

The Final Outcome - Evidence
and Analysis in the Meredith
Kercher Murder Case

Justice on Trial



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INTRODUCTION

On the 2nd November 2007 the body of a 21 year old British overseas student from Croydon, Meredith Kercher, was found in her bedroom in the flat she occupied with three other girls, Amanda Knox, Filomena Romanelli, and Laura Mezzetti, at 7 Via della Pergola in the city of Perugia in Italy. She had been killed. Her throat had been slashed.

The flat comprised the ground floor section of a cottage built on a hillside on the east facing side of Perugia. Beneath this flat was a basement flat occupied by four boys.

Three individuals were detained and charged with her murder. They were Rudy Guede, an Ivorian who had been fostered and raised in Italy, Amanda Knox, an American from Seattle who was a flatmate of Meredith's, and who like her was an overseas student, and Raffaele Sollecito, an Italian who was Knox's boyfriend at the time. They were to stand trial in Perugia.

Largely due to America's interest the case gripped the attention of the international media.

Guede elected, as was his right under the Italian system, for a trial separate from the other two. He was convicted of Meredith's murder "in complicity with others" in October 2008, and that conviction was confirmed at his final appeal in December 2010.

Knox and Sollecito were tried and convicted in Perugia of murder and other offences in a year long trial in 2009. In October 2011 an appeal concluded with acquittals for the pair save for the conviction for calunnia in Knox's case. The calunnia was in connection with her accusation concerning her employer, Patrick Lumumba, who she had falsely claimed, effectively as a witness, was responsible for Meredith's murder.

The prosecution appealed the acquittals. They were successful. The Supreme Court (often referred to as "the Court of Legitimacy") annulled them and remanded the case for a further appeal hearing in Florence. However the Supreme Court confirmed Knox's conviction for calunnia. That conviction thus became definitive.

In the first month of 2014 the Florence appeal court rejected their appeal against the remaining non-definitive convictions.

Knox and Sollecito had one final appeal left.

In March 2015, on final appeal, the 5th Chambers of the Italian Supreme Court annulled the convictions of Amanda Knox and Raffaele Sollecito. The verdict, it was said, was pursuant to Article 530, paragraph 2, of the Italian Code of Criminal Procedure. In other words the standard of "beyond a reasonable doubt" had not been met due to insufficient and/or contradictory evidence.

Six months later, towards the end of September, and three months overdue, the Court produced its long awaited Report. This was greeted by the media with sensational

headlines, lifted from the Report, that were critical of the investigation, the forensic service, the prosecution and of the judicial reasoning behind the previous two convictions for the pair. “Clamorous failures”, “investigative amnesia” and “culpable omissions of investigative activity” for example, but apart from that and as to any detailed analysis of the contents of the Report the media made no further comment. A blanket of silence seemingly descended over the case and indeed the matter is finished as far as the charges are concerned

However surely the case warranted some further attention to inform the public, given what the 5th Chambers actually wrote in it’s Report?

For a start how many people know that the 5th Chambers concluded that Amanda Knox was - contrary to her stated trial position, re-iterated in numerous television appearances - present in the cottage she shared with Kercher when the murder took place? It’s just that there was, apparently, insufficient evidence that she was actively involved, although the Court did note that there was compelling forensic evidence that she had washed blood off her hands at the cottage. Where has that ever been reported? Not by the media in the UK, not in the USA and maybe not in Italy either.

At the same time the Court upheld the ruling that Meredith Kercher had died at the hands of more than one assailant, thus excluding that the Ivorian Rudy Guede was solely responsible. This, of course, begs a lot of questions, including why there was never any forensic evidence for the existence of an unaccounted for assailant in the cottage and why, if Knox was present but not an active participant, she did not seek medical or other assistance nor give evidence against Guede, and this other, or others, who have yet to be identified and brought to justice.

How many people also know that the 5th Chambers appears to have exceeded it’s remit as a Court of Legitimacy by pronouncing on the sufficiency of the evidence; there being no provision under the Italian Code of Criminal Procedure that enables it to do this? That should have been the proper remit of the fact-finding judges of the lower courts but instead of sending the case back to a lower appeal court, no doubt with it’s reservations as to the safety of the convictions, the 5th Chambers precluded a further remand on appeal. In doing so it resorted to the provisions of Article 620 of the ICCP which I will look at on pages 321-3. I will argue there that this step was both dogmatic and disingenuous, and ultimately a travesty of justice.

But even if the matter is finished there is no reason why the case should not be discussed. Murder and the functioning of a judicial system is a proper matter of public interest.

In this book I shall reconsider the evidence and it’s evaluation. This will involve unavoidable repetition of elements for the simple reason that this is what the various courts had to consider, again and again, as the case made it’s long-winded progress through four appeals. The twists and turns, and the manner of the evaluation are, however, very interesting.

I shall also look at the law that was applied, both from an Italian and other perspectives, and in Chapter 34 I show how the 5th Chambers of the Supreme Court acted beyond it's own legal remit.

There is in fact a considerable body of evidence in the case. Not only that but because each verdict is required by the Italian judicial system to be "motivated" and published in a detailed report, we are privy to the reasons for the verdicts. These reports are, of course, in Italian, but volunteers from internet websites have undertaken translations.

There are also websites on which can be found the original prosecution case files, expert's reports and trial transcripts of witnesses for the prosecution and the defence. Again obviously in Italian but in many cases with similar translations.

The case is thus evidence rich for the researcher and it is a fascinating one.

I shall start with a brief introduction for the main characters, and then proceed to outline the course of events that led to each of the three co-accused being apprehended, detained and charged. I shall then look at the course of the judicial proceedings and undertake an evaluation of the evidence. I will not limit my evaluation of the evidence to what the various judges hearing the case have said. I have my own opinion on the case, of course, and basically this is why I have written this book. I have grave concerns about the outcome – and I disagree with it - and thus the reader can readily expect me to comment on and evaluate the evidence accordingly. I shall be judged by the contents. In particular I shall pay attention to the sufficiency of the evidence and whether or not the standard of "beyond any reasonable doubt" was met or not. The reader can agree or disagree with me as he or she pleases.

There are people who have met with Knox, and with Sollecito, and may know them well, and who vouch for their character and background, and who are convinced of their innocence. I acknowledge my own obvious deficiency here, but for me, above all, it is about the evidence.

There have been a number of books published about the case. However, none, as I see it, have involved a comprehensive and detailed study of the evidence, which is what this book seeks to redress.

However the picture would be incomplete without some background, and so I have also included particulars on the characters and the lead up to the crime as gleaned from the books and sources referred to in the next section, not all of which is court evidence, which should be borne in mind.

I also include a couple of Chapters that will look at the media reaction to the case, and attempts to influence the case in what, for want of a better term, we might call the court of public opinion.

Finally I shall consider the Supreme Court Motivation of the acquittals, to which I have appended a postscript to bring the reader up to date with the conclusion of various spin-off cases since then, including Knox's trial for defamation of police officers,

Sollecito's claim for compensation for wrongful imprisonment, and Knox's application to the European Court for Human Rights.

Readers may question why I will refer, uniquely, to Meredith Kercher by her christian name always. I do this simply as a mark of respect for a girl whose life was extinguished by a brutal murder.

I have set out a Chronology of the judicial hearings and decisions in Appendix A.

SOURCES AND ACKNOWLEDGEMENTS

I have had recourse to translations of a number of Sentencing or Motivation Reports in the Case which have been prepared by unpaid volunteers contributing to the following websites

Perugiamurderfile.org
Truejustice.org

In addition court case documents translated by unpaid volunteers contributing to the following website

Themurderofmeredithkercher.com

Many thanks to them including all who have contributed to these and other sites, including Perugiamurderfile.net and Injusticeinperugia.com, with their comments and observations. It should be noted that many of these people employ a moniker and are anonymous by choice, and therefore I am unable to attribute their insight.

Photographs are courtesy of the Gallery at Perugiamurderfile.org

I have also had recourse to a translation of the Independent Experts Report available at wordpress.com

I have also found the following publications useful

"Darkness Descending" by Paul Russell and Graham Johnson

"Death in Perugia" by John Follain

"Waiting to be Heard" by Amanda Knox

"Honour Bound : My Journey to Hell and Back with Amanda Knox" by Raffaele Sollecito

P.S Perugiamurderfile.org and Perugiamurderfile.net are now defunct.

CHAPTER 1

The Arrival of the Main Characters

Meredith Kercher



The youngest of the four children born to her parents, Arline and John Kercher, Meredith was born on the 28th December 1985 and was brought up in Coulsdon Surrey. She was pretty, cheerful, intelligent, and studious.

Meredith's parents divorced when she was eleven. Meredith lived with her mother but despite the divorce her parents remained in close contact with each other, to the advantage of their children, whose education remained important to them. Meredith won a scholarship to an independent private school for girls in Croydon, The Old Palace School. Gifted in languages, she took Latin and French for her "A" levels and went on to study European politics and Italian at Leeds University, which often sent students for a year abroad as part of their studies through Erasmus, the European student exchange programme. Meredith was excited at the prospect. She chose Perugia over Milan for her exchange. It would involve an initial intensive course in Italian after which the studies in European politics and Italian would continue until the end of the course.

She secured a University grant towards the cost of the year abroad and worked as a tour guide in London to bring in some more money.

21 years old she arrived in Perugia in late August 2007, initially staying in a hotel whilst she searched for more suitable accommodation. A few days later she saw a note on a university student notice board about a room for rent in a nearby cottage. She telephoned the number and made an arrangement to view the room. At the cottage she met Filomena Romanelli and Laura Mezzetti, current occupants of the upper flat in the cottage to let and both in their late 20s and training to be lawyers. The cottage was owned by an elderly banker who had renovated it and divided it into two flats, each being capable of housing up to four students. Meredith's contribution to the rent for the

upper flat was 300 euros a month. Meredith was delighted with the room and the cottage. She paid the two month's rent deposit and moved in.

Meredith had already met two other Erasmus students from England, one whom she already knew at Leeds University, Amy Frost, and another, Sophie Purton from Bristol University. This threesome was extended by the arrival of four others.

Shortly after Meredith had moved in she was told that there would be another girl coming to occupy the remaining unoccupied room, an American called Amanda.

Amanda Knox



Amanda Knox was the first of two children born to Edda and Curt Knox and was born in Seattle on the 9th July 1987. As with Meredith, Amanda's parents were to divorce, in Amanda's case when she 2 years old and shortly after the birth of her sister. Amanda and her sister remained with Edda. Both Edda and Curt subsequently remarried. Edda married Chris Mellas, but there were to be no more children for her and Chris had none of his own. Curt was subsequently to have two more children, girls, with his new wife. Both families lived in Seattle.

For Edda, life on her own raising two children was difficult immediately after the divorce. She was a local school teacher and needed financial support for her two girls that Curt was either unwilling or having some difficulty in providing, because she had to take Curt to court for alimony.

Like Meredith, Amanda was pretty and gifted with languages. Her mother came from German stock and had been born in Germany and accordingly Amanda was good at German. Amanda was brought up with a catholic background but without the family being particularly religious, though the connection enabled her and her mother to set

their sights on Amanda attending the Jesuit-run Seattle Preparatory School. Amanda gained a partial scholarship to the school.

Amanda was described by those who knew her at this time as bubbly and feisty but not violent or ill-behaved. Her stepfather, Chris said that she was also a bit quirky and harebrained, though, and not above playing pranks on people. She was good at sport and particularly liked playing football (soccer, in America) and she says that her moniker of "Foxy Knoxy" was acquired because of her ability at dribbling with the ball. She kept a diary which she had done since she was a little girl, and was to continue to do.

Amanda graduated from Seattle Prep and chose to study Italian, German and Creative Writing at the City's University of Washington. She also had a desire to travel. She had already been to Italy with family and to Japan on a home exchange.

Amanda found out about a course in Perugia, at the University of Foreigners, that would teach Italian and Creative Writing, and set her heart on it. Unlike Meredith the course was not arranged by her University as a study abroad programme but, like Meredith, Amanda worked, for a year, in the University's campus cafeteria and at an art gallery, to gather her finances together, which would be supplemented by family contributions.

University had helped liberate Amanda and she joined in the poor behaviour that some, if not many, students will engage in. She had a run in with the law when a leaving party got out of hand at the house she shared with five other female students, for which they received a ticket.

She also confirmed on her website that there had been an occasion when she had arranged a prank on a fellow student, staging a burglary in the student's room.

Apparently at the instigation of her creative writing teacher, who had asked her students to imagine, somewhat presciently in Amanda's case, the moments before the discovery of a body, Amanda wrote a short story called "Baby Brother". The central character asks his younger brother whether he had raped and killed a girl to which the younger brother responds with "A thing you have to know about chicks is that they don't know what they want" and then by punching him in the face....."Edgar dropped to the floor and tasted the blood in his mouth and swallowed it. He couldn't move his jaw and it felt like someone was jabbing a razor into the left side of his face.....Edgar let himself fully rest on the carpet and let the blood ooze between his teeth and out of his lips and onto the floor. He spat into the blossoming smudge beside his head."

In her diary she listed a number of things that she had to do before she left for Italy. "Number 1 : Sex Store". On her Facebook page, in the "About Me Section" she wrote "A lot of my friends say I am a hippy, but I'm thinking I'm just weird. I don't get embarrassed and therefore have very few social inhibitions. I love new situations and I love to meet new people. The bigger and scarier the rollercoaster the better."

Just after her 20th birthday she set off in mid-August on her adventure accompanied by her sister. They went to Germany to stay with their uncle and aunt. They then flew on to Milan and then to Perugia. Like Meredith she became aware of the room at the cottage via a notice board and viewed it with Laura Mezzetti. Having secured it she then visited some relatives in Austria and then, as pre-arranged with her uncle and aunt, returned to Germany where a short internship had been arranged for her at the Reichstag.

However Amanda was not really interested in that, walked out on it after two days and returned to Perugia on the 26th September.

Raffaele Sollecito



Raffaele Sollecito was born, on the 24th March 1984, into a more staunchly Catholic family than had been Knox, with right wing views. His father was a wealthy surgeon and urologist and his mother had been an accountant. Both his father and mother had come from well-off and influential families and owned several properties. His father had joined the freemasons. His only sibling, his elder sister, Vanessa, had been in the air force and was now with the Carabinieri.

It might be said, by comparison with others, that he was born with a silver spoon in his mouth. He was certainly doted on by his parents and their constant presence was often quite overbearing to him, particularly that of his father who was worried that Raffaele was too soft, and that this and his shyness with girls would make it difficult for him to make his own way in life.

When Raffaele was 14 years old he was sent to the mixed-gender Liceo Scientifico "Einstein", a British - style grammar school, where he learnt sciences and Latin.

But this was another family in crisis and his parents also separated. The separation led to divorce. It appears that the divorce was particularly bitter and that Raffaele was confused and traumatised by it. His mother suffered from depression and Raffaele felt guilty for her, especially when she died in 2005 when he was aged 21, at about the same time that he enrolled with the main University in Perugia. Perugia was far from his hometown and it seems that this was his way of escaping from his parents.

There was a suggestion, which it seems likely that Raffaele fostered himself, that his mother had committed suicide. This is what his college had been told but in fact the doctor attending upon his mother had issued a certificate of death from natural causes.

He initially lived in at the college his father had chosen and which was originally founded for the orphan sons of doctors, which he did not like. Whilst there he was the subject of a complaint as to the sort of videos he watched. This was investigated by the University. An administrator discovered he had videos containing pornographic and violent material. One involved a woman having sex with an animal. He was given a warning and was watched more closely.

Eventually Raffaele left the halls of residence and rented a bedsit on Corso Garibaldi. He wrote of his time living in college in a blog. He said that the ex-resident he most admired was Luigi Chiatti, the Monster of Foligno who was serving time for the murder of two young boys. He said that everyone there was depressed and “castrated”. “....it looks as if a place with 350 males cooped up together and where you can’t invite anyone in was meant to keep everyone’s instincts in check.” What he wanted was “bigger thrills”.

Since he had been a boy Raffaele was fascinated with knives and had a small collection. He, and his father, would refer to these as harmless and would remark that he kept a pocket-knife only for whittling wood and carving on trees, but some of his knives were collectors’ items and specifically manufactured to maim or kill.

Raffaele had a generous allowance from his father, dressed fashionably and drove around in a costly Audi A3. He also had a police caution for possession of cannabis.

Rudy Guede



Rudy Guede was born in the Ivory Coast. His mother was largely an absent figure in his life. He was effectively looked after by his aunt who moved from town to town with him and so he was never settled nor making friends. His father eventually emigrated with Rudy to Italy and Perugia, but when Rudy was 15 his father returned to the Ivory Coast leaving his son with a girlfriend. Social Services intervened and placed him with a foster family.

When his father returned to Perugia Rudy did not return to live with him. He was now living with the wealthy Caporali family which owned a basketball team. Rudy had begun to train with the team, and being athletic was showing much promise. He was not motivated to train for a career outside his interest in sport. He dropped out from a hotel management and then a computer studies course. The Caporalis owned a farmhouse bed and breakfast and took him on as an assistant gardener. He worked for a few months at this, playing basketball in the evenings on the court at Piazza Grimana where he met and made friends with one of the boys who lived in the lower flat at 7 Via della Pergola. He also moved into his own rented bedsit within a couple of minutes walk from Sollecito's.

Given that he was not in regular employment it is thought that he was soon in arrears with his rent and this, and the need to provide for himself, may have prompted him towards generating income from illegal activity. However he had no criminal record.

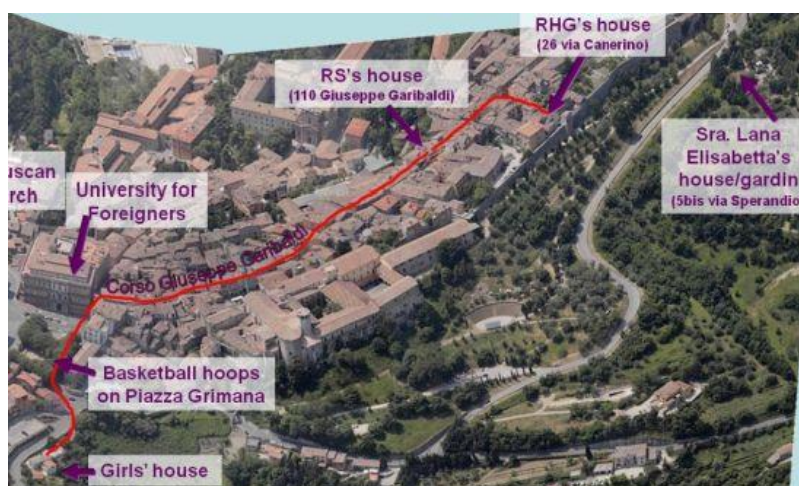
CHAPTER 2

Living in Perugia

Perugia is a small City the ancient walled part of which is perched on a hilltop by the river Tiber in the rolling hills of Umbria. It's history can be traced back nearly 3000 years. It's historic centre has an Etruscan ruin and it's buildings are a mixture of medieval and renaissance. It has a helter-skelter of cobbled alleys, arched stairways and piazzas framed by magnificent mansions.

