For example, why did Guede decide to wash his feet in the small bathroom contrasted with his use of the larger bathroom, where his traces were found? This reasoning was pure conjecture based on the convenience and location of the small bathroom. It also begged the question, analogous to the conclusion reached earlier in respect of Sollecito, that if Guede had indeed washed himself off in the small bathroom, the action of rubbing caused by the clean-up, must have led to the loss of flaking cells which would have been detected by scientific analysis. In addition, Hellmann neglected to comment on the evidence of Messrs. Rinaldi and Boemia whose calculations declared that the dimensions on the bathmat were incompatible with Guede's feet. By reference to Professor Vinci's findings, further elucidation was required to explain how Guede's footprint was compatible with the print found on the sky blue bathmat.

The prosecution, bolstered by the Massei Report, contended that there was a mass of circumstantial evidence linking Knox and Sollecito to the crime. As a paragon of virtue therefore, it might have been advisable (and with the benefit of hindsight), for Hellmann to have gone into a little more detail about certain aspects of the case, particularly the evidence which supported the allegation that Meredith had been attacked and subdued by more than one attacker. That said, the Report demonstrated a number of deep-seated flaws in some of the assumptions and conclusions drawn by both Micheli and Massei respectively.

Hellmann inferred that the reception of the cell phone message at 6.02am was not a directly proven circumstance because a defence consultant ascertained that the signal did not always reach every point of the house (Corso Garibaldi) which could have explained the delay in the reception of the message (an occurrence which is by no means rare). But even if the consultant's evidence was correct we know that Sollecito was up at roughly 5.30am by reason of his computer activity. That activity went on until 6am, just before the cell phone was, according to the prosecution, turned on. The timing of the two events was more than a mere coincidence and Massei had been entitled to find that the two events taken together, led to the inescapable inference that Sollecito was already awake by 5.30am on November 2, 2007 and at roughly 6am he turned on his mobile phone.

That concludes the author's analysis and evaluation of the Hellmann Report.

The Brutal Killing of Meredith Kercher – Part 16

The appeal of the prosecution to the Supreme Court of Italy in the matter of Amanda Marie Knox and Raffaele Sollecito (the Galati-Costaglioli appeal) – the forbidden reasoning reinstated with gusto

Shortly after the conclusion of the Hellmann appeal, both Knox and Sollecito were released from lawful custody. The response of the general public in Perugia and farther afield demonstrated that by late 2011, the views of the majority had become polarised and, the general consensus was that Knox and Sollecito had done the evil deed, so to speak, irrespective of the deficiencies in the prosecution case (the forbidden reasoning). To be fair, the parties and the wider public did not have immediate access to the Hellmann Report which by Italian law, had to be published within 90 days of the adjudication.

Immediately after the judgment of the Court of Appeal, the Knox family, followed by Sollecito's lawyers endeavoured to hold a press conference outside the Court House in Perugia. Knox's sister gave thanks to all of those who had supported Amanda Knox during what was described as her "nightmare". But the conference was cut short due to the hostile response of the local public who (with reference to the verdicts and outcome) shouted "shame". As the throng grew angrier a tactical decision was made to withdraw and both Knox and Sollecito (separately) quietly departed from Perugia possibly for the last time in their lives.

No one could have anticipated the reaction to the judgment afterwards. The local, national and international press, buoyed by public dissention criticised the decision of the Hellmann tribunal. The Prosecutor General was also dissatisfied with the outcome and appealed to the Supreme Court of Italy. As we shall see shortly, a severe and unmitigated attack was launched against the decision of the Court of Assizes of Appeal. The judgment was described, inter alia, as "unsound" and "illogical" having regard to the volume and weight of the "circumstantial evidence".

Throughout all of the judicial proceedings the only persons who maintained their dignity and self-respect were the Kercher family. By now they were entitled to be exasperated and frustrated by the events leading up to and, following the trials and appeals involving Guede and Knox/Sollecito respectively. They must have been bemused by the lenient sentence imposed upon Guede and understandably disturbed and bewildered by the acquittals of Knox and Sollecito considering the morass of potentially incriminating evidence adduced at the various hearings. But not once did they complain.

By now the reader will have discerned that the prosecution, together with the Micheli and Massei tribunals, placed great emphasis on the volume and quality of the "circumstantial evidence" adduced against Knox and Sollecito. Since a good deal has been made about the term "circumstantial evidence", before outlining the findings of the Supreme Court, for those not conversant with the law of evidence, a brief summary of the legal principles are set out immediately below.

"Circumstantial Evidence" – Definition

Circumstantial evidence should be contrasted with "direct evidence". As far as the latter

definition is concerned, in the context of a brutal attack, assuming the victim survives the assault he/she could testify as to what transpired and, where apposite, to identify the assailant(s). In other words, he/she can give direct evidence as to what occurred and who was responsible.

By contrast, the former is evidence of circumstances surrounding an event or offence from which a fact in issue may be inferred. Thus, witness “A” hears the sound of breaking glass. A few seconds later “A” sees a person “B” running down the street with jewellery hanging out of his pocket. It subsequently transpires that a burglary had taken place close to the proximity of where “A” had been standing. The burglar had apparently broken a window to gain entry to a jeweller’s shop in order to steal jewellery from the shop. “A’s” evidence of what he heard and saw would be circumstantial. The inference to be drawn is that “B” was responsible for the burglary.

Because many crimes are committed when witnesses are not present, circumstantial evidence may be a crucial ingredient in proving guilt. This is not to say that circumstantial evidence is of no less substance than direct evidence. Of course individual items of such evidence may by themselves be insufficient to establish guilt, but as in the Knox/Sollecito case, the Massei Court thought that taken together, their cumulative effect was extremely cogent. This effect has been variously described in English law by a number of distinguished jurists and in the case of *Exall* (1866) 4 F. & F. 922, the locus classicus statement on this rule of evidence was outlined by Pollock C.B. thus:

“It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope comprised of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence – there may be a combination of circumstances, no one of which would raise a reasonable conviction of more than mere suspicion; but the whole taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of”.

The above rationale has been approved on a number of occasions. Examples of circumstantial law occur daily in criminal trials. Some of the more common examples are: (a) proof of motive; (b) acts preparatory to the commission of the offence; (c) forensic or genetic traces eg, fingerprint or DNA evidence; (d) lies told by the defendant; (e) possession of recently stolen goods (the doctrine of recent possession); (f) inferences from the defendant’s failure to answer police questions or to testify at trial. Accordingly, a tribunal may convict where it is sure that a safe inference may be drawn having regard to the totality of the evidence.

In a helpful preamble to its judgment, the Supreme Court (*Galati*) observed that via the enactment of Article 192 of the Criminal Procedure Code, the Italian legislature had dictated the rules for the evaluation of evidence in a criminal trial. In para.2, the article specifies: “The existence of a fact may not be inferred from circumstantial evidence unless the evidence is of sufficient weight, precise and consistent” (my emphasis).

The Supreme Court, knowing the risks associated with a decision founded on elements as potentially weak or transient as circumstantial evidence, has affirmed generally that the validity of a decision is verifiable only when “...one may plausibly exclude every alternative explanation

which invalidates the hypothesis which appears most probable”. From a decision in 1995 (Ref: 4503 of 26/04/1995 R.v. 1133) the Supreme Court acknowledged that circumstantial evidence is capable of furnishing proof where the evidence, taken as a whole, is (i) of sufficient weight i.e. is able to withstand judicial and forensic scrutiny; (ii) is sufficiently precise as to not be susceptible to a different interpretation; and (iii) concordant (harmonious) which is to say the evidence fits neatly together, the various constituents do not conflict with themselves or other elements.

For the avoidance of doubt the adjective “concordant” signifies that each piece of circumstantial evidence, even if it has to be evaluated independently, must merge together with the others in a logical and coherent reconstruction of the unknown fact. The author will have regard to this guidance in a later section where a distillation (“summation”) of the respective cases against Guede, Knox and Sollecito is presented.

As one can discern therefore, the same rule of evidence, *mutatis mutandis*, applies in the Italian criminal jurisdiction. It involves a two-stage process. Thus, the evaluation of circumstantial proof, even according to the last pronouncements of a fully constituted Italian Supreme Court (eg, see Cass.Sez U Ref: 33748 of 20/09/2005 R. v. 231678) involve the precautionary assessment of each single piece of circumstantial evidence. If the quality is sufficiently precise and grave, it may then be assessed, in a global and unified perspective, tending to throw light on the linkages and merging in the same demonstrative context (the concordat).

The Appeal Hearing and Judgment

On March 25, 2013, the Supreme Court of Italy convened to hear the appeal of the State Prosecutor. The Supreme Court (Galati) rendered its decision the following day ie, March 26, 2013, setting aside the acquittals of Knox and Sollecito, ordering a retrial of both defendants at the second tier ie, by the Court of Assizes of Appeal, and confirming Knox’s conviction for Calunnia. The Galati Report was subsequently released to the parties and general public on June 18, 2013. As a point of information this meant that Knox’s legal remedies against her conviction for Calunnia were now exhausted.

More detailed analysis will follow a little later. Suffice it to say that the author’s overriding impression is that, analogous to the master chastising its pupil, the Supreme Court was convinced that Knox and Sollecito were guilty of the four outstanding charges. The judgment handed down was devastating and paid scant regard to conventional legal wisdom and sensitivity because it contained overt criticism of the decision of the Court of Assizes of Appeal. The appellate Court was left in no doubt that it had reached an erroneous decision. Having decided to remit the matter back to the second tier (Court of Assizes of Appeal) for retrial, the Supreme Court did not stop there. As we shall see shortly, as part of the forbidden reasoning, various observations or directions were made. One concerned the use to which declarations made by Guede during the various hearings (Micheli, Borsini and Giordano) could be used at Knox and Sollecito’s appeal. Those directions were to say the least stark and in the author’s opinion left the reconstituted appellate Court with little room for manoeuvre as to the likely outcome or verdicts.

The following is a summary of the key findings made by the Supreme Court:

There were 10 grounds of appeal albeit, the second ground, was divided into two separate and constituent parts. In comity with the Hellmann Report, the author will cover all of the points of

the judgment but not in the published order. Discussion will focus initially on the witness evidence of Curatolo (ground 4), Quintavalle (ground 3) and Aviello (ground 2.2).

(a) Ground 4: Unreliability of the witness Curatolo

It was submitted that the judgment of the Hellmann Report was illogical and unreliable in its evaluation of the witness in contravention of Article 606, para.1 (e) of the Italian Criminal Procedure Code.

The Supreme Court observed that the Court of Assizes of Appeal (CAA), slavishly followed the submission of the appellants, according a special emphasis to the testimony of Curatolo, so much so that it (the CAA) ordered the re-opening of oral argument and the adduction of witness testimony to rule out that Curatolo could have observed both Knox and Sollecito between the hours of 10pm up to 11.30pm on November 1, 2007 in Piazza Grimana, where Curatolo used to permanently station himself during the day and, at times, during the night. The CAA's evaluation was that the sighting perhaps occurred on October 31. In so doing, it refused, a priori, to acknowledge that the witness could have been confused about the context ie, about the evening of the sighting as opposed to what transpired the following day, when the crime was discovered. This was because there was incontrovertible evidence that neither Knox nor Sollecito were ever in the piazzetta on the late evening of October 31. Knox was in the "Le Chic" pub nearby between roughly the hours of 10pm-2am. At just before 2am, Knox was joined by Sollecito who had spent the evening in a trattoria in San Martino in the fields, to celebrate the graduation of one Angelo Cirillo. They later departed and as far as the author is aware stayed overnight at Sollecito's house in Corso Garibaldi.

With regard to Curatolo's testimony, the examination revealed that he mistakenly believed, and had always believed, Halloween fell on November 1 of each year, and not on October 31. It was evident to the Supreme Court therefore that Curatolo superimposed the two events. But the transference of the two dates did not alter the effective temporal reference ie, it was November 1, because as Curatolo had repeatedly maintained, even at the appeal stage, the arrival of the Postal Police and the Carabinieri was the day after the murder. Thus, the CAA's focus appeared illogical because its examination was confined to the presence of coaches in the square and to the presence of young people going to the discotheques. No part of the examination centred on the identification of the defendants and the correctness of that identification.

The attack on Curatolo's decline in his intellectual faculties, which found no confirmation in a medical assessment, derived only from an unjustified prejudice for the witness's lifestyle, as well as the fact that Curatolo was a user of Class A drugs. It is worthwhile quoting part of Curatolo's response: "I should point out that heroin is not a hallucinogen". What Curatolo said was true. Opioids (unlike say LSD and ecstasy) normally do not have hallucinogenic effects. In conclusion therefore, Curatolo was perfectly correct and lucid: it is hashish, rather, that has effects of this type. Opioids such as heroin cause a rapid excitation, followed by a phase of sedation – relatively brief relaxation – after which the subject returns to near normal until the onset of a new phase of need of the substance (presumably by a craving brought on via addiction to the prohibited substance). If there was any doubt, Professor Carlo Caltagirone, consultant for the Knox defence, when asked by the President of the Massei tribunal as to whether heroin impedes the memory and recollection, his response was: "No".

Thus, on the affirmation of the unreliability of the witness Curatolo, the Supreme Court concluded that the reasoning of the CAA was both illogical and contradictory in law.

Curatolo – Analysis and Evaluation

Galati's analysis of Curatolo's identification, on mature reflection, was just as inadequate as the Hellmann and Massei Reports. One cannot escape the fact Curatolo's clear testimony was that on the fateful evening, there were lots of masked, young people making a din as it was holiday time. Either he was talking about November 1 or not. If he was referring to October 31, then we know Knox and Sollecito were not in the piazzetta for reasons identified by the Supreme Court above. If he was talking about the night of November 1, then his description of what was going on did not accord with what transpired that night ie, if anything, it was relatively quiet and most of the discotheques were closed due to a lack of clientele. The pubs were also quiet which accounted for Patrick Lumumba's texted communication to Knox earlier that evening. This might explain why no other witnesses came forward to identify Knox and Sollecito as having been present in the piazzetta during that fateful night. Put another way, Curatolo's description suggested he was confused, not only as to the date, but as to what was going on and who was present in Piazza Grimana.

Then, as previously highlighted by the author whilst analysing the Massei Report's findings, Curatolo's purported identification was suspect for a multitude of reasons e.g. the time period in which he observed the two; the description as to what they were wearing; the vagueness as to their movements; the fact they had only been going out for 8 days; the number of people frequenting Piazza Grimana; the failure to espy Guede. A reluctance also on the part of the police to undertake or conduct a formal identification process to test Curatolo's claims. It is submitted there were just too many inconsistencies in Curatolo's account for the same to be true. To borrow an aphorism, it was a case of the blind leading the blind, culminating in a general acceptance that Curatolo was telling the truth and/or that he could not have been mistaken as to the date of the identification and who he purported to recognize/identify.

And finally, Curatolo was an admitted heroin user who described himself as a "Christian anarchist". The author is not entirely sure what Curatolo meant by using this term but one outcome was certain: any reasonable tribunal would have regarded Curatolo's motivations and testimony with circumspection and his sighting of Knox and Sollecito as potentially suspect or unreliable.

(b) Ground 3: Unreliability of the witness Quintavalle

On appeal, it was submitted that the judgment of the Hellmann Report failed to follow basic principles of law in criminal cases involving circumstantial evidence and that the CAA's evaluation of the reliability of Quintavalle's eye-witness testimony was illogical based on Article 606, para.1 (b) and (e) of the Italian Criminal Procedure Code.

According to the judgment of the Supreme Court, Quintavalle did not take a year to convince himself of the accuracy of his perception. His doubt was in regard to the probative value of having seen Knox at 7.45am on the morning of November 2, 2007 as he claimed. His hesitation in volunteering such information, thus, made it entirely plausible that Quintavalle limited himself to answering specific questions put to him by Inspector Volturno; such questions being focused

on the purchase of [cleaning] items and not on specific individuals (in fact (infra), it appears that Sollecito's name was given - author).

A further observation on which the CAA based its assessment of unreliability was the time frame and the circumstances of Quintavalle's purported identification. The latter circumstance was referred to earlier by the author as a "fleeting glance". On this aspect of the case the Hellmann Report appeared to Galati to be completely arbitrary, because it was contradicted by the statement of Quintavalle himself which was referred to in the Massei Report at p.71: "...this young woman when she came inside, I looked at her to greet her; I mean I saw her at a distance of one metre, 70-80cm". Since in the Hellmann ruling this clarification is omitted, it had to be presumed that Quintavalle's statements had been accepted by the CAA, exactly as they had been reported in the grounds of appeal.

The CAA then affirmed that Quintavalle spoke of a grey coat, which Knox apparently had never owned. The Supreme Court was content to observe that a criminal court could not support its own assessment on negative findings, because the ownership of the coat had never been the subject of a police investigation. In any event, as Galati observed, Quintavalle did not base his identification on the clothing worn by the girl (Knox) which did not catch his attention that much. Quintavalle based his identification on Knox's face, the features and colour of her eyes and the fact that he had seen Knox before.

The Supreme Court opined that the CAA's opinion of low credibility conflicted with the fact that the statements of Quintavalle had found full corroboration in those of the witness Chiribonga (hearing of June 26, 2009 p.74) about which the appellate Court said nothing and did not seek to explain its omission. Accordingly, the CAA devalued the reliability of Quintavalle, considering only the part of the statements suggested by the defence and hypothesising one possibility only ie, it took a year to convince himself of the precision of his perception. This conclusion was unjustified.

The CAA considered that Quintavalle's identification, even if correct, constituted an element of weak circumstantial evidence, inasmuch on its own, it did not prove guilt even presumptively. Galati opined that the CAA had fallen into error because that one aspect of the prosecution case could not be isolated from the context which bound it to the remainder of the circumstantial evidence thereby contradicting the alibi of the two accused.

In closing, Galati stated that the CAA had based its unreliability of Quintavalle on the fact that the witness, after an appreciable time afterwards, having seen Knox in his shop on November 2, did not explain why Quintavalle did not appreciate in the days following the event, or the supervening period, the relevance of his identification. On this point, declared the Supreme Court, the Hellmann judgment was completely lacking and was a key step in the logical coherence and assessment of the reliability of the witness.

Accordingly, the Supreme Court concluded that the judgment of the Hellmann Report failed to follow basic principles of law concerning circumstantial evidence and that the CAA's evaluation and rejection of the reliability of Quintavalle's eye-witness testimony was illegitimate, misleading and illogical.

The Brutal Killing of Meredith Kercher – Part 17

Quintavalle – Analysis and Evaluation

The author fundamentally disagrees with the analysis and conclusions of the Supreme Court for several reasons. As a precursor therefore it has become essential to outline the key testimony of Quintavalle in full.

At the hearing on March 21, 2009 Quintavalle said that on the morning of November 2, 2007 he went to his shop, a food store located in Corso Garibaldi (No. 6/8). He raised the automatic security shutters at 7.45am from inside the shop. While pressing the button he could see "...the silhouette of a young woman who was waiting for me to open the store". The girl came in and he could see her from a distance of one metre and perhaps less. A short time afterwards say, one minute, he saw this girl who was again outside the store on the street and [she] was walking in a descending direction towards Piazza Grimana. This young woman remained impressed in his memory because of her very light coloured eyes (azzurri or light blue). She was wearing jeans, a grey coat, a scarf and a hat. The description of the hat was vague because Quintavalle could not remember if it was a headset/cap or something else; however, she had a head cover. She could have been 1.65 to 1.67 metres tall. Her face was bianchissimo (very light skin colour) and she apparently was estimated as being about 20-21 years old.

Quintavalle said that the girl went into the department store which had groceries, detergents and toilet paper on sale. He did not know if she had bought anything. He recalled that a few days after this incident his employee told him (presumably a defence witness, one Ana Marina Chiribonga - author) that she had heard of the arrest of Sollecito, who was well known to Quintavalle because he used to go into the shop almost every day. At Quintavalle's request she went and bought a newspaper and when he saw all of the pictures in the journal, he said to himself: "...but this is the girl of the other morning" (the reference being to Knox). He also later recognized Knox in court.

He added that on one evening, presumably before November 2, a little after 8pm, Sollecito came into his store. Quintavalle said that he was accompanied by Knox.

When Quintavalle was initially questioned by Inspector Volturro, he was asked, so the witness recalled, about purchases made by Raffaele Sollecito. Quintavalle did not say anything about having seen Knox on the morning of November 2, 2007 in his shop because he was not questioned about this fact and also because, Quintavalle considered this fact to be "insignificant" (my emphasis). Consequently, the Supreme Court concluded, the fact of not telling the police about having seen Knox on the morning of November 2 and, the fact of having come forward only after being convinced by a trainee journalist (Fois) about the possible significance of this event, did not reduce the reliability of the witness, since these facts did not affect the genuineness of the memory. To this, the Supreme Court added that the witness Chiribonga said that Quintavalle asked her (presumably after having seen Knox's picture in the newspaper), whether that morning (November 2) she had seen Knox in the shop to which she replied in the negative. Galati inferred therefore that Quintavalle's question presupposed that he had seen Knox on the morning of November 2.

There are two aspects to Quintavalle's testimony on which both parts the judgment of the Supreme Court are questionable: (1) Whether the witness was reliable (and by definition credible). (2) Whether the girl who Quintavalle claimed was in the store that morning (November 2, 2007) was Amanda Knox – the focus being on the quality of the identification evidence. Although there is some overlap between the two headings the author will endeavour to examine each separately and seriatim.

(1) Reliability and credibility

Hellmann was correct in its evaluation that Quintavalle's evidence was an extremely weak piece of circumstantial evidence. According to expert evidence adduced at the Massei trial, the murder took place at some time between 9.30pm and 3.30am spanning November 1-2. It is more likely the murder probably occurred between a shorter time-period based on Meredith's cell phone data. In the section: Meredith Kercher's murder, the author opined that it was a reasonable deduction that her digital rape and murder took place between the hours of 10.13pm and 12.31am. The Massei Report narrowed the time of death down to roughly between 11pm and 11.30pm.

By 7.45am, Knox had no reason to fear being seen in 6/8 Corso Garibaldi because a finding of fact to that effect could in no way establish that both she and Sollecito were at Via della Pergola 7, during the time Meredith was attacked. If one also accepts that Knox had gone to Quintavalle's shop she would have been aware that she had been seen by the owner (and possibly others such as Chiribonga). Her reason for being at the shop would have been consistent with Sollecito's conversation with his father the preceding night i.e. the spillage in Corso Garibaldi. Put another way, the purpose of the visit was to purchase a new mop head, if one was available. As an aside, it was not to purchase bleach, as on the evidence of Chiribonga in September 2007, there were adequate supplies at Sollecito's house. But crucially, it would have been nonsensical for Knox to claim that she was in Sollecito's house at Corso Garibaldi up to roughly 10am-10.30am on November 2 if she knew she had left the house just before 7.45am. She would have known that any such assertion was liable to be exposed as a lie because she would have known that she had been seen by one or more members of the public. The singular inference to be drawn, therefore, is that Knox did not go to the shop as Quintavalle claimed.

Whether the Supreme Court liked it or not, Quintavalle did not report the fact of his having allegedly seen Knox until roughly 12 months later. By implication, the Galati judgment casts doubt on the efficacy of the police investigation because the original visit to Quintavalle's shop was (only) to determine recent purchases of bleach by Sollecito. It took a determined trainee journalist (Fois), some 12 months later, to wheedle out of Quintavalle that he had (apparently) seen Knox that morning. To be fair to Inspector Volturno, it is normal police practice for officers to leave contact numbers with a request for the witness to contact the police should any other information occur to him/her. It seems incredible, therefore, that Quintavalle did not volunteer the information to the police either at the time or a few days afterwards (when he learned of the arrest of the two accused) because according to his testimony, he had seen Sollecito in his shop prior to November 2, accompanied by Knox. Instead he did nothing for 12 months on the grounds that his potential testimony was insignificant. But the evidence was significant because Sollecito's girlfriend i.e. Knox, was allegedly in his shop the day after the murder (thereby exposing a false alibi and constituting a lie). This was more than a mere co-incidence and Quintavalle knew it.

And then Quintavalle disclosed his true motivations when he saw the pictures in the newspapers a few days after the murder. One would have expected him to say: “But this is the girlfriend of Raffaele Sollecito who I have seen in my shop before (with Sollecito) and who was in the shop the morning after the murder”. He then went on to say that this young woman remained impressed in his memory because of her very light coloured eyes (azzurri or light blue) (my emphasis). In lieu of recognition of the suspect, he said something quite different in order to bolster a mistaken recognition (identification) of the girl who was said to be in his store.

(2) The quality of the identification evidence

Quintavalle sought to reinforce his purported identification of Knox around 12 months after the heinous crime by claiming that only a few days after the murder he had seen her photograph in the newspapers which confirmed his recollection that she had been in his shop at 7.45am on November 2. It was an allegation easily made and very hard to refute. It was inevitable that by the time he gave a statement to the police (some 12 months later) he had convinced himself of the correctness of the events that took place that morning and his purported recognition or identification of the girl. To recapitulate: The total time period for identification took place over less than one minute. His view of the girl could only have been for a matter of seconds because she no doubt moved to other parts of the shop (to browse); Quintavalle could not say if she purchased any items and a short time afterwards he saw her outside the shop. We also know that no other employee (such as Chiribonga) saw Knox in the shop that morning.

Consider also his purported recognition of Knox. He saw very few of the girl’s facial features because she was wearing a hat and scarf. Although at one point she was within one metre of him, his view of the girl was for a short period of time, potentially “fleeting”. Even though Quintavalle had seen Knox on one previous occasion, the temporal period was short and the dangers of making a mistaken identification were manifest. Put another way, the quality of the identification was substandard.

And finally, for Galati to have dismissed the relevance of the “grey coat” was wrong in law. It served to illustrate that Quintavalle’s description and identification of the girl, some 12 months after the event was pure folly. If the police had not investigated Knox’s ownership of a grey coat that revealed a weakness in the prosecution case, associated with Quintavalle’s description of the girl in his shop. By analogy, one cannot overlook the fact that the Massei Court had on an earlier occasion found Fabio Goffredi’s evidence unreliable because, among other things, the witness had described Knox as wearing a red coat. If one refers back to the Massei Report it briefly declared: “There was no other evidence” to show that Knox owned a red coat. There was of course no evidence Knox ever owned and wore a red coat or a grey coat for that matter.

In conclusion therefore, it is submitted that Quintavalle’s testimony was manifestly unreliable and represented very poor quality identification evidence.

(c) Ground 2.2: Rejection of the re-examination of the witness Luciano Aviello

It was submitted that there had been a violation of several articles of the Italian Criminal Procedure Code including, inter alia, Article 606 para.1 (c) and (d). The pleadings made on appeal highlighted deficiencies in the CAA’s reasoning for declining to allow the Prosecutor General to recall the witness Aviello (a procedural issue). To understand the sequence of events

the reader is referred back to the Hellmann appeal hearing in the section entitled “Reasons for decision” under subheading (c) Statements by Guede.