It has more than one University and with so many students there are clubs and other facilities to cater for an active night life. It also has a problem with drugs.

Perugia is also famous for the production of chocolate.



Within a few days of Knox's arrival at the cottage she had imitated Laura Mezzetti by having her ear pierced several times. She was also delighted to find that Laura had a guitar, and she and Laura would practice together although Knox was not very good at it. When the weather was fine the girls often sat out on the terrace from where they could admire the view.

At first Meredith invited Amanda along to a number of her girlfriends' get-togethers in the restaurants and bars of Perugia but a number of Meredith's friends thought Knox was a bit peculiar. Knox insisted on talking in Italian and seemed, to them, to be constantly demanding attention.

The same behaviour was also noticed by Romanelli and Mezzetti. Knox would sometimes sing out loud or start doing yoga when they and Meredith were chatting, or pick up Mezzetti's guitar and strum the same chords again and again.

Knox obtained employment as, initially, a waitress at a bar run by Patrick Lumumba, called "Le Chic". Lumumba worked hard at trying to make the business a success and often kept the bar open for business until 3 am, depending on how busy trade was. Lumumba was not, however, all that impressed with Knox's work and so suggested to her that she hand out "Flyers" late at night promoting Le Chic instead, doing this two nights a week on Mondays and Thursdays.

One night Meredith went to Le Chic with Amanda and whilst there impressed Lumumba by showing him that she was able to make a mojito cocktail with a special kind of vodka. Lumumba asked if Meredith would be prepared to work for him at the bar. Her reply was non-committal but thereafter Lumumba would ask Meredith about it whenever he saw her.

A few days afterwards Meredith and Amanda were at the Velvet nightclub when Knox suddenly emptied a glass over the head of the disc jockey and was promptly thrown out by the bouncers. However Meredith leapt to Amanda's defence, promising them that Knox would not repeat her behaviour, and she was allowed back in.

This event may have been too much for Meredith because it was around this time that the invitations for Knox to join her and her friends ceased though Knox's antics continued very much to be a topic of conversation between them. Meredith was becoming irritated with Knox and their relationship had started to cool and this was also noticed by Romanelli and Mezzetti. Knox herself told them that she only wanted to socialise with Italians as that was the only way she would improve her Italian.

It also irritated Meredith that Knox invited strange men back to the girls' flat. One was an Albanian she had met at Le Chic and another who was only known to her as "Internet Man".

On another occasion Meredith sought advice from Sophie Purton as to how she should complain to Knox about her leaving the toilet in the bathroom they shared un-flushed. A few days later Meredith told Sophie that she had spoken to Knox about the toilet. It had not, she reported, developed into the row she had feared. On another occasion, Meredith complained about Knox leaving her sex toys in a transparent bag in the bathroom. In an attempt to resolve these and other issues the flatmates drew up a rota of chores.

Relations with the boys below were cordial. It was initially reported to Meredith that Giacomo fancied Amanda but was then told that he had developed a liking for her, and she started going out with him. She was not, however, really sure what he felt for her. The relationship seemed to blow hot and cold. Knox told her "I like Giacomo too, but you can have him". In his court testimony Giacomo said that he did have sex with Meredith

once. Studious and buttoned-up-British as she may have come across to some, Meredith was obviously not a complete square.

Guede had met Knox at Le Chic and had also bumped into her when she was walking in town with Meredith, Giacomo and another of the boys from the lower flat. He was invited by Giacomo to join them a little later to smoke weed. The boys had some marijuana plants they cultivated. Guede had also been to the boy's flat on another occasion when he had watched a Grand Prix on television and had been to the toilet which he left un-flushed. When he arrived they discussed the desirability and availability of the girls living above. They were then joined by Knox and Meredith and the boys laughed because Guede had been asking about Knox.

In an attempt to keep their relationship on as friendly a footing as possible Meredith and Knox went together to Perugia's Euro-Chocolate festival and later to a classical music concert at the University. Meredith then had to leave during the interval. Sitting by herself Knox was joined by a young man. His name was Raffaele Sollecito, and it seems that they hit it off together immediately.

We know from Knox's prison diary that Sollecito was to become Knox's fourth sexual conquest since she had turned up in Italy. For Sollecito it was to be his first time.

From this moment on, and for the week they knew each other prior to Meredith's murder, Knox started sleeping over at Sollecito's, but returning to the cottage during the day. Sollecito accompanied her on a couple of occasions. Mezzetti noticed, to her embarrassment, that Sollecito was very clingy with Knox.

On the two nights that Knox worked at Le Chic, Sollecito would meet her there and walk her back to his place. He drove her to Assisi for a day out and fooled around with her, teaching her kick boxing and martial arts. Knox wrote later that Sollecito had confided to her that he had had a bad experience when he had taken cocaine and marijuana, and drunk rum as well. Knox also wrote about Sollecito mentioning his mother's death and that she had understood that it was suicide.

On the 30th October Knox met with Meredith, Romanelli and Mezzetti at the cottage. Knox appeared to be a bit depressed, She said that she was not happy about sleeping with Sollecito because she had a boyfriend called DJ back in Seattle who, at the time, was abroad, as well, in Japan. This was not a fact unknown to the others as Knox had mentioned this several times already, including, she said, that she and he had come to a prior arrangement before they had left to go abroad; that they were free to do as they liked. However Knox then suddenly brightened up and the girls discussed the rent which was again due to be paid at the beginning of the next month. Meredith told the others that there would be no problem with her. She had already drawn most of the cash required from her from a dispenser.

Knox's own finances were less than satisfactory if she were to see the whole term of her course through. She had already, since arriving in Italy, had an injection of funds from

her aunt. The money she was paid by Lumumba was not much but she relied on the work continuing. She was becoming more dependent than she wanted to be and would have to be more careful with her money.

On the evening of the 31st October, Halloween, Sollecito left to attend a pre-arranged graduation dinner out of town for one of his friends. Knox used make-up to make herself look like a cat and went out into Perugia. She had earlier sent Meredith a series of texts enquiring as to what she was doing that evening, and if they could meet up, but Meredith was to be enjoying herself with her English friends and Knox's invitation was declined. Knox went to Le Chic where she chatted with Lumumba and knocked back glasses of wine.

Meredith and her friends dressed up in Halloween costumes, Meredith dressing up as a vampire and adding a trickle of "blood" to her mouth with red lipstick. They then went out, starting with some local pubs and ending up at the Merlin pub. They left at about 2 am and moved on to the Domus nightclub but their stamina was beginning to wane and they left at about 3 am.

Rather lonely, Knox contacted a Greek boy she knew called Spiros and they met up outside the Merlin but her evening was falling apart and Sollecito was back. They met up and he walked her back to his place.

The next day, the 1st November, Knox visited the cottage where she found Romanelli was at home. Romanelli was trying to wrap up a present and asked Knox to help her. Then Romanelli left. Sollecito joined Knox and started to cook. Meredith had been sleeping in late and emerged from her room at about midday. According to Knox they discussed what they had each been doing the night before. Meredith threw some clothes into the washing machine, got dressed and then left ("the last time I saw her alive" Knox said) to rendezvous with her friends.

After eating and playing the guitar Knox and Sollecito left the cottage to walk about town.

Their precise movements thereafter is a separate and crucial topic.

Amongst the personal effects seized by the police from Knox were her diary and notebooks. In her diary the pages for October had been ripped out.

CHAPTER 3

The Discovery of the Murder and Events leading up to the 5th/6th November Interrogations

On the morning of the 2nd November 2007 Mrs Elisabetta Lana, who lived about 400 yards away from Meredith's cottage, found a mobile phone within the curtilage of her property. Only the night before she had been the victim of a prank call from someone claiming that there was bomb in her toilet and she had called the police out. She handed the phone to the Postal Police in Perugia.

The Postal Police are concerned with postal and telecommunication offences. The phone was examined and found to be registered to a Filomena Romanelli of 7 Villa della Pergola. It was in fact an Italian Motorola phone which Romanelli had lent to Meredith so that she could make cheap local calls. Meredith had an English phone, a Sony Ericsson, on which she received and made calls to her family.

On or just before midday Inspector Bartolozzi dispatched two of his officers, Battistelli and a colleague by the name of Marzi, to locate Romanelli's address and to speak to her.

Just prior to that Mrs Lana's daughter had found a second mobile phone. She had found it in some bushes at her mother's home but would not have known it was there had it not started ringing. She picked it up and took it indoors. It rang again, very briefly, and a name appeared on the display screen : Amanda. This was Meredith's Sony Ericsson. Puzzled, Mrs Lana returned to the Postal Police and handed this one in as well.

Some time between about 12.35 and 1 pm Battistelli and his colleague arrived at the cottage and found Amanda Knox and Raffaele Sollecito sitting outside near the front door. Battistelli explained the reason for his presence and was told that Romanelli was not at home. However he was also told that that there had been a burglary at the cottage and that the pair were awaiting the arrival of the Carabinieri to whom the matter had just been reported. Knox explained who she was and took Battistelli and his colleague inside the cottage and showed them Romanelli's bedroom where the window had been broken and clothes were strewn about the floor. As to the phone it was explained by Knox that Romanelli's phone was actually being used by her other flatmate, Meredith Kercher, who, in addition to that, also had her own phone and she wrote the numbers down and gave them to the police.

Battistelli noticed nothing unusual about the demeanour of either Knox or Sollecito. Neither did he or his colleague notice either of them make or receive any phone calls. No concern was expressed by either Knox or Sollecito as to Meredith Kercher's whereabouts.

On or shortly before 1 pm Romanelli and her friend Paola Grande arrived together at the cottage to be followed within a matter of seconds or minutes, but probably seconds, by Romanelli's boyfriend Marco Zaroli and Paola's boyfriend Luca Altieri, again together. Romanelli had already been forewarned of the situation at the cottage by Knox, and before the arrival of the Postal Police, and had alerted and requested the boys to attend.

After inspecting her own bedroom Romanelli was told that Meredith's bedroom door was locked. On being told that Knox had told the police that it was not unusual for Meredith to lock her door, and disagreeing both with that statement and having already expressed alarm with Knox as to Meredith's safety in phone calls they had shared earlier, Romanelli instructed the boys to break down the door. This Altieri did.

There was a shout of alarm as the scene inside was exposed. It would appear from the court testimony that the only people who were privy to that scene were Altieri and Battistelli and maybe his colleague. Certainly the evidence is that neither Knox nor Sollecito were positioned so that they could see in. Knox was further down the corridor leading to Meredith's room and Sollecito was either in the kitchen or outside.

The scene that confronted the eye witnesses was blood on the floor and likely a person lying on the floor beneath a duvet. A bare foot was sticking out from underneath the bottom section of the duvet. The top of the duvet was next to a wardrobe on the right and a bedside table on the left, on the other side of the room.

The evidence is that everyone immediately left the cottage and stood outside on being told to do so by Battistelli. There is some dispute as to whether Battistelli entered Meredith's room. Battistelli says not whilst Altieri says that he did. Personally I do not consider Battistelli's denial as credible. As, effectively, the first official responder to the scene, he surely would, as would anybody, have needed to ascertain what he was dealing with and whether or not this victim was beyond help, or not, before calling it in. No doubt he was as careful as he could be not to contaminate the scene for the subsequent investigation and forensics.

Battistelli, who had earlier called Bartolozzi to report his findings and the arrival of Romanelli, now called him again, as a result of which the Chief of Police and the Flying Squad were notified. The Carabinieri who had been called by Sollecito earlier also now arrived, followed by the Murder Squad attached to the State police and a full murder investigation was launched to be handled by the State police and the Public Minister on duty at the time. The Public Minister, an officer akin to an American district attorney, was Giuliano Mignini. Mignini was also to prosecute the subsequent charges at trial. He was quick on arriving at the scene as was Monica Napoleoni, the head of the City's Homicide Squad and an ambulance crew.

One of Mignini's first decisions was to call in the State's scientific and forensic investigators from Rome and to postpone a medical examination of the body by the

pathologist until the initial forensic work had been completed. The scientific and forensic investigators, headed by Dr Stefanoni, did not arrive until about 7 pm. This delayed an assessment of the time of death until the pathologist was allowed access to the body after midnight. The body was removed to the mortuary shortly thereafter.

Outside the cottage members of the press had already arrived and Knox and Sollecito were photographed looking intently and comfortingly at each other. There was one photograph of them as they waited, sharing a kiss, that went viral.

It was quickly established that Knox and Sollecito certainly had to be questioned because of their presence at the cottage before anyone else had arrived. Knox explained her relationship with Sollecito, with whom she was now effectively living, and told the police that she had earlier been at the cottage. The reason for that was that she had to collect a mop and deal with some laundry. She had had a shower, and then returned to Sollecito's apartment. She had noticed a few things that were odd when she was there, the front door open, blood in the small bathroom, excrement in the toilet of the larger bathroom, but not the broken window in Romanelli's room. It was after she had discussed with Sollecito what had concerned her that they had together returned to the cottage to have another look. That was when she discovered that the window had been broken.

This brief account was later to re-appear in more detail in an e-mail she sent to various people back in the States on the 4th November and which came to the attention of the police. See Chapter 6.

There was one odd moment when, sitting in Altieri's car, waiting to be driven to the Questura (the police station) for further questioning, she sent Sollecito back to speak to Napoleoni to report that the excrement which she had first noticed had disappeared on the occasion of the later visit. Napoleoni checked but saw that the excrement was (very obviously) still there.

Shortly after 3 pm the witnesses present were asked to attend at the Questura for questioning.

Whilst these witnesses, and others who could tell the police more about the victim, were questioned at the Questura, the forensic examination of the murder scene proceeded apace at the cottage, concluding on the 5th November. There were, in all, something like 480 items of evidence that were catalogued for analysis, including samples swabbed and fingerprints lifted.

The police returned to the cottage with Knox on the 3rd November and then again on the 4th with Knox and her two flatmates, Romanelli and Laura Mezzetti. They then searched the flat again, on their own, on the 6th and 7th.

As for the witnesses questioned at the police station there were a good number of them. The six who had been present at the cottage: Knox, Sollecito, Romanelli, Grande, Altieri

and Zaroli, but also the two Postal Police officers. Laura Mezzetti and the boys who were tenants of the basement flat at the cottage had to be quickly traced and called in. Likewise Meredith's English girlfriends, Sophie Purton, Amy Frost, Natalie Hayward, Samantha Rodenhurst and Robyn Butterworth. The English girls were allowed home after midnight but Knox and Sollecito, who had both been released too, stayed the night, being driven back to Sollecito's flat by Romanelli and her boyfriend Zaroli at about 6 am.

The English girlfriends were allowed, and chose, to leave the country, save for Sophie Purton and Natalie Hayward who stayed on for a while to assist with the investigation. Knox had been told by the police to stay.

The next day, the 3rd, in the afternoon, Knox had to return to the Questura and (as previously mentioned) accompanied Mignini and Napoleoni back to the cottage on a visit to the boys' basement flat where traces of blood had been found the previous day, but was of no great help to them. The blood was later determined to belong to a cat which the boys had befriended and which may have been injured when the police kicked in the door to their flat. Back at the Questura she was questioned again by detectives for a couple of hours and then allowed to go.

The morning of the 4th the pathologist Dr Luca Lalli began to perform the autopsy with Mignini watching. Dr Lalli's initial indication of the time of death was late on the evening of the 1st of November.

In the early afternoon Meredith's flatmates were again called in for a further round of questioning. On this occasion Sollecito, who had not been asked to attend, visited the Questura and demanded to speak to Knox. They were allowed to speak together but, Sollecito's demand being considered unusual, their conversation was bugged by a microphone concealed in a cardboard box, without this producing anything useful to the investigation. Later that afternoon the flatmates accompanied Mignini and the police back to their flat (as previously mentioned) to check on the knives in the kitchen. On seeing the knives in a kitchen drawer Knox was said to be visibly distressed and had to be allowed to sit down on a sofa to recover.

Back at the police station Knox was again left in the bugged room with Sollecito where he tried to cheer her up.

On the following day, the 5th, neither Knox nor Sollecito were troubled by the police until, in the evening, Napoleoni decided to question Sollecito again. This time it was because the police had obtained the pair's mobile phone records. When a detective called Sollecito on his mobile he and Knox were at a friend's house having eaten with him.

Earlier that evening there had been a candle lit vigil and memorial for Meredith in Perugia Cathedral, arranged in advance. Neither Knox nor Sollecito had attended.

Sollecito arrived at the Questura at about 10.30 pm accompanied by Knox. Sollecito was taken in for questioning and Knox was allowed to wait in reception. It was while she was waiting that she performed various acrobatics and splits to relieve the monotony. A police officer sat with her and, to keep her busy, asked her to yet again compile a list of the various people that, to her knowledge, Meredith knew.

Meanwhile Sollecito was rather making a mess of things. He was asked to explain why the phone records showed that both his and Knox's phones had seemingly become inactive within minutes of each other and had remained inactive all that night before the discovery of Meredith's body. He was also relieved of a pocket knife that he had carried to the police station in his pocket. He ended up telling the police that he and Knox had been in the centre of town when sometime between 8.30 pm and 9 pm Knox had left him to go to work at Le Chic, Patrick Lumumba's bar. He had returned home, smoked pot, worked on his computer for 2 hours and Knox had arrived back at about 1 am. He made a statement to this effect and said that Knox had convinced him to tell a false version of events.

Since the story the police had hitherto been given by both Knox and Sollecito, that they had been together from the early evening until the following morning, had operated as a mutual alibi for the pair of them, and that was now in doubt, the police were keen to interview Knox.

I propose to give the interview with Knox, or interrogation depending on your choice of words, but as I am not fussy about it I shall call it an interrogation, the benefit of the next Chapter, but suffice to say that Knox, when confronted with the news that Sollecito was no longer confirming her alibi, and questioned about an exchange of texts which she and Patrick Lumumba had on the evening of the 1st, is said to have started shouting "Patrick - it's Patrick" whilst holding her head in her hands. The interrogation was stopped and she later signed two statements to the effect that she and Lumumba had been at the cottage, and that Lumumba had gone into Meredith's room and attacked Meredith. She had sat in the kitchen holding her hands over her ears whilst Meredith screamed.

On the morning of the 6th Lumumba was arrested and Mignini decided to authorise the detention in custody of all three and a search of Sollecito's flat.

CHAPTER 4

Knox's Interrogation

Knox's interrogation is often considered as being a crucial element in her conviction for murder. That is to overstate its importance in the trial, if not later, though it was, of course, a significant moment for the investigation.

As to my choice of the word "interrogation" I acknowledge that the police say that they regarded Knox as a witness informed as to the facts, rather than a suspect, but nevertheless it must be the case that there came a point in the questioning - no doubt, as we shall see, regarding an exchange of texts on her phone - when the police got frustrated with her and she felt under pressure and consequently that, whatever the legalities, the interview was, at that time, and in accordance with the common perception, an interrogation. However, this is not to imply that there was anything inappropriate about it, nor that the police had any firm suspicion of her direct involvement in Meredith's murder.

However, as we shall see, a not unreasonable suspicion at that time could well have been that, consciously or not, she was withholding from the police information that could be of assistance in identifying Meredith's killer.

Knox's interrogation was not tape recorded nor video recorded. Knox herself has given an account of the interrogation in her book "Waiting to be Heard" but in the main we must rely on the trial testimony of the police officers and the interpreter who were present, including Knox's own trial testimony. Nevertheless it is also instructive to look at what Knox said in her book and in what follows, though not a matter of evidence, I will give some prominence to that.

In her book Knox describes being taken from the waiting area to a formal interview room in which she had already spent some time before. It is unclear when that formal questioning began. Probably getting on for about 11.30pm because she also refers to some questions being asked of her in the waiting room following which she did some stretches and splits. She then says she was questioned so as to provide a recap of her account relating to the period from about the time she and Sollecito left the cottage to about 9 pm on the 1st November.

Possibly there was a short break. She describes being exhausted and confused. The interpreter, Knox says, arrived at about 12.30 am. Until then she had been conversing with the police in Italian.

Knox writes that almost immediately on the questioning resuming Monica Napoleoni opens the door to the interview room and announces, "gleefully" according to Knox, that

Sollecito was now saying that she had left his apartment Thursday night (the 1st) and that she had asked him to lie for her. She no longer had an alibi.

The first thing one can note is that Knox herself confirms that before anything had really happened she had been informed that thanks to Sollecito her alibi was now in serious doubt. Accordingly her version undermines Sollecito's claim in his book "Honour Bound" that he had done nothing of the sort until he had signed his own statement at 3.30 am.

Knox describes how she was dumbfounded and devastated by this news. She cannot believe that he would say that when they had been together all night. She feels all her reserves of energy draining away. Then we have a rapid dialogue in which the officer called Ficarra asks, "sneeringly" according to Knox, where Knox had gone and who she had texted. Knox replies that she did not remember texting anyone. The police grab her cell phone off the desk and scroll quickly through it's history. They then say she has to stop lying. "You texted Patrick. Who's Patrick?" they ask.

Knox had sent a text to Patrick Lumumba at 8.35 pm on the 1st which read "Sure. See you later. Have a good evening". That Knox had received a text (be it that it had been deleted) and had responded was shown in the phone records [ed: texts are shown as calls lasting one second].

In her book Knox suggests that it was the police who had suggested Patrick to her. This does not gel with the trial testimony where she is questioned by the presiding judge Massei.

GCM: In this message, was there the name of the person it was meant for?

AK: No, it was the message I wrote to my boss. The one that said "Va bene. Ci vediamo piu tardi. Buona serata."

GCM: But it could have been a message to anyone. Could you see from the message to whom it was written?

AK: Actually, I don't know if that information is in the telephone.....

GCM : But they didn't literally say it was him!

AK : No. They didn't say it was him, but they said "We know who it is, we know who it is. You were with him, you met him."

GCM : Now what happened next? You, confronted with the message, gave the name of Patrick. What did you say?"

AK : Well, first I started to cry.

Knox has always maintained that during the interrogation she was subjected to unreasonable pressure.

From her trial testimony -

AK: “And they told me that I knew, and that I didn't want to tell. And that I didn't want to tell because I didn't remember or because I was a stupid liar. Then they kept on about this message, that they were literally shoving in my face saying "Look what a stupid liar you are, you don't even remember this!" At first, I didn't even remember writing that message. But there was this interpreter next to me who kept saying "Maybe you don't remember, maybe you don't remember, but try," and other people were saying "Try, try, try to remember that you met someone, and I was there hearing "Remember, remember, remember.”

AK : “Well there were lots of people who were asking me questions, but the person who had started talking with me was a policewoman with long hair, chestnut brown hair, but I don't know her. Then in the circle of people who were around me, certain people asked me questions, for example there was a man holding my telephone, and who was literally shoving the telephone into my face, shouting “Look at this telephone! Who is this? Who did you want to meet?” Then there were others, for instance this woman who was leading, was the same person who at one point was standing behind me, because they kept moving, they were really surrounding me and on top of me. I was on a chair, then the interpreter was also sitting on a chair, and everyone else was standing around me, so I didn't see who gave me the first blow because it was someone behind me, but then I turned around and saw that woman and she gave me another blow to the head.”

AK :“Remember, remember, remember, and then there was this person behind me who -- it's not that she actually really physically hurt me, but she frightened me.”

This behaviour is denied by the police and by the interpreter who was present. There were, rather than lots of people present, no more than four other people present, including the interpreter. The officers in question were two female officers, Inspector Ficarra, who was leading the questioning, and Zugarina, who had called in the interpreter. There was also a male officer by the name of Ivano Raffo. The interpreter was another female, Anna Donnino.

In any event Knox suddenly suffered an emotional collapse. Why?

Given the trial and book accounts Knox would have us think that she was frightened, that it was due to exhaustion and the persistent bullying tone of the questioning, mixed with threats that she would spend time in prison for failing to co-operate. She also states that she was having a period and was not being allowed to attend to this and that the police had told her that they had “hard evidence” that she was involved in the murder.

Knox has given us a number of accounts as to what was actually happening when this occurred.

In a letter she wrote to her lawyers on the 9th November she says that suddenly all the police officers left the room but one, who told her that she was in serious trouble and that she should name the murderer. At this point Knox says that she asked to see the texted message again and then an image of Patrick came to mind. All she could think about was Patrick and so she named him (as the murderer).

During a recorded meeting with her mother in Capanne prison on the 10th November she relates essentially the same story.

In her book there is sort of the same story but significantly without mentioning that all the officers but one left the room and without mention of her having asked to see the texted message again.

If the first two accounts are correct then at least the sense of oppression she conveys in her book as to the room being crowded and questions being fired at her had lifted.

In her book Knox says that she suddenly snapped. She truly thought that she had remembered meeting someone. She did not know what was happening or that she was about to implicate an innocent person. She had not thought that she was making it up. Her mind had formed incoherent images of which one was Patrick's face. She gasped "It's Patrick! It's Patrick!"

And this from her trial testimony -

GCM - "Now what happened next? You, confronted with the message, gave the name of Patrick. What did you say?"

AK - "Well, first I started to cry. And all the policemen, together, started saying to me, you have to tell us why, what happened? They wanted all these details that I couldn't tell them, because in the end, what happened was this: when I said the name of Patrick I suddenly started imagining a kind of scene, but always using this idea; images that didn't agree. That maybe could give some kind of explanation of the scene."

What is she saying here? I don't know. Did she? Could she have been confused or was she deliberately sowing confusion? Why start imagining "a kind of scene"? An idea? What was that? Images that didn't agree. With what?

As indicated by the above there was probably some further brief questioning to obtain some meaning and context for her surprise remark and the questioning then stopped. In her book she states that a statement typed up in Italian was shoved under her nose and she was told to sign it. The statement was timed at 1.45 am. The statement was not long but would probably have taken about 20 minutes to prepare and type.

The relevant part of the statement -

“...I met Patrick immediately at the basketball court in Piazza Grimana and we went to the house together. I do not remember if Meredith was there or came shortly afterward. I have a hard time remembering those moments but Patrick had sex with Meredith with whom he was infatuated, but I cannot remember clearly whether he threatened Meredith first. I remember, confusedly, that he killed her.”

The fact that the statement was in Italian is not important. Knox could read simple Italian words perfectly well. It was not a case of “she barely spoke the language”. She was a competent linguist who was studying Italian and German at University and, according to her English speaking acquaintances in Perugia, chose to speak Italian, even to them. However she does insinuate in the book that the details in the statement were suggested to her and that she did not bother to read the statement before signing it.

The interpreter, Donnino, told the court that she had 22 years experience working as a translator for the police in Perugia. She was at home when she received a call from the police that her services were required and she arrived at the Questura just before 12.30 am, just as Knox confirmed in her book. She found Knox with Inspector Ficarra. There was also another police officer there whose name was Ivano. At some stage Ficarra left the room and then returned, and there was another officer by the name of Zugarino who came in. Donnino remained with Knox at all times.

The following points emerge from her testimony -

1. She makes no mention of Napoleoni and denied that anyone had entered the room to state that Sollecito had broken Knox’s alibi. However that is not to exclude that this had happened immediately prior to her arrival. [Inspector Ficarra, in her testimony, said that prior to her questioning of Knox she had been told by Napoleoni about the contradiction that had arisen as to what had hitherto been their joint alibi and had been instructed to seek Knox’s explanation as to this]
2. She states that Knox was perfectly calm but there came a point when Knox was being asked how come she had not gone to work (at Le Chic) that she was shown her own text message (to Patrick). Knox had an emotional shock, put her hands to her ears and started rolling her head, saying “It’s him! It’s him! It’s him!”
3. She denied that Knox had been maltreated or hit at all or called a liar.
4. She stated that the officer called Ivano had been particularly comforting to Knox, holding her hand occasionally.
5. She stated that prior to the 1.45 am statement being presented to Knox she was asked if she wanted a lawyer but Knox said no.

6. She stated that she had read the statement over to Knox in English and Knox had herself checked the Italian original having asked for clarification of specific wording.

7. She confirmed that she had told Knox about an accident which she had (a leg fracture) and that she had suffered amnesia about the accident itself. She had thought Knox was suffering something similar. She had also spoken to Knox about her own daughters because she thought it was necessary to establish a rapport and trust between the two of them.

It is valid to ask why Knox would not want to remember to whom the text "See you later" had been sent. Perhaps she realized that discussion of it would confirm that if she had indeed gone out, as Sollecito had said, then it was not to Le Chic, where she was not required. Lumumba's text (which had been deleted from Knox's phone - hence the questioning pertaining to it) had in fact been to inform her that as business was very slow she could have the evening off. However, even if she thought that could put her in the frame, without an alibi now, it is not what an innocent person, who was not at the cottage when Meredith was murdered, would be too worried about, certainly not to the extent that she would place herself at the scene of a murder. Perhaps she just did have difficulty remembering. However I have some difficulty imagining that a person whose flat mate had been murdered, and who had been present at the cottage immediately before, during and after the discovery, would not realize, from that moment on, that she was an important person of interest, whether as a witness or a suspect, whose recollection of her own preceding actions would be vital, and that she would need to be precise, either to establish an alibi, to co-operate fully with the investigation, or to cope with whatever uncomfortable questioning might come her way. Indeed, as we shall see in Chapter 6, she had already, in her e-mail, and earlier in police statements, refined her recollections in readiness for this, in some considerable detail.

This leaves one to speculate whether consumption of drugs (admitted by Knox in taped conversations with her mother whilst in prison and also partially acknowledged by Sollecito - See Chapter 7) had a role but I am disinclined to believe that this would have affected memory.

The really testy period in the questioning starts with the arrival of the interpreter at 12.30 am, coloured as it was, apparently, by notification of Sollecito's withdrawal of her alibi, and the questioning with regard to the text to Patrick. There has to be some critical point when she concedes what she is going to say, that she had met Patrick, after which there was the questioning as to what happened next. Say that additional questioning took 20 minutes. Then the questions stopped and the statement was prepared and typed up. Say another 20 minutes. Working back from the time of the statement at 1.45 am the difficult period for Knox, from start to the critical point, looks more like 35 minutes, or at the outside 50 minutes. A simple analysis, such as this, explodes the myth, later to gain ground, that she had been exposed to excessive hours of harsh interrogation. Even if the police had their suspicions the prior questioning had, as with the other girls, Meredith's two flatmates and her english friends, been largely to establish everyone's movements prior to her death, their circle of friends and

acquaintances, style of living, visitors to the cottage and anything that could possibly be of interest to the investigation. Typical police groundwork.

It is also interesting to note – indeed a critical detail - that Knox, in her statement, says that she met Lumumba on the basketball court in Piazza Grimana, which does not feature in the evidence until the witness Curatolo came forward later with his evidence placing her and Sollecito there around the time of the murder – See Chapter 12.

And just where, in Knox’s own account, do we get anything like the quite absurd account given by Sollecito in his book? He writes that he heard a sound that chilled his bones. It was Amanda, yowling for help in the next room. She was screaming in Italian “Aiuto! Aiuto!” [Help! Help!]. He says that he could hear police officers yelling and Amanda sobbing and crying another three or four times. He says that the police officer who was with him, Moscatelli, tells him that this was nothing for him to worry about.

The Supreme Court 5th Chambers observed -

“It is not understood what pushed the young American to make this serious accusation. The hypothesis that she did so to escape the psychological pressure of the investigators appears extremely fragile.....nevertheless the calumny in question also represents circumstantial evidence against her in so much as it could be considered as an initiative to cover for Guede, against whom she would have had an interest to protect herself due to retaliatory accusations against her. All is underpinned by the fact that Lumumba, like Guede, is black, hence the reliable reference to the former, in case the other was seen by someone, coming into or going out of the flat.”

I would suggest that there are in fact four hypotheses we can run with to aid our understanding.

First, Knox, as she claimed afterwards, was confused, in turmoil about her alibi, but anxious to be doing everything she could to assist the police, and having determined that the police were convinced that the recipient of Knox’s text was the guilty party, was playing along, doing her bit to give them grounds to make an arrest.

Second, and related to the first, to escape the psychological pressure of being regarded as a suspect herself at this point, but this does seem, based on a text that could easily be explained, an exceedingly fragile hypothesis but, even so, why such a serious, damaging, and untrue accusation? If she was at the cottage at the time of the murder then she knew it was not true. If she was not, then clearly she was aware that she was fabricating evidence.

I am not sure that the accusation can be construed simply as an initiative to cover for an accomplice – Guede – much as that is a sensible inference, and for the reason that in making this accusation she is placing herself at the scene of the crime. Why would she do that if in fact she had not been there? Perhaps she had hoped, notwithstanding the risks, that being the star witness who had cracked the case would give her considerable

latitude with the police.

The third hypothesis. Was she in fact experiencing flashbacks? See before, and the next Chapter.

However, and the fourth hypothesis, the accusation could also have been a cynical diversionary ploy, to end the questioning, but also giving her a get-out, and hopefully a chance to confront Sollecito quite soon.

The ploy is in accordance with Sollecito's statement, giving him a get-out too, and if the worst comes to the worst, she is only a traumatised witness to a crime. In the circumstances why should not both of them be released once their statements have been taken? An innocent man might be charged for the crime, or not, as the case may be, but why should that happen and what realistic chance of conviction would there be, in the absence of any other evidence, and if he had an alibi, especially if she were to cast doubt upon her own evidence, as she later tried to do. Here, we would have to add, she was playing along with the suggestion from the interpreter that she was suffering from amnesia.

If it was a ploy – and in truth it could only have had a very limited shelf-life - it backfired. In the event, of course, it also rendered her liable to a criminal prosecution, but she may not have realized this at the time.

Just how credible each of the four hypotheses are I will leave the reader to judge.

Mignini, who had been at home during the questioning, but was aware that Sollecito had been called in for questioning, and who had been asleep when notified of the outcome of both sessions, then arrived at the Questura to supervise the investigation. Knox was notified of his arrival and asked to see him. In her book she says she thought he was the Mayor of Perugia [This puzzles me. In Italy, Mignini would be addressed as Pubblico Ministero to reflect his administrative role as a judge and law officer. He was a prominent presence at the cottage immediately after the discovery of the murder, also present when Knox revisited the cottage on two occasions with the police, but even if Knox did not know exactly who or what he was, why would she think he was the Mayor of Perugia?]. They met, with the same interpreter present, and she had a little more to say but not much but it was taken down in shorthand. Accordingly Knox signed a further typed statement at 5.45 am. In it she repeats much of what is in the first statement but she adds that she covered her ears when Meredith screamed and that she is really afraid of Patrick and it is acknowledged that she repeatedly brings her hands up to her head and shakes it.

The police were later to find two witnesses who said that they heard screaming on the night of the murder.

Knox, however, has a different version of this meeting with Mignini in her book. One that she did not allude to at any other time i.e in her trial or appeal court testimony,

prior to the book's publication nearly six years after the event. It consists of a lengthy and detailed conversation between her and Mignini, which is rather remarkable given the problems she had with her memory and the time that had elapsed. This detailed recall is even more surprising given that she could not recall, even denied, the fact that there was a telephone conversation between herself and her mother minutes before the discovery of Meredith's murder (See Chapter 11) until, again, she wrote her book – but even then this included a provably false lie.

Plainly this conversation with Mignini is a fictional device to ramp up the sense of manipulation and pressure which she wished to convey in the book. In it she also says that it was Mignini who first mentioned Meredith screaming, which is strange because the investigation had no evidence at the time that anyone had heard any screaming.

I take another look at the interrogation in Chapter 20 (starting on page 160) particularly in relation to the legal aspects, and the commentary on it in the media and on the internet in the USA, post the trial conviction, which the reader can jump to if he, or she, so wishes at this stage.

CHAPTER 5

Knox's Memorial

Diya (aka Patrick) Lumumba was arrested in a dawn raid at his house at about 6 am on the 6th November.

Sollecito's flat was also searched. Whilst this was going on Knox asked for paper and writing material. When she had finished she handed what she had written to an officer and asked that it be given to Mignini. Since the contents of this statement were entirely voluntary, and written in the seclusion of her holding cell, it came to be referred to as her Gift, or her Memorial.