The witness Aviello (who was a serving prisoner) had been called and examined at the request of those representing Knox. The purpose being to exonerate Knox and Sollecito. As we have already seen, Hellmann concluded that Aviello’s evidence was unreliable. And then there was a strange turn of events while the appeal proceedings were ongoing. Aviello retracted what he had originally said to the Court and, in a new statement made initially to the prosecution, he said that he had gotten to know Sollecito while in custody. After about three days Sollecito revealed to him that it was Knox who had been materially involved in killing Meredith Kercher in the course of an erotic game, after there had been an argument about the possible appropriation of monies and that the killing had occurred with Knox using the Double DNA Knife (Exhibit 36).

These confidences apparently made to Aviello by the accused Sollecito were pointing therefore to Knox as the material author of the homicide, Sollecito as accessory or, in any case, being present at the material time, while the Double DNA Knife was used to murder Meredith. The Supreme Court commented that the extreme relevance of Aviello’s evidence in the Hellmann proceedings was quite apparent. It further opined that the Hellmann tribunal could do nothing other than to grant the request. The request of the prosecution was not prohibited by law since the evidence was neither superfluous nor irrelevant: Article 190, para. 2 of the Italian Criminal Procedure Code. Furthermore, Hellmann did not explain, in comity with the approach of the district Court ie, Massei, why the said evidence was not indispensable. (To be honest the author is struggling with this part of the translation. A reasonable deduction seems to be that Galati was declaring that the fresh evidence was indispensable to the prosecution case ie, that Knox and Sollecito were present and complicit in the digital rape and murder of Meredith Kercher.) Accordingly, Galati ruled that once the transcript of Aviello’s statement was made available to the Court (and the parties), the CAA should have allowed the witness to be recalled and thereafter to evaluate his testimony. Such a denial was in open violation of the principle of dibattimento (the phase of a trial where oral evidence is presented and argued).

In conclusion, Galati ruled that the CAA had erred when declining to allow Aviello to be re-called and examined by the prosecution. The CAA’s reasons for the refusal were manifestly illogical and constituted, in so many words, a fundamental procedural error leading to a denial of justice.

Aviello – Analysis and Evaluation

The overriding impression here (brought on by the forbidden reasoning) was that the Supreme Court was “nitpicking” in terms of deliberately finding fault with the procedural discretion exercised by Hellmann. Galati, along with the State Prosecutor, had the temerity to suggest that Aviello could give relevant and material evidence to the Court. How could such evidence be described as “indispensable”? As far back as the Massei trial, Aviello had claimed he could shed light on who had committed the evil deed, while in the same breath exonerating Knox and Sollecito. One can infer that Massei did not consider Aviello’s claims reliable and/or credible since the author can find no reference to his utterances in the Massei Report.

In retrospect, the legal team representing Knox probably made an unwise decision to call Aviello on appeal (and others), since in the absence of independent and credible evidence to support his

iniquitous claims, it was inevitable that Hellmann would (as it did) find the affirmations of a serving prisoner unreliable (incredible even).

From the outset of the investigation, the prosecution had struggled to explain the motivations behind Knox and Sollecito's alleged participation in Meredith Kercher's brutal killing. The Massei Report concluded that the imbibing of hashish had affected the cognitive reasoning of the two and that as a matter of evil choice they had assisted Guede after he had initiated the attack upon Meredith which, was motivated by sexual desire on Guede's part. Now at last, out of the blue and more than five years after the barbaric killing of poor Meredith, Aviello claimed that Sollecito had confided in him as to what really happened. We will return to this theme a little later ie, consideration of the Nencini Report *infra*, but suffice it to say that there were so many holes in Aviello's account, eg, how Guede came to be present and the reference to money (an allegation made by Guede in his pre-trial declarations), from a reasonable perspective, Aviello's revised declaration was fictitious – a sham even. One could comprehend therefore why Hellmann did not wish to be deflected from its main task ie, review and evaluation of the biological and forensic evidence, bearing in mind it had ordered an independent expert report. When a formal application was made to recall Aviello, one could well imagine the President of the Hellmann tribunal retorting to the State Prosecutor: "The Court did not believe him earlier, why should the Court believe him now?"

The bottom line is that the finding of a material procedural irregularity based on the failure of the Hellmann tribunal to exercise its discretion to permit the prosecutor to recall the witness Aviello, in accordance with the Italian Criminal Procedure Code, was purely technical and lacking in substance. Aviello's new evidence was superfluous and irrelevant to Hellmann's adjudication.

(d) Ground 1: The admission of independent expert witness report by an order of the CAA dated December 18, 2010

It was submitted that the reasoning which lay behind the CAA's order was manifestly illogical and contradictory in nature and thus in violation of Article 606, para.1 (e) of the Italian Criminal Procedure Code.

By a decree dating from December 18, 2010, Hellmann acceded to a request from the defence and ordered an independent expert review of the results derived from Exhibits 36 (the Double DNA Knife) and 165b (the bra clasp), explaining the reasons underlying the need for this measure. In summary, the principal reason for sanctioning the order was due to complex technical genetic issues which had arisen during the course of the trial (Massei) and the ability of that Court to formulate evaluations and opinions without technical assistance. Massei had declined the same request by the defence on the grounds that there was already a morass of expert scientific evidence and opinion at the disposal of the Court to enable it to reach a reasoned and logical conclusion; the addition of a further expert report would take the matter no further other than to add to the surfeit of genetic interpretation and conjecture already available at first instance.

The Supreme Court's stance was that the discretionary decision of the CAA to re-open and review the decision taken by Massei had to be specifically justified. Furthermore, having regard to Article 533 of the Criminal Procedure Code, the CAA ought to have indicated what were the possible gaps in the genetic findings carried out at first instance, what were the themes that were

insufficiently developed and what were the aspects of the genetic investigations that merited further enlightenment. None of this was documented, limiting the CAA to declaring itself unfit to autonomously evaluate the conclusions reached by the professionals who were opposed to each other's theses at first instance. By this process the independent experts were asked to choose which hypothesis they preferred. In the end, this confirmed a willingness on the part of the CAA to delegate to the experts all evaluation of the genetic analysis results, which was precisely what occurred.

The Brutal Killing of Meredith Kercher – Part 18

The Admission of Independent Expert Witness Report – Analysis and Evaluation

There was specific justification for the CAA's order and within the sphere of reasonable discretion. From an objective standpoint, therefore, the author can fully appreciate why the order was made. In relation to Exhibit 165b (bra clasp), without wishing to replicate the arguments set out in the analysis and evaluation section of the Hellmann judgment, there was prima facie evidence that the sample had been contaminated between November 2 and December 18, 2007 when, the bra clasp was finally bagged and collected for forensic analysis. The second justification, which applied to both Exhibits (36 and 165b), was that the Court was dealing with cutting edge science as far as the analysis of what has been described as "low copy number" traces. Given the forensic disagreement between the prosecution and defence experts, the CAA decided that it needed a fresh evaluation in order to gauge the reliability of the genetic samples and to interpret the findings. And if that were not enough, Hellmann was undoubtedly perturbed by the hypothesis put forward to explain Knox and Sollecito's complicity in the crime. Having reviewed various and individual items of evidence, in the CAA's view, the totality of the key circumstantial evidence was not sufficiently "weighty, precise and concordant" as dictated by Article 192 of the Criminal Procedure Code. Put another way, the CAA had reasonable doubts as to whether the accused Knox and Sollecito had helped subdue, stab and murder the victim, Meredith Kercher.

(e) Ground 2.1: Rejection of new expert witness testimony in relation to Exhibit 36 (the Double DNA Knife)

The CAA, by an order dated September 7, 2011 rejected, inter alia, the prosecution's request to furnish the Court with supplementary expert testimony; the objective being to carry out additional genetic analysis of the quantity of human DNA extracted from the new trace sampled by the experts Vecchiotti and Conti (supra) on the blade of Exhibit 36. The Court appointed experts had concluded that the quantity was not sufficient ie, it was of low copy number, to furnish a reliable analysis. But the prosecution consultant, Professor Giuseppe Novelli (described as the undisputed luminary of human genetics), contradicted this opinion. He stated that it was possible to analyse low copy number DNA traces with totally reliable results. The Supreme Court observed that the CAA, inexplicably, rejected the request, holding:

"To leave aside the sustainability or otherwise of the gaps set out by the [prosecution]... the tests effected by the experts and the evaluative elements proposed by the parties' consultants allow this Court to form its own reasoned conclusion".

Galati declared that a new element had appeared at the completion of the technical investigations which was susceptible of biochemical analysis ie, traces of DNA (not collected before). The discovery ought to have induced the appellate Court, in concordance with its earlier decision, to order new tests. Accordingly, the CAA had proceeded in violation of Article 606 para.1 (d) and (e) of the Italian Criminal Procedure Code.

Exhibit 36 (the Double DNA Knife) – Analysis and Evaluation

The case before the CAA was that a fresh biological trace existed but the appellate Court refused

to allow an analysis to be undertaken to extract the relevant profile from it. To recapitulate, Vecchiotti and Conti's brief was, in so many words: "...to ascertain, by means of new technical testing, the attribution and level of reliability of the possible traces of the DNA present on Exhibits 165b (bra clasp) and 36 (Double DNA Knife) if possible; if not feasible, to evaluate the level of reliability of the genetic tests carried out by the Scientific Police on the above-mentioned exhibits, with reference also to possible contamination."

The prosecution case, through its expert Professor Novelli, was that the new techniques described were cutting edge. They would have allowed analysis of the quantities of DNA found on Exhibit 36, despite the quantities being well below those recovered by, inter alia, Vecchiotti and Conti. The author agrees with the Supreme Court that the decision of Hellmann on this specific point was unreasonable. That is not to say Professor Novelli's conclusion was irrefutable i.e. a finding of a positive trace would have led to Knox (and by implication Sollecito) being found guilty. The evidence pointed in another direction i.e. Exhibit 36 was not the murder weapon and, thus, the only way by which a small trace of Meredith's DNA could have gotten onto the Exhibit (36) was by way of contamination. Looked at in isolation, the breach of Articles 606 para.1 (d) and (e) of the Italian Criminal Procedure Code was not fatal to the verdicts reached by the CAA.

(f) Ground 5: The time of death

Judging by Meredith's mobile telephone records, it is reasonable to infer that she was attacked and murdered some time between 10.13pm and 0.31am the following morning, an interval of roughly just over two hours. The Massei Court was able to narrow down the time of death based on an accumulation of circumstantial evidence: the results of the autopsy report; the evidence derived from Meredith's cell phones; the testimony of various witnesses, notably, Nara Capezzali, Antonella Monacchia, Maria Dramis, Alessandra Formica, Giampaolo Lombardo and Antonio Curatolo. Based on the harrowing scream heard by two witnesses coupled with the sighting of Guede after the fact (another reasonable deduction), in all likelihood, the murder took place some time after 11pm.

As we have already seen, the CAA conceded that the murder could have taken place earlier eg, at 10pm. This finding therefore cast doubt on Knox and Sollecito's presence at Via della Pergola 7, if Curatolo's evidence was reliable. There was also Guede's admission to De Benedetti, that he was present at the apartment during 9pm-9.30pm. The reader is referred to the Analysis and Evaluation section of the Hellmann Report under the heading Time of death.

The author rejected that assumption for a number of reasons.

Galati seized on Hellmann's inconsistent approach to the reliability and truthfulness of Guede's apparent admissions against his interests. The CAA made anomalous use of the Skyped conversation, accepting it for the time of death but not for other relevant purposes eg, what was going on in the apartment and who was present. As Galati observed, to support his innocence and bolster his defence, the best position for Guede was to declare that he had arrived at the house before the attack upon poor Meredith. Thus, for Hellmann to hypothesize on the time of death as having occurred earlier was both defective and illogical in law and contrary to Article 606, para.1 (e) of the Italian Criminal Procedure Code.

The Time of Death – Analysis and Evaluation

The author supports the stance adopted by the Supreme Court. What Galati had overlooked however, is the emphasis or weight to be accorded to Guede's pre-trial declarations. Micheli, it is submitted fell into the same trap and by implication Massei. Put another way, the various tribunals could not "cherry pick" Guede's evidence because his account was essentially exculpatory in nature. Aside from Guede's admitted presence at Via della Pergola 7, the fact that Meredith was attacked while he was present, the acceptance that he had disposed of incriminating evidence (Nike shoes), the rest of Guede's pre-trial declarations were implausible, self-serving and lacking in credibility.

There is a legal argument that Guede's pre-trial declarations represented "mixed statements" of fact ie, part inculpatory, part exculpatory. Accordingly, a tribunal of fact would be entitled to select those parts of the statements it thought credible while rejecting the surplus as implausible. This attractive synthesis has much to commend it but one cannot overlook the fact that the statements were never confirmed on oath by Guede; hence the weight that they carried, particularly the exculpatory parts, was negligible and, (as we shall see shortly) despite the opinion of the Supreme Court, they were unsubstantiated (uncorroborated). The other singular observation is that Micheli, Massei and Galati only selected those parts of Guede's pre-trial statements that supported the prosecution case but patently neglected those parts which supported Knox and Sollecito's defence eg, the time Guede said he was at Via della Pergola 7; the failure to name or identify Knox and Sollecito in his conversation with De Benedetti; the reference to monies and the later acquittals of all three accused for allegedly stealing 300 euros and two credit cards due to a lack of evidence.

As we have already seen, Micheli inexplicably declined or neglected to draw reasonable inferences eg, that Guede was carrying a knife which was used to stab poor Meredith. It also seems odd that, at the behest of Guede, the motivation behind the crime switched from sex to a potential dispute about the appropriation of monies. Of course, by the time of the conversation with De Benedetti, Guede had had time to read about the progress of the investigation and hence his mentioning "money" and the simulation of a breaking and entering. The author could go on but it is clear that Guede's account of events at Via della Pergola 7 was implausible, self-serving and, its probative value was negligible.

But in any event the time of death was not critical to the establishment of Knox and Sollecito's complicity. Both had pleaded an alibi. As we have seen, there was no credible eye-witness testimony placing them at Via della Pergola 7 at the material time (unlike Guede). Irrespective of the prognostications of the various tribunals regarding the cumulative effect of the "circumstantial evidence", the key to proof of their guilt lay in the forensic and biological traces found both at the apartment and on the alleged murder weapon, the Double DNA Knife (Exhibit 36).

(g) Ground 6: Genetic investigations

On this aspect of the case, it was submitted that the Hellmann judgment was defective, contradictory and illogical in violation of Article 606, para.1(e) of the Italian Criminal Procedure Code.

The Supreme Court declared it had already observed in Ground 2.1 supra, that further scientific tests should have been ordered to ensure the consistency and reliability of the results presented to the CAA. Galati was scathing as far as the allegation and finding of contamination (Exhibits 36 and 165b) was concerned. It noted that nothing was said by the independent expert report or Hellmann as to how traces of the victim's DNA could have accidentally found its way on to the exhibits. Since, contamination in the laboratory had been ruled out, the CAA had erroneously failed to demonstrate how the defence had laid the evidential foundation for such a theory. Put another way, since there were no reasonable factors present to explain what was posited as accidental contamination, the CAA proceeded as if the prosecution bore the evidential burden of establishing that the traces were not tainted. The CAA had erred; if a theory is to be confirmed or denied, it was transparent that the general principle "onus probandi incumbit ei qui dicit non ei qui negat" applied (the burden of proof falls upon he who states, not he who denies).

Moreover, the experts had not been able to point to any reasonable source of contamination outside of the laboratory ie, during the investigative stage. Professor Conti, when questioned by the prosecution on the point, limited himself to claiming that "anything is possible" (p.70 of the transcript of the Hellmann hearing dated July 30, 2011). Consequently, Galati concluded that these matters were totally ignored by the CAA, from which a glaring defect was apparent.

Likewise, no logical explanation was supplied for adopting the conclusion, on the one hand, that the DNA recovered from the handle of Exhibit 36 belonged to Knox, while on the other hand, the methodology of collection by the Scientific Police was liable to invalidate the results of the tests ie, the trace found of Meredith's DNA on the blade. The same could be said for the bra clasp. To save the result of one part of the test undertaken was, according to the Supreme Court, a contradiction in terms. Equally contradictory and completely illogical was for the Hellmann Report to maintain, in unison with the experts Vecchiotti and Conti, the inexactitude of the interpretation afforded to the genetic profiles on Exhibits 36 and 165b, while simultaneously adhering to the hypothesis that the said exhibits had been contaminated.

Genetic Investigations – Analysis and Evaluation

The Supreme Court knew jolly well there was evidence to support the contention that Exhibits 36 and 165b had been contaminated. As we shall see in a moment, once that evidential burden had been surmounted (as distinct from the legal burden ie, the prosecution must establish proof beyond a reasonable doubt), the onus shifted to the prosecution to rebut the defence assertion. To recapitulate:

(1) Exhibit 165b (bra clasp)

As we have already seen, one of the two bra hooks was the only evidence physically placing Sollecito in the "killing zone" (Meredith's bedroom). It seemed odd that no other forensic traces of Sollecito were ever found in the bedroom despite the finding that the flat had been extensively purged by Knox and Sollecito. According to Massei, Sollecito cut Meredith's bra with a pocket knife and also stabbed her to the right side of the neck. And yet no other physical traces of the accused were found on Meredith's bra, her clothing, in the bedroom itself and on Sollecito's clothes (the same goes for Knox). No fingerprint evidence was also adduced at trial. The bra clasp had been photographed on November 2, 2007 but not collected and bagged as evidence. It was only collected for analysis later ie, December 18, 2007. The prosecution had to concede that

the clasp had somehow been moved from its original location in the room by the time it was sealed for analysis. There was also the photographic still which disclosed that the gloves worn by the technicians of the Scientific Police already showed traces of stains located at the tips of the fingers which were used to pick up the bra clasp. Thus, even if the trace found on the bra clasp was Sollecito's DNA, it could not be ruled out that it had gotten there by way of contamination.

(2) Exhibit 36 (The Double DNA Knife)

The Massei Report's hypothesis as to how and why Knox came to be carrying the Double DNA Knife in the first place was speculative. Sollecito, on the evidence available to the trial Court, owned at least three knives, one of which he could have loaned to his girlfriend Knox.

It was the contention of the defence that Exhibit 36 had not caused the injuries to the right side of Meredith's neck. So another knife must have been employed in the cowardly attack upon poor Meredith. The author would refer the reader to the detailed Analysis and Evaluation section of the Massei trial supra. Here is a brief synopsis:

Eight of the experts agreed that the wounds caused to the right side of Meredith's neck could not have been caused by the sequestered knife. This conclusion left only one of two possible hypotheses: Either there was only one knife used in the attack or two different knives had been used to subdue and cause the lesions to Meredith's neck. Professor Vinci focused his attention on the bloody outline left on Meredith's bedsheet. What we know is that the bloody outline was left by a knife with a blade 11.3cm long or a knife with a blade 9.6cm long and a handle 1.7cm long. These measurements were incompatible therefore with either Exhibit 36 or the size of the pocket knife credited to Sollecito which, was declared by Massei to have been used by him to cut Meredith's bra and stab Meredith to the right side of her neck. Contrary to the Massei Court hypothesis therefore we are left with potentially three knives! It is submitted that the totality of the expert evidence was consistent with only one knife being used in the attack which was consonant with there being only one assailant, ie, Guede.

As we have just seen, this formed the evidential basis for the defence assertion that the only way that Meredith's DNA trace could have gotten on Exhibit 36 was via contamination.

And finally, the approach of Hellmann was not defective, inconsistent or illogical. A careful reading of the judgment reveals that it approached the problem by way of a two-stage process: First, the evidence was unreliable due to the methodology of collection; secondly, even if by chance eg, Knox's DNA, as detected on the knife handle, (ie, by normal usage for cooking and associated purposes) was reliable, the same could not be said of Meredith's DNA trace. It should be remembered that the trace of Meredith's DNA found on the blade of the Exhibit was "low copy number" (trace 36B) contrasted with the first sample (trace 36A) of Knox's DNA adduced at her original trial (Massei). Expressed in so many words, the issue was not the reliability of the trace found on the handle ie, Knox's DNA, but the reliability of the trace of Meredith's DNA found on the blade of the knife and how it got there.

(h) Ground 7 – Analysis of the prints and other traces

It was alleged that the reasoning of the CAA was defective, contradictory and illogical in violation of Article 606 para.1 (e) of the Italian Criminal Procedure Code.

The focus of attention moved to (i) the footprint found on the sky blue bathmat in the small bathroom; (ii) footprints revealed by Luminol on the corridor floor; (iii) traces of blood found in the small bathroom. To resolve the opposing theses of the parties, the CAA, it was said, reached conclusions by improvisation ie, as if the tribunal was by definition an expert itself.

Turning to the sky blue bathmat, Galati noted that the meaning of “probable identification” (of Sollecito) had been reported in the Massei judgment in comity with what was deduced in the technical report: “The lack of fine detail present on the capillary ridges, which are highly individualizing elements, has led the specialists to conclude that the print on the small mat was useful for negative comparisons but not for positive ones, in this case, corresponding with what occurred for print 5/A and for numerous others Dr Rinaldi and Chief Inspector Boemia have reached an opinion of probable identity, as will be explained” (p.362: Massei Report).

The Supreme Court observed that the CAA carried out an illogical approach leading to incongruous outcomes, demonstrating that it had not appreciated the limits of footprint analysis. What the CAA had not understood was that the threshold did not relate only to those footprints analyzed during the trial, but all [the] footprints, given the absence on the sole of the foot and on the toes of the “fine details” that characterized the fingertips. A limit which even Professor Vinci had to take into account, whose own thesis appeared immune to censure ie, his theory that the footprint on the bathroom mat could have been made by Guede. Not only that, but the CAA used the criteria and techniques of exclusion, to attribute the same prints to Guede, while at the same time developing a set of unexplained and speculative arguments. For example, Hellmann could not explain how Guede had lost a shoe in the struggle in Meredith’s bedroom and why he chose therefore to wash his feet in the small bathroom as opposed to the large bathroom which he undoubtedly did use, as evidenced by the faeces that were found in the toilet basin.

In conclusion, Galati observed that the CAA neglected to evaluate Professor Vinci’s calculations in order to determine whether they were reliable. For example, the consultant employed the so-called “Robbins grid” for aligning the footprints for comparison. But he adopted a different reference point to the one used by Rinaldi and Boemia which was not in conformity with the specific indications set out in the relevant literature.

As for the bare footprints revealed by Luminol along the hallway of Via della Pergola 7, the Supreme Court stated that the CAA adhered solely (forgive the pun) to the undemonstrated theses of the defence ie, the prints compatible with Knox and Sollecito could have been the same as those left on earlier occasions. It was common experience that Luminol principally reveals traces of blood. No evidence had been admitted to suggest that other material, equally copious and equally sensitive to Luminol, had been poured out onto the floor. The Supreme Court ruled that the reasoning of the CAA was beyond logic ie, to theorize that Knox and Sollecito could have had bloodstained feet on a prior occasion and distinct from the date Meredith Kercher was murdered.

Finally, the analysis of the genetic traces on the blood found in the small bathroom provided a corollary to the inconsistent approach of the CAA already advanced. The defence had alleged that as a result of the botched collection by the Scientific Police, the victim’s blood, carried into

the bathroom by an unknown person, was mixed with that of the accused Knox. The Supreme Court continued:

“The argument, borrowed wholesale once again from the daring and undemonstrated conjectures of the defence, is entirely irrational and illogical, because it does not even attempt to justify the ‘singular’ coincidence of the presence of Amanda’s DNA in all the traces mixed with Meredith’s blood, lacking...the presence of the DNA of others which might explain who and how – if not Ms Knox – the victim’s blood had been carried from the murder room to various points in the little bathroom where the traces had been collected”.

Galati’s criticism of Hellmann reached a climax concerning the absence of genetic traces of Sollecito in the small bathroom. Hellmann had reasoned that if Sollecito, as found by Massei, had washed himself after the murder and, before Knox, the action of rubbing, would have entailed the loss of cells by exfoliation. It followed that Sollecito’s DNA would have been found in the small bathroom. But according to Galati, the CAA did not explain why, on the basis of these negative elements, it excluded the presence of Sollecito and included that of Guede. The absence of a rational basis for this finding was defective and illogical.

The Prints and Other Traces – Analysis and Evaluation

We will start with the print found on the sky blue bathmat. For their consultancy activities, Rinaldi and Boemia had in their possession numerous pairs of shoes seized from Via della Pergola 7 and Sollecito’s house respectively on April 23, 2008. They had 12 pairs of shoes belonging to Meredith Kercher, 4 pairs belonging to Knox and 6 pairs belonging to Sollecito. We also know that footwear was seized from Guede’s house after his house was raided on November 21, 2007 (source: Massei p.332). Furthermore, the technicians possessed footprints taken from the three accused on May 12, 2008. Other traces taken into consideration included: (1) The footprint found on the sky blue bathmat during the course of the crime scene inspection on November 2-5, 2007. (2) Four photographs disclosed prints revealed by means of Luminol (found by the Scientific Police on December 18, 2007). Further consideration of the footprints can be found in the earlier section entitled: Biological and Forensic Evidence.

These prints were compared with those prints taken from the three accused on May 12, 2008. All the Luminol positive prints, as well as the bathmat print were of the right foot and so only the right foot print of each of the subjects was taken. The footprints were taken using inking technology, with printer’s ink, which was said to be standard practice and referred to in the available literature on the subject.

On a detailed examination of the right foot prints of Sollecito and Guede respectively, the technicians concluded that “...there was compatibility of imprint ‘A’ on the mat with regard to the general characteristics of shape and size with Raffaele Sollecito’s right foot.” This outcome allowed them to express an opinion of probable identity; at the same time they arrived at a finding of non-compatibility of print ‘A’ with Guede’s right foot.

We now turn to the evidence of Professor Vinci. It should be noted that Professor Vinci’s input had already contributed to the finding that the bloody shoe-sole print (Exhibit 5A) found near the body of Meredith Kercher was attributable to Nike Outbreak 2 footwear worn by Guede, rather than, as initially conjectured by the Scientific Police, to the sole of Air Force 1 Low Shoes worn

by Sollecito. The reader will also recall that a left shoe print was found on Meredith's pillow, estimated to be between size 36 and 38 (Knox wears a size 37). Having made a comparison of the sole pattern with Guede's right shoe, the Professor opined that the print could have been made by him. The Massei Court noted the conflicting theories without expressing a specific opinion but commented that it could not exclude that it was Guede's imprint, particularly as the Court had determined, on the basis of the traces revealed by Luminol, Knox was essentially moving around the flat in bare feet.