Her statement is slightly longer than as quoted below.

She wrote -

"I understand that the police are under a lot of stress so I understand the treatment that I received. However it was under this pressure and after many hours of confusion that my mind came up with these answers. In my mind I saw Patrick in flashes of blurred images. I saw him near the basketball court. I saw him at my front door. I saw myself cowering in the kitchen with my hands over my ears because in my head I could hear Meredith screaming. But I have said this many times so as to make myself clear: these things seem unreal to me, like a dream, and I am unsure if they are real things that happened or are just dreams my head has made to try to answer the questions in my head and the questions I am being asked. But the truth is, I am unsure about the truth and here's why.

1. The police have told me that they have hard evidence that places me at the house, my house, at the time of Meredith's murder. I don't know what proof they are talking about, but if this is true it means that I am very confused and my dreams must be real.
2. My boyfriend has claimed that I have said things that I know are not true.

I know I told him that I didn't have to work that night. I remember that moment very clearly. I also never asked him to lie for me. This is absolutely a lie. What I don't understand is why Raffaele, who has always been so gentle and caring with me, would lie about this. What does he have to hide? I don't think he killed Meredith, but I do think he is scared, like me. He walked into a situation that he has never had to be in, and perhaps he is trying to find a way out by disassociating himself with me....."

".....And I stand by my statements that I made last night about events that could have taken place in my home with Patrick, but I want to make very clear that these events seem more unreal to me than what I said before, that I stayed at Raffaele's house."

She remembers “very clearly” now that she had told Sollecito that she did not have to work that night. That, of course, can only have been because Patrick had said so in the exchange of texts that, for some reason, she had so much trouble remembering in the preceding interrogation. Her memory comes and goes, it seems.

What could Sollecito possibly have to hide? Why say she doesn’t think he killed Meredith? Why on earth say these things? It all looks more like a tit for tat response to his disloyalty than the bewilderment and outrage one might expect.

Also, is it because she now realised that her earlier “ploy” had not worked, and that she was now in serious trouble with no prospect of being able to just walk out of the police station with Sollecito?

Both comments simply throw further doubt on what had been their joint alibi.

Furthermore I am a bit curious as to what hard evidence the police, according to Knox, said they had. Incidentally, whatever one’s take on the police misleading suspects (whether deliberately or not) as to the evidence against them (in this case, according to Knox, that they had hard evidence against her) it is nevertheless not illegal (or rather, a breach of any code of practice) for the police to do this, not in the UK nor the USA. I do know that had I been the one being questioned, particularly if I was innocent of any involvement, I would have reacted with incredulity and been more than a bit curious about this and have insisted on the police telling me what this was, being disinclined to co-operate without this critical disclosure. Such disclosure would have no doubt been sought immediately had a legal representative been present.

The statement also included the first reference to her possible mistreatment.

“Not only was I told that I would be arrested and put in jail for 30 years, but I was also hit in the head when I didn’t remember a fact correctly.”

The suggestion here is that there was more than one fact that she was unable to remember correctly. We have already examined the context for the alleged cuffing (which in any event she later acknowledged did not really physically hurt her) which makes it clear that the relevant and only fact was her inability to remember that there had been text communication between her and Lumumba despite the fact that she could see there obviously had been.

The search at Sollecito’s flat produced what would become a material item of evidence in the prosecution’s case. A kitchen knife

The same day Knox, Sollecito and Lumumba were taken from the Questura to be held in prison.

Knox was to struggle with this outcome. The next day she wrote two pages about how at first she could not remember but that now, finally, she could. She was innocent and could account for what she and Sollecito were doing the night Meredith was murdered.

She apologised for her actions –

“I’m sorry I didn’t remember before and I’m sorry I said that I could have been at the house when it happened. I was very stressed at the time and I really did think he was the murderer. I said these things because I was confused and scared. But now I remember that I can’t know who was the murderer because I didn’t return back to the house.

The pages were handed to a guard to be given to Mignini.

The issue, for Knox, would therefore seem to have been that she had not been able to remember whether or not she had really met up with Patrick at the cottage. So why say she had? Would being “confused” and “scared” really bring on a sudden bout of amnesia that was only to dissipate some time after, and as a credible eye witness, giving two statements, 4 hours apart, to the police, directly incriminating Patrick? Plenty of time there to reflect on what she had just done. That made no difference. She doubled down on it, both in her 5.45 am statement and in her Memorial.

One would think, would one not, that not being at the cottage at the time of the murder would, for her, and whatever the stressful circumstances, be a pivotal, and unshakable fact, ever present at the forefront of her mind? In her case so much so that she had already given statements to the police to that effect and had written a lengthy account of her non-involvement with murder, including not being at the cottage when it happened. This is the e-mail to which we will come in the next Chapter. This was never about her memory being affected by confusion, or by being scared, as she would have us believe.

In any event it would hardly be surprising if Mignini were to consider that there had been genuine flashbacks and that there was more to come.

Although Knox did recant, the motivation for that was probably just to undo the mess she had made for herself, and get herself out of prison, rather than her having any consideration for Patrick Lumumba, for whom she had shown none at all with her false accusation.

CHAPTER 6

Knox's E-mail

In Chapter 4 I mentioned that Knox had despatched an e-mail to various recipients in the States on the 4th November. This essentially forms Knox's alibi, and that of her boyfriend. It is long but it is worth quoting a major portion of it.

Knox had also signed a statement given to the police on the 2nd which in it's essentials did not differ radically from what is contained in the e-mail, but the e-mail is longer, more detailed, and gives us her thoughts and impressions, which is why it is more interesting.

"After a little while of playing guitar me and Raffaele went to his house to watch movies and after to eat dinner and generally spend the evening and night indoors. We didn't go out. The next morning I woke up around 10.30 and after grabbing my few things I left Raffaele's apartment and walked the 5 minutes back to my house to once again take a shower and grab a [change] of clothes. I also needed to grab a mop because after dinner Raffaele had spilled a lot of water on the floor of his kitchen by accident and didn't have a mop to clean it up.

So I arrived home and the first abnormal thing I noticed was the door was wide open. Here's the thing about the door to the house: it's broken in such a way that you have to use the keys to keep it closed. If we don't have the door locked, it is really easy for the [wind] to blow the door open, and so, my roommates and I always have the door locked unless we are running really quickly to bring the garbage out or to get something from the neighbours who live below us.

Another important piece of information for those who don't know, I inhabit a house of two stories, of which my three roommates and I share the second storey apartment, there are four Italian guys of our age between 22 and 26 who live below us. We are all quite good friends and we often talk. Giacomo is especially welcome because he plays guitar with me and Laura, one of my roommates, and is, or was dating Meredith. The other three are Marco, Stefano, and Ricardo.

Anyway, so the door was wide open. Strange, yes, but not so strange that I really thought anything about it. I assumed someone in the house was doing exactly what I just said, taking out the trash or talking really quickly to the neighbours downstairs. So I closed the door behind me but I didn't lock it, assuming that the person who left the door open would like to come back in. When I entered I called out if anyone was there, but no one responded and I assumed that if anyone was there, they were still asleep. Laura's door was open which meant that she wasn't home, and Filomena's door was also closed.

My door was open like always and Meredith's door was closed, which to me meant that she was sleeping. I undressed in my room and took a quick shower in one of the two bathrooms in the house, the one that is right next to Meredith and my bedroom (situated right next to one another). It was after I stepped out of the shower and onto the mat that I noticed the blood in the bathroom. It was on the mat I was using to dry my feet and there were drops of blood in the sink.

At first I thought that the blood might have come [from] my ears which I had pierced [extensively] not too long ago, but then immediately I knew it wasn't mine because the stains on the mat were too big for just droplets from my ear, and when I touched the blood in the sink it was caked on already. There was also blood smeared on the faucet. Again, however, I thought it was strange, because my roommates and I are very clean and we wouldn't leave blood in the bathroom, but I assumed that perhaps Meredith was having menstrual issues and hadn't cleaned up yet. Ew! But nothing to worry about.

I left the bathroom and got dressed in my room. After I got dressed I went into the other bathroom in my house, the one that Filomena and Laura use, and used their hairdryer to obviously dry my hair and it was after I was putting back the dryer that I noticed the shit that was left in the toilet, something that definitely no one in our house would do. I started feeling a little uncomfortable and so I grabbed the mop from out of the closet and left the house, closing and locking the door that no one had come back through while I was in the shower, and I returned to Raffaele's place.

After we had used the mop to clean up the kitchen I told Raffaele about what I had seen in the house over breakfast. The strange blood in the bathroom, the door wide open, the shit left in the toilet. He suggested I call one of my roommates, so I called Filomena. Filomena had been at a party the night before with her boyfriend Marco..... She also told me that Laura wasn't at home and hadn't been because she was on business in Rome. Which meant that the only one who had spent the night at our house last night was Meredith, and she was as yet unaccounted for. Filomena seemed really worried, so I told her that I would call Meredith and then call her back. I called both of Meredith's phones the English one first and last and the Italian one in between. The first time I called the English phone it rang and then sounded as if there was a disturbance, but no one answered. I then called the Italian one and it just kept ringing, no answer. I called her English phone again and this time an English voice told me her phone was out of service. Raffaele and I gathered our things and went back to my house.

I unlocked the door and I'm going to tell this really slowly to get everything right so just have patience with me. The living room/kitchen was fine. Looked perfectly normal. I was checking for signs of our things missing, should there have been a burglar in our house the night before. Filomena's room was closed, but when I opened the door her room was a mess and her window was open and completely broken, but her computer was still sitting on her desk like it always was and this confused me. Convinced that we had been robbed I went to Laura's room and looked quickly in, but it was spotless like it hadn't even been touched. This, too, I thought was odd. I then went into the part of the house that Meredith and I share and checked my room for things missing, which there

weren't. Then I knocked on Meredith's room. At first I thought that she was asleep so I knocked gently, but when she didn't respond I knocked louder and louder until I was really banging on her door and shouting her name. No response.

Panicing (sic) I ran onto our terrace to see if maybe I could see over the ledge into her room from the window, but I couldn't see in. Bad angle. I then went into the bathroom where I had dried my hair and looked really quickly into the toilet. In my panic I thought I hadn't seen anything there, which to me meant that whoever was in my house had been there when I had been there. As it turns out the police told me later that the toilet was full and that the shit had just fallen to the bottom of the toilet, so I didn't see it. I ran outside and down to the neighbours' door. The lights were out but I banged on the door anyway. I wanted to ask them if they had heard anything the night before, but no one was home.

I ran back into the house. In the living room Raffaele told me that he wanted to see if he could break down Meredith's door. He tried and cracked the door, but we couldn't open it. It was then that we decided to call the cops..... [Raffaele] first called his sister for advice and then called the Carabinieri. I then called Filomena who said she would be on her way home immediately. While we were waiting two ununiformed police investigators came to our house. I showed them what I could and told them what I knew. Gave them phone numbers and explained a bit in broken Italian, and then Filomena arrived with her boyfriend Marco-f and two other friends of hers. All together we checked the house out, talked to the police and in a big [*word missing*] they all opened Meredith's door. I was [standing] aside really having done my part for the situation."

The original e-mail is just over twice as long. She goes on to tell the recipients more about her involvement in the subsequent police investigation about which she does not appear to be unduly concerned, be it that she does say that she is beginning to feel a bit pressured by, and fed up with, the questions.

What is obvious is the considerable care taken and the inclusion of as much detail as she can remember (or wants the missive to contain).

On a first reading of it, and without knowing much else, her account seems entirely plausible. It is only when one looks at it again with reference to the other material in the case, and particularly once one has a degree of familiarity with the crime scene, that one realises that there are things she has said which do not make much sense.

I shall return to what I mean by the above in other Chapters but I will deal with the following examples here.

It should also be remembered, incidentally, that the only judges who actually ever visited the cottage were those from the Massei trial. None of the appeal judges ever did.

Knox maintains in her e-mail that she never at any time noticed that Filomena Romanelli's window was broken, and her room ransacked, until she returned to the flat with Sollecito and opened her door.

I submit that this claim is not credible. Take a look at the cottage in the picture below.



What we see is the long approach to the cottage and the first thing any visitor can see is the entrance to the upstairs girls' flat with, next to it, Romanelli's shuttered bedroom window. Incidentally the two figures standing immediately in front of the window are Knox and Sollecito.

It is hard to believe that as Knox approached the cottage she did not notice the hard to miss fact that the shutters to Romanelli's window were (as they were found) partially open - this would have alerted her to the likelihood that Romanelli was at home (although she had understood that Romanelli was going to be away with friends) which she would, of course, have checked out of curiosity if nothing else and given certain "abnormal things" and that she found no one home.

It can also be found in the evidence that her claim that Romanelli's door was shut is contradicted by Sollecito who wrote (prison diary) that when he entered the cottage with Knox, Romanelli's door was "spalancata" [wide open].

It is hard to believe that Knox took a shower without noticing until after her shower that there was blood on the bathroom mat, including a bloody footprint (see page 83). In fact she does not even mention that it was a footprint despite the fact that it was obviously so. How, one might think, could such a footprint be explained by "menstrual issues"?

At no stage, it seems, was she even a little bit curious, despite the front door being wide open (the first "abnormal thing"), the blood in the small bathroom, and the excrement in the toilet of the large bathroom, about the rooms the doors to which were closed.

The possible innocent explanation for the front door being open does not make sense.

The trash bin is just outside the entrance gate and if someone had nipped out to talk to the boys below, Knox does not check there at any time before leaving. Had a flatmate nipped out for another reason, perhaps to the chemists, or whatever, then she would surely have not been delayed so long that she would not encounter Knox on her return. Knox would have to have been at the cottage for an appreciable amount of time. This will be considered in Chapter 11.

Her statement that “Laura’s door was open which meant that she wasn’t home, and Filomena’s door was also closed” is an unattentive and revealing slip up. If Romanelli’s door was closed then, on this logic, surely she was at home and in her room? Would not Knox look?

She describes how she ran out onto the terrace at the back of the cottage to try and see in through Meredith’s window. Take a look at the pictures below. We see the terrace and Meredith’s bedroom window high up to the right.



For someone who was entirely familiar with where she lived, and who had admitted to spending time on and much enjoying the spectacular view from the terrace, she must have known that there was no prospect at all of being able to see into Meredith’s bedroom from such a vantage point.

The panic she describes, the above and Sollecito trying to break down Meredith’s door etc, none of this is reflected in their demeanour as described by the postal police when they arrive moments later. Neither of them mention that nor any concern about Meredith to the postal police, even while discussing her phones with them knowing that one of her phones had been found away from the cottage and had been handed in, and showing them the state of Romanelli’s room and the blood traces in the small bathroom. The fact that Meredith’s door is locked is not mentioned either until the others arrive, though it had been, with concern expressed as to Meredith’s safety, when Sollecito called the Carabinieri, which according to Knox and Sollecito was just before the arrival of the postal police. This behaviour, this lack of concern while they are alone with the postal police, and before the others pile in, is not credible unless one postulates that they had knowledge of what lay behind the door.

Would that knowledge be the “situation” for which, and from which, she felt she had done her part in distancing herself? Was that a flourish of “duper’s delight”?

The time of arrival of the postal police and the juxtaposition of this with Sollecito's call to the Carabinieri, i.e whether before or after, was a matter of some discussion in court and that will be looked at in Chapter 13.

Here in her e-mail, she clearly has the call to the Carabinieri before the arrival of the postal police. Now, it may just be a mistake on her part but she also has it before her last conversation with Romanelli. We will look at the telephone records in Chapter 11 (See also Appendix C) but we can note here that the call to the Carabinieri was initiated at 12.51 whereas her last conversation with Romanelli was at 12.35. Is it significant that she has the 112 call at least 16 minutes before it was actually made? Can that just be a simple mistake or is it an attempt, even if just in her own mind, to cover for what she knew was a lie, having told the postal police that they had already called the Carabinieri? Maybe the existence of phone records only actually dawned on her, unnerving her, during her interrogation.

From her appearance at the cottage that morning it is hard to believe that she had just taken a shower at all, let alone blow dried her hair. Furthermore both Knox and Sollecito looked tired which does not fit with her claim that they had spent a quiet and relaxing night indoors.



Knox claims to have checked her own bedroom (a small room) to see if there was anything missing but somehow did not notice that her lamp, her only source of illumination, and which would have been sitting in full view on her desk or bedside table, was missing. It was on the floor in Meredith's bedroom, behind the locked door.

Of lesser importance, but still relevant, is the question why she needed to visit the cottage that morning. Knox says that it was to collect a mop because of a water spill in Sollecito's flat (occurring sometime between 10 and 11 pm on the night of the murder, according to Knox's testimony – See Chapter 11) and “to again take a shower and grab a change of clothes” (she and Sollecito had planned a trip to Gubbio that day).

Sollecito was to claim (prison diary) that “half the house” had flooded and that he had laid down some rags to soak up the water, Knox bringing the mop from the cottage the next day.

Assuming the water leak to be true, and if Sollecito did not have a mop, and if a lot of water was involved, why not collect the mop straight away? That would be a 10 minute round journey. In view of the trip planned for the next day, she could also have grabbed a change of clothes at the same time. We can note that had she in fact done so that could have placed her at the cottage around the time of the murder. By not doing so, the water spill, if it is to be believed, and depending on the timing, potentially gives her and Sollecito an alibi. Again see Chapter 11.

It really is not difficult to infer that a lot of her account is fiction. But why? This will be considered further in Chapters 11 and 14.

The e-mail was not, of course, specifically directed for the attention of the police, but it did come to their attention shortly after Knox had made her statements to the police incriminating Lumumba. Somebody in Seattle had drawn the attention of the Seattle police to it and they had sent it on to Perugia. Given who the e-mail was for (there were 25 recipients) one can therefore expect to find some measure of her playing up to her audience and, of course, in her leaving with them a strong impression of her own complete uninvolvedness in her flatmate's brutal murder. Ultimately, whether or not the intention was to get her story and circumstances out for wider publication than just family and friends, I would judge that it did her no favours, when the implausibilities in it are duly considered. Furthermore I doubt that it would have made any difference had the police had sight of it earlier.

Despite the care taken over the e-mail there were some elements which Knox then changed and which she added, when (on her initiative, and with her lawyers present) she was interviewed by Mignini on the 17th December.

CHAPTER 7

Compilation of the Investigative File

In Italy procedure relating to criminal matters is governed by the Italian Code of Criminal Procedure. Suspects are not formally charged for the purposes of detention. Instead they can be held in custody pending completion of an investigation and a decision to bring formal charges. However the judiciary retains control over the process of detention and the investigation.

On the 8th November there was an arrest validation and remand hearing for the three detainees before Judge Matteini. She ruled that the three should, subject to judicial review, remain in detention for a period of up to a year pending completion of the investigative file and any decision to bring charges.

Knox and Sollecito had legal representation by that time. Knox's mother, Edda, had arrived in Perugia on the 6th. With a helping hand from the Mayor of Perugia (Perugia and Seattle are twinned cities) a prominent lawyer in Perugia, Luciano Ghirga, agreed to defend Amanda. Ghirga had experience defending murder cases. A little later a high powered business lawyer Carlo Dalla Vedova, who had offices in Rome and stateside Washington, was engaged to work alongside Ghirga and together they constituted Amanda's defence team.

Raffaele's father, Francesco, was also quick in hiring legal representation for his son. Luca Maori and Marco Brusco were local lawyers but Raffaele's defence team was soon to be joined and spearheaded by another lawyer, a flamboyant heavy-hitter with political connections, Giulia Bongiorno. Bongiorno had political ambitions as well. She was president of the parliamentary commission for legal reforms and had participated in the defence of the former premier of Italy, Giulio Andreotti, against accusations of mafia connections and of having ordered the murder of a left wing journalist in the 1980's. After the Kercher case, from 2018 – 2019, she was a junior minister in Italy's coalition government of anti-establishment and right wing parties.

From Sollecito's prison diary -

"The judge questioned me today and he told me that I gave three different statements, but the only difference that I find is that I said that Amanda persuaded me to talk crap [dire cazzate] in the second version, and that she [quella] had gone out to go to the bar where she worked, Le Chic. But I do not remember exactly whether she went out or not to go to that pub and as a consequence I do not remember how long she was gone for. What is the big problem? I do not remember this, for them, important detail, therefore they should stop bothering me and start investigating her [non mi rompessero e facessero le indagini su di lei]. I tried to help them in the investigation by trying to

remember and now I am the one taking it in that place (where the sun never shines...). It would have been better if I had done nothing and had limited myself to saying that she had remained at my house. I would have spared myself a lot of anxiety. Let's talk about something else that it is better..."

On the 10th November there was a development in the case when a Swiss professor from Zurich arrived in Perugia and proceeded to explain to the police that he had been in Perugia on the 1st November and indeed had been in Lumumba's bar at Le Chic on that evening, chatting to him, before leaving to return to his hotel.

On the 12th November the knife taken from Sollecito's bedsit was analysed and samples taken for DNA testing, with results which will be discussed in Chapter 18.

On the 16th November there was yet another development when Mignini was informed that a bloody palm print found on a pillow in Meredith's bedroom had been run through the national database and a match had been obtained with a Rudy Hermann Guede. The only reason the prints were in the database was that they were taken when he applied for his resident's permit.

Lumumba was released from detention within a few days.

The investigation cranked up a gear and the police raided Guede's address in Perugia but the bird had flown the nest.

On the 17th November the police bugged a conversation between Amanda and her parents at Capanne prison -

Amanda; "Yeah, when I was in the room with him I said what ... [laughs] and then when I returned to my bedroom I was crying. I am very, very worried for this thing about the knife.....because there is this knife from Raffaele..."

Curt: "Well here, here, here are the facts.....we talked yesterday with the lawyer and asked him about the knife. Every time that they have to review an item we have an expert there that will review it with them. This is an example of....this knife of which they are talking about, they have never notified anything about the knife."

Edda: "So it's bullshit"

Amanda: "Is it bullshit?"

Edda: "It's bullshit"

Curt: "It's complete bullshit. It's a total fabrication"

Edda: "That's what they're doing now. Simply lying."

Curt: "It's all a fabrication..."

Edda: "Yes, to make someone break down.."

Amanda: "It's stupid. I can't say anything but the truth, because I know I was there. I mean, I can't lie on this, there is no reason to do it."

Curt: "Yeah, yeah, so what you have to do is not talk about anything with anyone...."

Later, in her court testimony, Knox would affirm that "I was there" was a reference to Sollecito's bedsit, but why there would be any need to lie about that is not understood.

The police tracked down a former foster family for Guede and discovered that their real son, Gabriele, and Guede remained close friends. They also found through him another friend of Guede's, Giacomo Benedetti, who informed the police that he had recently had a phone conversation with Guede over the internet on Skype. Guede was in Germany.

The police arranged with the two boys to listen in and record the next internet conversation. It was Giacomo who set this up after leaving an e-mail message for Guede. What emerged from the subsequent recorded conversation was what would basically emerge as Guede's defence during his trial, with which I will deal in more detail in the next Chapter, but briefly it involved an admission that he was in the girls' flat at the time of the murder but sitting on the toilet listening to music on his I-pod in the large bathroom.

Giacomo asked him if he had seen Amanda Knox there. Guede replied "Amanda non c'entra" - "Amanda has nothing to do with it." He then added "She wasn't there."

Guede was arrested by the German police under an international arrest warrant on the 20th November. He agreed to extradition, rather than prolong the matter, and returned to Italy on the 6th December and, of course, was immediately arrested.

From Sollecito's prison diary -

"The real murderer of this incredible story was finally caught today. He is a 22 year old Ivorian [and] they found him in Germany. I saw father happy and smiling, but I am not 100% calm at the moment because I fear that he might invent strange things."

Sollecito wrote of Amanda in a letter to his father. He had known her only a week and had found her "slippery". He wrote -

"I think she was living on another planet. She lives life as if it was a dream, she can't distinguish between dreams and reality...The Amanda I knew is an Amanda who lives life in a thoughtless way. All she thinks about is pleasure all the time. But it's impossible to even imagine that she's a murderess."

In a self critical vein, he added -

“I realise that if we have all ended up in prison it’s also because of my irresponsibility concerning what happened that evening. And also because of the fact that we smoked a lot of joints and I’m very sorry about that....I’m paying the price for my superficiality, and this time I’ll pay everything, down to the last penny.”

On the 22nd November Knox wrote in her prison diary -

“Last night, before I went to bed, I was taken down to see yet another doctor who I haven’t yet met before. He had my results from a test they took - which says that I’m positive for HIV. First of all the guy told me not to worry, it could be a mistake, they’re going to take a second test next week.....I don’t want to die. I want to get married and have children. I want to create something good. I want to get old. I want my time. I want my life. Why, why, why? I can’t believe this. Thirdly I don’t know where I could have got HIV from. Here is a list of people I’ve had sex with in general.”

The diagnosis was later found to be incorrect.

Following on from the arrest validation and remand hearing on the 8th Knox and Sollecito appealed Matteini’s ruling and the appeal was heard by Judge Ricciarelli at the Perugia Appeals Court. He dismissed the appeals on the 30th November.

Mignini met Knox again in Capanne prison on the 17th December with Ghirga and Dalla Vedova present. This time the interview was recorded. It did not achieve very much but for two new items of information. It was eventually suspended when Knox broke down in tears. The two new items were that (1) contrary to what she had said in her e-mail, she now said that she had noticed the blood on the bathmat before having a shower, and (2) after the shower she had engaged in a double shuffle with the bathmat. She had undressed for her shower in her own room, had her shower but then noticed that she had no towel with which to dry herself. She had shuffled to her room with one foot on the blood stained mat, collected the towel, and had then shuffled back to the bathroom in the same manner. It is difficult not to think that prior to the interview her lawyers had discussed with her the fact that there was to be a further forensic examination of her flat the next day, and that this would involve a search for invisible blood traces and prints with luminol (for a result correlation, the reader can refer to page 217). In addition, and as a matter of interest I can also point out that in her e-mail she says that having returned to her room to collect the towel, she then got dressed in her room. So presumably she towelled off there as well which rather obviates any need for a shuffle back to the bathroom on the bathmat. It seems she just doubles up on things (and not entirely successfully) whenever she feels a need to do so.

Sollecito was not interviewed again nor did he take the stand to give evidence at his trial. He was, of course, perfectly legally entitled to take this stance. Knox, however, would give evidence at her trial.

Since the closure of the forensic investigation at the cottage on the 5th November the forensic work of analysis had been proceeding apace back in Stefanoni's Rome laboratory. However Stefanoni had noticed that an item which had been referenced in the catalogue and which she herself had noticed at the cottage was not in the lab. This was a small section of Meredith's bra which contained the bra clasp. She could not simply return to the cottage on her own to collect this. Under the criminal procedure code she had to notify everyone concerned of her intention to do this. She and her forensic team returned to the cottage on the 18th December. As previously, what they did was video recorded and the lawyers with their scientific experts were able to watch the video in real time in a vehicle nearby. Stefanoni also used the visit as an opportunity to apply luminol to the floors of the corridor, the kitchen/living room area, and to Knox and Romanelli's rooms, and record the findings.

Discussion of all the forensic findings is best left to the Chapters dealing with the trial evidence where we can also include what defence objections there were to the findings.

As can be seen from the Chronology Knox and Sollecito then appealed the decision of Judge Ricciarelli, but this second appeal was dismissed by Judge Gemelli presiding over a panel of judges at the Supreme Court. However this appeal also dealt with the admissibility of the statements made by Knox at the Questura on the 5th and 6th November. The Supreme Court ruled that the typed up statements which she had signed at 1.45 and 5.45 am were not admissible as evidence in relation to any forthcoming charge of murder or any ancillary charge involving her being at the scene of the crime. She should have been treated as a formal suspect for the purpose of these statements and arrangements should have been made for her to have a lawyer present.

Knox's Memorial, however, would be admissible in relation to charges arising as above. No "interrogation" was involved and there could be no suggestion of coercion nor that Knox had failed to understand the significance of what she was writing. All three statements were admissible in respect of the forthcoming charge of calunnia. Calunnia is an offence under Article 368 of the Italian Penal Code. The Article states that anyone who with a denunciation, complaint demand or request, even anonymously or under a false name, directs a judicial authority or other authority with an obligation to report, to blame someone for a crime who he knows is innocent, that is he fabricates evidence against someone, shall be punished with imprisonment from two to six years.

One might argue over what "knows is innocent" means exactly but I suspect the meaning has been resolved at some stage in favour of the words immediately following - "that is, fabricates evidence against someone". It must be knowing that in the sense that you know your evidence is fabricated. That said, it does not look as if the offence has been well drafted. It is nevertheless akin to perverting the course of justice and it would be difficult to argue that Knox did not do that. Furthermore even though Knox was acquitted of the remaining extant charges by the Supreme Court they nevertheless found that she had been in the cottage at the time of the murder. Accordingly she must have known that Lumumba was not there and thus innocent.

There was no ruling with regard to Sollecito's signed statement to the police. That raises a question as to whether it might have been admissible in evidence. It does not appear to have been admitted as I can find no mention of it in the trial judge's Motivation. The statement was not self incriminating (at any rate as to his presence at the cottage at the time of the murder) as had been the statements Knox had made. However it did give the lie to his previous statements (their joint alibi) which would make him potentially liable to criminal charges. Perhaps, and taking into account the Gemelli ruling, that is why the Prosecution let the matter of admissibility lie. It could have been produced in evidence against Knox but only had Sollecito chosen to give evidence on it and, critically, accept cross-examination on his evidence from Knox's lawyers. That was not about to happen.

Seven months after the opening of the police investigation the prosecution gave formal notice that the Investigative file was complete and that they were ready to proceed with formal charges against Knox, Sollecito and Guede.

On the 16th September 2008 preliminary proceedings opened before Judge Micheli. As I suggest in the Chronology, as I am not entirely sure of the procedure here, presumably the formal charges were read out and Not Guilty were recorded or indicated. The judge accepted a request from the lawyers for Guede for a fast track trial for their client. There was no such request from the lawyers for Knox and Sollecito. Micheli would deal with the fast track trial and decide whether there was sufficient evidence for Knox and Sollecito to stand trial, together.

CHAPTER 8

Rudy Guede and his trial

Rudy Guede's trial began on the 26th September. When Guede had opted for a fast track trial his lawyer, Valter Biscotti, had afterwards explained to the press why. The decision had been on his advice. There would be the very likely danger that if he was tried together with the other two that they would gang up to present Guede as being the sole perpetrator of the crime.

A fast track trial was particularly suitable to his circumstances because the defence in any event did not dispute the forensic evidence that the prosecution would bring to trial.

In addition, and probably more importantly, in the event that he was convicted he would be entitled to a third off his sentence. This is an automatic reduction simply for choosing fast track.

He would also still be entitled to appeal a conviction and it would be hoped that by the time that came to pass Knox and Sollecito might have destroyed each other running a cut-throat defence at their own trial.

It is appropriate to consider the evidence against him, and his defence, because in the event the lawyers for Knox and Sollecito duly attempted to portray Guede as the sole perpetrator of the crime at their clients' trial.

The forensic evidence against Guede consisted of -

1. 7 imprints of a left shoe in blood next to Meredith's body that were compatible with Outbreak Nike 2 size 11 shoes which it was determined Guede had worn.
2. There were more left shoe prints in a line in the corridor leading from Meredith's bedroom to the kitchen and front door, but only two of which had sufficient detail to match with his shoes.
3. His palm print on the pillowcase
4. His DNA on a swab taken from Meredith's vagina
5. His DNA on a swab taken from the wrist of a sleeve on Meredith's jumper
6. His DNA on a swab taken from the strap of Meredith's handbag

7. His DNA on Meredith's bra (not the bra clasp referred to earlier)
8. His DNA on a swab of the excrement in the toilet in the large bathroom

With the exception of 2 and 8 all the forensic evidence comes from Meredith's bedroom.

There was an argument as to whether a shoeprint on a pillowcase belonged to a woman, or a man (Guede), but this Massei, I submit with good reason, was unable to determine.

Nevertheless, the above clearly placed him at the scene of the crime and this was never denied by Guede. Instead he fell back on what he had told Giacomo Benedetti in his Skype chat and upon which he had expanded in subsequent interviews with the police.

Briefly, and as a composite of that Skype chat and various statements and interviews with the police, his account was that he had earlier met Meredith at a nightclub and she had agreed that he could call to see her on the evening of the 1st November at about 8.30 pm. Despite that agreement he had called at the cottage at about 7.30 pm in the evening but there was no one at home. He left. When he returned this co-incided with Meredith's arrival and she invited him in. According to the Skype chat this was about 8.30, as arranged. He said that they sat together, chatted, and after a while they started to fondle each other sexually during which he digitally penetrated her vagina. It did not go further than that because neither had contraceptives. After Meredith had visited her bedroom she then started foul mouthing Amanda. Meredith had money in the drawer of her bedroom table which had gone missing. Meredith spoke of Amanda's propensity for drugs and inviting strangers back to the flat. Together they checked Amanda's room but there was no money there. Guede did his best to try and calm Meredith down but she was distressed and furious.

Guede then suddenly had an urge to visit the toilet in the large bathroom, apparently because of a kebab he had eaten whilst waiting to return to the cottage. He sat on the toilet and listened to music on his I-pod. However he heard the front door bell ring and a moment later a snatch of conversation between two girls. He heard Meredith say "We need to talk" and a girl who he thought sounded like Knox reply "What's happening?" Then, a little later, he heard a terrible scream. He said, though he said that he did not have a watch, that this must have been sometime between 9 and 9.30 pm. He pulled his trousers up in a rush, exited the toilet and looking down the corridor saw a man standing at the entrance to Meredith's bedroom. He approached the man and asked "What's happening?" The man turned to face him. Guede described him as white, slightly smaller than he was, with brown hair underneath a white headwarmer with a red band, and wearing a Napapijri style jacket. He was also holding a knife in his hand.

He said that Meredith was lying on the floor next to her bedroom table and blood was pouring from the left side of her neck. She was dressed. She was wearing jeans and a woollen vest.

He said he did not get a good look at the man's face because the man almost

immediately struck at him with his knife inflicting a wound to his right hand. He retreated back down the corridor where he stumbled and fell over by the fridge in the kitchen. The man ran past him and out of the front door shouting, in Italian, “He’s black, black man found, black man guilty”.

Guede had heard other footsteps and he says that on looking out of Romanelli’s window he saw a figure with flowing hair and having, he said, Knox’s silhouette. He then rushed to assist Meredith trying to stem the flow of blood with towels [towels soaked in blood were found at the scene]. Meredith croaked a sound that sounded like “af”. His hands were covered in blood and he tried to write the letters on the wall.

When he realized there was nothing further he could do he left. He did not call for help as Meredith was beyond that and did not report what had happened as he knew he would not be believed. He says that he left the cottage at about 10.30 pm.

He was not believed. Micheli found him guilty of murder aggravated by sexual assault, in complicity with others. He was sentenced to 30 years imprisonment. A generic reduction of 6 years for mitigating circumstances on account of his age and then the automatic reduction on top of that were applied later in the appeal stages, so that he had to serve 16 years in prison.

Guede’s account was, however, well crafted. It innocently explained all, well nearly all, of the forensic evidence against him.

Guede’s trial also considered some propensity evidence against him which was subsequently drawn on and taken further by the defence during the trial of Knox and Sollecito presided over by Judge Massei. As this Chapter is about Guede it would be appropriate to consider all that here.

Cristian Tramontano testified (Massei) “about an attempted robbery at his home, carried out by a young man who, seeing that he had been observed, tried to exit the house and, finding the door locked, pulled out a jack-knife with which he threatened Tramontano, who was following him to make him leave the house. Tramontano declared that he believed he recognized that the thief was Rudy when he saw his picture published in the newspapers.”

Micheli discounted Tramontano’s evidence on the basis that his evidence was not a positive identification and, indeed, he had not provided much of a description of the thief in his deposition.

Four days before the murder, on the 27th October 2007, Guede had been arrested by police in Milan. He had been observed inside a nursery school by the principal who had called the police. Guede had made no attempt to run away.

(Massei) “There were no signs of a break in. There was some money missing from a money box, but just small change. Guede had a backpack inside which was a

computer.....a 40 cm kitchen knife, a bunch of keys, a small gold woman's watch, and a tiny hammer of the type found in buses to smash windows.....the witness stated that the knife came from the kitchen, the door was not locked and Rudy Guede must have taken it from there."

The computer, police discovered, had been reported stolen from a law office in Perugia. Two witnesses, lawyers Paolo Brocchi and Matteo Palazzoli, testified as to the burglary at their offices on the night of 13th/14th October 2007.