From the outset, Professor Vinci's report on the bathmat, completely contradicted the conclusions of Rinaldi and Boemia. The consultant rejected the hypothesis that the footprint could be attributed to Knox or Sollecito while at the same time he reasoned that the print could have been made by the right foot of Guede. Let us consider his report in a little more detail.

The Professor dissented from the technique used to take the footprints of the three accused. He recommended a more modern method, approved by the scientific community, of the suspect walking along a paper-covered gangway for at least six metres. He then criticized the fact that the investigations were conducted uniquely on the basis of imagery scrutiny, without any direct examination of the bathmat on which the footprint was actually found. By contrast, the Professor personally examined the bathmat and took accurate photographs using his own sophisticated equipment together with accurate measuring tapes, approved by the scientific community of the United States. The relevance of these observations did not by themselves impugn the findings made by Rinaldi and Boemia, but they did cast doubt on the weight or probative value to be attached to their findings and, ultimately, their conclusions.

Professor Vinci then proceeded to take a new measurement of Sollecito's footprints, yielding results which were extremely close to those previously obtained and, the results of a baropodometric examination (weight distribution on the feet) which had been performed on the feet of Sollecito on September 9, 2006. The consultant stressed the value of some distinctive details of the right foot of the accused, consisting of: (i) the fact that his second toe did not touch the ground (the so-called "hammer" position of the distal phalange) connected to a slight case of valgus (deformity) on the right big toe; (ii) the fact that the distal phalange of his big right toe also did not touch the ground, meaning there is a distinct separation between the print of the ball of the foot and the print of the big toe in the footprint of the accused.

Consequently, a morphological examination of the footprint found on the bathmat did not correspond with that of the footprint taken directly from Sollecito's right foot, due to its characteristics (the shape and size).

The consultant went further. He hypothesized that the measurement calculated by the Scientific Police of the width of the big toe found on the bathmat print required reconsideration. He rejected the measurement of about 30mm in favour of a much smaller measurement of 24.8mm, which he obtained by detaching a mark of haematic substance, not from the surface of the big toe (as Rinaldi and Boemia had done), but from the imprint of the second toe which, as we have already noted, was totally absent from the print taken from Sollecito's right foot.

When Professor Vinci proceeded to carry out measurements aimed at comparing the bathmat print with Sollecito's print, he made use of the "Robbins grid" but yielded results which were irreconcilable with Rinaldi and Boemia's findings. However, the Massei Report found that the

grid was not positioned according to the methodology followed by Dr Rinaldi culminating in a distorted result.

More important, Massei did not agree with the Professor's methodology which consisted of detaching the small mark from the big toe print, since this would result in a visible resizing of the big toe. This approach relied on the assumption that there is an interruption of continuity in the print, but this starting point was not considered convincing, given that the photograph furnished in support of this contention appeared to Massei to show exactly the opposite. For those reasons, the proof that the mark on the bathmat was that of a second toe (missing in the morphology of Sollecito's foot) was found to be totally weak and unsatisfactory.

Finally, Massei rejected the association of the bathmat print with Guede's foot. The Court determined that the hypothesis appeared "strained" because Guede's footprint, apart from having a morphology which was generally longer and more tapered, also had a second toe print which unequivocally fell quite far from the big toe print, so that the small mark whose detachment from the big toe was in question could hardly be attributed to the second toe of Guede.

Galati commented that the Hellmann tribunal had accepted the defence theory uncritically and without scrutinizing the methodology adopted by Professor Vinci. Touché, the overriding impression is that both Massei and Galati accepted unreservedly the findings made by Messrs. Rinaldi and Boemia. The Supreme Court in particular was unwilling to accept few, if any, of the points raised throughout the course of the hearings and more specifically that

Professor Vinci's report had highlighted a number of morphological differences between the bathmat print and the foot of Sollecito. It was noted while evaluating the Hellmann report, the Professor had calculated the different width of the point of contact of the first metatarsal bone and the different width of the whole forefront as disclosed by Sollecito's print. Also, at p.19 of their report, Rinaldi and Boemia emphasized some points of considerable discrepancy in the dimensions of the bathmat print and Sollecito's reference print, which contradicted their finding of "probable identity". None of this appeared in the Massei Report and Galati neglected to mention it.

And finally, Massei and Galati inferred that the bathmat print was another facet of the circumstantial evidence which inextricably pointed to the presence of Sollecito at the time of the murder. Rinaldi and Boemia's report had excluded Sollecito's right foot as compatible with the print found. Massei and Galati ruled out the presence of Guede in the small bathroom based on the footprints revealed by Luminol and other forensic traces eg, those found in the large bathroom. Ergo, it followed that the print found must have been that of Sollecito. That deduction, it is submitted is unconvincing because no other flaking traces of Sollecito's DNA were ever found in the small bathroom. The Massei Report's conclusion that his DNA traces were washed away while he cleansed himself in the shower after the murder is, to say the least, speculative and unconvincing.

We now turn to the bare footprints revealed by Luminol. Galati made no reference to the generic blood test which had yielded a negative result. To recapitulate, Professor Tagliabracci specified, without being refuted, that the tetramethylbenzidine test is very sensitive, so much so as to give a positive result even if only five red blood cells were present. Dr Stefanoni herself clarified that while a positive test could be deceptive due to the chemical reactivity of other substances, a

negative result indicated that no blood was present. If no blood was present they (Knox and Sollecito) could not have walked the same around the apartment and is suggestive that they were not in the killing zone at the critical time. In other words, the traces revealed by Luminol, of Knox and Sollecito's footprints, were more consistent with the same having been deposited on a different occasion or occasions, either before or after the murder of the victim. Common sense dictates that any such traces would have been deposited after the murder.

As for the traces of blood found in the small bathroom, Galati was troubled by the conundrum as to how they had got there: "...carried into the bathroom by whomever..." [The translation said "who know who" – author.] It reasoned therefore that there was an irresistible inference that Knox must have carried them into the bathroom because only her traces and those of Meredith's were found in that location. As attractive as this prognosis appears, the outcome effectively reverses the burden of proof. It was for the prosecution to demonstrate that the methodology employed by the Scientific Police resulted in reliable mixed samples. This they failed to do and the question as to who and/or how the blood traces came to be found in the small bathroom sadly, remains unresolved. It is just as explicable, it is submitted, that those traces were carried by Knox from the killing zone into the small bathroom some time after the murder. Elucidation of this hypothesis will feature in the Summation and Conclusions section towards the end of this work.

The Brutal Killing of Meredith Kercher – Part 19

(i) Ground 8 – The presence of the accused at the crime scene

Due to the findings made by the CAA in respect of eg, the eye-witness testimony together with the biological and forensic traces, Hellmann reasoned that other elements of the circumstantial evidence, placing Knox and Sollecito at the scene of the crime during the relevant time had, by necessary implication, diminished. This assertion, according to the Supreme Court, misrepresented the evidence and was contradicted by some unambiguous elements which Hellmann had completely ignored or attempted to circumvent by faulty or inconsistent reasoning, in violation of Article 606, of the Italian Criminal Procedure Code.

The focus of attention shifted to statements made by Knox on November 2, 2007 in the presence and hearing of Robyn Carmel Butterworth, Sophie Purton, Nathalie Hayward and Helen Power. The witnesses all testified, in so many words, that while present at the Police Headquarters in Perugia, Knox said "... she was the one who had found Meredith's body, that it (the body) was 'in' the wardrobe, that she was covered by a quilt, that a foot was sticking out, that they had cut her throat and that there was blood everywhere..." As we already know, when giving evidence to the Massei tribunal, Knox excluded having seen the murder scene because both she and Sollecito were standing a little way from the bedroom and could not have seen anything (a circumstance later confirmed by the witnesses Altieri, Grande and Inspector Battistelli who were also present). The Technical Director of the Inter-Regional Office of the Scientific Police, Dr Francesco Camana, also testified that the victim had been struck in front of the wardrobe.

The irresistible inference, therefore, was that Knox had described the spot where poor Meredith was effectively murdered; she had described the state of the body and the condition of the room and of the injury to the victim's throat. She could only have known these facts because she had been in the killing zone at the material time, when Meredith was left in the conditions in which her lifeless body was later discovered. The verification of that circumstance emerging from the case files in the first instance trial (Massei) had been completely ignored by the CAA, which did not even venture to explain why it had not accorded the evidence any prominence or weight.

Aside from Knox's description of the crime scene, Galati opined that Knox's behaviour, after the discovery of the crime, was also highly indicative of guilt. It escaped the CAA's attention that the emotional reactions displayed by Knox were a response to her having been present at and, being complicit in, the murder of Meredith Kercher. On this aspect of the case, the Hellmann Report failed to carry out a logical synthesis of the witnesses' accounts in tandem with Knox's behaviour and declarations.

The Supreme Court then turned its attention to a phone call made by Knox at around 12.47pm on November 2, 2007, at a time appreciably earlier than the discovery of Meredith's body (the body was discovered at 1.30pm). The phone call was made to Knox's mother in the United States. It was accepted that local time in the US (Seattle, Washington) would have been almost 4am (3.47am - author). Knox's mother, therefore, would have been asleep in bed. This conversation was not intercepted. However, based on a later conversation (November 10, 2007), the line by then having lawfully been tapped, the mother displayed a perplexity indicating that in this phone call (November 2) Knox had told her of circumstances which, if she was a stranger to what had transpired, she could not have known:

- Mother: “You called me one time saying...”
- Knox: “I was in shock you know”.
- Mother: “But this was before anything happened except for the fact that the house was...” (Massei: p.95.)

Knox was cross-examined by the Public Prosecutor (PP) about the telephone conversations with her mother at the Massei hearing on June 13, 2009. Here is a damning excerpt:

- PP: “The [phone] records show...that you called your mother at 12, that is at midday”.
- Knox: “Okay”.
- PP: “At 12 [noon] nothing had yet happened, this is what your mother said also... During your prison conversation with your mother, even your mother is surprised by the fact that you at 12 noon, or rather at three to four at night, you called her, but still, your mother says, her exact words, ‘nothing has happened yet’...”
- Knox: “But I didn’t know what happened, I only said...I called my mother only to say we were being sent out of the house and I had heard something about a foot”.
- PP: Yes, but at twelve [noon] nothing had happened yet, in the sense that the door had not yet been broken down”.
- Knox: “Okay. I don’t remember this call...”

Knox, under intense cross-examination from the prosecutor, relayed that she could not remember the call and when pressed on the later telephone conversation with her mother (“But at 12 nothing had happened yet”?) said that she did not remember this part of the conversation (either). It was also significant, according to the Supreme Court that Knox’s telephone call to her mother, at 12.47pm was immediately prior to the telephone calls made by Sollecito to the Carabinieri. Those calls were made at 12.51pm and 12.54pm.

All of this was said to have been ignored by the CAA. Accordingly, Galati found that Hellmann had erred under Article 606, para. 1 (e) of the Italian Criminal Procedure Code, because the omission failed to address a pointed examination by the prosecutor which also highlighted that Knox’s mother, in the (later) intercepted conversation of November 10, 2007 had asked her daughter for an explanation.

The Supreme Court then made a number of poignant observations in respect of the evaluation made by Hellmann of Sollecito’s telephone conversations to the Carabinieri on November 2, 2007. The two affirmations, when linked to each other ie, “...there is no theft” and “...they haven’t taken anything”, was suggestive that Sollecito knew there had been a staged burglary and that he betrayed himself by also telling the Carabinieri that nothing was missing in Romanelli’s room. As further proof, the Massei Report affirmed the conviction that only Sollecito and Knox had an interest in simulating a break-in.

As the last limb of Ground 8, the Supreme Court scrutinized Hellmann's evaluation of the declarations made by Rudy Guede. Galati declared there had been contravention of the Italian Criminal Procedural Rules coupled with an illogical declaration by the CAA, in contravention of Article 606, para.1 (b) and (e) of the Italian Criminal Procedure Code.

On p.35 of the Hellmann judgment, it was claimed that Guede had never appeared before the Massei Court in relation to the trial against Knox and Sollecito. This fact, Hellmann claimed was "surprising" ("...as much as it may surprise."). According to Galati this was a clear error which was symptomatic of the CAA's superficial attention to the case file documentation. Galati was at pains to point out that Guede had been summonsed as a witness and had appeared before the Massei Court, but exercised his right not to give evidence (or respond) pursuant to Article 210, paras.1 and 4 of the Italian Criminal Procedure Code.

According to Galati, Guede's reliability, together with any other items of evidence which confirmed his account, ought to have been evaluated under Article 192, para.3 of the Italian Criminal Procedure Code. The Supreme Court went further. It added: "...therefore the declarations made by the convict ought to have been evaluated positively, if, in the case documentation, there had been objective corroboration".

Galati observed there was corroboration. It originated in Knox's memoriale, relevant in terms of being a spontaneous document and freely written by Knox and admitted into the proceedings at her trial (Massei). As already acknowledged, in this narrative, Knox placed herself in the house at Via della Pergola 7 while Meredith was being killed, in conformity with what Guede said in his pre-trial declarations.

The Supreme Court also determined that if the CAA had found as reliable, what Guede related in his pre-trial declarations, ie, to the time in which Meredith was killed, it supplied no reason at all, for why it did not believe him, when he denied having committed the break-in or when he recounted a quarrel between Meredith and Knox about missing money. In conclusion, therefore, Guede's declarations on the presence of Knox and Sollecito at Via della Pergola 7 on the night of the murder, together with his (later) accusations of their having committed the homicide, directed not only in the Court of Appeal (Hellmann), but also on other occasions, towards Knox, ought to have been evaluated by application of the principles dictated by the Supreme Court under the rubric of hetero-accusatory declarations on the part of accomplices, according to the judgment rule stipulated by Article 192, para.3 of the Criminal Procedure Code; inasmuch the declarations of Guede, found full corroboration in the trial documents which had been noted and were annexed to the current appeal.

The presence of the accused at the crime scene – Analysis and Evaluation

Looked at in isolation the claim made by Knox at the Police Headquarters, in the presence of several friends or acquaintances of Meredith Kercher, was capable of being interpreted as nothing more than mere bravado on the accused's part. Knox was a flatmate of the victim. She was present in the apartment when Meredith's lifeless body was discovered. To have conceded that she was not actively involved in the decision to break down Meredith's bedroom door would have seemed odd to the outside observer and to borrow a metaphor, she would have lost face. The Massei Court thought Knox's response was odd and drew its own conclusions therefrom. Galati quite naturally declared that the CAA did not even venture to explain why it had not

accorded the evidence any prominence or weight. Nonetheless, by that stage Hellmann did not think the circumstances were critical. With the benefit of judicial hindsight it would have been expedient for the CAA to deal with the issue. As stated above the claim of Knox was explicable as pure bravado in order to save face. By then she would have known of the details of the discovery since Filomena Romanelli and the other civilians present had discussed the same in her presence and Sollecito outside the cottage. They would have been relatively conversant therefore with the appalling sight which greeted Luca Altieri, Romanelli and the other persons present when Altieri broke down Meredith's bedroom door.

The phone call made by Knox to her mother at 12.47pm was potentially the most incriminating piece of circumstantial evidence pointing to Knox's presence in Via della Pergola 7 at the time of Meredith's murder. The initial conversation was explicable if both the mother and Knox had become confused about the terms of their conversation eg, Knox had phoned solely to report a break-in at the apartment. But the subsequent phone conversation suggested otherwise. The critical moment occurred during cross-examination when Knox responded, "...I called my mother only to say we were being sent out of the house and I had heard something about a foot". On being reminded that the call was made before the bedroom door was broken down Knox said she could no longer remember the telephone call (or its contents) much to the consternation of the prosecutor and no doubt the trial Court (Massei). If Knox's account was at all truthful, one would have expected her to have set the record straight during the later conversation with her mother on 10th November 2007 and, when testifying at trial. Knox fell back on a different explanation i.e. she was in shock which accounted for her temporary amnesia. With the benefit of hindsight her counsel should have tried to repair the damage by taking Knox to her original accounts which indicated that she thought she had called her mother on a number of occasions and the first time was as soon as they (Knox, Romanelli et al) were sent outside the house. To quote Knox: "It was after they knocked down the door and they sent us outside". On one interpretation, it could be inferred that both Knox and her mother had become confused about what had been said during their first telephone conversation at 12.47pm (Italian time) and 3.47am (Washington State time).

So what did the Massei Court make of Knox's explanation? The answer is to be found on p.94 of the Report: "The conduct they both exhibited, consisting of staying away from Meredith's door in a position which would not allow them to see inside the room, seems explicable only if we admit that Amanda and Raffaele already knew what was beyond the door and therefore had no reason to look inside the room; on this point, some parts of the [wiretapped prison] conversation between Amanda and her mother are rather telling...The mother who says to Amanda that at the time [12.47pm in Perugia] nothing had happened, demonstrates a significant contradiction in this sequence of events, of which the daughter would have progressive knowledge...However, the perplexity shown by the mother indicates that in this phone call Amanda had told her of circumstances which, if she was a stranger to what had occurred, she could not have known".

Accordingly, the author agrees with the Supreme Court that there had been a violation of the Italian Criminal Procedure Code. As an important piece of circumstantial evidence, it was beholden on the CAA to carry out a logical examination of Knox's behaviour and declarations and to elucidate its probative value or weight.

In the case of Sollecito's telephone calls to the Carabinieri at 12.51pm and 12.54pm respectively, the author stands by his analysis and evaluation of the Massei Report (supra) under the relevant

section: 2. The accounts of Knox and Sollecito – (b) character and behaviour. Furthermore, the author does not dissent from the findings made by the CAA outlined earlier.

Turning to the declarations made by Guede, it is submitted that the Supreme Court erred. Much has already been said about this aspect of the case. In summary:

Guede's pre-trial declarations constituted evidence against the maker only ie, Guede. They were not capable therefore of corroborating the evidence adduced against Knox (or, a fortiori, vice versa). In point of fact, Knox's voluntary written declaration made on November 6, 2007 to the Chief Inspector of Police was admitted to prove that she persisted in her slanderous accusation that Lumumba was present at Via della Pergola 7 on the occasion of the homicide. To substitute Guede in place of Lumumba based on Knox's declaration that she had imagined eg, "Patrick near the basketball court, near the front door of the house: of herself crouched down in the kitchen with her hands over her ears because in her own head, she had heard Meredith scream..."

(see Amanda Knox's accounts supra), was wrong in principle and in law.

Furthermore, to amount to corroboration, the evidence must implicate the defendant in the crime charged in a material particular. On one interpretation, Knox's memoriale merely confirmed she imagined Patrick and herself being present at or near to Via della Pergola 7 when the crime took place. Knox's limited admission did not confirm, in a material particular, that she was complicit in or had committed the crime of murder with Guede.

Whether the Supreme Court liked it or not, Guede chose not to testify at his own trial or at the trial of Knox and Sollecito. As for his appearance before the CAA, his presence was purely to rebut a suggestion he had made damaging disclosures (admissions of guilt) to fellow prisoners. He declined to answer questions on the murder and was entitled to do so by Italian law. The letter he had written to his advocate was entirely self-serving and of no evidential value which accounted for the CAA's finding that the contents of Guede's letter, coupled with his limited testimony, was wholly unreliable. In other words, Guede's limited pre-trial declarations and his testimony before the CAA could not in fact and in law be corroborated by the declarations later made by Knox in her written statement (memoriale) or vice versa.

To the trained eye, it should be added that the rules of evidence concerning corroboration were never designed to bolster pre-trial admissions by permitting those unsworn declarations to be regarded as affirmed by the declarations of others external to or after the trial of the accused. In plain English, the Supreme Court was allowing Guede's pre-trial declarations and limited testimonials to be accorded a probative value which was undeserving (confirmation by the back door). This legal chicanery could be regarded, to borrow another euphemism, "as using a sledgehammer to crack a nut". As we shall see later (Nencini), Knox's presence and complicity as set out in her memoriale was capable of being corroborated by lies told by her to the police eg, the false alibi, and/or by dint of the weight, precision and concordance of the circumstantial evidence.

(j) Ground 9: Simulation of an attempted burglary

The CAA absolved both Knox and Sollecito from criminal responsibility on the basis that a burglary had actually been committed and therefore the crime of simulation did not in fact and in

law occur.

There were two aspects to the judgment of the Supreme Court. The first related to a whole series of obscure and unexplained points arising from the intruder's hypothetical entry including, *inter alia*:

- How the intruder could have been able to think of climbing without a ladder at night and above all without knowing beforehand of the existence of the nail on the wall
- The fact that the intruder left no traces on the wall
- The feasibility of the intruder being able to accomplish the two separate phases of the climb, having first to push aside the shutters and then secondly to climb and gain entry after having thrown the rock
- Why all the pieces of glass fell inside the apartment
- The fact that pieces of glass were found on top of and beneath Romanelli's clothing.

The second issue related to the motive for simulating the break-in. Galati was content to adopt the Massei hypothesis that Guede had no interest in simulating a burglary and, therefore, the staging could not have been anything but the work of someone who had reason to deflect suspicion from those staying in the house. Given the cast-iron alibis of Romanelli and Mezzetti, as well as the four men who lived in the apartment below, the only logical inference was that the person who staged the break-in at Via della Pergola 7 was Knox, assisted by Sollecito.

Simulation of an attempted burglary – Analysis and Evaluation

The author agrees with the first part of the Supreme Court's conclusion i.e. the break-in was staged. There is no need to dwell on this point and the reader is referred to the Analysis and Evaluation sections of the Micheli, Massei and Hellmann Reports, respectively (*ante*). However, in relation to the motive for the simulation, despite the evidence adduced at the various trials, the Italian courts appeared reluctant to consider whether the staged break-in was designed to deflect the authorities from the probable motive for the entry i.e. a sexual urge on Guede's part or (Micheli): "An agreed plan to satisfy sexual instincts".

Furthermore, and on a related note, what did Guede have to say about the theft of money and the faked break-in? The topics were brought up by the defendant during his Skyped conversation with his friend De Benedetti. Having mentioned the missing "money", Guede then conveniently dropped into the conversation that from what he had read, someone else must have come to the house afterwards because when he left none of the windows at Via della Pergola 7 were broken. Guede's strategy was masterful – his explanation shifted the blame firmly into Knox and Sollecito's lap. As a matter of record, Micheli found that there was no evidence Guede was involved in the staged break-in (he was not charged with this offence) and also acquitted him of theft.

Paradoxically, not only were Knox and Sollecito convicted of simulating a burglary, they were also convicted of the theft of Meredith's mobile phones. The verdicts bear the hallmark of being

mutually inconsistent based on Guede's presence and complicity while at Via della Pergola 7. The reader is also reminded that only Guede's DNA traces were found on Meredith's handbag (purse) where her monies and mobile phones were kept.

(k) Ground 10: Defective recognition of aggravation in the teleological nexus offence of Calunnia

In plain English, Galati found that the CAA placed too much emphasis on the purpose or cause of Knox's incrimination of Lumumba as opposed to its likely effects on the victim of her slanderous outbursts. Having affirmed the Calunnia conviction against Knox, the CAA excluded its potential link with the murder investigation which at that time was ongoing. Accordingly, Galati ruled that the judgment of the CAA was illogical and quashed the sentence on appeal, substituting the original sentence imposed at first instance.

The author does not intend to dwell on this aspect of the Galati judgment. As previously observed ie, during analysis and evaluation of the Hellmann Report, from a practical standpoint Knox had already been incarcerated for several years and, aside from the compensatory elements therefore, she had already served that part of her sentence.

The Brutal Killing of Meredith Kercher – Part 20

Overview of the Galati-Costaglioli judgment

The Supreme Court stressed that having reviewed the totality of the Hellmann judgment, its conclusion was that the CAA erroneously placed itself, not as an appellate court with the task of analyzing the facts, law and verdicts appealed against, but as a sort of alternative first instance court, whose task was to make a decision on the facts (known as a “re-hearing de novo”), without reference to the findings made by Massei. In carrying out this task, the CAA did not shrink from making disconcerting polemical observations about the subservience of the Massei Report to the case for the prosecution and the findings of the investigative task force. At the same time, Hellmann adopted almost exclusively the arguments for the defence consultants. The hypotheses subsequently adumbrated were therefore preponderantly favourable to Knox and Sollecito. Galati reasoned that the typology of errors committed by the appellate Court, independent of the specific findings highlighted (above), could be summarized thus:

- The adoption of a circuitous reasoning founded on the so-called “petitio principii” (begs the question) which manifests itself by way of fallacious reasoning. For example, it was assumed that Knox accused Lumumba of the crime solely because she had been questioned by the police about the text messages between them earlier that evening together with her response: “See you later”. Put another way, the CAA’s judgment was characterized by its opinions being based on a mere possibility (not even based on probability).

- The CAA opted for a parcelled-out evaluation of individual items of circumstantial evidential depriving them of any probative value without reference to context and the totality of the evidence.

- The interpretation of Article 238 of the Criminal Procedure Code relating to Guede’s first instance conviction (Micheli), the appeal decision (Borsini) and that of the Supreme Court (Giordano). Italian law bears a similarity to English law. Finalized judgments can be admitted into evidence, as provided for by the law (for example, to prove that Guede was convicted as being complicit (with others) in the murder of Meredith Kercher), but the transcript of convictions do not constitute full proof of the facts contained within them, some element of corroboration is often required. Corroboration can take a number of forms eg, the declarations of co-accused in the same or connected proceedings. But that is not the full extent or use to which a judgment can be used by Italian law. Corroboration is unnecessary when the finalised decision is not directly utilized to prove a fact but as confirmation of other circumstantial pieces of evidence. As we have already seen, the Supreme Court regarded the memoriale written by Knox as confirmation that both she and Guede were present in Via della Pergola 7, at the time Meredith was attacked.

- In relation to the memoriale written by Knox, the CAA affirmed Knox’s responsibility for Calunnia but, despite an earlier ruling by the Supreme Court (Sez. 1 pen. N. 990/08) that Knox’s declarations could be fully utilized in her trial for murder, Hellmann declined to say why the memoriale was unreliable as proof of Knox’s complicity in Meredith’s digital rape and murder. The CAA had said: “...as regards the murder, not only can the spontaneous declarations not be used, but in reality neither can the memoriale written [afterwards]; although utilizable under a procedural [rule], [the memoriale] merits no reliability under the substantive [charge], not

representing the real outcomes of the case...” Galati declared that the Hellmann judgment failed to examine and analyse the probative value of Knox’s written declaration and as such constituted violation of Article 237 of the Criminal Procedure Code.

- The failure to permit the adduction of additional genetic evidence and for the witness Aviello to be recalled. On this point, see Grounds 2.1 and 2.2 supra.

- Defective conclusions flowing from a faulty and illogical reconstruction of the facts. On this point, see Grounds 5, 8 and 10 supra.

Accordingly, the Supreme Court, allowed the prosecution appeal, and set aside the judgment of the appellate Court (Hellmann) and the acquittals of Knox and Sollecito. The Supreme Court ordered that Knox and Sollecito be retried at the second level (ie, by a reconstituted Court of Assizes of Appeal). As we have seen the judgment contained guidance on the use to which the Judges re-hearing the appeal could assess Guede’s reliability, together with any other items of evidence which confirmed his account pursuant to Article 192, para.3 of the Italian Criminal Procedure Code. The Supreme Court went further. It added that the declarations made by Guede ought to have been evaluated positively, if, in the case documentation, there had been objective corroboration. And on that point the Supreme Court was reasonably satisfied there was corroboration: The memoriale of Amanda Knox dated November 6, 2007. It is submitted that this was tantamount to saying that the “Lone Wolf” theory could be discounted and that Knox was present, complicit and therefore guilty of the digital rape and murder of Meredith Kercher. By implication it also meant that Sollecito was equally guilty.

It is submitted that the Supreme Court ruling represented an unbalanced judgment. In contradistinction to Hellmann, which was criticized for being too fawning or subservient to the arguments or hypotheses advanced on behalf of the defence, the Supreme Court was too servile or complacent in its unprincipled acceptance of the case for the prosecution. During the Massei trial, the advocates had on occasion made reference to quotations derived from literature or famous Hollywood movies. Seizing on that theme one has in mind the approach of the flight director, Gene Kranz in the movie Apollo 13. The lunar spaceship had suffered a calamitous explosion and Apollo 13 was losing power and venting oxygen into space. Kranz remarked that the mission control centre should approach the problem from the perspective of status i.e. what did they have left on the spaceship which was still functional? Both Hellmann and the Supreme Court should have approached the appeals of Knox and Sollecito in the same way, viz: What aspects of the prosecution hypothesis, supported by the circumstantial evidence, had withstood the rigours of the challenges mounted by Knox and Sollecito’s defence teams? Expressed another way, from an objective standpoint, could an evaluation of the totality of the circumstantial evidence, on appeal, satisfy the test provided for by Article 192 of the Italian Criminal Procedure Code ie, could it still be regarded as sufficiently cogent, precise and consistent (concordant)?

The prosecution had struggled throughout the hearings against Knox and Sollecito to detect a possible motive to explain their participation in the crime. The apparent meeting up with Guede was unfathomable which was why great emphasis was placed on Curatolo’s testimony, warts and all. Galati had also fallen into the trap of adopting a circuitous reasoning associated with Knox’s memoriale. It failed to grasp that during the illicit interviews of Knox (which the Supreme Court later ruled were inadmissible at her trial for murder etc (other than Calunnia)), the reason Knox

slanderosly accused Lumumba was not only because the police had questioned her about the texted response she had sent to him after 8pm but because, discounting Sollecito, the police had no other suspects to connect her with the crime ie, Guede. It was not a level playing field (Knox had not been advised of her right to consult a lawyer etc) and Knox's testimony was to the effect that the interviewing officers were telling her they knew she was not telling the truth (and thus was guilty of murder).

They were just waiting for Knox to either incriminate herself and/or others. It is somewhat ironic but if one examines closely the interviews of both Knox and Sollecito, the defendants' replies contained a litany of inaccuracies (lies even). Accordingly, those accounts were unreliable as evidence of the truth as to their movements and actions during the hours of 8pm-10.30am on November 1-2. Finally, a little later, Knox realized that she was going to be incarcerated as a suspect in the murder of Meredith Kercher. The temporal link between Knox's illicit interviews and the voluntary written statement (memoriale) is why Hellmann did not place great store on the admissions contained therein. The CAA judged them to be unreliable. That was a logical, coherent and reasonable step to take and is thus beyond reproach.

The Supreme Court, it is suggested, opted for a selective evaluation of individual items of circumstantial evidence, without proper scrutiny and failed to have regard to their relevance and probative value. Consequently, Galati neglected to consider whether individual items of evidence provided another link in the missing chain, so to speak, consistent with the hypothesis advanced by the Massei Report. For example, we have already seen that the identification evidence of Curatolo and Quintavalle was found wanting; and the suggestion that Aviello's revelations were anything other than superfluous or irrelevant was absurd: his declarations on the motivation for the attack upon poor Meredith were unsubstantiated and totally lacking in credibility. To borrow a rule of evidence from English law, Aviello's new statement made to the prosecution was nothing more than a "recent fabrication".

The memoriale written by Knox did not corroborate Guede's pre-trial declarations (or vice versa) which contained admissions to the effect that both he and Knox were present at the apartment when Meredith was attacked. It is also unclear whether the Supreme Court exceeded its jurisdictional and Constitutional role as an appellate court. For example, it was entitled to find that a specific item of evidence was capable of corroborating other evidence and/or formed part of the overall context. But Galati went further and said the memoriale corroborated Guede's pre-trial declarations. Galati appeared therefore to have made specific findings of fact which were essentially binding on the CAA, to whom the case was being remitted.

That said, Knox's statement could be used in her trial as it contained an admission against her interests ie, that she was present in and around the apartment when Meredith screamed out. That declaration also demonstrated that her later pre-trial accounts and sworn testimony ie, she was at Corso Garibaldi, was a lie. What required judicial scrutiny, therefore, included consideration as to whether (i) the memoriale and its contents were reliable; and (ii) if the contents represented reliable evidence, Knox's reference to the "scream". In relation to (ii), by the time Knox wrote her memoriale (November 6) was the fact of the scream already in the public domain? If not, the declaration constituted a strong piece of circumstantial evidence proving the falsity of Knox's later accounts while negating her alibi.

The one positive or major element in support of the Hellmann judgment was that for the first and

only time, an Italian criminal court evinced doubts as to the hypothesis put forward to explain Knox and Sollecito's complicity in the digital rape and murder of Meredith Kercher. Hellmann could see that there were gaps and potential shortfalls in the prosecution case. For example, disagreement as to the interpretation to be accorded to genetic and biological traces, in combination with the contentious issue as to whether the Double DNA Knife (Exhibit 36) was, de facto, the murder weapon. These and other factors persuaded Hellmann to order an independent expert report. The CAA concluded that it needed a fresh technical insight into such matters as "low copy number" and innocent contamination.

Admittedly there were some defective conclusions flowing from a faulty and illogical reconstruction of the facts by Hellmann eg, the rejection of a finding by Massei that the break-in at the apartment had been simulated and, a failure to assess the truth and probative value of Knox's telephone call to her mother at 12.47pm on November 2. But this still begged the question as to whether the combined defects in the reasoning of the Hellmann report were such, that the CAA, properly directing itself on the law, had reached perverse and illogical verdicts ie, that neither defendant was guilty of the four substantive charges and that Knox was guilty (only) of the non-aggravated form of Calunnia.

That concludes the overview of the Galati-Costaglioli Report.

The Brutal Killing of Meredith Kercher – Part 21

The second appeal of Amanda Marie Knox and Raffaele Sollecito (the Nencini Motivations Report) – the forbidden reasoning ratified

The appeal hearing and judgment

Pending the appeal, Sollecito remained at liberty within Italy, while by the same token, Knox had already returned to her hometown in Seattle, Washington State, USA. In November, 2013, the rehearing of Knox and Sollecito's second-tier appeal commenced in Florence, Northern Tuscany. The presiding Judge was Alessandro Nencini. At the outset of the appeal hearing and in comity with the observations of the Supreme Court Report (see Ground 2.1 supra) the CAA in Florence ordered analysis of previously unexamined DNA found on Exhibit 36 (the Double DNA Knife) which, the prosecution had always alleged was the murder weapon. When the unexamined sample was retested by court-appointed experts, no additional DNA belonging to Meredith Kercher was found on the blade of the knife (infra). The CAA continued to receive evidence during the months of November and December 2013. Knox declined to attend the appeal hearing. She publicly declared in the United States that she was "afraid" the Hellmann verdicts might be reversed leading to the re-imposition of an inevitable and lengthy gaol sentence. Instead, she sent a letter, dated December 15, 2013 which was read out to the court. Sollecito was present during part of the appeal hearing and at some stage addressed the court personally. Both Knox and Sollecito continued to deny any involvement, inter alia, in the digital rape and murder of Meredith Kercher. Closing arguments were made by the parties' advocates on December 16-17 inclusive.

On January 30, 2014 after roughly 12 hours of deliberation, the Judges found both Knox and Sollecito guilty of, inter alia, the murder of Meredith Kercher. Sollecito was sentenced to 25 years' imprisonment, while Knox, in absentia, received an increased sentence of 28 years and six months' imprisonment. The CAA also ordered the defendants to pay the Kercher family damages. The presiding Judge directed the police to locate Sollecito, revoke his travel rights (outside of Italy) and to confiscate his passport. As a matter of record, lawyers for both defendants indicated they planned to appeal to the Supreme Court against the decision (the earliest date of hearing is said to be September 2014). On April 29, 2014, Nencini released its Motivations Report to the parties and the public.

Note, the ipsissima verba (precise words) of the translated Report are not always followed, in order to ensure that the correct legal import or meaning of the judgment is conveyed to the reader.

The following is a summary of the key findings made by the Court.

The Report began with a foreword dealing with the scope of the trial by specific reference to the ruling of the Galati Report (which quashed the acquittals) followed by allusion to the Micheli Report and its findings concerning the guilt of Guede and the complicity of others. At p.36 of its judgment Nencini, in so many words, formulated the following premise:

"In conclusion...the existence of a definitive judgment [Micheli] attributing the murder of Meredith Kercher to a specific culprit, Rudy Hermann Guede, in complicity with other persons,

makes unquestionable the assumption that any fact finding... to be carried out with reference to the evidentiary compendium emerging from the documents of [those] proceeding[s] will have to be performed having as a... reference point that judicially ascertained fact... that [is] Rudi Hermann Guede participated, along with others, in the murder of Meredith Kercher.

This obdurate declaration left the reasonable observer in no doubt. Notwithstanding Micheli was a fast-track trial, its findings ruled out the hypothesis that Guede may have acted alone (the Lone Wolf theory). For Nencini, the task which presented itself therefore was straightforward: To determine, if possible, who Guede was aiding and abetting during the brutal killing of Meredith Kercher. In that sense, therefore, Nencini carried out its task as if Guede was a secondary as opposed to a principal offender.

The second part of the judgment outlined the facts leading up to and including the murder of Meredith; the context in which the murder took place and evaluation of the causes and time of death. Nencini also concentrated on the circumstances leading up to the discovery of Meredith's lifeless body at Via della Pergola 7, focusing on Knox/Sollecito's actions and behaviour during that fateful evening. Much of the aforesaid has already been covered earlier in this work and to avoid unnecessary duplication the reader is referred to eg: (1) The Murder of Meredith Kercher and (2) The trial of Knox and Sollecito (Massei) supra. The following, therefore, is a summary of the key findings or observations made by Nencini during the second part of its Report.

In relation to Knox and Sollecito's alibi: "...no court finding had shown that Knox and Sollecito were elsewhere with respect to the place where the murder happened, nor together with persons who could testify as to their non-involvement in the events, from about 9.30pm on November 1, 2007 to about 12.30pm on November 2, 2007.

Unlike Massei, which narrowed down the time of death to roughly 11pm-11.30pm, at p.50, Nencini observed: "...the eventual ascertainment that Meredith Kercher's murder took place at a certain precise time rather than at another [time] on the night during November 1-2, 2007 would have little significance in the...evidentiary assessments this Court has to make".

Examination of the testimonies of Capezzali, Monacchia, Dramis, Formica and Lombardo respectively. In relation to Capezzali and Monacchia (excluding Dramis), Nencini concluded their evidence was reliable. Although the witnesses could not give a precise timeline, their description of a "heart-rending" scream was compatible with the time range in which the murder took place.

Phone records established that by 12.31am on November 2, 2007 Meredith's mobile phones were situate in the garden of Mrs Lana.

There were no major defensive wounds to Meredith's hands and any DNA or tissue under her nails. A young, athletic woman like Meredith would have been able to offer fierce resistance to a single attacker. The absence of a struggle or fight was suggestive of multiple aggressors.

The position of Meredith's main wounds on her neck was incompatible with a single attacker because the victim would have been able to rotate her head 180 degrees.

Genetic and biological traces disclosed that Guede's bloody shoeprints led from the killing zone (Meredith's bedroom), into the hallway and directly out of the apartment. In contrast, the bloody outline found on the sky blue bathmat in the small bathroom was of a bare male foot. Further, that there were three female sized barefoot prints found in Meredith's bedroom. (Just pausing there, the author was puzzled by the reference to the three bare footprints.

Tracking back to the Massei Report, the author recorded the following: There were three bloody footprints on the ground, set in concentric circles. It was assumed that these were sole prints left by Guede's Nike shoes. As it is, these footprints do not appear to have been regarded as significant by the Massei Report and, ironically, no further reference is made to them by Nencini.)

On the basis of these elements Nencini determined that Meredith Kercher was "...attacked and killed by multiple individuals" (p.63).

Having ruled that multiple aggression was involved in the crime the third part of the Report moved on to consideration of the "post delictum" ie, what happened after the murder, while endeavouring to identify the persons who Guede assisted. To that end, the focus of attention initially shifted to: (1) The simulation of a break-in. (2) The potential alteration of the crime scene (the clean-up). (3) The appropriation and subsequent disposal of Meredith's mobile phones. The author will deal with each of these subheadings seriatim.

1. The simulation of a burglary

As previously outlined (see Analysis and Evaluation of the Massei Report), Nencini acknowledged that Guede was a dishonest man who best fitted the description: "... [a] skilled and shrewd thief...surely expert in breaking and entering..." (See pp.73-74 and 78). While Nencini conceded that Guede could have broken into Via della Pergola 7, the purported entry through Romanelli's room was too difficult as opposed to other parts of the property where ingress could more easily have been gained. By contrast, the simulation was described as "gross" and "clumsy". The other compelling element to support the prosecution claim that the break-in was staged was the presence of glass found on the clothes. The glass was said to have been found both above and below Romanelli's clothing. This could not have happened if the brick found in the room had broken the window from the outside. Nencini concluded: "...if to these considerations one adds the circumstance, deemed as acquired by this Court, that the aggression to Meredith Kercher was the work of multiple individuals...the defence's hypothesis of Guede who, as a lone killer, breaks in through the window, is caught by Meredith and kills her, is shown to be completely without foundation".

2. The alteration of the crime scene (the clean-up)

The Report conjectured as to whether a "selective" clean-up was possible or not. Nencini's starting point was the fact that no trace of Knox, besides those traces directly linked to the murder was found in the apartment. A thesis characteristically emerged that after Meredith's murder, there was a clean-up of the traces and a manoeuvring of the cadaver into a new position (between the armoire and the wall of the room) and covered by a duvet. Nencini reasoned that from the evidence, the position in which the body was found did not correspond with the position in which Meredith died.

Nencini declared that a clean-up certainly took place, also because the footprint on the sky blue bathmat in the small bathroom was “orphaned”, that is, no other bloody footprints compatible with the dimensions of the print were found going from the killing zone into the small bathroom. Further, the presence of bloody towels near the victim’s corpse was additional evidence of some form of “cleaning”. Thus, at p.81, the Report concluded: “Someone spent a lot of time inside the cottage on the night between November 1 and 2, 2007 altering the crime scene and deleting many traces”.

The step was to ascertain who was responsible for the clean-up. Nencini posed three rhetorical questions: 1) Who had an interest? 2) Who had time to undertake a systematic alteration of the crime scene? 3) What was the aim of that activity?

Nencini excluded Guede. The traces left at Via della Pergola 7, suggested that he had fled the cottage shortly after the murder and it was odd that no attempt was made to remove any of his traces from the killing zone ie, Meredith’s bedroom and, the large bathroom where he had defecated. At p.84, the Report stated: “Rudy Hermann Guede was absolutely not linkable by the investigators to the apartment...used by the victim, nor to the victim herself”. Turning to the second question, Nencini inferred that Guede could not have known of the whereabouts (and plans) of the other tenants (Romanelli and Mezzetti) and hence any cleaning on his part would have been cursory while in a frenzied state of mind. Accordingly, the only person who could have known that there was adequate time at her disposal was Knox. In so many words, Nencini reiterated that Knox knew neither Romanelli nor Mezzetti would be returning to the cottage that night (p.92).

As to the third question (p.85), the only conceivable aim of the clean-up and the overall alteration of the crime scene (including the simulation of a break-in) was preventing the discovery of the murder before its authors had organized their departure from the cottage (“fuoriuscita dalla scena”). As for Knox’s testimony that she had even returned to the apartment at roughly 10.30am, Nencini evidently did not believe that account either: “At the cottage...from the early hours of the day [November 2] and until about 12 noon, no one had a shower, as much as no thief had broken in through the window [of] Filomena Romanelli’s room; more simply the sum of the circumstantial evidence examined up to now shows us that the defendants operated an activity of cleaning up the traces of the murder they had perpetrated and an activity of sidetracking the investigation”. So this was another lie told by Knox which corroborated the prosecution version that she and, by implication, Sollecito, had killed Meredith Kercher.

3. The appropriation and subsequent disposal of Meredith’s mobile phones

Nencini tackled the identity of the person or persons who appropriated the two cell phones of Meredith Kercher and later dumped the same in the garden of Mrs Lana’s property. At p.88, the Report commented: “...for whatever reason, the perpetrators of [the] murder ...seize[d] the cell phones of the victim only to discard them afterwards. And in the case we are dealing with, [whether] Rudy Hermann Guede had a reason to do that”.

In respect of the disposal of the mobile phones Nencini adopted almost verbatim the hypothesis promulgated by the Massei Report. At p.88 it reasoned: “...the only rational explanation...can be found in the need by the perpetrators of the murder to prevent one of the cell phones ringing inside the locked room of Meredith Kercher [since that] could alert someone who in the

meantime had entered the apartment, causing...the discovery of the corpse...before the time deemed necessary by the perpetrators”.

And a little later: “With respect to this explanation, which appears to be the only rational one...it is easy to notice how an alternative explanation to this singular fact has not been given by any of the defendants, nor by their lawyers. The theft of the cell phones has been completely ignored by the defen[ce] when reconstructing the events of that night. There is, substantially, no alternative hypothesis to deal with in the context of the trial”.

Calunnia

The next section of the Report (p.95 onwards) is devoted to consideration of the offence of Calunnia ie, the slanderous accusation made by Knox implicating Patrick Diya Lumumba in the digital rape and murder of Meredith Kercher. The author has already concluded, following a detailed examination of the facts and the law that Knox was guilty of the non-aggravated offence e.g. see the relevant Analysis and Evaluation section of the Hellmann Report ante. Considerations of space and the length of this work militate against further discussion. The reader is invited to read the pertinent part of the Nencini Report for himself or herself.

It is submitted that Nencini adds nothing to the debate about the criminality of Knox other than to adopt the Massei/Galati rationale that the Calunnia offence was aggravated.

The Alibi

Knox and Sollecito had maintained throughout all of their various court proceedings that they were at Corso Garibaldi during the evening of November 1, 2007 up to roughly 10.30am on the following day, when Knox returned to Via della Pergola 7. Of course, it was for the prosecution to negative their alibi, beyond a reasonable doubt. Massei was certain that the alibi was false (and thereby negated) having regard to a preponderance of circumstantial evidence beginning with the testimonies of Antonio Curatolo and Marco Quintavalle.

Nencini considered both witnesses were fully reliable. The CAA prefaced its assessment of the two witnesses by making the following observations: “Trial experience shows that any testimony, if fragmented and critically analysed in every single assertion, can be found ridd[led] with contradictions (p.128)”. And a little later at p. 129: Piazza Grimana is described as: “...surely a place usually frequented by youngsters who gravitate or hang out in that area”.

As for Curatolo, Nencini began with an endorsement of his reliability at p.128: “No one among the fact-finding Judges who dealt with this case doubted that the witness Curatolo saw together the two defendants that evening at Piazza Grimana”. And, a little later at p.129: “...the time when the witness would have seen the defendants, defined by him as between 9.30pm and midnight on November 1, 2007...has to admit some tolerance, since it is a memory not linked to a specific point of reference”. And again a little later at p.140: “According to the precise testimony of Curatolo, which the Court deems reliable for the aforementioned reasons, Knox and Sollecito, from 9.30pm to about midnight on November 1, 2007 were noticed multiple times [by him] at Piazza Grimana”.

In relation to Quintavalle his evidence was fully catalogued during the analysis and evaluation of

the Galati Report. Nencini did go on to observe however that according to Quintavalle she, (Knox) looked tired while in his shop. This was evidently directed to the finding by the CAA, that Knox and Sollecito had been engaged the previous night and early into the hours of the following morning in purging the cottage of any of their incriminating traces.

Nencini then moved on to consideration of the computer and cellular phone activity of Knox and Sollecito. Having regard to the interaction that took place on Sollecito's computer at 5.32am, the day after the murder, coupled with his cellular phone activity at 6.02am, the CAA concluded that both defendants had lied and they had not spent the entire night (asleep) at Corso Garibaldi.

The final words of this part of the Report are to be found at p.146: "...the defendants perpetrated the murder shortly before midnight on November 1 and, [after having] left immediately from the house at Via della Pergola 7 and [having] abandoned the cell phones at Via Sperandio, that they went back to Sollecito's flat, also with the aim of planning the activity they later implemented, and that they were there [Via della Pergola 7] shortly before 1am on November 2, 2007".

Inferences to be Derived from the Statements of the Defendants and Witnesses

Concerning the morning of November 2, as already noted, the CAA rejected Knox's account that she had taken a shower back at the cottage. Taking its cue from Massei, the Report stated that Knox had no need to shower or change clothes at Via della Pergola 7 as she could have showered at Corso Garibaldi, having taken a change of clothing with her.

We have already seen that Nencini rejected Knox's account that she went to the cottage at about 10.30am but assuming that she had, the CAA found her account as to what she described at the premises unbelievable: (a) When she found the entrance door open, she should have inspected the property which, would have revealed the burglary, enabling her to immediately contact the Carabinieri. (b) A burglar would not have closed Romanelli's bedroom door (on departure) and thus she would have seen the ransacked room. (c) Knox had a shower in the small bathroom which contained multiple traces of blood and yet used the sky blue bathmat without caring (or being concerned) about the bloody footprint on it. At p.151, Nencini summed up its finding: "The behaviour reported by the defendant defies common sense".

Another damaging aspect of Knox's case was the cellular activity just after 12 noon on November 2 starting with the phone call to Meredith's "English" cell phone at 12.07pm (for 16 seconds). Knox then spoke to Romanelli at 12.08pm and thereafter phoned Meredith again at 12.11am (on this occasion she phoned both of Meredith's cell phones – three seconds to the Italian phone Romanelli had given Meredith (the answer-phone kicked in) and four seconds to the English phone). Similar to Massei, the CAA reasoned that Knox knew perfectly well that Meredith would not answer: "...the circumstance that the two calls to the numbers used by Meredith Kercher did not alarm the defendant has just one plausible explanation (page 153)".

Nencini also drew an inference from where Knox made her initial call to Romanelli and, the delay in Sollecito calling the Carabinieri to report the alleged break-in when, by this time, two Postal Police officers were already on the scene (my emphasis).

The Genetic Investigations

(a) Luminol

Nencini surmised that although Luminol reacts with many substances besides blood, bearing in mind there had been a murder with copious loss of blood, the CAA could safely infer that the test revealed traces of blood. Expressed another way, the presence of other substances would be an abstraction unrelated to the findings made by the Scientific Police on December 18, 2007 (see pp.187-188).

(b) The small bathroom

To recapitulate, mixed traces of Knox's and Meredith's DNA were found in three places. Nencini rejected the thesis that such mixing could have been due to the method of collection and/or the fact that both persons shared the bathroom. At p.189 the Report stated: "...the loss of biological substance useful to DNA extraction is not a phenomenon [which occurs] with normal frequency and regularity...For the loss of biological material useful to DNA extraction [to occur] it is however necessary to have a consistent frictioning action, causing the fall of biologically significant parts".

As for the sky blue bathmat, the reader is referred to 2. The alteration of the crime scene (the clean-up) supra and to subs.(f) immediately below.

(c) Romanelli's room

Nencini presumed that the mixed genetic profile of Knox and Meredith was of a haematic substance and as such demonstrated not only that Knox was present in the bedroom of Meredith when she was killed but also that it was Knox who had simulated the break-in.

(d) Exhibit 36 (the Double DNA Knife)

Nencini adopted the reasoning of the Supreme Court (Galati) ie, unorthodox protocol collection and laboratory contamination having been ruled out, the defence had failed to satisfy an evidential burden (as distinct from the overall legal burden which rested throughout the trial with the prosecution). It was incumbent on the defence to introduce credible evidence that the trace of Meredith's DNA found on the blade of the kitchen knife had got there via contamination.

As for the genetic traces found on the Double DNA Knife, to recapitulate, at the Massei trial, trace 36A was found to be Knox's DNA on the handle; trace 36B was found to be the victim's DNA on the tip of the blade. As we have already ascertained these findings were found to be scientifically unreliable at the Hellmann appeal but were discounted and set aside by the Supreme Court (Galati) supra. Accordingly, and in compliance with the guidance handed down by Galati, a fresh sample trace was collected and tested (Exhibit 36I) The new trace revealed the attribution of DNA to Knox but none to Meredith Kercher. For the sake of completeness, the trace was found on the blade close to the handle.

On the basis of these findings Nencini deduced that the trace found on Exhibit 36B to Meredith Kercher was admissible, "univocal" (capable of only one interpretation), although it did qualify the weight to be attached to the evidence via the insertion of the phrase "not reassuring" (viewed in isolation, inconclusive).

(e) Exhibit 165b (the bra clasp)

Although the CAA postulated there could have been undetected traces of Sollecito's DNA due to his previous visits to the flat, Nencini reasoned that on December 18, 2007 (when Exhibit 165 was collected and bagged) if someone had unwittingly transferred Sollecito's DNA from some place to the metal hook then the same agent would have contaminated other parts of the same Exhibit ie, trace 165b and potentially other exhibits bagged that day. The probative value of the genetic trace attributable to the accused was elucidated at p.243: "But the real matter important to the trial is not constituted by the presence of more [potential] contributors in the mixed DNA trace extracted from the bra clasp donned by Meredith Kercher the evening she was killed, but the presence of Raffaele Sollecito's DNA". In other words, there was strong circumstantial evidence placing Sollecito at the scene of the crime at the material time from which the CAA, having regard to the totality of the evidence, was prepared to infer complicity.