(Massei) "The thief or thieves had entered through a window whose panes had been smashed with a rather large stone; the glass was scattered around, and they had found some of their clothing on top of the glass..... Later, on the 29th October, a colleague in the office had called Brocchi to tell him that in the corridor was a person who said that he had been found with some goods in Milan, goods which had been declared stolen by Brocchi, but which he claimed to have purchased legitimately in Milan."

(Massei) "The lawyer Palazzoli declared that the broken window was a French window opening on to a small balcony overlooking the inner courtyard (at the rear); beneath it corresponding precisely to our window, there is a door equipped with a metal grille."



I have included this photograph of the rear of the law office because it will become relevant in discussing the "staging" of a break in at the cottage, which will be discussed later. The balcony in question is that with the flower pot on it, not the nearer balcony. Underneath there is a back door and, in front of it, a grille, flush with the wall, on which an intruder can climb up to the balcony.

In relation to this incident Guede was released by the police, but subsequently charged and convicted of possession of stolen goods.

The Micheli hearing lasted a month but it would appear that it only took up a few days. We are used to a trial running almost continuously but that is not the way Italian courts work! Micheli also ruled that there was sufficient prima facie evidence against Knox and Sollecito for them to stand trial at Perugia Assizes.

CHAPTER 9

The Trial of Knox and Sollecito

The trial of Knox and Sollecito opened at Perugia Assizes on the 16th January 2009.

On the indictment were the following charges against them.

A -

For having, in complicity amongst themselves and with Rudy Hermann Guede, killed Meredith Kercher, by means of strangulation.....and.....with a bladed weapon to which B applies.....for trivial reasons whilst Guede, in concourse with the others, was committing the felony of sexual assault.

B -

For having, in complicity amongst themselves, carried out of the residence of Sollecito, without justified reason, a large knife of point and blade comprising in total a length of 31 cms (seized at Sollecito's on November the 6th, 2007 - Exhibit 36)

C -

For having, in complicity amongst themselves and with Rudy Hermann Guede (the principal executor) constrained Meredith Kercher to submit to sexual acts.....

D -

For having, in complicity amongst themselves, taken possession of a sum of approximately 300 euros, two credit cards from Abbeybank and Nationwide, and two mobile phones, the property of Meredith Kercher.

E -

For having, in complicity amongst themselves, simulated an attempted burglary with break-in in the room of the apartment of Number 7 Via della Pergola occupied by Filomena Romanelli breaking the glass of the window with a rock taken from the vicinity of the residence, which was left in the room, near the window, to ensure impunity for themselves from the felonies of murder and sexual assault, attempting to attribute the responsibility for them to persons unknown who penetrated the apartment to this end.

Knox faced the following charge alone.

F -

Knowing him to be innocent and with a denunciation to the Flying Squad of Perugia on the 6th November 2007, falsely implicated Diya Lumumba (known as Patrick) in the murder of Meredith Kercher, with the intention of gaining impunity for everybody, and in particular for Rudy Hermann Guede who, like Lumumba, is black.

In the event they were to be convicted of all the charges other than, in relation to D, the theft of money and credit cards.

There were five major themes that I would discern to the prosecution's case against the pair. These were -

1. A staged break-in
2. Their suspicious behaviour
- 3 Evidence contradicting their mutual alibi
4. A post murder manipulation of the murder scene by the removal of blood traces
5. The modality of the murder (multiple attackers) and the forensic evidence as to their presence at the crime scene and involvement.

The prosecution set about proving each of these using witnesses, lay and expert, together with phone records and computer analysis.

Giuliano Mignini and Manuela Comodi were to present the case for the prosecution. Comodi's speciality was forensic evidence.

In the Italian system the family of the victim can also be represented in court and the Kerchers had Francesco Maresca representing them. Carlo Pacelli, who had acted for Patrick Lumumba on his arrest, represented his client's interests with regard to the charge of calunnia against Knox. Both the Kerchers and Lumumba had civil claims for compensation.

I will take each of the above themes in turn. The presiding judge, Massei, wrote an extensive Motivations Report which details all the evidence, which I will refer to with his findings, but I will also present it in my own way and with my own additions and comments.

At this stage, though, it would be useful to introduce a layout of the inside of the girls' flat. This is in Appendix B.

CHAPTER 10

The Staged Break-in

Romanelli's bedroom window had been smashed and a rock lay inside her room beneath the window. The logical inference is that these two facts are connected. Also, since Meredith had arrived home at approximately 9 pm (we know this from the evidence of Sophie Purton, who had accompanied Meredith most of the way home after an evening shared with the other English girls), and it was November, it must have been dark when the window was broken, whether it was broken before or after her return.

There is a room below Romanelli's and the drop from her window ledge to the ground is 3.78 metres.



There is a grille on the window beneath but otherwise there are no other features to assist a climb up to Romanelli's window other than a nail in the wall between the two. This nail, it was observed by Massei, showed no sign of having been bent by any weight. It might, however, have been useful to hold onto by hand. It was not, as far as I am aware, swabbed for a sample for DNA analysis.

Had an intruder cast the rock from outside then two questions arise. From where? Had the shutters to be opened or not?

The first question seems to be readily answered by the fact that we can see in the bottom left of the picture the top of the retaining wall of the residents' parking area. It would be far easier, and safer, to cast the rock from there than from the base of the wall.

As to the second question we have to turn to Romanelli's court testimony. She had left the cottage on the 1st November, having been there with her boyfriend and Knox, to go to a party with him and stay with him overnight at his place.

Massei summarised her evidence as follows -

"Filomena Romanelli stated (cf. declarations at the hearing of February 7, 2009) that when she left the house in Via della Pergola 7 on the afternoon of November 1, 2007 she had closed the shutters of her window (p. 68); she had pulled them in (p. 95); "the wood was slightly swelled, so they rubbed against the windowsill" (p. 26), adding that "it was

an old window...the wood rubbed". And on the day she went away, she recalled "having closed them because I knew that I would be away for a couple of days" (p. 96). She later added, when noting what she had declared on December 3, 2007, that "I had pulled the shutters together, but I don't think I closed them tight" (p. 115)."

We then need to look at the window from the inside.

In this picture we can see how close is the outside parking area. The corner of the car park retaining wall is on just about a 90 degree angle with the window. So, no problem if the rock was cast from there.



A close up.



As we see, it was the pane of the left-hand (from inside) window that was broken, with the bottom half of the pane shattered. In addition to the outside slatted shutters there are inner shutters or blinds called scuri.

Note that just above the letter "R" there is a crush mark directly on the right edge, and just inside that edge, of a square-shaped recess on the scuri. On the flat horizontal bottom part of the same recess there a small fragment of glass embedded in the scuri. Assuming that the crush mark was caused by the rock then this suggests that the impact was from a trajectory that was on a different angle from that of a rock thrown from the car park. The positioning of the glass fragment seems irrelevant as this could have resulted from any

trajectory. I will expand on both these observations a little later.

On the right hand window there is a vertical rotating rod with a lever, with a double hinge, bracketed to the middle of it, so that when that window is closed and the lever is swung to the left, it rotates the rod so that hooks at each end of the rod engage with slots in the frame to hold the window secure and in place. The left hand window can then be shut and the lever, which also swings up and down, can be slid into a clip on the left hand window to secure that one as well. The same action would also secure the left

hand scuri or alternatively the scuri could be left unlatched and open so as to let light into the room. As far as the right hand window is concerned there is a separate mechanism for it's scuri. The condition of that mechanism in fact looks pretty awful and it seems that the right hand scuri was pretty much permanently stuck to it's window.

Having pulled the shutters in as far as they would go Romanelli then says that she closed both the windows, with the scuri up against the back of each, but was not sure that she had slipped the lever fully over the clip on the left hand window. In any event to attempt that, the right hand window would have to be secured. So it may be that not just the left side scuri, but the window to which it was hinged was not secured. Indeed, she said, she may have left the lever resting on top of the clip, as it was somewhat difficult to force it in with the scuri also in place.

She also mentioned that the window frames were old and did not shut tight without applying some force.

On the basis of the above information Massei inferred that with the shutters shut the first step for an intruder would have to be to access the shutters to open them and that would not be an easy operation as it would involve climbing onto the grille on the lower window and then prising the shutters off the ledge to which they were likely to some extent jammed. There was no implement to hand at the scene which the intruder might have used.

There is a theory that the shutters could have been accessed by standing on a concrete flower holder in the porch (seen far right in the picture above) but this seems frankly ludicrous, not to mention more dangerous. Anybody attempting this would have nothing to hold on to in order to prevent himself from overbalancing.

Having succeeded in the first task, and leaving the shutters wide open, he would then have to retreat to the parking lot and, having found the rock to throw, cast it at the window. However I would add that he could not have failed to notice by then that the windows were backed by the scuri. Even though it was dark the scuri are of a light colour and would easily be noticed. Furthermore, he could not have known, as Massei observed, whether or not the scuri were latched and had they been so then breaking the glass would have achieved nothing but the loud noise that would have made. Unless the intruder was blessed with second sight the odds against any entry at that point, and even before, would have looked formidable, and surely would have deterred him.

However, assuming he pressed on, he then had to break the glass, scale the wall and access the bedroom. I have already mentioned what looks like an impact with the scuri as there was a crush mark on the scuri. However that mark on the scuri would confirm that it was in position behind the glass and not left open by Romanelli. Nevertheless it is possible, given what I have mentioned, that the impact of the rock would force the left hand window open. That said, I am surprised that there is no other damage that I can see to the scuri i.e dents or chipped

paint, which is what I would expect to see, from a rock weighing 4 kilos tossed full on at the window from several feet away. In fact the scuri looks remarkably pristine but for the crush mark. This, and that paint was crushed into a ball in the dent (see below), establishes that the crush mark was not a glancing blow, but a head-on crush. Hence on a different trajectory from a rock thrown from the car park.

It is odd that the rock somehow ended up in a bag under the leg of a chair to the side of the window. To accomplish that, in my opinion, had it been thrown from outside, it would certainly have had to impact the scuri and further, given the weight of the rock at 4 kilos, there must have been an element of resistance from the scuri to have caused that deflection.



The Crush Mark and fragment of glass

There was no broken glass on the ground outside the window nor any scuff marks on the wall, as might have been expected given the condition of the ground below and that it had been raining the day before, and that the intruder had to walk over that ground on at least three occasions to complete the double operation. Nor was there any dirt or prints on the windowsill or on the floor of Romanelli's bedroom.

Massei also observed -

"....the pieces of glass from the broken pane were distributed in a homogeneous manner on the inside and outside parts of the windowsill, without any displacement being noticed or any piece of glass being found on the ground beneath. This circumstance, also confirmed by the [defence] consultant Pasquali, tends to exclude the possibility that the rock was thrown from outside.....the climber, in then leaning his hands and then feet or knees on the windowsill, would have caused at least some pieces of broken glass to fall, or at least would have been obliged to shift some pieces of glass in order to have avoided being wounded by them."

Indeed the lie of the glass, as seen in the photograph below, suggests that the outside shutters were closed when the pane of glass was broken.



Massei's theorised that having staged the inside of the room to suggest a burglary, it was likely Sollecito who had then opened the shutters, gone outside to find the rock and who had then (perhaps from outside) cast it at the window. Perhaps the crush mark and the embedded glass on the scuri accords with throwing the rock from outside? As to the lie of the glass on the windowsill it has been suggested that this was due to the intruder closing the shutters behind him after he had entered. However, closing the shutters afterwards might just as well have been done by one or other of the stagers, to maintain privacy for themselves in the aftermath of the breakage.

We should, though, bear in mind that the shutters were found partially open the next day. Had they been closed, for either of the foregoing reasons, and thus accounting for the lie of the glass, then obviously they had been opened again. Whichever scenario applies, if either does, this would have to be considered as confirmation of the staging of a break in, and it is difficult to see why Guede (to be discussed in a moment) would attend to this.

Throwing the rock against the window from the inside would not accord with all of these facts unless, with the shutters closed, and the window with its scuri braced against the clothes cabinet, or possibly held firmly against the window by hand, or more likely clipped into place, the rock was then tossed, thrust or swung against the glass, and the window then closed before then being opened again. Given the weight and size of the rock it would not require much by way of velocity to break the glass. In any event Massei was to conclude that the breakage had taken place inside the cottage.

No fingerprint evidence - there is no fingerprint or DNA evidence against Guede anywhere in the room - despite the likelihood that shards would have surely remained in the window frame mouldings (and these seem mostly to be absent) which would then have to be removed by hand to make the aperture wider. The broken glass removed could be repositioned as appropriate. That could be considered as much part of a staging as a genuine break-in.

It might also be recalled, at this point, that Knox had pranked a fellow student with a staged burglary before she left for Italy, although that had not involved breaking a window.

It would take an athletic and strong young man to scale the wall and perch on Romanelli's window ledge, and furthermore in full view of anyone on the road running by the side of the cottage or on the open top storey of the St Antonio car park on the other side of the road.



The above picture is taken from the multi storey car park. On the other side of the car park is a high bank of tenements with windows overlooking it and the cottage.

Delfo Berretti, a tall and athletic looking young lawyer in the Sollecito defence team, and in the company of police and photographers, attempted to do just that. He certainly managed to get his hands onto the window ledge but he left it at that. During this demonstration the shutters were left closed. He did not, it seems, attempt a lift or to prise open the shutters, which surely should have been the object of the exercise.

An English Channel 5 TV documentary also aired much later showing a young man scale the wall and perch on the window ledge. He did this relatively easily. However he was not able to do this without holding on to a grille which had been installed over the window, as a further security feature, since the murder. The young man chosen was also an experienced free rock climber, rather re-inforcing the point about the difficulty.

In my submission the operation would be difficult and hazardous, but not impossible, and it would certainly have assisted a burglar if the window with the broken pane had burst open, otherwise entry would have become even more difficult and dangerous. It is just somewhat improbable particularly given that the intruder we are talking about is Rudy Guede, about whose requisite experience and skill for the task we can only speculate.

Guede was familiar with the cottage as he was friends with one of the boys in the lower flat (they played basketball together) and had visited their flat on at least a couple of occasions. On one of them he had also met Knox and Meredith as both girls had joined them. He would therefore be aware that there was a far easier way into the girls' flat, one that afforded him some seclusion from prying eyes as well.

There is a handy grille and/or window which anyone could use to give easy access to

the girls' terrace and from there to either their kitchen window to the left or their door to the terrace. There is also an outbuilding and shrubbery which helps block the view of the cottage from the road.



There were in fact two break -ins in 2008 and on both occasions this was the intruders choice of entry.

We should not, though, forget the propensity evidence concerning Guede and his link via the Milan nursery incident to the break-in at the law office in Perugia. Was not a rock used to smash the glass there as well as at the cottage? If Guede was involved in that break-in then could the rock be evidence of mode of operation? The trouble with this, apart from the fact that it is an MOD for a lot of burglaries, is that it is built on a hypothesis that Guede was involved in the break-in at the law office but even if true then it makes it even more likely that he would have gone for accessing the girls' flat via the rear of the cottage because the mode of operation in each case is (1) choose the secluded back of the target building and (2) have an easy climb on to a steady platform, such as a balcony, from which to effect the break-in. If Guede was a practiced burglar by this time, as the defence would have it, then it would be part and parcel of his business to take the easiest, quickest, and more secluded route, to lessen the chance of being noticed and caught.

Furthermore, Guede's choice of the more difficult means of access can not be put down to mere oversight. The logical scenario is that he would have had to pass the rear of the cottage on at least three occasions in order to enter via Romanelli's window. The corner of the cottage in which Romanelli's room, and that below, is situate, is sited in what might be called a trough, at a sudden and considerably lower level from ground access to the front door and from the parking area, and accordingly the obvious choice of approach is round the rear of the cottage. He would have had to do this three times : to first check (if he had not already done so) that there was no-one downstairs, or for that matter upstairs (no lights on), and to get close enough to Romanelli's window to open the shutters, then to return to the parking lot and cast the rock at the window, and then to return and scale the wall.

Throwing the rock from the base of the wall would not be a sensible or feasible option, for fairly obvious reasons.

Why would he be so dim as to do this when in doing so he could see for himself that

there was a better alternative, and of which he must have already been aware anyway? It would probably even have been easier for him to break into the lower flat.

However it is the evidence as to the state of Romanelli's bedroom that is even more persuasive. In this respect it is the evidence of those who first came upon the scene which is important and not the photographs, which whilst useful, were taken later by the scene of crime photographers, after Romanelli, in an agitated state, had been handling, moving and tidying things up a bit in her room whilst checking to see what, if anything had been stolen.

This is what she said -

"I entered my room and I saw the broken window and everything in chaos, the clothing, a big mess, everything was all dishevelled, everything ... Everything scattered, there was the open closet, a mess on the desk, everything out of place. I looked around quickly - in addition to the fright of having to immediately check to see if my valuables were there. So the first thing was to check that all the jewelry was there, and it was, so I said to Paola 'at least they didn't take this', then I looked for the computer and I saw it from below....Picking up the computer I noticed that in lifting the computer I lifted some glass, in the sense that the glass [fragments] were on top of things, there was a mess and so right then and there I didn't notice it right away. It was a mess of glass, clothing, glass ...Yes they were underneath but they were also on top. So yes, they were on top. I remember very well [the glass] on top of the computer bag because I was careful as I pulled it away because it was all covered with glass and in fact right then and there I didn't notice it right away, but then also talking with Marco we mentioned this, saying 'the burglar was an idiot, in addition to the fact that he did not take anything, the pieces of glass are all on top of the things', he is an odd burglar"

There are some things to note here.

She says that she noticed her computer from below. What does she mean? Elsewhere in her testimony she said that when she left the cottage the day before she had left her computer standing up in its case on the floor, near to the bottom of her bed and to what became the pile of clothes next to the closet, but now it was either on its side, or upside down (which is not entirely clear from her testimony) but in any event she was clear that it had been moved or had been knocked over (changed position so that she could see it from below). It was not positioned as she had left it and the rock, if cast from outside, cannot account for this, given the position in which it was found. Furthermore, there was glass on top of the computer case.