(f) Shoe prints and footprints

Much has already been said about this evidence already. In summary, the Report began with an exposition of Messrs. Boemia and Rinaldi's conclusions regarding the print found on the sky blue bathmat. The objections of Professor Vinci's findings were also evaluated and rejected. Nencini decided that the footprint belonged to Sollecito subject to the caveat, expressed by Boemia and Rinaldi in their report, that due to a lack of papillary ridges the footprint could permit a "probable" but not certain identification to be inferred. Nencini was also careful to exclude the presence of a fourth "unknown" person at p.259:

"...because of size...and being incompatible with Sollecito and Guede, according to the arguments of Professor Vinci's expert report, one should attribute the print to a fourth person, remaining unknown and evidently an accomplice of Guede, a circumstance incoherent and eccentric with respect to the whole spectrum of the data collected in the trial".

As for the footprints detected by Luminol, to summarize, Boemia and Rinaldi found:

Exhibits F and H (living room) and 2 and 3 (corridor): left shoe prints belonging to Guede.

Exhibits 5A, 5/11, 5C (Meredith's bedroom) Guede's left shoeprints.

Photo 104 (pillow found under the victim): Guede's right shoe print.

Photo 105 (pillow): unknown female shoe size 36-38 (Knox being 37).

Exhibit 1 (Knox bedroom): footprint.

Exhibit 2 (corridor orientated towards the exit): one footprint.

Exhibit 6 (corridor orientated towards the exit): shoe print not useful for comparison.

Exhibit 7 (just outside Meredith's bedroom, orientated towards the room): footprint.

Boemia and Rinaldi attributed Exhibits 1 and 7 to Knox and Exhibit 2 to Sollecito. As for

Exhibit 2, Nencini remarked at p.263: "...the perception of the images show an absolute morphological similarity of the [print] once rescaled to the same size and thus this [Court] cannot agree with the defence consultant Professor Vinci; also, in light of the sizable dissimilarity between traces made by a foot resting on a flat rigid surface and in static conditions and those made in dynamic conditions (ie, when in motion)".

It is also worth noting that at the end of this section of the Report, the CAA reiterated that the murder was perpetrated by multiple attackers, a woman being among them and that they (by inference Knox and Sollecito) "...remained for a long time after the murder in the house, with the evident aim of erasing the traces of their presence – an operation which was only partially possible".

The Statements of the Witnesses Aviello and Alessi

The reader will recall that the Hellmann Report concluded that the testimonies of serving prisoners such as Aviello, Alessi (and three others) were unreliable. Hellmann also declined a prosecution request to recall Aviello on the basis of a new statement made available to the parties and the Court while the proceedings were ongoing.

However, by the time the Nencini appeal commenced there appeared to be some suggestion that Aviello and Alessi's evidence was concocted as part of a defence conspiracy to secure the acquittals of Knox and Sollecito. Suffice it to say that Nencini had to concede there was no proof to establish the exact motivations of the aforesaid.

Guede's pre-trial declarations and his testimony to the CAA (Hellmann)

At p.298 Nencini considered the statements made to the CAA (supra) to be of "undeniable interest to the trial". In that context, Nencini concluded that Guede had placed both Sollecito and Knox at the crime scene. Nencini then quotes from Guede's pre-trial declarations which included his admission that he was present at Via della Pergola 7, when Meredith was murdered; culminating in his later declarations that a man (unnamed) and a woman (Knox) were the authors of the murder.

Conclusive Evaluations

Here is a summary of what Nencini had to say at pp.308-328 inclusive:

"Each piece of evidence from the [entirety] that has been obtained, of absolute consistency in its quantity and significance, was singularly evaluated and analyzed by this Court with the articulated treatment that verified [the accused's] part in the context in which the homicide occurred... The assignment of this concluding [Part] is instead to evaluate altogether the circumstantial clues collected and already evaluated... [from which] there emerges a probative picture [unequivocally] that confirms the criminal responsibility of the defendants [in] the murder of Meredith Kercher, beyond a reasonable doubt..."

This Court affirms that an alternate explanation of the causes of the circumstantial evidence... is not conceivable and that the body of evidence, if evaluated critically, inevitably affirms the criminal responsibility of both the defendants of the crime ascribed to them..."

The Court having set the scene as to what transpired earlier in the evening continued:

“The witness Curatolo placed them [the accused] in Piazza Grimana already from 9.30pm/10pm, where the witness claimed to have noticed them many times until 11pm/11.30pm of the same evening; a circumstance that the Court holds to be reliable for the reasons already expressed... We know for certain that Rudy Hermann Guede was present inside the cottage...not only because this was affirmed in his conviction and by his own testimony and... that he remained for a considerable period of time in the cottage seeing as he left his traces in the big bathroom of the apartment.

We know for certain, because the probative picture allows it, that immediately after the murder, within the cottage there were three persons present, certainly two men and a woman. This is confirmed by the genetic investigations and from the traces revealed by Luminol. We can also confirm that one of the men, who stepped in Meredith Kercher’s blood, left a visible trace of his foot on the sky blue bathmat found in the small bathroom... This footprint was attributed... [by] this Court, to the right bare foot of Raffaele Sollecito. One of the footprints revealed by Luminol was attributed to... Knox [and] the mixed traces of DNA in the small bathroom...

[W]hat matters is not whether Guede entered the apartment with Knox and Sollecito or if Meredith Kercher opened the door for him (the only possible options, excluding the entrance via the window of Filomena Romanelli’s bedroom). What is important is that at a certain point, most likely between 9.30pm and 10pm... both of the defendants and Guede were certainly within the cottage and Meredith Kercher [was] in her bedroom.

The development of the events necessitates a premise to the problematic issue of the motive – a precise motive that would have driven the defendants, together with Guede, to the murder of Meredith Kercher. One must begin with an evaluation of a series of facts, taken together, that might produce an indication of the reasons for the crime.

And so a first fact may be immediately perceived. Knox and Meredith did not have a good relationship. Meredith did not tolerate the way in which Knox interpreted cohabitation of the same apartment... the fact that Knox brought strange persons to the apartment, especially young men; she did not tolerate that Knox used communal spaces of the apartment and did not take part in the cleaning such that, in the last period of their cohabitation, it was necessary for the young women to construct a kind of system for the performing of domestic chores... The fact that their relationship was not idyllic is adequately reflected in the testimonies of the British girls examined in the course of the first trial (Massei); and Knox, who hinted at the difficulty of her relationship with the victim, if undervaluing the circumstance. Lastly, there are the declarations made by Guede. He claimed that Meredith had discovered that night money was missing from her bedroom and she immediately blamed the theft on Knox... a circumstance that is compatible only with a negative evaluation of the personality of the defendant.

But the theme of money... introduces another reflection. From the witness testimonies heard in the first trial, in the days preceding November 1, 2007, Filomena Romanelli invited all of the girls to procure the sum of 300 euros that [constituted their rent]. It also results [is inferred] that the victim had the money at her disposal and evidently kept [it] in her bedroom. The sum was certainly in Meredith’s bedroom and it was not found after her murder, just as the credit cards were not found (the Court then went on to note that due to a lack of evidence, first Guede and

later Knox and Sollecito, were acquitted at their trials)... In any case...there remains the fact that both the money and cards were never found...If, then, the acquittal of the defendants constitutes an indisputable element [since] it is covered by the judgment[s]...the disappearance was never explained in the court documents and could constitute an element that could have sparked a discussion between the defendants and Meredith Kercher...

But there is another certain element that must be evaluated in the scope of the reconstruction of the events of that night and in the possible reconstruction of the motive [for] the murder. Surely Meredith Kercher suffered a sexual assault, with vaginal penetration by the fingers of Guede. This fact is confirmed by the finding of the convict's DNA inside the vagina of the victim and expressly admitted by him in all of his interrogations [albeit Guede said it was in the context of an affectionate exchange, tolerated and consented to by Meredith]".

Nencini reasoned that Meredith's accusation that Knox had stolen 300 euros out of her purse was the catalyst for the violence, fuelled by the imbibing of drugs certainly on Knox and Sollecito's part (and presumably Guede's sexual lust). The reconstruction of the attack upon poor Meredith mirrors that of Massei: In summary, the three assailants simultaneously attacking and immobilizing the victim; a first small wound to the right side of Meredith's neck being inflicted by Sollecito with the pocket knife he was carrying, thereby causing Meredith to scream out in pain. Guede meanwhile blocked her left hand and also penetrated her digitally while Sollecito touched the bra clasp to lift it from Meredith's back and then the cutting of the strap with his pocket knife. To prevent Meredith from screaming again, Knox caused the mortal wound to Meredith by stabbing her to the left side of the neck with Exhibit 36.

As to the presence of the Double DNA Knife, Nencini inferred that Knox was carrying the Knife in her bag for personal defence. It also deduced that the reason why Knox and Sollecito did not later dispose of the same was that it was inventoried and its unexplained absence would have cast suspicion upon Sollecito. Instead, Knox and Sollecito preferred to wash the Knife, with a particularly careful cleaning operation, which by pure chance (the presence of streaks not immediately detectable to the naked eye) did not erase all traces of Meredith Kercher (see p.324).

Having regard to all of the circumstantial evidence, Nencini found both defendants guilty of, inter alia, digital rape and murder. The last Part of the Report deals with the determination of sentence in accordance with the Italian Penal Code. The author does not intend to dwell on this aspect of the judgment.

The Brutal Killing of Meredith Kercher: A Search For The Truth – Part 22

Overview of the Nencini judgment

Introduction

Following the observations and directions made by the Supreme Court in the Galati-Costaglioli Report supra, if I had been a betting man, my money would have been on a reconstituted Court of Assizes of Appeal returning a finding of guilt; but then again if I had been a bookmaker, I would only have accepted wagers from the optimistic few who were brave enough to predict an

acquittal of either Knox and Sollecito (or both). To all intents and purposes, the outcome was pre-ordained. Nencini had been directed by the Supreme Court (Galati) to ascertain who were the principal offenders involved in the killing of Meredith Kercher. The “Lone Wolf” theory having been ruled out, there were only two suspects: Knox and Sollecito. There was no evidence that an unknown felon or felons were involved in this most heinous of crimes.

Micheli’s binding judgment had unwittingly determined that Guede had played a secondary role in the homicide. It is submitted that by October 2013, the forbidden reasoning prevented an objective and critical analysis of the deficiencies in the prosecution evidence, not just the defence case. The sad irony is, the only perceived role of the CAA sitting in Perugia was to shore up some of the deficiencies flowing from the Micheli and Massei hypotheses as to the motive(s) for the crime and the circumstances leading up to the killing of Meredith Kercher. This approach was, to say the least, unscientific and injudicious. To avoid replication therefore, the author will endeavour to summarize the evaluation and analyses conducted by Nencini ie, the good, the bad and the downright ugly.

Witness testimony

Nencini endeavoured to defend Curatolo and Quintavalle’s identification evidence on the basis that any testimony, if fragmented and critically analysed in every single assertion, can often be found riddled with contradictions. However, successive Italian courts (other than Hellmann) had experienced no problem in pulling Knox and Sollecito’s accounts to pieces but conversely failed to treat the prosecution case in an even-handed manner. To describe Curatolo’s evidence as precise and reliable was abject nonsense. Aside from obvious deficiencies in his purported identification of the two accused, it is difficult to conceive how, over a maximum period of two or two-and-one half hours, before the murder, no other person frequenting Piazza Grimana ever saw Knox or Sollecito (or Guede for that matter – including Curatolo). It is also difficult to conceive or visualise as to what Knox and Sollecito were doing in the piazzetta for such a protracted period of time and their motivations.

As for Quintavalle, Nencini neglected to consider whether Quintavalle was a convincing but mistaken witness given the small amount of time the girl was under his gaze in the shop at 7.45am. It was all too convenient that Quintavalle made reference to Knox apparently “looking tired”. But there is another glaring weakness in the CAA’s hypothesis. If Knox and Sollecito were up half the night (from 1am) cleaning Via della Pergola 7, what was Knox doing in Quintavalle’s store later that morning? After all, she did not purchase any items. The answer is plain as a nose on a pikestaff. She was not there and Quintavalle’s testimony was foolhardy and mistaken, egged on by an enthusiastic trainee journalist (Fois) some 12 months after the killing.

What is even more mystifying was the reference to Aviello and Alessi’s evidence. Hellmann had decided that the evidence of all five serving prisoners was unreliable. Later the CAA declined, in the exercise of its discretion, to permit the prosecutor to recall Aviello to change his original testimony. Aviello was now alleging that Sollecito had confided to him in gaol that Knox had stabbed Meredith and Sollecito was present in the cottage at the material time. The Supreme Court declared that Hellmann’s decision was illogical and a breach of the Italian Criminal Procedure Code. But by the time of the Nencini appeal the relevance of that testimony had apparently changed. It was being alleged that Aviello and Alessi’s evidence had been concocted as part of a defence conspiracy to secure the acquittals of Knox and Sollecito. Suffice it to say

that Nencini had to concede there was no proof to establish the exact motivations of the convicts. The author cannot speak for the Italian Criminal Justice System, but in the absence of independent evidence to substantiate the claim of a conspiracy, by English standards this aspect of the case, potentially amounted to an abuse of the process of the court. Put another way, both the Supreme Court (Galati) and the CAA (Nencini) were being sidetracked by a new and irrelevant issue (known as “satellite litigation”) and as such could constitute an unconscionable manipulation of the court proceedings. As it is, thankfully, Nencini did not take the bait.

As for Guede’s pre-trial declarations and rebuttal evidence, successive courts (other than Hellmann) accorded the same a status (credence) and a probative value which was undeserving. Analysis has already demonstrated that his declarations and rebuttal testimony were “cherry picked” ie, those parts tending to incriminate Knox and/or Sollecito were relied upon but not the exculpatory parts. For example, in his Skyped conversation with De Benedetti, Guede made no reference to Knox, only an unknown Italian male armed with a knife. It is suggestive that by March 2008, when Guede was interviewed for the third time, he had a big incentive to put Knox and Sollecito in the frame, so to speak. It was frankly, no surprise, when he identified Knox as one of the two persons entering the cottage; by inference, Sollecito was undoubtedly the man who was accompanying her at the same time.

But the really clever part about Guede’s accounts (a “skilled and shrewd thief...surely expert in breaking and entering...”) was the reference to the “money” and a little later to the “break-in” at Via della Pergola 7. First of all, Guede never gave any indication as to the amount of money which had allegedly been purloined from poor Meredith. The prosecution were left to figure that one out. They plumped at the figure of 300 euros which accorded with Meredith’s monthly rental contribution. And yet there was no evidence that Meredith had made a contemporaneous withdrawal from her bank account. It was just as likely that any monies taken from Meredith’s purse (amount unknown) were appropriated by Guede, bearing in mind his traces were found on the handbag of Meredith (also described as the victim’s “purse”). And secondly, the Machiavellian reference to the absence of a break-in. All of these utterances were designed to mislead the investigating authorities as to the real motive for why he was present at Via della Pergola 7. The question of the motive will be expanded upon shortly.

The author has already dismissed the assertion that Guede’s pre-trial declarations, together with his rebuttal evidence at the Hellmann appeal, could in fact and in law corroborate Knox’s memoriale (or vice versa). And so essentially, we are back to square one. There was no independent witness evidence to negate the defence assertion that both Knox and Sollecito were at Corso Garibaldi during the critical time when Meredith Kercher was digitally raped and murdered.

The Motive

The Supreme Court (Galati) stressed that, having reviewed the totality of the Hellmann judgment, its conclusion was that the CAA erroneously placed itself, not as an appellate court with the task of analysing the facts, law and verdicts appealed against, but as a sort of alternative first instance court, whose task was to make a decision on the facts without reference to the findings made by Massei. It is submitted that Nencini fell into the same trap, making specific findings Massei did not, without the benefit of fresh evidence. This is borne out by reference to the motivations for the crime.

Nencini concluded that the “strained” relationship between Meredith and Knox was the touchstone for an “argument” between the two on the night of November 1, 2007. This thesis deserves closer examination. Only eight days previous ie, October 25, the two had attended together a classical musical concert where, as fate would have it, Knox met Sollecito. Although there would be occasions when relations between four young women, sharing a relatively small apartment, could become tense or fraught, there was no evidence that Meredith and Knox’s relationship had reached such a parlous state. The author was also intrigued by the reference to Knox bringing young men to the apartment (presumably before October 25) and for what purpose. Knox was cast in the mould of a “loose woman” or a “tart” (Foxy Knoxy) whose use of the communal area and cleaning of the flat was less than ideal. Knox being aware that Meredith did not tolerate Knox’s lifestyle was apparently the catalyst for an emotional and violent outburst, followed by an attack on the victim (fuelled by drugs), after Meredith had accused Knox of stealing monies from her room. This is conjecture and even Guede’s account makes no reference to a verbal dispute (as opposed to a discussion at best) between Meredith and Knox prior to the attack. Massei concluded that the motivations for the crime began with Guede’s unwarranted sexual advances towards Meredith. Massei could not explain Knox and Sollecito’s motivations for their part in the crime other than a loss of cognitive reasoning due to the smoking of marijuana or hashish. Note, the possession and use of the alleged murder weapon by Knox (the Double DNA Knife) will be re-assessed shortly.

Nencini erred when it conflated more than one potential motivation for the attack: Knox’s fractious relationship with Meredith; the theft of monies and the accusation that Knox appropriated 300 euros from Meredith’s bedroom; culminating in Knox’s subsequent attack upon Meredith aided and abetted by Sollecito and Guede (the latter by chance being present). What this thesis fails to demonstrate, in the light of the biological traces found in the killing zone, was Guede’s motivations and complicity, the stripping and digital rape of poor Meredith and, critically, how or why the victim came to be stabbed.

It is submitted the sole motive for the attack upon the innocent victim was, at the outset, sexual. Massei and Micheli reached the same conclusion; the latter Court declared: “An agreed plan to satisfy sexual instincts”. The person with the motive (according to Massei) was Guede who had given in to his lustful urges. And we already know, in his pre-trial declarations Guede outlined a consensual and “intimate encounter” with Meredith at the flat. This was of course a lie in as much that Meredith was not remotely interested in Guede and she most certainly did not consent to and, no doubt, did her best to resist his unwarranted advances. This then was the catalyst or trigger for the escalation of violence coupled with the probable brandishing of a single knife by Guede to subdue or suppress the victim followed by the infliction of at least two stab wounds, one proving fatal. As will be elucidated during the summation infra, to credit those actions to Knox and Sollecito, ran contrary to the totality of the evidence and represented an affront to common sense principles.

The Mobile Phones

Nencini adopted the same notion propounded by Massei ie, that Knox and Sollecito appropriated and disposed of Meredith’s cell phones to lessen the chance of an early discovery of her body should someone try to contact Meredith by telephone. If Knox and Sollecito did take and later abandon the phones it is inexplicable that the accused who were, according to Massei and Nencini, so calculating, they neglected to turn off at least one of the phones and/or to remove the

SIM cards. It was also virtually impossible for the accused to have removed their traces from the handbag in which Meredith kept the phones.

What we do know is that Guede's traces were found on the said item. It had also been established that Knox phoned Meredith's phones just after 12 noon the following day. The phone calls made by Knox to Meredith's English phone alerted Fiammetta Biscarini to its presence in her mother's garden, precisely what the appellate Court reasoned was the purpose for its disposal. The outcome was an enigma which the CAA failed to decipher. Knox had no fear of anyone hearing Meredith's mobile phones ringing at Via della Pergola 7 because she could be reasonably confident that no other person eg, Romanelli or Mezzetti, would be returning to the cottage until the evening of November 2 at the earliest. While invalidating the thesis put forward by Massei and Nencini, the said analysis demonstrates that Guede had just as much reason to take the phones; to reiterate, it was odd that only his DNA was found on the purse (handbag) where the phones were normally kept.

The Alteration of the Crime Scene (the clean-up)

Massei had put forward a theory to explain why, unlike Guede, there was a marked absence of incriminating biological or forensic traces of Knox or Sollecito found in the apartment, particularly Sollecito. It concluded that Via della Pergola 7, had been systematically cleaned after the murder; and hence the reference to Knox's visit to Quintavalle's shop later that morning. Although Massei neglected to say so, there was plenty of innuendo that Knox and/or Sollecito had evidently washed the clothing they were wearing that fateful evening to emasculate or erase any incriminating traces of their presence when the murder took place. Nencini started from the same premise. The Report also stated that Meredith's body had been moved as part of the clean-up.

But the probability of Knox or Sollecito eliminating their traces in such circumstances must be discounted. The adoption of a circuitous reasoning founded on the so-called "petitio principii" (begs the question) is also evident because the author cannot point to any expert testimony which confirmed the hypothesis that the body had been moved after the homicide. Furthermore, if Knox and Sollecito were relatively efficient in their clean up of the apartment why leave the sky blue mat with the bloody footprint in the small bathroom? Since they evidently went to the trouble of removing and washing all of their clothing (like Guede they would have been covered in blood) this is an inexplicable oversight unless, one eliminates their presence from the killing zone at the time Meredith was attacked. Having been so careful about cleansing certain parts of the house the Court's theory does not adequately explain the superficial and sloppy expurgation of the small bathroom.

And finally, Nencini declared that the presence of bloody towels near the victim's corpse was additional evidence of some form of "cleaning". Since much was made of Guede's pre-trial accounts here is an extract: "He (Guede) said his hands were injured as a result of the struggle and he still bore the wounds. The man [the attacker] then ran away and he (Guede) tried to help staunch Meredith's blood loss with the aid of bathroom towels, but to no avail". Thus, one can immediately deduce that the presence of the towels was unrelated to Knox and Sollecito's reprehensible activities. They were left there by Guede.

It can also be inferred that Guede collected those towels from the small bathroom which was next

door or adjacent to Meredith's bedroom. The reader is also referred to the Borsini Report supra. Guede's attempt to staunch Meredith wounds using the bathroom towels was put forward as mitigation leading to a reduction of sentence. To borrow another metaphor: "It was a case of Nencini having its cake and eating it".

The Simulation of a Burglary

Nencini tried to visualise a motive for the simulation of the break-in. It rejected what it described as the defence hypothesis whereby Guede, as a lone killer, broke in through Romanelli's bedroom window, is caught by Meredith and later killed her. The author agrees that this reconstruction has no evidential foundation. It does not correspond with the motive for the digital rape and murder of Meredith. Having elucidated earlier that the burglary was staged, the live issue was who undertook the simulation and why? On that point the reader is referred to the analysis and evaluation sections of the Massei and Hellmann Reports respectively supra.

Inferences to be Derived from the Statements of the Defendants and Witnesses

Nencini adopted, mutatis mutandis, the findings made by Massei and the judicial observations of the Supreme Court (Galati). The reader is invited to scrutinise the analysis and evaluation of the Massei Report and the overview of the Galati Report supra. Although Nencini rejected Knox's account that she had returned to the cottage at around 10.30am, if her testimony contained a semblance of truth, the Court reasoned she would have been put on immediate notice that all was not right at the house eg, the front door being open, the condition of the premises, the bloody imprint of a foot on the sky blue bathmat.

Nencini was entitled to infer that Knox's recollection defied common sense and that any reasonable person would have immediately contacted the police. To borrow a phrase from an English judgment: "Knox's brain refused to tell her the obvious".

Genetic Considerations

The biological and forensic traces were the key to proving Knox and Sollecito's complicity.

Nencini said that given the copious loss of blood, the bare footprint traces revealed by Luminol had to be attributable to blood and nothing else (and despite the clean-up). But it did not adequately explain how the generic blood test yielded a negative result. The substance tetramethylbenzidine test is very sensitive, so much so as to give a positive result even if only a very small number of red blood corpuscles were present. Dr Stefanoni herself clarified that while a positive test could be deceptive due to the chemical reactivity of other substances, a negative result indicated that no blood was present. Nencini would have one believe that the clean-up had emasculated or removed some of the incriminating blood traces. Nencini's conclusion therefore appears "Wednesbury unreasonable" ie, there was no evidence to support the Court's finding.

Nencini continued to rule out the probability of Exhibit 36B being contaminated and determined that the sample was admissible. Despite this setback to the defence, Nencini conceded that the probative value of the trace of Meredith's DNA found on Exhibit 36B, viewed in isolation, was

“not reassuring” (inconclusive). Put another way, if the trace were the only evidence against Knox, an acquittal would follow. Nevertheless, like Massei, Nencini continued to reject the opinions of four expert defence consultants that the Double DNA Knife could not have been the murder weapon.

As we have already seen, the most damning evidence against Sollecito was Exhibit 165b, that is, the trace of his DNA found on one of Meredith’s bra hooks. The author is troubled by the deduction reached by Nencini. It had already conceded there could have been undetected traces of Sollecito’s DNA due to his previous visits to the flat. But then it decided that if someone present between November 2, up to and including December 18, had unwittingly transferred Sollecito’s DNA to the metal hook then the same agent would have likely contaminated other parts of the same Exhibit and potentially other exhibits bagged that day. There are two factors to consider. The first concerns the transfer of DNA to other exhibits. Logic dictates that if a single person had picked up and moved the bra clasp (which must have happened) without touching any other exhibit, then the contamination of other material objects can be excluded. Remember, by December 18, 2007, many of the items found in Meredith’s bedroom had already been collected and bagged for scientific examination. Secondly, the expert testimony adduced at the various hearings, particularly Massei, asserted that the transfer of DNA between objects is relatively rare. If the bra had been picked up by the hook, why would that lead to a contamination of the rest of the Exhibit? It is submitted that the explanation and conclusion reached by Nencini is not convincing. But the conundrum which the CAA was unable to resolve was the absence of Sollecito’s DNA on say, Meredith’s sweatshirt. The same goes for Knox. If both defendants had stabbed Meredith, as the CAA found, it was a virtual certainty that traces of their DNA would have been found on Meredith’s clothing. By a process of deduction and logic the reader is invited to infer that the two accused were not present in the bedroom when Meredith was attacked and murdered. This also implies that the prosecution theory, beginning with Micheli ie, there were multiple assailants, is deeply flawed and thereby nullified.

Much has already been said about the imprint of the bare foot found on the sky blue mat in the small bathroom. Nencini decided that the footprint belonged to Sollecito subject to the caveat, that due to a lack of papillary ridges the footprint could permit a “probable” but not certain identification, to be inferred. Nencini was also careful to exclude the presence of a fourth “unknown” person (attributable to a theory put forward in Professor Vinci’s expert report), describing the same as: “... a circumstance incoherent and eccentric with respect to the whole spectrum of the data collected in the trial” (p.292).

But Professor Vinci’s report was not suggestive that the print was attributable to a fourth unknown person. His contention was that it could not be excluded that the bloody right footprint found on the bathmat was left by Guede (see the Hellmann Report ante).

Concluding Remarks

It is submitted that the Nencini Report was unbalanced and lacking in objectivity. The motivations of the accused put forward to explain the crime are speculative. The only evidence to support the allegation that Knox stole monies from Meredith came from, wait for it, Guede’s pre-trial declarations. Although the alibi put forward by Knox and Sollecito was not rebutted by independent witness testimony, Knox’s memoriale and telephone activity is suggestive that she lied as to her movements between 9.30am on November 1, up to and including 12 noon on

November 2. By inference and by reason of his association with Knox's account, Sollecito's joint alibi is likewise suggestive that he also was economical with the truth and had something to hide. It would have been more circumspect and logical, therefore, if successive courts had carefully contemplated, in view of the totality of the circumstantial evidence, why it was, Knox and Sollecito had lied about their movements and probable presence (at some stage) at Via della Pergola 7.

That said, successive courts failed to critically examine and explain the weaknesses associated with the Micheli judgment ie, Guede participated in the murder of Meredith Kercher along with Knox and Sollecito. It is unscientific to hold on to a thesis when the evidence discloses an alternative and stronger premise, that is, the circumstantial evidence as a whole, was more consistent with Guede having committed the crime alone. Prosecutors, trial courts and Judges, should be able and willing to acknowledge, on occasion, that a previous judgment was based upon a faulty diagnosis. That ends the overview of the Nencini Motivations Report.

Summation and Conclusions

My heart goes out to the late Meredith Kercher, her immediate family and close circle of friends. In November 2007, at the tender age of 21 years, Meredith was brutally attacked and murdered. Justice demanded that the perpetrator(s) should be apprehended and brought to justice, as soon as reasonably practicable, consonant with the interests of justice. At the time of writing, more than six years on, there has not been final closure to this harrowing case. It is time for the criminal and related proceedings to be justly brought to an end so that the victim's family can try to come to terms with what happened to Meredith, as part of the grieving process.

Similar to the Louise Woodward case, it should perhaps be made clear that I came to the case with no bias or preconceptions. My only connection with Meredith Kercher (and Louise Woodward for that matter) is that we were both born and brought up in England. Aside from knowing a little about the case, as highlighted occasionally on the national news, I knew none of the detail before researching and writing this article. My goal was to analyse objectively the strength of the evidence against Knox, Sollecito and Guede respectively, in a search for the truth as to what transpired at Via della Pergola during the fateful evening of November 1, 2007.

The first part of this summation will furnish the reader with a synopsis of the evidence adduced against the three accused followed by a reasoned judgment concerning their participation in and, more important, their guilt or innocence to any of the charges levelled against them. It is conceivable that the author's conclusions and later hypothesis will prove controversial to all concerned, not only the defendants, but those who assert that Knox, Sollecito and Guede (or one or more of them) was guilty of this heinous crime; likewise, those who attest to or argue tendentiously that one or other defendant is innocent. I cannot speak for the Italian authorities ie, the police, the forensic scientists and the judiciary, but the synopsis and judgment may cause them some unease or discomfiture as well. While demonstrating the fallacy of successive hypotheses promulgated to explain the complicity of the three accused, the author furnishes the reader with a hypothesis derived almost entirely from the circumstantial evidence, supported by the findings of the Italian Courts.

Afterwards, this work will consider briefly the future prognosis for the case against Knox and Sollecito whose liberty still lies in the balance. As we know, their appeal against convictions for, inter alia, digital rape and murder, is pending before the Supreme Court of Italy. Finally, Appendix 1, containing a timeline, has been inserted. The timeline contains a record of crucial events beginning with Meredith Kercher and Amanda Knox's arrival in Perugia, Italy.

Summation

What should have been a judicial exercise in reasoned deduction and logical synthesis degenerated very quickly into a "journalistic circus" where emotional reasoning transcended or obfuscated the truth. To be fair, the behaviour of the defendants and the tactics adopted by their defence teams contributed significantly to the furore. The origins of this mindset (the forbidden reasoning) probably started when the police, who rightly became suspicious of the behaviour and

accounts of Raffaele Sollecito and Amanda Knox, interviewed both suspects (by then, both defendants were suspects) during the evening of November 5, 2007 into the early hours of the following day. Given their respective ages and taking into account the magnitude of the crimes, the police should have ensured from the outset that the suspects' rights were fully respected ie, by informing Knox and Sollecito that they were entitled to legal representation and it was in their best interests to consult a lawyer tout suite. By failing to do so, both defendants told the police, at best, a series of half-truths as to their movements and activities on that fateful night. Those accounts were later ruled by the Supreme Court to be inadmissible at their subsequent trial, inter alia, for digital rape and murder, except for the offence of Calunnia (against Knox) which, as the author has already stated, should have been tried separately from the principal offences because it prejudiced a fair trial for the more serious crimes. But having apparently lied or told a series of half-truths to the police, the State authorities and later, the judiciary, were convinced and still appear convinced, they had "got their man" (or "woman") so to speak.

To the reasonable bystander, Amanda Knox's behaviour was so outré the police suspected that she had been present in the bedroom at the time Meredith Kercher was murdered. Professor Carlo Caltagirone, a medical specialist in neurology and psychiatry and a professor at the University of Rome Tor Vergata, was asked by her legal team to investigate Knox's cognitive reasoning on November 5, 2007 and the possibility of Knox having false memories with respect to the statements she gave to the police (including her memoriale). With the benefit of hindsight, one wonders whether Knox and potentially Sollecito should, at some early stage, have been medically examined to ascertain whether one or other was suffering from some sort of psychiatric/psychological disorder or post-traumatic stress syndrome. This observation is supported by the notion that Knox, and possibly Sollecito, aside from being the murderers, may have been present at or witnessed part of what went on at the cottage or, witnessed the aftermath. As with all human behaviour there were different scenarios to explain what transpired at Via della Pergola 7 on that fateful evening, bearing in mind the motivations for Knox and Sollecito's participation did not make objective sense unless, of course, they are, de facto and in reality, depraved psychopaths or sociopaths. But as far as the author can discern, there was no independent medical evidence to support a clinical judgment to that effect. Before moving on, the same observation goes for Guede. He too, pre-trial, should have been psychiatrically assessed.

The forbidden reasoning gained a foothold when the Italian judicial process accorded Guede the right to a "fast-track" trial, despite the fact the prosecution were alleging that all three accused: Amanda Marie Knox, Raffaele Sollecito and Rudy Hermann Guede, were present at and participated in, a savage, progressive and unremitting attack upon an innocent young woman culminating in her digital rape and murder. Poor Meredith had been assailed; she had been held and subdued, aided by the brandishing of at least one bladed article; at some stage the majority of her clothes had been removed from her body; her bra strap had been cut at the back (by the clasp); she had been choked; she had been stabbed on at least two occasions, one proving fatal; and she had been left to die in a miserable state which she neither sought nor deserved. The task which ultimately presented itself to the triers of fact was to separately ascertain the responsibility of the three accused and, their respective parts, if any, in this heinous crime.

From Guede's perspective he was happy for the criminal proceedings to be severed. His lawyer had gone on record by publicly declaring that Knox and Sollecito would have "dumped all of the blame onto him". Instead, since his trial came first, Guede, aided by his pre-trial declarations and

half-truths, sought to minimize his complicity in the crime and ultimately resorted to pointing the finger of blame directly at Knox (by naming her) and implicitly, by virtue of his relationship and association with Knox, Sollecito. This is often referred to in England as a “cut-throat defence” - a tad ironic – acknowledging what happened to poor Meredith for which the author apologizes. No sleight against Meredith’s memory was intended.

The holding of separate trials also laid the foundation stone for “mutually inconsistent verdicts”, binding rulings on issues of fact (eg, Micheli) which, ultimately hindered, rather than assisted, the progress of legal proceedings. The fact that there have now been seven court hearings, with a further appeal pending, is testament to this assertion. In all likelihood, nigh on seven years or more will have elapsed before Italian judicial proceedings concerning Meredith Kercher are finally brought to a close.

The holding of separate trials also gave vent to an emotional undercurrent described earlier as “the forbidden reasoning”. What precipitated these strong feelings? It was quite apparent from the outset, when all three accused were called to account, ie, to explain their movements and behaviour on the night of November 1, 2007, they either lied, misrepresented specific facts, or sought to mislead the police. What the author has endeavoured to discover, therefore, is the purposes or objectives which lay behind eg, the lies told by the three accused.

In temporal order we must start with Knox and Sollecito. At the outset, every instinct of the investigative authority suggested that the two young students concerned knew more than they had volunteered in their original statements. There were “clues” supporting the police’s suspicions based on “human intuition” eg, Knox’s description as to what she found at the cottage at 10.30am; both Knox and Sollecito’s “shifty” behaviour outside the cottage before and after the Postal Police arrived; Knox’s apparent stress and perceived irrational behaviour at the Police Headquarters on November 5; Sollecito’s description of the burglary; the fact that they did not seem overly concerned for the whereabouts and welfare of Meredith; and finally, their perceived lack of participation in the breaking-down of Meredith’s bedroom door, which implied that both defendants already knew what terrible sight awaited Luca Altieri, Filomena Romanelli and the other persons present.

As for Guede, by virtue of biological traces left in the apartment, the Carabinieri quickly ascertained he had been present at the material time and, thus, he became a prime suspect. But by this time he had already taken flight from the jurisdiction. This fact alone was a circumstance from which adverse inferences could be drawn. With the assistance of a friend or associate of Guede, Giacomo De Benedetti, the police were able to track him down to Germany. By virtue of a taped Skyped conversation with De Benedetti, the police were able to confirm that Guede had been present at the cottage during the relevant time period. In point of fact, aside from his lies or half truths, as later described by successive Italian Courts, the conversation grudgingly contained some damaging admissions eg, “I was scared that they would say I was the only guilty person” (my emphasis).

With rare exception eg, insanity, it behoves the prosecution to prove its case beyond a reasonable doubt. The trials of Knox, Sollecito and Guede were no exception to that general principle. To surmount the legal burden, the prosecution had to satisfy the court that each defendant had sufficient motive to commit the crime; that they had the opportunity to commit the crime during the relevant time period eg, that any alibi had been negated and one or more were present at Via

della Pergola 7; and, that they had the means to commit the crime. In respect of the latter element, the prosecution could prove that the victim had been stabbed by one or more bladed articles and, based upon scientific examination, the prosecution alleged that the murder weapon was Exhibit 36, the Double DNA Knife sequestered from Sollecito's house in Corso Garibaldi.

The prosecution and Court of Assizes' hypothesis for what lay behind the motivations for committing the crime was relatively straightforward in Guede's case. The biological traces found on Meredith's body disclosed that he had lingered over her vaginal area and expert testimony revealed that penetration of the vulva had been abrupt and forced, consistent with her digital rape. A surfeit of circumstantial evidence disclosed that he had lied concerning his alleged meeting with Meredith the previous night ie, October 31, 2007. There was no independent information to verify that Meredith ever demonstrated any attraction towards Guede and his story that they had met the previous night at a Halloween party and she had agreed to meet him at her apartment, the following evening, was concocted. Meredith would have resisted his attentions and therefore the claim that she consented to some mutual and intimate caressing or foreplay inside the cottage was fabricated. Micheli described the motivation for the crime as an "...agreed plan to satisfy sexual instincts", while Massei inferred that Guede had yielded to his lustful impulses and gone to Meredith's room on his own initiative. Massei was inclined to this scenario because it could not envisage the motive for such an invitation on the part of Amanda Knox and/or Raffaele Sollecito. Besides, based on the character and past behaviour of Guede, he did not seem to need any encouragement.

Massei struggled to explain why Knox and Sollecito would have intervened in the progression of events and, as the epilogue showed, became Meredith's aggressors and ultimately her murderers. Why would two intelligent young people, who had just commenced an intimate and passionate affair, with Sollecito on the eve of his graduation, assisted Guede in digitally raping Meredith and then, according to the prosecution, stabbed her? Massei could not escape the fact that Knox and Meredith were barely acquainted with Guede. The Court of Assizes also agonised as to how Guede had gained admittance to Via della Pergola 7; whether it was Knox who had let him in and why? However Guede gained admittance into the cottage one must not forget that he was a shrewd, cunning and plausible character. He had an answer for most situations eg, his behaviour after the break-in at the law offices in Perugia and, his subsequent apprehension for burglary in Milan.

Studies of human behaviour and criminality have disclosed that some individual acts of malfeasance are difficult to rationalise, whatever the background, education and intellect of the perpetrator. Massei could only suggest that the choice of Knox and Sollecito's evil began with the consumption of drugs which had happened earlier that evening, as Knox testified. Massei had heard some limited evidence on the effects of drugs, in this case, hashish or marijuana.

Nonetheless, it is submitted, the testimony was inadequate to support a scientific or judicial conclusion that Knox and Sollecito's cognitive reasoning had been so compromised by illicit drug use they resorted to assisting Guede in his sexual attack upon poor Meredith and, during an escalation in violence, Knox went and fetched the Double DNA Knife from her handbag (which she just happened to be carrying); at some stage, Sollecito cut Meredith's bra strap with his pocket knife, stabbed Meredith to the right side of her neck, culminating eventually in a final and

fatal wound being inflicted by Knox, to the left anterior side of Meredith's neck. And one cannot overlook the fact that Knox was not in the habit of carrying an offensive weapon in public. What was she doing carrying a bladed article in her handbag (as alleged) and why that knife (the Double DNA Knife)? The evidence disclosed that Sollecito already owned several small bladed articles. He could have easily loaned one of his knives to Knox.

As an aside, if Knox and Sollecito's cognitive reasoning had been so compromised by eg, hashish, aside from the fact that the drug was voluntarily imbibed, the defendants might have had a partial defence to murder. Certainly by English law, the defendant's criminal liability could have been diminished and therefore, even if they carried out the acts of which they were accused, both would be guilty of manslaughter not murder. For the avoidance of doubt, the author does not seriously suggest that by smoking a "joint" that evening, Knox and Sollecito lacked the mental capacity to commit murder.

By the time of the seventh court hearing, this latent weakness in the prosecution case was so apparent, Nencini's intuitive reasoning led it to deduce that the catalyst for the murder started with an unrelated confrontation and argument between Knox and Meredith associated with the potential theft of monies from Meredith's room. Given Romanelli and Zannetti's absence from the premises, the only rational starting point (from Meredith's perspective) was that Knox must have gone in and purloined the monies. The weakness in this hypothesis was that the prosecution had not done its job properly by checking with Meredith's bank as to whether she had made a recent withdrawal from her account eg, 300 euros, in order to substantiate the allegation. The only reference to "money" was Guede's pre-trial declarations. There simply was no credible evidence to that effect ie, to permit a reasonable inference to be drawn, which explains why first Guede and, later Knox/Sollecito were acquitted of the theft of monies. The acquittals represented determinative and binding judgments reached by both by Micheli and Massei. Accordingly, Nencini should have respected and paid heed to the findings of the Courts of Assizes. However, it is an interesting deduction which goes some way to explaining Knox's actions and motivations during the days following the murder and her outlandish behaviour and lies.

In conclusion, therefore, one can deduce that as far as the motivations for committing the crime were concerned, the evidence was precise, consistent and harmonious in Guede's case; in respect of Knox and Sollecito, the evidence was less than precise, inconsistent and far from harmonious. Put another way, Guede ticked all of the boxes, so to speak, while apparently Knox and Sollecito did not.

Next, the focus of attention shifted to the second element ie, as to whether one or other accused were present at the material time (opportunity).

As for Guede, he had admitted to being present in all three of his pre-trial declarations. In addition, there was a welter of biological and forensic traces found at the scene of the crime, to substantiate his pre-trial confessions, to wit: his palm print on the pillow, followed by the equally unequivocal results of the DNA analysis relating to vaginal swab, toilet paper, bra, handbag (purse), and the sweatshirt, as well as the latest fingerprint comparisons of his model of shoes "Nike" with those imprinted on the floor of Meredith Kercher's bedroom.

So once again, as far as the second element was concerned, Guede ticked all of the boxes. By

contrast, the same could not be said for Knox and Sollecito. The two defendants denied being present at the material time and pleaded an alibi. They both declared that they had been at Corso Garibaldi continuously between the hours of 8am on November 1, 2007 up to and including approximately 10.30am the following day. It was for the prosecution to negative their joint alibi beyond a reasonable doubt. There was no direct evidence that they were present at the murder scene. The one person who first-hand, could incriminate one or other defendant was Guede. But he declined to give evidence at his own trial and that of Knox and Sollecito. Thus, the prosecution was reliant on a number of separate items of “circumstantial evidence”. The various elements broken down into their constituent parts consisted of: (a) witness testimony; (b) Guede’s pre-trial declarations (and later, his limited testimony), corroborated by Knox’s memoriale; (c) lies told by the accused (which corroborated material parts of the prosecution case); (d) admissions made by Knox; (e) inferences to be derived from separate items of evidence eg, the cellular phone traffic of the accused and Sollecito’s home computer; (f) genetic traces.

In essence, Massei declared that all of the elements put together and considered singularly, created a complete framework without gaps or incongruities and lead to the ineluctable attribution of the crimes to both the accused. As we have seen, Nencini expressed its conclusions in much the same vein: “Each piece of evidence from the [entirety] that has been obtained, of absolute consistency in its quantity and significance, was singularly evaluated and analysed by this Court... [from which] there emerges a probative picture [unequivocally] that confirms the criminal responsibility of the defendants [in] the murder of Meredith Kercher, beyond a reasonable doubt”. Both Reports also ruled out an alternative explanation for the various component parts on the grounds that the alternative hypotheses put forward were not possible or inconceivable.

The author will now test the findings of the various courts by reference to Article 192 of the Italian Criminal Procedure Code. Paragraph 2 specifies that the existence of a fact may not be inferred from circumstantial evidence unless the evidence is of “sufficient weight, precise and consistent”. To put flesh on the bones, from a decision in 1995 (op.cit), the Supreme Court acknowledged that circumstantial evidence is capable of furnishing proof where the evidence, taken as a whole, is (i) of sufficient weight ie, is able to withstand judicial and forensic scrutiny; (ii) is sufficiently precise as to not be susceptible to a different interpretation; and (iii) concordant (harmonious) which is to say the evidence fits neatly together, the various constituents do not conflict with themselves or other elements.

The methodology adopted by the writer is the same as that laid down by the Supreme Court. First, each individual item will be looked at in isolation to test its reliability, admissibility and probative value. That assessment must also be made in the light of the weight and totality of the evidence adduced against each defendant ie, it cannot be compartmentalised. Secondly, the weight, precision and concordance of the evidence will be evaluated in order to determine whether the various allegations were proved to the requisite criminal standard eg, a reasonable tribunal, properly directed on the law, could be sure of their presence at the requisite time. (To save time it should be noted the author will adhere to the same test when examining the means by which the crime was committed ie, whether there were “multiple attackers and whether Knox and Sollecito were proved to have stabbed Meredith during the assault.)

(a) Witness testimony

In summary, the witness evidence of Curatolo, Quintavalle and two serving prisoners, Aviello and Alessi (plus three other convicts for that matter) did not come up to proof. Previous analysis has demonstrated that their evidence was unreliable and could not disprove Knox and Sollecito were at Corso Garibaldi during the critical period when Meredith was murdered.

(b) Guede's pre-trial declarations and Knox's memoriale

Guede's pre-trial declarations were never confirmed on oath. He declined to give evidence at his own trial (Micheli) and the later trial of Knox and Sollecito (Massei). Guede's pre-trial declarations therefore had limited evidential value. It represented evidence against the maker only ie, Guede. The Court could use the same as declarations against his interests (either, as an admission of guilt or from which inferences could be drawn). The exculpatory parts should have been treated with care and carried very little weight, except perhaps for those parts which were corroborated (excluding Knox's memoriale), since they were never confirmed on oath. And, for the avoidance of doubt, Guede's declarations before the Hellmann appeal were totally exculpatory and self-serving. Aside from the fact the evidence was only adduced to rebut a suggestion he had made damaging disclosures (admissions of guilt) to fellow prisoners, he declined to answer questions on the murder and was entitled to do so by Italian law. Thus, Guede's limited testimony was completely unreliable, as the CAA (Hellmann) found.

There is an old English legal maxim that "equity should be used as a shield, not as a sword". Guede was entitled to limit what he told the investigating authorities and later the CAA. He was not obliged to say anything although adverse inferences against him, where it was safe to do so, could be drawn.

But the rules of evidence never envisaged a situation where Guede's pre-trial declarations could be "cherry picked" to support the prosecution case (used as a sword), without regard to the inconsistencies in his three accounts and especially those parts which indicated that Knox and Sollecito had not been present at the time (used as a shield); nor could Guede's declarations corroborate Knox's memoriale or vice-versa. This perceived bastardisation of an established rule of evidence (corroboration) was unnecessary and unfair because Knox's memoriale was admissible, per se, as a confession against her own interests ie, that she was present at Via della Pergola 7 at the material time, substantiated by the fact that she apparently heard Meredith's harrowing scream.

(c) Lies told by the accused

With the collapse of the independent witness testimony (para.(a) above) and the rejection of the principle that in fact and in law, Knox's memoriale corroborated Guede's account(s) (para.(b) above) one must go on to consider whether there were other items of independent evidence to demonstrate that either Knox or Sollecito's alibi was false.

In relation to Knox, the inescapable inference is that she lied as to her movements on the night in question. There are several separate elements which disjunctively and conjunctively proved that she did not stay indoors at Corso Garibaldi as she claimed. Knox's testimony that both she and Sollecito had dined late in the evening of November 1, 2007 was an attempt to bolster the alibi

and distance herself from the crime. Consider the following. Up to roughly 8pm that evening, Knox was due to go to work at Le Chic pub in Perugia that night while Sollecito had other plans. It made perfect sense, in accordance with their itinerary, that they would dine before Knox went to work, leaving Sollecito free to assist the witness Jovana Popovic. By 8.40pm the position had changed because both defendants had been relieved of their prior commitments. And it can be no coincidence that at 8.42pm, when Sollecito's father rang, Raffaele was in the process of washing dishes. On its own, this blatant fib by Knox, so to speak, was not suggestive of guilt, but it circumstantially supported the prosecution case that one or other was free to pursue other nocturnal activities outside of Corso Garibaldi.

And then there was Knox's return to the cottage the following morning to take a shower and to collect a set of fresh clothes in preparation for Knox and Sollecito's planned visit to Gubbio. The return to Via della Pergola 7 was reasonable in itself, bearing in mind Knox lived at those premises and her personal items were stored there. But the condition of the premises which she described would have alerted her to the fact that "something" was not quite right ie, the front door being open, the absence of any individual at the flat; Meredith's bedroom door being closed, implied she was still asleep in bed; Knox's presence would in all likelihood have stirred Meredith from her slumbers (if alive) and she would have responded to Knox's call, to the effect, "...hello, is there anyone there". Also the condition of the large bathroom eg, the presence of faeces and, finally, the condition of the small bathroom evidenced by eg, the bloody stain on the sky blue bathmat. It was also odd that Knox, at that time, did not notice there had apparently been a break-in at the premises judging by the state of Filomena Romanelli's room and the broken window pane. No burglar would have bothered to shut Romanelli's bedroom door, unless of course the closing of the bedroom doors earlier (by Knox or Sollecito) was to disguise what had really taken place, in this case, a murder. Both Massei and Nencini were entitled to find that Knox's description defied common sense and was undoubtedly a lie.

In contrast, Sollecito's position was markedly different from that of his girlfriend Knox. Although he adopted the same alibi ie, they had remained throughout at Corso Garibaldi between the temporal hours of 8pm until 10.30am the following day, there was far less empirical evidence to demonstrate that he had lied (thereby negating his alibi). The fact that Sollecito may have been awake at 5.30am and used his personal computer, followed by the activation of his cell phone at just after 6am, could not prove a lie because he did not give evidence at his trial. He never claimed that he was asleep at 5.30am on the morning of November 2, 2007. Furthermore, Knox's declaration that they had been asleep and did not rise until 10am at the earliest could not be imputed to Sollecito because he could have been awake while she was not. The same goes for the phone call made later by Sollecito's father at roughly 9.24am.

Adverse inferences could have been drawn from Sollecito's silence at trial, where it was safe to do so, but that was not part of the Massei Court's reasoning. It is submitted it would be unfair to draw inferences because the computer and cellular activity confirmed Sollecito's declaration to the Matteini hearing that he was at Corso Garibaldi at that time. Put another way, it did not circumstantially prove he was outside Corso Garibaldi at eg, 11pm the previous night. But Sollecito had confirmed to Matteini that both he and Knox had returned to his house and he had remained indoors all night. As for Knox's continuous presence, he said he could not remember. Combined with his failure to testify on oath, it was open to Massei and Nencini to infer that Sollecito's lapse in memory signified he was being economical with the truth and, at some stage that night (November 1-2), he too had left Corso Garibaldi.

Another crucial aspect of Sollecito's defence concerned the content of the two telephone calls which he made to the Carabinieri just before 1pm on November 2, 2007. The prosecution contended Sollecito lied to the police eg, "...nothing has been taken". Viewed in isolation, the prosecution allegation was, to use the vernacular, "pretty thin". Even when judged against the remainder of the evidence, the probative value of this item of evidence was relatively weak. The best that could be said for the evidence was that the tribunal of fact was entitled to draw an inference that he must have been at the cottage earlier than claimed because (ignoring for one moment the issue of stolen monies and the two credit cards), aside from the mobile phones and keys belonging to Meredith, apparently, nothing else had actually been taken.

During the Analysis and Evaluation section of the Massei trial: (6. Whether the alibi of Knox and Sollecito was a lie and corroborated the prosecution case), a brief distillation of the law of corroboration was outlined beginning with the case of R. v. Lucas. If the defendants had not told the truth, the Massei and Nencini tribunals neglected to consider why the two defendants had lied. Both Reports were merely content to observe that there was no other rational explanation ie, the two defendants were guilty as charged (a form of syllogism). This chain of reasoning appears suspect judging by the motivations which apparently lay behind Knox's actions (and by implication Sollecito) eg, the reference to the theft of 300 euros and the resentment felt by Knox towards Meredith's criticism of her general behaviour and lifestyle (Nencini). It is submitted there was an intelligible motive for the lies and this will be graphically illustrated in the alternative hypothesis to be outlined in the Conclusions section shortly. The same analysis also deals with the Massei/Nencini thesis as to why Knox and Sollecito attempted to hide their traces (signifying their presence) after the murder and, presumably meant, they were responsible for the staged burglary.

(d) Admissions made by Knox;

In Knox's first telephone conversation with her mother, analogous to a bad poker player, Knox revealed part of her hand (or the truth). This call took place at 12.47pm on November 2, 2007, before the door of Meredith's bedroom had been broken down. The ineluctable inference to be derived from the content of the conversation was that Knox had either been present at the material time or had witnessed the aftermath of the homicide. This fact was supported by Knox's second call at a later date when the bemused mother asked her daughter for an explanation. Knox's response (and the same goes for the answer provided during her cross-examination) lacked credibility.