The odd thing about the glass was also noticed by Battistelli -

"...it was a little topsy-turvy, in the sense that it was mostly ... There was clothing out, thrown around a bit, and scattered pieces of glass. Glass pieces were on the floor and the curious thing, which stood out for me, is that these glass pieces were on top of the clothing. I noticed this to the point where I started playing with the notion, in the sense

that I immediately said that for me this was a simulation of what I was seeing, basically this...The things that I noticed, the camera, the computer, if they played into the theory of a hypothetical burglary, I saw that inside the house practically everything was there. There was a laptop, a digital camera, things that can be easily taken, so..."

Marzi, Battistelli's colleague, who stood at the doorway, looking in, added -

"he [Battistelli] ... he immediately raised doubt as to whether this was real. If this entry, this damage, because he said 'but here something is not right, the glass is on top...' he referred to the fact that the glass was on the clothing. And to the fact that entering through that type of window to the eye, in this way was a little difficult".

Romanelli's boyfriend made much the same comment.

The point about fragments of glass on top of the items strewn around and/or knocked over on the floor, is that if an intruder had to break the glass first to access the room before ransacking it, and knocking things over, then one would expect the fragments of glass to be under rather than on top of things.

Furthermore, there did not appear to be any evidence of a genuine search for articles of value or of any such items being set aside for removal.

Massei -

"....one can perceive an activity which appears to have been performed with the goal of creating a situation of obvious disorder in Romanelli's room, but does not appear to be the result of actual ransacking, true searching for the kind of valuable objects that might tempt a burglar. The drawers of the little dresser next to the bed were not even opened (photo 51 and declarations of Battistelli who noted that Romanelli was the one who opened the drawers, having found them closed and with no sign of having been rifled: see p. 66 of Battistelli's declarations, hearing of Feb. 6, 2009). The objects on the shelves in photo 52 appear not to have been touched at all; piles of clothes seem to have been thrown down from the closet (photo 54) but it does not seem that there was any serious search in the closet, in which some clothes and some boxes remained in place without showing any signs of an actual search for valuable items that might have been there (photo 54). It does not appear that the boxes on the table were opened (photo 65) in a search for valuable items. And indeed, no valuable item (cf. declarations of Romanelli) was taken, or even set aside to be taken."

A search for valuable objects would be expected from a burglar who had effected the break-in prior to Meredith's arrival home. Had the break-in occurred after her arrival home then one would expect that Meredith, on hearing the breaking glass, would have had more than enough opportunity to call the police or otherwise take action to deter an intruder effecting such a difficult entry.

If Guede had broken in just before Meredith's arrival, and had already closed the shutters so that she would not have noticed anything untoward from the outside, why

would he not escape upon her entry by simply dropping to the ground from the window? Below was soft earth and grass and there were escape routes downhill. That said, at what point did he use the toilet to defecate, indicating that he was there for a time? That rather dispels the foregoing scenario, if not that Guede, caught unawares, would then have had a confrontation with Meredith. However it is not that he was trapped. The toilet was not flushed and he could have chosen his moment to slip out of the front door. Moreover burglars, particularly sole operators, have a tendency not to hang about in residential properties and, as in this case, as Guede knew, occupied by four students, any one of whom, for all he knew, including any of the lads from downstairs for that matter, and to most of whom Guede was an acquaintance, could have turned up at any time, with or without friends in tow. Furthermore would he extend his time there by sexually assaulting and killing an occupant?

The better informed as to the occupants' likely whereabouts would surely be Knox.

In all a profitable return for Guede was hardly guaranteed at the outset, nor would the likely modest return seem commensurate with the quite unnecessary degree of difficulty and risk involved with the chosen point of entry.

In the event, neither the trial judge, Massei, nor the judge on the second appeal, Nencini, had any reservations that the break-in was a simulation. Nor did the Supreme Court 5th Chambers criticise that finding. Only the judge, in the first appeal, judge Hellmann, demurred. In the opinion of his court there was no evidence that the break-in had not been a genuine break-in (see his reasoning – Chapter 25 page 220) and, in the alternative, if it was a simulation, there was no reason to attribute the simulation, with any degree of certainty, to either the defendants Knox or Sollecito.

This brings us to who would be responsible for the simulation.

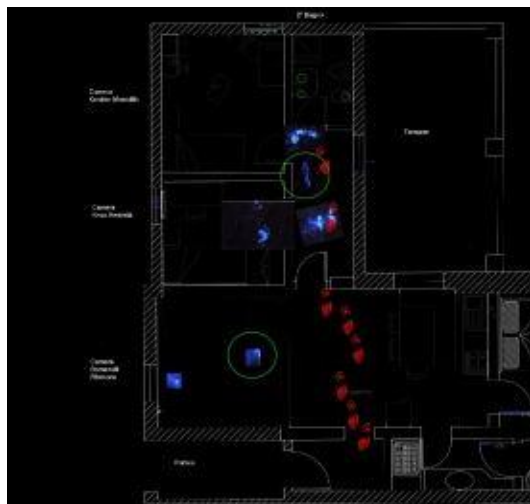
The logical inference of a crime scene being staged is that the stager is endeavouring to deflect suspicion from himself by diverting the investigators' suspicions to another, or others, known or, preferably, unknown. The motive is to gain impunity for his own involvement in the crime. Since, here, the staging concerns a break-in, the intention behind it has to be to make the investigators think that the cottage was accessed by someone who did not otherwise have the means and the legitimate right to be there. In other words someone who did not have a key to the cottage.

There is, however, another possibility. Could Guede have been the stager? Had he been invited in by Meredith, committed the murder and then staged a burglary?

This does seem a most unlikely probability. First of all why would he think that there was any need to deflect suspicion from himself? He had, at that time, no criminal record. Granted, he had a tenuous link to the break-in at the law office but there is a considerable difference between burglary and murder, and simulating a burglary could only draw attention to himself, and for a far more serious offence, even if the link was tenuous. Next, of course, is that he left a good deal of evidence as to his presence at the

crime scene (see Chapter 8) and therefore dallying at the scene to simulate a burglary, but ignoring that evidence, makes no sense at all.

There is no forensic evidence of his presence in Romanelli's room, as there is for Knox (See later). Furthermore when did he attend to the staging? Was this before or after we are supposed to believe (See Chapter 14) that he left the diluted bloody imprint of his bare foot on the mat in the small bathroom? It would surely be afterwards. We are supposed to hypothesize that he committed the murder by himself, lost a shoe in the struggle and, having thereby got blood on his right foot, went to the bathroom to wash it. Did he then walk into Romanelli's room, to effect the staging, with one bare foot, but without leaving footprints to be detected by luminol in her room or in the corridor on the way there, or possibly did he return to Meredith's room from the bathroom, where he got blood on the shoe he was wearing? If so, what did he do then? The forensic evidence is that the bloody shoeprints (not footprints) , and (again see Chapter 14) without deviation to the small bathroom, are pointing down the corridor. The just visible traces of these shoe prints disappear well before Romanelli's room but (See illustration taken from the Rinaldi/Boemia report below) luminol applied to the corridor and kitchen/living room show Guede's left shoe prints (in red) going straight to the front door, without deviation to Romanelli's room. Furthermore, Romanelli's floor was sprayed with luminol and no shoe or foot prints were revealed.



But in any event why stage a break in but leave behind so much incriminating evidence of himself?

If Guede was not the simulator then, as I have said, the logical inference is that the simulation was carried out by, or on behalf of, someone with a key and who might otherwise fall under suspicion as having been involved.

By way of corroboration there is also evidence of other staging in the case, consequent to and connected to the staging of a break in. See Chapter 14.

There is much evidence in the case but for me the evidence, and the logical inferences to be drawn from it, pertaining to a staging of a break-in, is one of the compelling aspects of the prosecution's case, but as we shall see this was largely ignored, or disingenuously evaluated, by the acquitting judges.

CHAPTER 11

The Suspicious Behaviour and Evidence contradicting the Mutual Alibi

It is convenient to take these two themes together.

Suspicious behaviour is not proof of guilt but it is an addition to the mix and, if there is enough of it, it can be weighty. I have already mentioned in Chapter 6 reservations as to the motive for Knox's E-mail in view of certain things in it that did not make much sense.

Now we can consider what else arises from the testimony of witnesses, from what Knox and Sollecito had to say for themselves in their own words, and from the evidence concerning the phone records and computer analyses.

I have included the Court Exhibit log of calls made and received on the mobile phones for Knox and Sollecito, for the days the 1st and 2nd November 2007, in Appendix C. I did consider whether I should have done this given the telephone numbers referred to. However it is now many years since the murder and I think it very unlikely that these numbers have not since been changed. In addition, Knox herself has had for some time, and may still have, a similar log for her mobile, covering the period from the beginning of October until a few days after Meredith's death, on her website.

The relevant behaviour to be covered is from the day before the discovery of the murder up to the time of their arrest and we will discuss how this reflects upon their mutual alibi. As to that alibi we have in evidence Knox's Memorial but not Sollecito's statement to the police.

We also have the testimony of Antonio Curatolo and Marco Quintavalle.

Curatolo was a tramp who says that he saw Knox and Sollecito in the square at Piazza Grimana after 9.30 pm on the 1st November, having, as it appeared to him, an argument. They were at the end of the square from which the gates leading to the cottage could be seen.

Quintavalle was the owner of a store who said that he saw Knox there at 7.45 am on the morning of the 2nd November.

Both were amongst witnesses unearthed by an enterprising local reporter, Antioco Fois, who stole a march on the police's own investigation.

I will look more closely at their evidence in the next Chapter.

Knox and Sollecito would certainly have an alibi up until 8.40 pm on the 1st November, and later as it happens. That is because a witness, Jovana Popovic, knocked on Sollecito's door at that time and spoke to Knox.

We need, however, to backtrack a bit. Popovic had knocked at Sollecito's door between 5.30 and 5.45 pm. She wanted to ask Sollecito for a favour. Would he be kind enough to drive her to the train station in his Audi to collect some luggage that would arrive for her there later that night? Knox answered the door and invited her in and she spoke to Sollecito. He agreed he would do that.

According to the computer evidence (see later) Sollecito's computer then started to play a film, Amelie, at 6.27 pm, which he says he and Knox watched. It would appear (See Chapter 30) that Knox then went out (whether with or without Sollecito is not clear) and that before returning to Sollecito's flat, she (at 8.18 pm) received the text from Lumumba saying that she did not have to go to work that evening. She replied by text at 8.35 - "Sure. See you later. Have a good evening".

Sollecito's varying versions, be it in his statements to the police, was (in the first version) that after leaving the cottage, and after wandering around town, he and Knox returned to his flat between 8.30 and 9 pm to eat, watch the movie and smoke some pot and that they had both stayed there until the next morning. That version then changed, of course, during his interview with the police on the 5th November, when he told them that before he got home Knox had left him to go and see friends at Le Chic and did not return until 1 am.

Popovic returned to Sollecito's flat at 8.40 because she had been told that the luggage was not in fact being sent that evening. Knox, whom she described as being in a very good mood, told her that she would pass the message to Raffaele.

From this point on, of course, both Knox and Sollecito had an evening free to themselves.

At 8.42 pm Sollecito received a call from his father on his mobile. That this call was within 7 minutes of Knox's text to Lumumba, and that there was no further activity on their mobiles until the following morning, is what had sparked the interest of the police and had resulted in Sollecito being called to the Questura on the 5th.

As mentioned Curatolo claimed to have first seen Knox and Sollecito in Piazza Grimana shortly after 9.30 pm. However that was contradicted by Knox's trial testimony as to when she and Sollecito had eaten a meal at his flat.

From Knox's trial testimony on the 12th June 2009 -

GCM: Can you say what time this was?

AK: umm, around, umm, we ate around 9.30 or 10, and then after we had eaten, and he was washing the dishes, well, as I said, I don't look at the clock much, but it was around 10. And...he...umm...well, he was washing the dishes and, umm, the water was coming out and he was very bummed, displeased, he told me he had just had that thing repaired. He was annoyed that it had broken again. So...umm

LG: Yes, so you talked a bit. Then what did you do?

AK: Then we smoked a joint together.....we made love.....then we fell asleep.

The next day, on the 13th, on cross-examination by Mignini, Knox testified -

GM: So, I wanted to know something else. At what time did the water leak?

AK: After dinner, I don't know what time it was.

GM: Towards 21, 21.30?

AK: 21, that's 9? No, it was much later than that.

GM: A bit later? How much?

AK: We had dinner around.....10.30, so that must have happened a bit later than that. Maybe around 11 [slow voice as if thinking it out]

The alibi also now covers the prosecution's first indication of the likely time of death at around 11 pm, but which was then moved to around 11.30 pm during the prosecution summing up at the trial.

Unfortunately Sollecito's father himself torpedoed this dodge by telling the court that when he phoned his son at 8.42 pm Sollecito had told him that there had been a water leak while he was washing the dishes. Taking into account Knox's testimony (and her e-mail) that they had eaten before the dish washing, this places both the meal and the dish washing before that call.

Sollecito told the police that at about 11 pm he had received a call from his father on his land line. Not only is that not confirmed by his father but there is no log of such a call. There were no landline calls at all for the relevant period of an alibi.

There is no log of a call to his mobile at that time either though his father had sent a text message then but which Sollecito did not receive until 6. 03 am the following morning. We know that he had received it at that time because that is the time at which it is logged in the phone records. Sollecito had just turned his phone on and clearly the phone had been off when the text message was sent.

There is no record of any phone activity for either of them from after the 8.42 pm call until, in Sollecito's case, receipt of that text message at 6.03 am, and in Knox's case her call to Meredith's English phone at 12.07 pm the next day.

A word about this here because, as mentioned, Knox released her phone records on her web site. In her case it has to be said that this is not so unusual. Up until the 30th October there is no regular pattern of late or early morning phone activity.

Sollecito is different as his father was in the habit of calling at all hours just to find out what his son was doing. This is backed up by his phone records.

In the case of Knox she said that her phone had been switched off so as not to be disturbed and to save the battery.

We can now consider Sollecito's computer, a "MacBook - PRO" - model Apple Laptop. This had been seized by the police on the 6th November and was then handed over to the Postal Police on the 13th November. They cloned the hard disk which is standard practice.

Massei -

"Of the 124 files (or "reports") with "last accessed" in the referenced time period (from 18:00 on 1/11/07 to 08:00 on 2/11/07) only two were "human interaction"; the remaining 122 reports were actions carried out automatically by the Mac OS X operating system installed on the Apple MacBook PRO.

In particular the evidenced human interaction occurred at :

21:10:32 [9.10 pm] on the 1/11/07

and at

05:32:09 [5.32 am] on the 2/11/07

Furthermore at 18:27:15 [6.27 pm] on the 1/11/07, there was human interaction via the "VLC" application, software used to play a multimedia file for a film "Il Favolso Mondo Di Amelie.avi", already downloaded onto Sollecito's computer laptop via P2P (peer to peer) some days earlier."

There is thus no record of any human interaction with Sollecito's computer from 9.10 pm on the 1st November until 5.32 am the next morning, when music was played on the computer for half an hour.

There was computer evidence for the defence at the trial and further attempts were made to try and force an alibi from his computer later on appeal. I think it would be appropriate, and convenient, to include a discussion of all this here.

At first Sollecito had maintained that he had been sending e-mails and surfing the web but that account was quickly demolished. However, a defence expert called Antonio D'Ambrosio did give very clear testimony at the trial. He was generous enough to acknowledge that the investigations carried out by the postal police were accurate, and well interpreted, but he said he had been able to uncover a bit more information about the computer because he was not limited by forensic protocols (and could therefore reveal information not visible to the Encase software used by the police) when he examined a copy of the cloned disk. This information was an interaction with the Apple website at 00.58 on the 2/11/07 which he did believe was a human interaction.

Unfortunately, whether there was or was not a human interaction with the computer at that time, does not provide Sollecito with an alibi.

D'Ambrosio also said that he noticed an interaction at 9.26 pm on the 1/11/07 but was unable to be certain whether a human interaction had occurred or whether a pre-requested download of a film, Naruto, had commenced.

The first defence expert report was in fact one prepared by Angelucci, in March 2008, at the request of Knox's lawyer, Dalla Vedova. It does not appear to have been submitted in evidence but the salient point from this was that the data from both Sollecito's Asus computer (he said he had another which was broken) and Meredith's computer, was recovered.

Then there was the D'Ambrosio report followed at the first appeal by another report from Professor Alfredo Milani. In his book Sollecito mentions Milani as one of his professors at the college at which he was studying computer science. Milani credits D'Ambrosio with a lot of the content but his report was gratuitously offensive as regards the work of the postal police and he said that they had made "grave methodological errors" which had resulted in the concealment of information and which led him to conclude that it could not be excluded that there had been an overwriting of the time data was stored.

Firstly he spends much time outlining the Mac OS, in every release, and tells us that because the postal police used an "analogous but not identical" MacBook a tiny difference in the release number in it's operating system renders their analysis unreliable. This is impossible to accept for two reasons - firstly, that the OS employed resided on the cloned disk from Sollecito's own MacBook, but more importantly the precise OS release would not affect in any way the reading of the log files.

Secondly, he unwisely reminds us of the log files. These files are regularly archived, in compressed form, and the archive is not over written. The archive is not very easy for

an ordinary user to search but it is certainly not beyond the capabilities of “an expert computer consultant”.

He also unwisely provides a play list of the music which Sollecito had been playing when he opened his iTunes app: at 5.32 am in the morning.

<u>Song</u>	<u>Start Time according to Encase</u>	<u>End Time according to iTunes</u>
10 Stealing Fat. mp3	5:44:45	Not available
Breed.mp3	5:46:11	05:49:15
Come as you are.mpg	5:49:12	05:52:54
In bloom.mpg	5:52:51	05:57:09
Lithium.mpg	5:57:06	06:01:26
32 32 Polly.mp3	6:06:24	05:44:48
Smells like teen spirit.mp3	6:06:24	06:06:27
It's my life.mp3	6:06:39	Not available
32 Prelude.mp3	6:06:41	Not available
05 Songbird.mp3	6:06:42	06:08:52
06 Little by Little.mp3	6:11:51	06:13:45
Don't look back in anger.mp3	6:13:42	06:18:09
07 Sleeping Awake.mp3	6:18:07	Skipped 06:18:07
Jan Johnston Flesh .mp3	6:18:07	Not available.

The Report was in evidence but it is unlikely that the Court had before it an analysis of the music. The music app featured, amongst others, songs by the Seattle based punk rock band Nirvana, but more interestingly the app opens with the head banging introductory music (entitled “Stealing Fat”) to “The Fight Club” cult movie: with it’s own rendition of the iconic stabbing sound from the Hitchcock movie “Psycho” and introducing a background wailing sound. An interesting choice of music at 5.32 am in the morning and within hours of Meredith’s brutal murder. There is clear evidence of manual interaction as some tracks are paused and then clicked through to the next.