More crucially, as previously noted, we have Knox's memoriale. Once again, Knox betrayed her presence at Via della Pergola 7, during the critical time period, because she described in her written statement being crouched down (almost in dread) while poor Meredith screamed out in agony and terror during the barbaric attack. Those facts could only have been known either to a principal offender, to a secondary offender or, at the very least, attributed to a person who was present at the scene (which could include being inside the cottage or within its curtilage). It should perhaps be reiterated that as a general proposition, mere presence at the scene of a crime is insufficient to establish guilt. In Guede's first trial (Micheli), the Court of Assizes of Perugia summarised the Italian legal position when it declared that the attack lasted well beyond the appearance (and brandishing) of the [murder] weapon, and significantly there was no evidence that one or more of the attackers "...fled before the attack commenced, tried to stop the others, to solicit assistance, or expressed disagreement with the progression of the attack on Meredith".

But to recapitulate, mere presence at the scene of a crime is generally insufficient to establish guilt. If Knox's "memoriale" was true, her description and her concluding remarks ie, "...she only knew she had not killed Meredith Kercher" was evidence of presence but did not by itself prove complicity.

And finally, as if to emphasize the point that she was present in the cottage at the material time, we have the intercepted telephone conversation between Knox and her parents where at one stage she said: "I was there, I have no interest in lying, I'm not afraid of the truth" and later "It's stupid, I can't say anything but the truth, because I know I was there, I mean, I can't lie there's no reason to do it." During cross-examination Knox retorted that she was referring to Raffaele's apartment that evening, not Via della Pergola 7. But it was open to the triers of fact to reject her testimony and to infer that she was talking about the occasion on which she had been at the cottage when poor Meredith was killed.

(e) Inferences to be derived from separate items of evidence and as a whole

To a greater or lesser extent the majority of this topic has already been expanded upon in items (a)-(d) ante, but one or two separate strands cannot be ignored. First of all, there was the damage caused to Romanelli's room. The author agrees with both Massei and Nencini that the break-in was simulated in order to deflect the police from the real motivations of the criminal(s) and, the presence and role played by those inside the cottage at the material time. In that respect, the finding reached by Hellmann was erroneous.

The Brutal Killing of Meredith Kercher – Part 24

Fortified in its belief that there were no gaps or incongruities in the framework of evidence, both Massei and Nencini proceeded on the basis (supported by Micheli's binding judgment that Guede assisted others to kill Meredith Kercher), that the only persons who could have had a motive to simulate the burglary were Knox and Sollecito. But of course, there were gaps in the prosecution's framework of evidence and, as we shall see shortly, a discernible hiatus in genetic traces to attribute the murder to Knox and Sollecito. But even assuming that the intuitive reasoning of those Courts was right, the Judges still failed to grasp or consider whether there was another credible explanation for the simulation. The same goes for the apparent "clean-up" of the premises. As it is, despite the fact that neither Massei nor Nencini could positively identify latent traces of bleach or other cleaning agent to support their supposition, both Courts declared that Knox, aided by Sollecito, spent half the night cleaning up the cottage in a vain attempt to emasculate their traces. The flaw in this reasoning is obvious even to the ill-informed. It was scientifically impossible for the untutored layman such as Knox and Sollecito to have eradicated their vestiges in Meredith's bedroom (or elsewhere for that matter). Further evaluation of this aspect of the case will follow shortly.

The theft of Meredith's mobile telephones was credited to Knox and Sollecito. Guede was acquitted of the same charge despite the fact his DNA was found on Meredith's purse (handbag) where the cell phones were kept. Both Massei and Nencini would have one believe that Knox and Sollecito, in cold blood, showered after the murder; cleaned up the flat (mysteriously neglecting the small bathroom and carefully avoiding Guede's traces); moved the body and covered it with a duvet (hardly leaving a biological or other trace of their presence); disposed of the mobile telephones (neglecting to turn them off or to remove the SIM cards); and, were prudent enough to dispose of Sollecito's pocket knife, but not the Double DNA Knife. To stipulate that there were no gaps or incongruities in either hypothesis was risible.

The final conundrum concerned Knox's telephone conversation with Filomena Romanelli. By then Knox had already phoned one of the two cell phones belonging to Meredith Kercher (an inconsistency in itself). The prosecution had alleged that the mobile phones had been taken out of Meredith's room and later abandoned in order to prevent Meredith's cadaver from being discovered early. Massei and Nencini concluded that if the phones had been left in Meredith's room, the ringing of one or other phone would have alerted a person residing at the cottage to the presence of Meredith's body in the bedroom.

Put another way, the crime may have been detected earlier than 1.30pm on November 2, 2007. But the flaw in that hypothesis is obvious: Knox could be reasonably sure that neither flatmate (Romanelli or Zennetti) would be returning to the cottage until late on November 2 at the earliest.

We know that having spoken to Romanelli, Knox agreed to phone Meredith (again), which she did. The earlier phone call had already alerted the daughter of Mrs Lana to the presence of the second telephone (the "English telephone") in her mother's garden. So Knox's ringing of the phones contradicted her motivations for the theft and subsequent disposal of the two mobile phones. Even if Knox was aware already that Meredith lay dead in her bedroom (a reasonable inference) it might serve to demonstrate that by this time Knox was still oblivious to the fact that the phones, the previous night, had been appropriated, presumably by Guede. One can deduce

that she assumed or expected one or other phone to ring in Meredith's bedroom. Conversely, the author should perhaps make clear, Knox's calls to Meredith's mobile phones did not signify or establish she was innocent of the charges she faced.

(f) Genetic traces

Although there was a reasonable level of circumstantial evidence suggestive of Knox and, possibly, Sollecito's presence, when Meredith was digitally raped and murdered, the key to proving the allegations beyond a reasonable doubt, resided in the forensic and biological traces found both at the apartment and on the alleged murder weapon (the "Double DNA Knife" or Exhibit 36). As in earlier sections, the evidence against each of the two accused will be reviewed separately.

1. Sollecito

There were few genetic traces to credit Sollecito with having been present at the material time. One footprint revealed by Luminol (Exhibit 2) which was found in the corridor, orientated towards the exit, was attributed to Sollecito. We then have the outline of a bloody bare footprint found on the sky blue mat in the small bathroom. Despite the objections set out in Professor Vinci's findings, Nencini decided that the footprint belonged to Sollecito subject to the caveat, expressed by Boemia and Rinaldi in their report, that due to a lack of papillary ridges the footprint could permit a "probable" but not certain identification to be inferred. The author can only reiterate, at p.19 of their report, Rinaldi and Boemia emphasised some points of considerable discrepancy in the dimensions of the bathmat print and Sollecito's reference print, which contradicted their finding of "probable identity". It was also odd that no other genetic traces attributable to Sollecito were found in the small bathroom. Judging by its condition, there was little or no evidence there had been a clean-up of the small bathroom.

The only remaining piece of genetic evidence to establish Sollecito's presence was the trace found on one of the bra hooks (Exhibit 165b). Although Nencini postulated there could have been undetected traces of Sollecito's DNA due to his previous visits to the flat, the CAA reasoned that on December 18, 2007 (when Exhibit 165 was collected and bagged) if someone had unwittingly transferred Sollecito's DNA from some place to the metal hook then the same agent would have contaminated other parts of the same Exhibit ie, trace 165 and potentially other exhibits bagged that day. Taken at face value this deduction appears reasonable but conversely Nencini failed to consider that if Sollecito participated in the attack upon Meredith, why was there an absence of his DNA traces in the bedroom and on Meredith's clothing eg, her sweatshirt? According to the Court's hypothesis (and Massei) Sollecito had stabbed Meredith on the right side of her neck. Given the absence of Sollecito's DNA, the only rational explanation is that Sollecito was not present at the material time when Meredith was attacked and killed. If it was Sollecito's DNA on the bra hook, aside from contamination, it seems more probably that the DNA was deposited by him, some time after the murder. In other words, the evidence confirmed his presence at the house, post delictum.

2. Knox

Boemia and Rinaldi attributed a footprint found in Knox's bedroom and another just outside Meredith's bedroom, orientated towards the same room, to the accused. These footprints were

detected by Luminol.

In the small bathroom, mixed traces of Knox's and Meredith's DNA were found in three places. Nencini rejected the thesis that such mixing could have been due to the method of collection and/or the fact that both persons shared the bathroom. At p.189 the Report stated: "... the loss of biological substance useful to DNA extraction is not a phenomenon [which occurs] with normal frequency and regularity...For the loss of biological material useful to DNA extraction [to occur] it is however necessary to have a consistent frictioning action, causing the fall of biologically significant parts".

In Filomena Romanelli's room, Nencini presumed that the mixed genetic profile of Knox and Meredith was of a haematic substance and as such demonstrated not only that Knox was present in the bedroom of Meredith when she was killed but also that it was Knox who had simulated the break-in. But as we have already seen eg, during the overview of the Nencini Report supra, the Court could not adequately explain how the generic blood test yielded a negative result.

So far, the genetic traces supported the circumstantial evidence highlighted in sub-paragraphs (a)-(e) above, but on their own they did not, per se, prove that Knox was present in the "killing zone" at the critical juncture ie, when Meredith was fatally stabbed. Only the Double DNA Knife could confirm Knox's presence and probable complicity. Nonetheless, having assessed the scientific testimony concerning Exhibit 36B and, having ruled that the trace attributable to Meredith Kercher could be admitted into evidence, contamination having been ruled out, Nencini qualified the weight to be attached to the Exhibit 36 sample. The Court employed the phrase "not reassuring" (viewed in isolation, inconclusive). In legal parlance, the evidence of the trace, on its own, was insufficient to found a conviction for digital rape and murder unless the remainder of the circumstantial evidence was of sufficient weight, precision and concordance. But as part of the framework of evidence, the traces found on the knife lent support to the prosecution contention that Knox had been present at the cottage during the time Meredith Kercher was killed.

In conclusion, therefore, one can depose to the fact that there was a sufficiency of evidence, probative in value, of sufficient precision and concordance, to support a finding that both Guede and Knox were present in the cottage at the material time. Employing the same test, the case against Sollecito was less clear. Put another way, Guede ticked all of the boxes; Knox ticked most of the critical boxes; Sollecito, by contrast, did not tick many of the relevant boxes. His presence was imputed having regard to his relationship with Knox, his ownership of the Double DNA Knife and the adoption of Knox's alibi.

Now the focus of attention shifted to the third element ie, consideration as to whether one or other accused had the means to commit the crime, either alone or in concert with each other.

It is submitted that the findings made by Micheli against Guede, prima facie, contravened various articles of the Italian Criminal Procedure Code. In stark terms, the Report's conclusions were not supported by the evidence and irrational. For one, Micheli excluded Guede, as one of three assailants who carried, wielded or stabbed the victim, Meredith Kercher. His complicity was confined to assisting Knox and Sollecito in subduing the victim. The motivations for the crime conceivably began with "... an agreed plan to satisfy sexual instincts". But there was no agreed plan. Guede initiated the sexual attack on his own and Massei acknowledged that fact. Nencini

tried to repair the damage by declaring the incident commenced with a confrontation between Knox and Meredith concerning the theft of monies. Nencini fell into the trap of conflating two separate and distinct motivations associated with different species of criminal offending (theft and murder). These findings revealed that Micheli's insight into the probable motive for the attack and, the number of persons involved, was illogical. It also supports the author's assertion that separate trials inexorably led to mutually inconsistent findings (verdicts).

Micheli declined to draw reasonable inferences from the evidence. As we have just seen, Guede initiated a sexual attack upon Meredith; his DNA was present in the killing zone and upon Meredith's genitalia; a bloody outline of a knife was found in Meredith's bedroom; given its dimensions it was reasonable to assume that the knife was being carried by Guede and had been used to subdue and eventually to stab Meredith.

After the murder Guede fled and later disposed of various incriminating articles – reasonable inferences could be drawn from this fact. Eventually he travelled to Germany to escape arrest – inferences could be drawn from his behaviour. His flight from Italy gave him breathing space in which he could construct a plausible account for his presence and actions at the cottage. While he was in Germany he would have been aware that the police, in the meantime, had arrested Knox and Sollecito and they had been remanded in custody. Nevertheless, in his conversation with De Benedetti, Guede made damaging admissions eg, “I was scared that they would say I was the only guilty person”.

It is also noteworthy, Guede later declined to give evidence at his trial. It was safe to draw inferences from his failure to testify – Guede had no answer to the mountain of evidence levelled against him, including the allegation that he had digitally raped and murdered Meredith Kercher, the homicide being achieved by use of a knife (which could be imputed to him). Guede was in the habit of carrying a bladed article upon his person, substantiated by his motivations and character. For example, on October 27, 2007, Guede was apprehended while carrying out a burglary in Milan. One of the items found in his possession was a 40cm kitchen knife. As we shall see in a moment, it is peculiar that both Massei and Nencini were less reticent when it came to the drawing of inferences against Knox and Sollecito (the forbidden reasoning).

So, as far as Guede was concerned, he ticked all of the relevant boxes. He was accustomed to carrying an offensive weapon in public; the bloody outline of a knife found close to Meredith's body was suggestive that he was the architect and perpetrator of this heinous crime, either alone, or in concert with others. The ineluctable conclusion is that Guede had digitally raped and killed Meredith Kercher; that the murder had been achieved by the use of an unrecovered knife which he was carrying with him at the material time.

But undoubtedly, the greatest damage wrought by Micheli was the judicially ascertained fact... that [is] Rudi Hermann Guede participated, along with others, in the murder of Meredith Kercher. Micheli was entitled to find that in addition to Guede, the presence and participation of others could not be ruled out. But given the subsequent challenge to e.g. the genetic traces found at Via della Pergola 7 and, on the knife recovered from Corso Garibaldi (the Double DNA Knife), the later trial of Knox and Sollecito had already been substantially compromised because Massei (and subsequent courts), started from the wrong premise: The prosecution and later courts deduced that it was impossible for the crime to have been committed by a single individual thereby ruling out the “Lone Wolf” theory. This approach was unscientific and injudicious.

As in earlier sections, the evidence against Sollecito and Knox will now be considered individually.

1. Sollecito

Like Guede, Sollecito was accustomed to carrying bladed articles in public. During the Massei trial, four character witnesses for the defence (which included Sollecito's father) testified that Sollecito owned a small pocket knife. Sollecito was described as being adept and dexterous in his usage of the knife eg, his ability to carve small objects with it. However, their evidence was primarily directed towards Sollecito's quiescent behaviour. He was not depicted as a madman who was disposed to raping and stabbing innocent young women. When Corso Garibaldi was later searched an 8cm bladed knife was seized from Sollecito's bedroom. We also know that when he was interviewed at the Perugia Police Headquarters (earlier), another knife, found in his possession, was confiscated by the police. At no stage, however, was it suggested that either knife had been used during the attack upon poor Meredith and there was no forensic traces to substantiate such a claim.

Massei inferred that on the night of November 2, 2007, Sollecito was present at Via della Pergola 7 and the Court found as a fact that he was carrying the pocket knife as alluded to by the four defence witnesses. The knife was described by the Court of Assizes as having a blade 4cm in length. Both Massei and Nencini concluded that Sollecito used the pocket knife to cut Meredith's bra strap during the attack and that it was Sollecito who stabbed Meredith on the right side of her neck.

Neither Sollecito nor Knox were every charged with carrying the pocket knife. The dimensions of the knife, as described by Sollecito's four character witnesses, varied markedly. As previously noted, the consultants disagreed on whether one or more knives were used to inflict the wounds on the victim. But one fact is clear: the experts were not asked to comment on the consistency of the wounds inflicted on poor Meredith with that of a pocket knife with a 4cm blade allegedly carried by Sollecito. And finally, Massei credited Sollecito with disposing of the pocket knife after the murder. An odd conclusion since Knox and Sollecito were also said, at some stage, to have returned to Corso Garibaldi, where one or other carefully scrubbed the Double DNA Knife before returning it to its rightful place in the kitchen drawer. One could hardly postulate that this unscientific and imprudent hypothesis was of "sufficient weight, precision and concordance".

At first blush, therefore, the means by which it said Sollecito committed the crime was not precise, consistent and concordant. Expressed another way, the evidence did not tick all of the relevant boxes. But of course the prosecution were entitled to fall back on Sollecito's relationship with Knox and, the genetic traces found on Exhibit 36, the Double DNA Knife. This was a kitchen knife which belonged to Sollecito and had been sequestered from his home at Corso Garibaldi. The prosecution accusation was that it was the murder weapon. Thus, Sollecito's alleged collusion and participation in the homicide hinged on the findings made in relation to the said article. As we know, separate traces of Meredith's DNA and Knox were found on the said Knife. A summary of the means by which it was said Knox perpetrated the crime will now be evaluated.

2. Knox

The genetic traces of Meredith and Knox found on Exhibit 36 (the Double DNA Knife) were the lynchpin to proving Knox's complicity in the digital rape and homicide of Meredith Kercher. At first blush, based on scientific examination of the wound inflicted to the left side of Meredith's neck, the only reasonable inference was that the said article was the murder weapon and that Knox was the person who administered the fatal blow. If one linked this fact to the three mixed blood samples found in the small bathroom, supported by a posse of credible circumstantial evidence, Massei's hypothesis was univocal amounting to nothing less than proof beyond peradventure (never mind beyond a reasonable doubt). But was the case that simple?

A cadre of eight experts all concurred that Exhibit 36 could not have caused the separate wounds to the right side of Meredith's neck. This supported the prosecution's contention that more than one person had been present at the material time and two weapons had been used to subdue and inflict the injuries found on the victim's cadaver.

However, two consultants deposed to the fact that Exhibit 36 caused the fatal injury; two said it was consistent with, or, could not be ruled out as the murder weapon, while four defence consultants excluded the Exhibit altogether. Massei found that the fatal injury was inflicted by the Double DNA Knife and gave reasons to support its findings. Paradoxically, Nencini arrived at the same conclusion. Parts of those judgments were predicated, of course, on Massei and Nencini's failure to weed out those elements of the prosecution case that were unreliable or devoid of probative value. But the major obstacle to the Court's thesis lay in the fact that the bloody outline of a different knife had been found in Meredith's bedroom. Its dimensions were dissimilar from the 4cm pocket knife credited to Sollecito and, for that matter, the dimensions of the Double DNA Knife credited to Knox.

If the author's supposition is correct, it is more likely that only one weapon was used to subdue and ultimately stab the victim. It also casts serious doubt on whether the Double DNA Knife was ever taken from Corso Garibaldi to Via della Pergola 7 and then returned later, having been carefully washed in order to remove any incriminating traces.

That is not the end of the discussion. The traces found on the Knife were described as "low copy number traces". In general, the scientific community recommended that in such cases, the tests should be repeated in order to verify the results. This was cutting edge science which culminated in an eventual retesting of the Knife. The later tests only revealed a further trace of Knox's DNA. This outcome caused the Nencini tribunal severe misgivings about the traces found on the Exhibit. In sporting parlance, both teams (defence and prosecution) achieved a "score draw". The traces were found to be genuine but the probative value ascribed to the Exhibit was described as "not reassuring". Which nicely leads on to an associated question: How did Meredith's traces come to be on the Knife in the first place? Whether the prosecution liked it or not, by a process of elimination, Professors Vecchiotti and Conti's earlier deduction (cf Hellmann) was correct ie, adequate precautions had not been taken to guarantee the purity of the results obtained. In other words, the trace of Meredith's DNA was a by-product of contamination.

So what can be deduced from the above? As far as Guede was concerned it could be inferred that he had the means to commit the offence, evidenced by the bloody outline of a knife found in Meredith's bedroom. The likely dimensions of the blade of the knife were either 9.6cm or 11.3cm according to the expert opinion of Professor Vinci. To hoist Massei with its own petard,

the fact that the knife used by Guede on this occasion had never been located was an irrelevant circumstance. The availability of bladed weapons [arma bianca] and the ability of individuals to easily conceal them (or, a fortiori, dispose of the same) did not prevent the drawing of reasonable inferences or conclusions from the evidence: cf Cassation, June 30, 2004, No 48349.

As for Sollecito, the evidence adduced against him by no means ticked all of the relevant boxes, even allowing for his association and alleged complicity with Knox. In other words, the evidence was imprecise, inconsistent and less than concordant. The finding by Massei (and later, Nencini), that he had, inter alia, used a pocket knife to stab Meredith Kercher was a contravention of article 6 of the European Convention of Human Rights (the right to a fair trial). Neither he, nor Knox, was ever charged with possession of a pocket knife during November 1-2, 2007. Massei and Nencini's thesis was a desperate attempt to close loopholes flowing from Micheli eg, the failure to draw appropriate inferences regarding Guede's possession and use of a knife on November 1, 2007; it also added credence to Micheli's "judicially ascertained fact" that more than one participant was involved in the murder. In common parlance, the deck was "stacked" against Sollecito (and Knox for that matter).

As for Knox, she did not tick all of the relevant boxes either. The prosecution theory that the Double DNA Knife was the murder weapon had been substantially weakened and/or discredited. When one considers its probative value alongside the expert testimony concerning the wounds found on poor Meredith's body, one begins to have lurking doubts as to the correctness of the ruling. Put another way, the evidence could not be described as consistent, precise and harmonious - which neatly leads on the assessment of the totality of the evidence against each defendant.

The Brutal Killing of Meredith Kercher – Part 25

Conclusions

Summary

Beginning with Guede, when looked at individually and as a whole, the various elements of circumstantial evidence were of such quality and quantity, the finding that he had digitally raped and murdered Meredith Kercher was proven beyond all reasonable doubt. Various inferences could safely be drawn eg, his false explanation for his presence at the cottage; the forensic and biological traces left by him in the house, particularly on Meredith and in Meredith's bedroom (the killing zone); his flight from the apartment after the murder; his decision to travel to Germany to escape detection and arrest; his disposal of incriminating articles; the content of his pre-trial declarations and, his decision not to testify, from which an inference of guilt could safely be drawn. The case against Guede was singularly overwhelming. He was motivated to commit the crimes, his presence was undeniable and he had the means with which to subdue, rape and kill Meredith Kercher. As previously noted, at his fast-track trial, although the participation of others could not be ruled out, Micheli erred when it made a binding adjudication to that effect. It was also regrettable and bewildering that Micheli failed to deduce Guede was carrying a bladed article which, was used by him to subdue and stab Meredith Kercher, during a progressive, savage and unrelenting attack.

In respect of Sollecito, when one considers each and every component, either individually or as a whole, the quality and quantity of the circumstantial evidence was less than convincing. The motivations for the crime were shrouded in mystery. No reliable or credible eye-witness testimony to confirm his presence at the material time. Suspicious behaviour yes and, an economy with the truth as to his activities, or more likely, Knox's movements and deeds that fateful day. The main focus of attention inevitably centred on the genetic and biological traces found inside the cottage. There was the bloody footprint found on the sky blue mat in the small bathroom. This element, posited by Rinaldi and Boemia as "probable identity" was just as suggestive, if it was indeed his footprint, that he visited the cottage some time later that evening ie, after the crime had already been committed. Another crucial element was the Double DNA Knife sequestered from Corso Garibaldi. The probative value of this piece of evidence will be considered shortly.

The only biological element signifying Sollecito's physical presence in the "killing zone" (Meredith's bedroom) at the time she was killed was the trace found on the bra hook. Successive courts struggled to come to terms with the fact that there was a paucity of genetic traces at the prosecution's behest to demonstrate that Sollecito had participated in the attack upon Meredith Kercher. If Sollecito, as contended, had helped subdue poor Meredith, cut her bra strap with a pocket knife and then at close quarters stabbed her, it was a racing certainty his DNA traces would have been found inside the bedroom eg, on Meredith's clothing, and similarly on the clothes he was wearing that night. No such traces were ever found; nor did the prosecution detect or introduce fingerprint evidence as an alternate means to establish Sollecito's presence in Meredith's bedroom. Given the paucity of forensic traces one can only postulate, therefore, that Sollecito's presence at the scene of the crime was, at best, post delictum i.e. at some time after the murder. On the assumption it was indeed Sollecito's DNA on Exhibit 165b, it is reasonable to suppose that he (later) picked up the same to examine it out of a sense of morbid curiosity.

In retrospect, the evidence disclosed a reasonable doubt as to Sollecito's complicity in Meredith's digital rape and murder. He lacked a motive for the crime, his presence in the cottage at the material time could not be conclusively established and, he lacked the means with which to commit the crime, judging by the description of the knife wounds found on Meredith's body and the bloody outline of a knife print found on the pillow in Meredith's bedroom. Put another way, the circumstantial evidence lacked sufficient weight, precision and concordance to prove beyond a reasonable doubt that he was guilty of digital rape, murder, possession of the Double DNA Knife and, theft of the mobile phones. The charge of simulation will be considered shortly, in tandem with Knox's case.

As for Knox, when one considers each and every component either singularly and/or in combination, the evidence did not create a complete framework because there were gaps or incongruities which discounted the attribution of the substantive crimes to her. For one, she lacked motive. True, there was evidence to show that she was present at the cottage during the temporal period when poor Meredith was digitally raped and killed. But in Knox's case, analogous to Sollecito, the quantity and probative value of the mixed biological traces to establish her complicity for digital rape and murder was also tenuous. This could not be explained away by reference to a systematic and thorough cleansing of the apartment, *ex post facto*. If Massei and Nencini's premise was correct i.e. Knox and Sollecito had participated in the attack upon Meredith, they did not possess the cleaning materials or the scientific knowledge to conceal or remove their genetic traces from the house, especially in Meredith's bedroom and/or the small bathroom.

Essentially, the only evidence which could conclusively establish Knox's presence in Meredith's bedroom at the time of the attack was the Double DNA Knife (Exhibit 36). The probative value of the traces found on the Knife was subsequently described by Nencini as "not reassuring". The remainder of the genetic elements e.g. the mixed traces found in the small bathroom were just as consistent with Knox entering Meredith's bedroom after Guede had left Via della Pergola 7 and inadvertently (later) carrying them into the small bathroom. This deduction, similar to Sollecito, is derived from the fact that no other traces of Knox's DNA were ever found in the killing zone, upon Meredith's clothing or upon Knox's clothing. To recapitulate, if Knox had struck the fatal blow to Meredith's left side of her neck, Knox's DNA would assuredly have been found inside the bedroom, especially on Meredith's clothing. It would have been impossible for Knox and Sollecito to have disguised or excluded their presence by some form of clean-up and, without interfering with Guede's traces. They did not possess the expertise to achieve this objective; and, if they did, this does not explain the traces found in the small bathroom. Thus, the only reasonable conclusion one can derive from the forensic traces detected, is that there is a reasonable doubt Knox participated in the digital rape and murder of Meredith Kercher.

To bolster this judgment, the author also places reliance on two other factors. First, the bloody outline on Meredith's pillow was suggestive of a knife with different dimensions from Exhibit 36 and, the pocket knife apparently used by Sollecito to cut Meredith's bra strap etc. Secondly, having regard to the evidence of the eight consultants as to the description of the knife (or knives) which inflicted the injuries to Meredith's neck, the only rational explanation is that the Double DNA Knife was not the murder weapon. And, for the sake of completeness, assuming Meredith's traces were found on Exhibit 36 those traces were a by-product of contamination, as Professor Vecchiotti and Professor Conti later concluded.

To summarize, therefore, Knox lacked a sufficient motive to digitally rape and murder Meredith Kercher. The mere fact that she was present inside the cottage at the material time did not prove that she participated in the crime. It was suggestive that she was present at the cottage for an ulterior reason and her actions thereafter betrayed those motivations. Finally, the totality of the genetic traces found inside the cottage and, on the Double DNA Knife, did not conclusively prove that she participated in the attack upon poor Meredith. Expressed another way, there were gaps or incongruities in the framework of evidence. As we have just seen the circumstantial evidence lacked sufficient weight, precision and concordance to prove beyond a reasonable doubt that Knox was guilty of digital rape, murder, possession of the Double DNA Knife and, theft of the mobile phones.

The author anticipates an attack upon this judgment based upon several other components of the circumstantial evidence. Lest one forgets the reasonable onlooker is bound to ask, if Knox was truly innocent of the crimes attributed to her (and Sollecito) why lie about her movements and activities that fateful evening? The answer lies in the criminal conduct and motivations of Knox which was unrelated to Guede's lustful impulses and sexual instincts, after he had gained admittance to Via della Pergola 7.

Lest we forget, however, the alternative hypothesis which follows shortly, discloses that both Sollecito and Knox lied about their movements and activities that fateful night. Judged by US Federal law, they were guilty of obstructing justice; by English law, they were certainly guilty of attempting to pervert the course of justice. Based on those lies it is almost certain they were responsible for and guilty of simulating a burglary. As the author has already concluded, Knox was also guilty of Calunnia. In the final analysis, Knox and Sollecito's calculating and callous behaviour, disrespectful of the memory of poor Meredith, evidenced by their repeated lies or half-truths vindicated a sentence of imprisonment for both; but not 25 years and 28 years and six months, respectively.

The writer has forged his own synthesis as to the horrific events which transpired during November 1-2, 2007. The scenario is derived almost entirely from the evidence and the findings made by successive Italian Courts. As we have already seen, in retrospect, Hellmann unwisely declined to set out or elucidate as to what transpired on that fateful day. By contrast, the author is prepared to set out his thesis. So here goes.

The Brutal Killing of Meredith Kercher – Part 26*

A synopsis of events that took place at Via della Pergola during November 1–2, 2007

(a) Background information

The author has already demonstrated that Knox clearly lied as to her movements and actions on the night of November 1–2, 2007. Sollecito concocted a story as well, arising from a misplaced sense of loyalty and affection for his girlfriend. Knox and Sollecito's perfidy could mean only one of two things. First, one or both were complicit in the brutal and unremitting attack upon Meredith Kercher, or secondly, there was a less sinister reason to explain their lies, albeit, criminal in nature. The latter scenario would still have brought disgrace upon Knox and indirectly her family. Conceivably, it could have led to Knox being expelled from her University course followed by the revocation of her Italian visa. One fact is certain. Having regard to the gravamen of the events at Via della Pergola 7 and, out of respect for the memory of Meredith Kercher, both accused should have told the truth from the outset. But they have persisted in their palpable lies until the present day. The dilemma facing the defendants is this: if they were to "come clean" so to speak, and tell the authorities the truth, even now, at this late stage, few people, if any, would ever believe them. They are caught in a sort of "Catch 22" syndrome. It is the price they pay for their deceit. The remaining dubiety, if they were not involved in the homicide, as the author asserts, is that they face the prospect of spending the best part of their remaining lives behind prison bars.

Although Meredith Kercher and Amanda Knox both originated from and were domiciled in an English-speaking country, their cultures and outlook on life were very different. Meredith was kind, reserved and considerate in her behaviour towards others. Knox, by contrast, was much more outgoing and somewhat insensitive to the feelings of others. Knox's favourite film was *The Fabulous World of Amelia*. To all intents and purposes "Amanda" could have been substituted for "Amelia". Not once has the author detected any form of empathy or sympathy flowing from Knox (and Sollecito for that matter), directed towards Meredith Kercher and her family following the murder. This has not been lost on the reasonable onlooker which, may account for the general belief that Knox and Sollecito killed Meredith. Even in the United States, public opinion and sympathy lies with the victim coupled with a tangible conviction that Knox is guilty. This assumption is explicable by reference to the poor sales of Knox's book in which she continues to protest her innocence. It seems few people believe Knox, even in her own country.

In current parlance, Meredith and Knox did not have a lot in common. This inevitably led to tensions within the cottage but this was countered by the maturity and common-sense of their Italian flatmates who endeavoured to instil a sense of discipline into the household. This accounted for the drawing up of a cleaning rota for the apartment and an insistence by Romanelli that both Knox and Meredith should pay their share of the rental promptly at the beginning of each month. There is little doubt that Meredith took those sentiments to heart and, bearing in mind it was the end of the month, it is reasonable to infer she made a withdrawal of 300 euros from her bank account, so that she could pay her rent on time and with the minimum of fuss. Of course, the author has already observed that the court transcripts have disclosed that the police were so preoccupied in focusing upon the murder they failed to make the perfunctory checks with Meredith's bank – a necessary precondition to proving that someone had appropriated 300 Euros from Meredith, even if the person concerned was Guede. Despite the effluxion of time it is still

not too late to carry out those investigations.

(b) The events leading up to the attack upon Meredith Kercher

The tragedy associated with November 1–2, 2007 was that both Romanelli and Mezzetti were away from the flat during a public holiday, while Knox's original intention, before going to work, was to spend time with Sollecito at Corso Garibaldi followed by a planned visit to Gubbio the next day. We also know that the four young men who occupied the downstairs flat were not at home on the evening of November 1, 2007. They had returned to spend the festive period in their respective home towns, all in the Marches region of Italy. With the benefit of hindsight, this left Meredith in a somewhat vulnerable position as she was destined, from about 9pm onwards, to spend the remainder of the evening at the cottage alone.

There is no reason to dispute Knox's narrative that Meredith, Knox and Sollecito had lunch at Via della Pergola 7 on November 1, before Meredith said her goodbyes. Meredith proposed to spend the remainder of the day with her English girlfriends in Perugia. One can speculate that the luncheon discussion centred on the payment of the rent. It is also reasonable to infer that Knox became aware that Meredith had made a withdrawal from her bank account in order to pay her share of the rent on time. In that respect, Meredith was too naïve and trusting, particularly as she did not usually lock her bedroom door, despite the comings and goings of persons who did not live at the cottage. If this hypothesis, derived almost entirely from Nencini, is correct, then the opportunity presented itself for a crime to be perpetrated ie, the theft of 300 Euros from Meredith's bedroom where the money was secreted. It is unlikely that Meredith would have carried such a large sum about her person. So just after lunchtime on November 1, up to and including roughly 8pm on the same day, there was opportunity for either Knox or Sollecito to have purloined the monies from Meredith's bedroom, the more obvious candidate being Knox.

Up to and just after 8pm, Knox and Sollecito had separate engagements. Knox was scheduled to work at Patrick Lumumba's pub, "Le Chic" while Sollecito had promised to assist Jovana Popovic with the carrying of a bulky suitcase from the bus station at Perugia which was due to arrive from Milan later that evening. The evidence is unequivocal, Knox and Sollecito dined prior to 8.40pm. By the time Sollecito's father called his son at 8.42pm, both defendants had finished their evening meal and Raffaele was washing up. But shortly after 8pm, business was quiet which led to Lumumba texting Knox to inform her that she was no longer required to work that evening. After they had finished their meal, at 8.35pm, Knox texted Lumumba back saying "See you later". By a strange quirk of fate at roughly 8.40pm, several minutes after Knox had sent her texted response to Lumumba, Jovana Popovic called at Sollecito's house in Corso Garibaldi, to inform him that the bus driver had refused to accept the suitcase in Milan and his assistance was no longer required. Accordingly, both defendants were completely free of any commitments that evening.

Massei made great play of the fact that it would have been sensible for Knox to have taken a change of clothing to Corso Garibaldi, in preparation for the planned visit to Gubbio the following day. What the Court neglected to consider is the fact that Knox was originally scheduled to work at the Le Chic pub later that evening. It is more likely that she planned to return to Via della Pergola 7, after work, either to stay the night or, to shower and then pick up a change of clothing, before returning to Sollecito's house. But by roughly 8.40pm, the position had changed. Furthermore, to ensure that one or other would not be disturbed for the remainder

of the evening, Knox and Sollecito turned off their mobile phones. The general plan appeared to be that they would spend the rest of the evening together at Corso Garibaldi.

It has already been ascertained that during the same evening, Meredith Kercher had dinner with three English friends (Robyn Butterworth, Amy Frost and Sophie Purton). Meredith and Sophie said their goodbyes to Robyn and Amy shortly before 9pm. Sophie and Meredith also parted company at around 8.55pm, a short walk from Meredith's flat. This was the last time Meredith was seen alive, other than by Guede and, indubitably, Amanda Knox. Having returned to the apartment it is a reasonable supposition that Meredith discovered, at some stage, that the rental money had been taken from her bedroom (stolen). The discovery shocked poor Meredith's equilibrium and psychological wellbeing. Like most normal people she would have made a number of searches of her bedroom to verify the money was missing. She may even have imagined that her mind was playing tricks with her and that she had not made a withdrawal from her bank account. And thus, at roughly 10pm, she dialled the number "08459724724" which, according to the phonebook of both her mobile phones, corresponded to the user "Abbey" which was the banking institute used by Meredith. But the call could not be routed because in her pent-up state, Meredith neglected to dial the international country code for the United Kingdom i.e. "0044", or else the symbol "+" followed by "44". The number was undoubtedly dialled as the mobile phone's memory attested to this fact. This could not be explained away as a coincidence or the accidental dialling of the number.

Massei, Hellmann and Nencini could not fathom out why it was that shortly thereafter, Meredith's mobile telephone traffic fell silent. She had earlier tried to ring her mother in England (8.56pm) but to no avail. Given Meredith's close family ties, it was a mystery as to why no further phone calls were made after 10.13pm. But there was no enigma. By this time Knox, accompanied by Guede, had entered the cottage.

Winding the clock back to roughly between 9-10pm, it occurred to Knox that since she was no longer required to work at the Le Chic pub, it made perfect sense for her to go and fetch a change of clothing from Via della Pergola 7, or to change her wardrobe at the cottage, in preparation for the planned visit to Gubbio the following day. There would also be opportunity to borrow a replacement mop head in order to clean up the leakage from the spillage in Sollecito's kitchen. It is a reasonable supposition, therefore, that around 10pm she left Corso Garibaldi to return to the cottage. Sollecito did not accompany her because it was not anticipated that Knox would be absent for very long which, also explains why Knox did not take her mobile phone with her. This confirms the lack of GSM mobile telephone traffic between roughly 9pm and 12 noon the following day. One can also surmise that Knox did not anticipate that Meredith would have already returned to the cottage.

Massei was correct in its supposition that Guede was in the vicinity of Via della Pergola at the same hour. In all likelihood he had gone there to hang out with the four young men in the downstairs apartment, with whom he was acquainted. But he was disappointed to discover that no one was present. And so, just as he was leaving the apartment block, it is reasonable to infer that Guede met Knox who was coming in the opposite direction. Knox now made a critical mistake. She allowed Guede to enter the cottage. How did Guede persuade her to let him into the apartment? The probable scenario is that Guede complained of a stomach upset and asked if he could swiftly make use of a toilet at the cottage. We know that Guede did in fact use the large bathroom because his faeces and other traces were found at that location.

No doubt Meredith was disconcerted by the appearance of Guede, in addition to Knox. Knox's carefree attitude to permitting a virtual stranger to use Romanelli and Mezzetti's bathroom was further illustration of her lack of consideration for others, especially her flatmates. Conversely, Meredith's presence was as much a surprise to Knox and Meredith wasted little time in bringing up the topic of the missing rental money. Knox could have been left in little doubt that either she or Sollecito were the prime suspects since they were the only persons who conceivably had access to the cottage and Meredith's bedroom during the afternoon of November 1. We know that there was a heated conversation or dispute about monies because Guede heard it from the confines of the large bathroom. He even referred to the same in his skyped conversation with De Benedetti. We can also infer that Knox was the person who had stolen the money. That fact was corroborated by her subsequent furtive behaviour and actions.

The subject of the missing monies led to a fraught confrontation where tempers and raised voices were the order of the day. In the light of what later transpired it is difficult to say whether the two (Meredith and Knox) came to blows – the evidence is sketchy on this point. The only suggestion of physical contact came via an unsubstantiated claim, from Romanelli, that on or after November 2, she had observed a scratch mark on Knox's neck. But when one considers Meredith's autopsy revealed no discernible DNA or equivalent tissue under her fingernails, this observation is fragmentary to say the least. It is much more plausible that Knox either retreated to her own bedroom or the small bathroom, slamming the door behind her in a fit of pique. Meanwhile Meredith went back to her own bedroom, no doubt distraught and tearful as a result of the confrontation.

It was at this juncture that the evil Guede sought to take advantage of the situation. He would have heard the altercation between the two young flatmates. At some stage he came out of the large bathroom, neglecting to flush the toilet properly and entered Meredith's bedroom. At first, viewed from Meredith's perception, his presence may have been to offer support and comfort and, it is reasonable to assume, that he sought to offer his shoulder, so to speak, as a prop to cry on (or was perceived as such). But then his distorted and lustful desires got the better of him and his attentions became too intimate. Meredith would have recoiled from his advances but by this time Guede persisted. Meredith no doubt struck Guede in a vital area of his body to discourage his illicit behaviour but this only made the defendant more angry and determined and, it was at this juncture or shortly thereafter he produced a knife which, he was carrying about his person. What do we know about this knife? Its probable dimensions included a blade of between 9.6cm and 11.3cm. This fact can be discerned from the bloody outline found on Meredith's pillow case and the reader is referred to the testimony of Professor Vinci in the Massei trial summary at s.7 (b) ante: "The curious case of the missing murder weapon".

And so we have the beginnings of a barbaric and progressive attack in a confined space upon poor Meredith which she neither sought nor desired. The attack could not have been lost upon Knox who heard the commotion and no doubt, in response to Meredith's screams for assistance, ventured out and went to Meredith's room. The sight that greeted her by this time must have been terrifying. Knox's appearance evoked a response from Guede and the combination of the wielding of the knife and a movement towards Knox caused her to flee for safety, either to her own bedroom or to the small bathroom which were adjacent to Meredith's bedroom, remembering to lock the door behind her. It is more likely that Knox retreated to her own bedroom. From Knox's memoriale we know that she was present in the cottage. She depicts the scene and describes her own terror: crouched down with her hands pressed to her ears, trying to

drown out the sounds of Meredith's screams, particularly the "harrowing scream" which, most likely preceded the first occasion on which Meredith was stabbed. Knox may well have imagined that once Guede had finished his attack upon poor Meredith, she would be next. Regrettably, instead of attempting to aide poor Meredith in her hour of need, Knox placed her own wellbeing first and left Meredith to fend for herself. Meredith's efforts to defend herself would have proved futile since she was faced with a relatively large young male armed with a knife - which accounts for the limited resistance offered. This bears out the residual marks found on Meredith's hands which, is suggestive: she could only have offered limited or token resistance to Guede's machinations.

At the conclusion of the frenzied attack, the enormity of what he had done finally hit Guede. He went and fetched some towels to try and staunch the blood emanating from Meredith's body. There is no reason to doubt the scenario that Guede was the person who fetched the towels; Guede mentioned it in his recorded skyped conversation with De Benedetti and, the towels were later found by the Carabinieri and forensics staff. But Guede's gesture was futile. By this time, poor Meredith was already dead or the life was slowly ebbing from her. Panic seized Guede. Judging by the fingerprints found on Meredith's purse he quickly rummaged through the contents – after all he was going to need money as the police would quickly connect him to the crime. Any remaining monies and credit cards would have been removed from the purse by him. It is also a reasonable assumption, bearing in mind what transpired the following day that he took Meredith's mobile phones and later abandoned them in Mrs Lana's garden. And finally, as disclosed by his bloody footprints, he ultimately left the scene of the crime, departing via the front door.

(c) The aftermath

It took some time for Knox to emerge from her relative place of safety. She was in a state of shock and wanted to be sure that Guede had left the confines of Via della Pergola 7, lest she became his second victim. The scene that must have greeted Knox in Meredith's room was horrific. Guede had fled leaving Meredith half naked with two discernible stab wounds, one to the left side of her neck and similarly one to the right side. A considerable amount of blood was strewn about Meredith's bedroom. Any decent person would have immediately run out of the cottage and sought assistance and/or attempted to contact the authorities including the police. But yet again Knox placed her own needs ahead of those of Meredith and, her duty to tell the truth. Questions would arise as to how Guede had gained admittance to the cottage. In combination with the argument that initially ensued between Knox and Meredith, Knox figured that it would appear she was a tangible suspect. And it could not be overlooked that any subsequent police investigation was bound to throw up the issue of the missing rent money, which Knox had undoubtedly purloined. Finally, even if Knox were exonerated as being complicit in the major crime, she would be branded as a coward. She could hardly be described as the altruistic type, in contrast to Meredith. There is little doubt if the roles had been reversed, Meredith would have unhesitatingly gone to Amanda Knox's assistance, without regard to the risk Guede posed to her or to Knox.

Moving on, Knox figured if she could disassociate herself from being present at the scene of the crime all suspicion would centre on Guede. Thus, at that fateful moment, rather than contacting the authorities, she returned swiftly to Corso Garibaldi to seek the assistance of Sollecito, who was to become a confederate in this odious cover-up. The author has little doubt that Knox and

Sollecito argued. Sollecito wanted Knox to go to the police immediately but Knox's stronger personality prevailed and foolishly, Sollecito went along with Knox's stratagem.

Successive courts were able to piece together the activities of the two that night and during the early hours of November 2. Knox and Sollecito returned to the cottage. Their purpose was to disguise their presence at the cottage. Both were careful to wipe away some of their footprints in the hallway and Meredith's bedroom. The cleaning was by no means as systematic as Massei and Nencini would have one believe. The condition of the small bathroom is testament to this assertion. Both were slipshod and as we know, Sollecito probably left his traces on the bra clasp; it is still a matter of conjecture whether he stood in some of Meredith's blood barefoot and, in his attempts to remove the stains, went into the small bathroom to wash them off; this would account for an imprint of a right foot being found on the sky blue bathmat. At least one or other had the decency to cover Meredith's battered body with her quilt. As for Knox her presence could be detected by the footprints revealed by Luminol. The footprint found in Romanelli's bedroom confirmed the police's suspicions that the break-in had been staged and that Knox and Sollecito were responsible. And as for the Double DNA Knife, it has clearly been demonstrated that this was not the murder weapon. Any traces of Meredith that were found on Exhibit 36 could only have gotten there by way of contamination. Finally, the defendants took the precaution of locking Meredith's door with her keys and it can only be assumed, that one or other defendant disposed of the keys sometime later.

(d) Deduction

Various theses have been put forward to explain what occurred on the night of November 1 inside Via della Pergola 7. For example, the three defendants were engaged in a sexual tryst directed at Meredith who wanted no part in the game. Such theories are absolute piffle.

The intrinsic failure by the police and the judiciary to ascertain what really happened to Meredith on November 1, 2007 was conditioned by a mindset dubbed the forbidden reasoning. Massei and Nencini, influenced by Micheli and Galati started from an imperfect premise ie, Knox and Sollecito were an integral part of a "trio" involved in the digital rape and murder of Meredith Kercher. A more objective examination of the evidence and surrounding circumstances might have led them to a more logical synthesis which, would also have clarified why Knox and Sollecito behaved as they did on that fateful night. It might even explain why, even to this day, they continue to deny being responsible for Meredith's murder and being present at the cottage during the night of November 1.

The author has forged a hypothesis based on the evidence, reliant in the main, on the findings made by the several courts, including Nencini. The plain ridiculous or improbable has been eliminated. What remains, however improbable, must represent the truth.

The Future

The future prospects for the case against Knox and Sollecito, whose liberty still lies in the balance, is, from their perspective, not encouraging. As we know, their appeal against convictions for, inter alia, digital rape and murder, is pending before the Supreme Court of Italy. The judicial directions handed down by the Galati tribunal is suggestive that the Supreme Court concurs with Micheli, Massei and by inference Nencini that, Knox, Sollecito and Guede, were

complicit in the digital rape and murder of Meredith Kercher.

The outlook for Sollecito is that if his convictions are upheld, he will be apprehended in Italy and incarcerated to serve out the remainder of his sentence. As for Knox, bearing in mind an extradition treaty exists between Italy and the USA, the prospect of a request from Italy, as a contracting State, must appear daunting. The double irony is that, despite being the undoubted killer of Meredith Kercher, Guede is already eligible for parole. In any event, he will have served the remainder of his sentence by 2023.

The author is ignorant as to what treatment or assistance may have been offered or given to Guede while serving a term of imprisonment in Italy. The prospect of Guede being released back into the community fills the author with foreboding. On his release, Guede may still represent a significant risk to the general public, notably the female of the species. As far as the UK is concerned, one sincerely hopes that despite the guarantee of the freedom of movement for EU nationals eg, to seek employment, Guede is regarded as *persona non grata*. In other words, should he seek to exercise that right, on the grounds of public policy or public security, he should be denied admittance to the UK. His presence in the UK would not be conducive to the national interest.

And finally, even assuming that Knox and Sollecito succeed with their appeals and/or retain their liberty, life will prove challenging and austere. They will always carry the stigma of being involved in the brutal killing of Meredith Kercher. Certain members of the general populous, both at home and abroad, will always believe that they did the “evil deed” so to speak. The defendants’ ability to obtain viable employment and to form emotional relationships with members of the opposite sex may already be compromised. And, if that were not enough, the press and general public will not easily forget. At the beginning of this work the author made reference to the Louise Woodward ruling. That case was concluded many years ago. And yet, only recently, she featured in a press release. The headline declared that the former nanny, who was convicted of killing an eight-month-old child some 16 years ago, was photographed in public, walking her baby daughter (who was in a pram) for the first time. The author envisages that the case of Knox, Sollecito and Guede may, from time to time, be revisited and/or, as part of a journalistic investigation, they may be photographed by members of the press.

Appendix 1 – Timeline

2007

September: Meredith Kercher and Amanda Knox arrive in Perugia.

Mid-September: Meredith and Knox move into Via della Pergola 7.

Mid-October: Meredith and Knox meet Rudy Hermann Guede.

October 25: Meredith and Knox attend a music concert. Knox meets Raffaele Sollecito and they start dating.

November 1: Meredith Kercher murdered in her bedroom at Via della Pergola 7.

November 2: Body of Meredith discovered at roughly 1.30pm.

November 5-6: Knox and Sollecito questioned by police without lawyers.

November 5-6: Knox implicates herself and Diya “Patrick” Lumumba.

November 6: Knox, Sollecito and Lumumba arrested.

November 6: Knox makes a voluntary written statement to the police. (memoriale).

November 6-7: Via della Pergola 7 and Corso Garibaldi searched. Exhibit 36 (Double DNA Knife) sequestered from Sollecito’s home.

November 8: Pre-trial hearing (Matteini).

November 16: Guede identified as a suspect.

Guede’s house on Via del Canerino raided and searched.

November 20: Guede arrested in Germany.

December 7: Guede extradited to Italy.

December 18: Via della Pergola 7 searched. Exhibit 165b (bra clasp) .

Bagged and collected for forensic examination.

2008

April: Supreme Court of Italy upholds continuing detention of Knox, Sollecito and Guede (Sez. 1 pen. N. 990/08).

October 28: Fast-track trial of Guede commenced (Micheli).

2009

January 26: Trial of Guede concluded. Guede found guilty of sexual assault (digital rape) and murder. Acquitted of theft of monies and two credit cards. Sentenced to 30 years’ imprisonment.

The Micheli Report finds that Guede participated, along with others, in the murder of Meredith Kercher.

Micheli commits Knox and Sollecito in custody to stand trial, inter alia for sexual assault (digital rape) and murder.

January 16: Trial of Knox and Sollecito commenced (Massei).

November 18: First appeal of Guede commenced (Borsini-Belardi).

December 5: Trial of Knox and Sollecito concluded. Knox and Sollecito both convicted of sexual assault (digital rape), murder, theft of Meredith's mobile phones and simulation of a burglary.

Both acquitted of theft of 300 Euros and two credit cards from Meredith. Knox separately convicted of the offence of the aggravated form of Calunnia.

Knox sentenced to 26 years' imprisonment.

Sollecito sentenced to 25 years' imprisonment.

December 22: First appeal of Guede concluded (Borsini-Belardi).

Guede's appeal against his convictions dismissed. Appeal against sentence succeeds. Guede's term of imprisonment reduced from 30 years to 16 years.

2010

November 24: First appeal of Knox and Sollecito commenced (Hellmann).

December 16: Second appeal of Guede concluded (Giordano).

Supreme Court of Italy dismisses Guede's appeal against his convictions and sentence.

2011

October 3: First appeal of Knox and Sollecito concluded (Hellmann).

Knox and Sollecito's convictions for sexual assault (digital rape), murder, theft and simulation of a burglary quashed.

Knox's conviction for Calunnia partially successful.

A conviction for the non-aggravated form of Calunnia substituted on appeal.

Knox and Sollecito released from custody. Knox returns to Seattle, Washington State, USA.

2013

March 25: Supreme Court of Italy convened to hear the appeal of the State Prosecutor (Galati-Costaglioli)

March 26: Appeal decisions of the Court of Assizes of Appeal (Hellmann) set aside.

Case remitted to the second tier for a re-hearing of the appeal. Specific directions given by the Supreme Court eg, on the binding effect of previous judgments (Micheli) and, the corroborative status of Knox's memoriale made on November 6, 2007.

November: Second appeal of Knox and Sollecito begins (Nencini).

December 16-17: Closing arguments of the parties.

2014

January 30: Court of Assizes of Appeal, sitting in Florence (Nencini) upholds the convictions of Knox and Sollecito (Massei), inter alia, for digital rape and murder.

Sollecito sentenced to 25 years' imprisonment. Knox (in her absence) sentenced to 28 years and six months' imprisonment.

April 29: The Nencini Motivations Report published.

* Since the writing of this article, on March 27, 2015, the Italian Supreme Court acquitted both Knox and Sollecito of murder, sexual assault, theft and simulation of a burglary charge.

About the author

BA (Hons), Barrister; former editor of the Justice of the Peace; past editor of Anthony & Berrymans