One track on the app was not given any play time. This was “Polly” by Nirvana based on the true story of the abduction, torture and rape of a 14 year old girl. The culprit is still serving time in jail.

Knox and Sollecito claimed that neither woke until Knox rose at 10.30 am. Not only are the two of them trapped by a blatant lie but if one’s choice of music is a reflection of mood, or to facilitate a change of mood, then their choice of music (and some of the lyrics, such as “I killed you, I’m not gonna crack”) is disturbing.

In the event the defence reports seem to have done little to impress the appeal judges. Perhaps Sollecito knew that they never would. In his prison diary on the 11th November 2007 he wrote -

“I have been very anxious and nervous in the last few days, but to see my father who tells me “do not worry, we will get you out”, makes me feel better. My real concerns are now two: the first one derives from the fact that if that night Amanda remained with me all night long, we could have (and this is a very remote possibility) made love all evening and night only stopping to eat.... It would be a real problem because there would be no connections from my computer to servers in those hours.”

Knox falsely claims in her book that having had her shower at the cottage she called her mother on her way back to Sollecito’s apartment (a 5 minute journey) as she was beginning to have concerns as to what she had seen at the cottage. She writes that her mother tells her to raise her concerns with Raffaele and the other flatmates and Knox says that she then immediately called Filomena Romanelli. Romanelli tells her to get hold of Meredith by phone which she tries to do by calling Meredith’s English phone first, then her Italian one.

- (a) How does this correlate to the contents of her e-mail of the 4th Nov?
- (b) How does this correlate to Knox’s phone records?

(a) There is no mention of a call to her mother at all in the e-mail. This from her e-mail -

“....and I returned to Raffaele’s place. After we had used the mop to clean up the kitchen I told Raffaele about what I had seen in the house over breakfast. The strange blood in the bathroom, the door wide open, the shit in the toilet. He suggested I call one of my roommates, so I called Filomena.....

Filomena seemed really worried so I told her I’d call Meredith and then call her back. I called both of Meredith’s phones the English one first and last and the Italian one in between. The first time I called the English phone it rang and then sounded as if there was disturbance, but no one answered. I then called the Italian phone and it just kept ringing, no answer. I called the English phone again and this time an English voice told me the phone was out of service.”

(b) the phone records (See Appendix C) are as follows -

02/11/2007

Ist call @ 12.07.12 (to Meredith’s English phone) - 16 seconds

- 2nd call @ 12.08.44 (to Romanelli) - 68 seconds
- 3rd call @ 12.11.02 (to Meredith's Italian phone) - 3 seconds
- 4th call @ 12.11.54 (to Meredith's English phone) - 4 seconds
- (The 5th, 6th and 7th calls are by Romanelli)
- 8th call @ 12.47.23 (first call to her mother) - 88 seconds

© the discrepancies are as follows -

1. The accounts in the book and the e-mail differ materially but at least the phone records enable us to establish the facts. The first call to her mother was not just after leaving the cottage but 40 minutes after the call to Romanelli, and the call to Romanelli had been placed (on the basis of the e-mail) after she had returned to Raffaele's place and after they had used the mop and had breakfast. If we add on 20 minutes for that activity then we can say that she called her mother at least an hour after she had left the cottage, in fact after she and Sollecito had returned to it. See end 5 below.
2. The first call to Meredith's English phone (and it rang for an appreciable time - 16 seconds) was placed before the call to Romanelli, and not after as Knox would have it in her e-mail and in her book. A minute before, but Knox did not mention this to Romanelli, as confirmed by the e-mail and Romanelli's testimony.
3. The call to the Italian phone did not, as Knox claims, keep ringing (See 5 below). The connection was for 3 seconds and this was followed by a connection to the English phone for 4 seconds.
4. The English phone was not switched off, nor (as Knox has claimed -see email) out of service. Mrs Lana's daughter had found it. She said that she would not have done so but for it ringing (the 12.07 call for 16 seconds?). She picked it up and took it into the house where it rang again (the 12.11 call - 4 seconds?). A name appeared on the screen as it rang : "Amanda".
5. The 3 and 4 second calls are highly suspicious. The Italian phone was already in the possession of the postal police. Because of it's discovery before the English phone the postal police had been dispatched to the cottage at about midday. According to Massei it's answering service was activated, accounting for the log. Clearly Knox did not even bother to leave a message for Meredith as it would take longer than 3 seconds just to listen to the answering service. This is not the behaviour of someone genuinely concerned about another. By contrast Romanelli had called Knox three times, spending no less than half a minute on each call, and on the last one (at 12.35) being informed by Knox that her room had been burgled and ransacked. That establishes that Knox was (back) at the cottage, at least 12 minutes before the 12.47 call to her mother.

Observations -

In her e-mail, and repeated in her trial testimony, Knox says that she woke up around 10.30 am, grabbed a few things and walked the 5 minutes back to the cottage. If the first call to her mother (at 12.47) was about an hour after she left the cottage (see before) then she left the cottage at about 11.47 am, which means that she spent over an hour there. Either that or she spent much more than 20 minutes at Raffaele's place before calling Romanelli. One might think that the latter would be more likely as it is difficult to conceive that she spent over an hour at the cottage just showering and blow drying her hair, is it not? She did not (Knox's testimony) have the heating on (other than, presumably, in the shower unit) when she was there. If that were the case then one has to wonder why she dallied, having a shower (and a quick shower according to her e-mail), without any concern for her flatmates, in an empty and cold cottage, the front door to which she says she had found open.

Either way there is a period of up to about an hour and a half between when she might have tried to contact Meredith (when at the cottage, by knocking on or trying her bedroom door if she believed she was there, or by calling her phone – no such activity is mentioned in her e-mail – and no log of a phone call) and her calling Romanelli just after the first call to Meredith, effectively to raise the alarm. It is difficult to believe that she would not have tried to contact her flatmate, one way or another, before leaving the cottage at about 11.47 am, especially given the “abnormal” things she had observed, and even if, initially, she thought Meredith might be asleep.

That we are right to be incredulous about this is borne out by the false claim in Knox's book. That false claim is significant and can only be because Knox is acutely aware that the phone records show that her story does not stack up.

Equally incredulous, of course, is her claim (See Chapter 6) that she did not know that Romanelli's window had been broken and her room trashed.

That the forgoing is incredible is even belatedly acknowledged by Sollecito's feeble but revealing attempt to distance himself from Knox in a CNN interview on the 28 Feb 2014. “Certainly I asked her questions” he said. “Why did you take a shower? – (Sollecito had his own shower unit) - Why did you spend so much time there?”

That she makes false claims, and highly improbable assertions, and has constantly stonewalled on and/or misplaced the 16 second call to Meredith's English phone is indicative of a guilty knowledge. Her guilty knowledge with respect to the 16 second call was that it was made to ascertain whether or not the phones had been located before she called Romanelli, and hence for her it was not (incredulous though this is without such explanation) a pertinent fact for her to bring up with Romanelli. More than that though she also sidestepped the specific question put to her by Romanelli –

Massei - “Amanda called Romanelli, to whom she started to detail what she had noticed in the house (without, however, telling her a single word about the unanswered call made to Meredith, despite the question expressly put to her by Romanelli)”.

As to the 12.47 call to her mother (4.47 am Seattle time and prior to the discovery of Meredith’s body) Knox not only did not mention that in her e-mail but in taped conversation with her mother and in her trial testimony she steadfastly declined to recall that it had occurred. Ostensibly the call would have been, of course, to report the break in. So what would be the problem with that? On the other hand, what was so important about it that her mother should know, and at that moment? Knox was aware of the time difference between Italy and Seattle, and that it would have been early in the morning in Seattle, as she acknowledged in her trial testimony. If Knox had a premonition then why not wait a little longer for resolution? Indeed, Edda’s puzzlement with her daughter was expressed on tape as follows –

A: Oh, I don’t remember this.

M: OK, you’d called me once telling me...

A: Honestly, maybe I was shocked.

M: Yes, but this happened before anything had really happened, besides the house...

A: I know that I was calling, but I remember that I was calling Filomena; I don’t remember having called anyone else, and so the whole thing of having called you... I don’t remember.

M: Mhmm... why? Do you think? Stress?

A: Maybe because so many things were happening at once

Knox clearly did not want, then or later, to discuss her motive for the call and what had transpired in conversation with her mother (and stepfather) before the discovery of Meredith’s body.

Not only was the timing of the 12.47 call inconvenient to her mother but I found it interesting to note from Knox’s phone records (covering 2nd Oct - 3rd November) that mother and daughter do not appear to have called or texted each other once by phone up until that 12.47 call. It would appear then that in so far as they remained in direct communication with each other for that period it must have been by e-mail or Skype. Indeed Knox has referred to such communication being via internet café. One can therefore imagine that her mother was very surprised to receive that call so early in the morning for her. It is also very difficult to accept that Knox could not recall a phone call she was not in the habit of making.

The explanation given by Knox to her mother as to why she could not remember the phone call – “Maybe because so many things were happening at once” only makes sense, in my submission, if the postal police had arrived or were just in the process of arriving at the Cottage, otherwise nothing much as yet, and as her mother had observed, was actually happening, certainly not so as to warrant a phone call to wake up her mother.

Until Knox published her book the only information that was available about the 12.47 call (apart from the phone log which showed that it lasted 88 seconds) came from her mother (in her trial testimony – see below) and her stepfather Chris Mellas. Mellas says that he interrupted the conversation between mother and daughter to tell Amanda to get out of the cottage. In her book Knox tells us (her memory now having returned) that he yelled at her but that she was “spooked” enough without that. But what had really happened to spook her? It was just a burglary after all even if Meredith’s whereabouts were as yet unresolved. None of her own possessions had been stolen. Furthermore Romanelli was on her way to take charge. The call she made to her mother after the discovery of the murder (@ 1.24 pm, the one she remembered) was perfectly understandable, the prior call, without further context, less so. Readers will already know where I am coming from, and may think I am pushing at bit hard here, but I believe that the call to her mother was both a comfort and a rehearsal call, not simply because there had been a burglary, but because she knew a dire set of events was about to unfold on Romanelli’s arrival at the cottage. Would her explanation about having been there earlier for a shower be credible? What of her lamp on the floor (See Chapter 14) behind the locked door? Would Romanelli and subsequently the police, detect anything suspicious? The fact that her mother and stepfather already had the jitters was not a good omen.

What may have “spooked” her was the knowledge that, by an oversight, her lamp had been left in Meredith’s room. Was this the reason why Knox and Sollecito had to be at the cottage for the discovery of the murder, rather than removing themselves from the scene by taking their pre-arranged trip to Gubbio? Did she have a plan to retrieve this and return it to her room, perhaps during the confusion caused by the discovery of Meredith’s body? Carrying that out successfully, with Sollecito’s assistance, would be more manageable without the presence of the police and if only Romanelli and her friends were there. Were the police to be there then no doubt order would be maintained and the incriminating presence of the lamp in the room where the murder took place would be preserved. That was to be avoided. Romanelli had yet to arrive but was now definitely on her way as a result of the 12.35 call. All the same time was running out, and having been urged by Romanelli to call the police straight away both Knox and Sollecito knew that any further delay in doing so would look suspicious.

Finally, Sollecito called the Carabinieri on 112 at 12.51, though I think it is probable that the postal police had unexpectedly arrived before then. In Chapter 13 I will argue that the likely time of arrival of the postal police was probably about 12.48-9. Indeed, that could have been why Knox brought her call to her mother to an end (e.g “Looks as if someone is coming. Gotta go now”). Would that be another reason why Knox would not want to remember the call, particularly during the taped conversation with her mother in prison? She would not want to prompt her mother to that recollection. That wouldn’t fit with the claim, as related to the postal police, that they had already called the Carabinieri.

For this hypothesis about the lamp to fly one would have to assume, of course, that she

was no longer in possession of Meredith's keys or at least had no time to retrieve them given the train of events set in motion.

What happened to those keys we are likely to never know but clearly no perpetrator would want these to be discovered in their possession. On the face of it the keys could have been taken by Guede, but the staged burglary and (as I argue in Chapter 14) a post murder manipulation of the crime scene, make that improbable.

Very probably the keys were tossed away into heavy undergrowth afterwards, or disposed of down some drain and then, some time later, Knox had the sudden realisation that this left her and Sollecito with a problem. She could not simply retrieve the lamp and return it to her room without breaking down Meredith's door.

Actually that could have been done, and it would have fitted with a burglary and a violent assault on Meredith, though here the intelligent observer would have to assume from the circumstances, and no doubt Knox and Sollecito would have pondered on this, that Meredith had surprisingly been unable to thwart the lone intruder through Romanelli's window, and having failed in that task would then have locked herself in to her room with her phones still with her, and would have undoubtedly called the emergency number for the police while all this, and the breaking down of her door by the intruder, was going on. Neither would a broken door be something that could have gone unnoticed when taking a shower just a few feet away from it.

In her e-mail Knox mentions that Sollecito had wanted to break down the door, and had tried but failed. Or perhaps they had second thoughts about doing so, as it did not fit with the overall plan, which was to take a backseat during the discovery of the murder, but take advantage of the chaos and horror immediately following it and before the authorities were involved.

The testimony of Edda Mellas was as follows –

“Yes, in the first call she said that she knew that it was really early in the morning but she had called because she felt that someone had been in the house. She had spent the night at Raffaele's and she had returned to take a shower at her house, and the main door was open. That had seemed strange to her, but the door had a strange lock and sometimes the door didn't close properly, and when she entered the house everything seemed to be in place. Then she went to take the shower, and when she came out of the shower she noticed that there was a bit of blood but she thought that perhaps someone was having their period and had not cleaned up properly after themselves. She then went to her room and dressed and then went into the other bathroom to blow dry her hair and realized that someone had not flushed the toilet., and she thought it was strange because usually the girls flushed. Then she had to go to meet Raffaele, and she told him of these strange things in the house. Then she tried to call one of the others who lived with them to find out something,, and had the number of another Italian roommate that was in the town, the others were there no longer and she tried to call

Meredith several times but there was no response. They returned to the house, and she showed Raffaele what she had found and they realized that there was a broken window. Then at this point they began to knock on Meredith's door trying to wake her up and when there was no answer they tried to enter her room."

This is a lot of information to cram in to an 88 second phone call when surely Knox's mother must have been feeling sleepy, confused, concerned, and with questions of her own. At what point did Chris interrupt and yell at her to get out of the house? Edda's testimony is very much a reprise and summary of Knox's e-mail. How could Knox not have remembered such a detail packed conversation, a prelude to her e-mail, and triggered by, on the face of it, a burglary?

Knox's phone records also correct a previous misapprehension of mine. I had regarded it as rather unlikely that Knox would have tried to contact Meredith first on her English phone rather than the Italian phone which she knew Meredith had and used for local calls. However the records show that it was not at all unusual for Knox to call Meredith's English phone. In fact she did this most of the time. But also, if the purpose of the first call to Meredith (after midday on the 2nd) was to check as to whether or not the phones had been located by anyone, then calling Meredith's English, rather than her Italian, phone would make sense, because of course Knox would know that was the phone by which Meredith and her parents remained in frequent contact with each other, and that the parents would surely have raised the alarm had the phone been discovered and a call by Meredith's parents been answered by some diligent but confused citizen in Italian. Whilst this could already have happened, such an eventuality could be considered improbable until at least the coming of daylight, or even a bit later, and even then it would take time for the parents' concern to turn into action unless, of course, the recipient of the call happened to be a police officer who spoke English. Having an approximate idea as to where the phone had been discarded would assist in one's judgement on the matter as well. Indeed the judgement might well have been, when Knox called Meredith's phone, that sufficient time had passed for something to have happened, if it was ever going to, and that knowing (wrongly) that it had not was the reassurance she needed given that she was about to launch, and play her innocent part in, the process of discovering the death by murder of her flatmate.

In her first call to Romanelli at 12.08 Knox did not tell her about the unanswered call to Meredith immediately beforehand. That was at a time when Meredith could not have been anything other than up and about. Had Romanelli known about that call then it is difficult to believe that she would have been anything other than concerned. Instead all she was told about were some strange things (and not a break-in) in respect of which Knox was unable to elaborate. As a consequence Romanelli told Knox to try Meredith's phones, but other than that, quite reasonably, saw no reason to return to the cottage herself, or involve the police at that point. Was that the point of the omission by Knox, given that time had to pass for Knox and Sollecito to return to the cottage and engage in the panic and search part of the pre-prepared account?

At the cottage Sollecito received a call from his father at 12.40. Do we know what they discussed? It would in any event have been after the discovery of Romanelli's broken window and (allegedly) Sollecito's (rather feeble) attempt to break down Meredith's door. Did the responsible adult advise his son to do the obvious and call the police? One would think so, but then why was there a 10 minute delay before, instead of calling 112, he called his sister in the Carabinieri at 12.50 ? Why call his sister at all? Did he really need advice from her as to what to do? Was it something his father had suggested, rather than call 112 (which he did at 12.51), but why would his father suggest this, and why the delay by Sollecito in doing anything? Remember, Romanelli had already urged Knox to call the police when she called at 12.35. The 16 minute delay from that call might be accounted for by the unexpected arrival of the postal police and if this was the case then it was before Sollecito called the 112 emergency services.

Sollecito's call to his sister remains something of a mystery for me. Knox had already been told by Romanelli to call the police and Sollecito surely can not have been deemed such a helpless individual by his father as to require his sister to do it for him.

This being so, it leads me back to the hypothesis that indeed the postal police had already arrived, but having told them that they had already called the Carabinieri, it made sense to cover for that lie by calling the Carabinieri without mention of their presence and, for added measure, not mention them to his sister, in order to have that additional, and seemingly reliable, witness corroboration for the time of arrival of the postal police, should it become an issue.

Perhaps that is being a little too clever. Maybe Sollecito simply took the opportunity to show off in front of his girlfriend, by demonstrating how well connected his family was? I think, though, that the real objective was to waste time until the arrival of Romanelli, for the reason I hypothesized earlier concerning Knox's lamp. I also note that in her e-mail Knox says that after the Carabinieri had been called she phoned Romanelli and that Romanelli had said that she would be home immediately. Why? The implication is that Knox had told Romanelli that the police had been told and were coming. In fact the phone records show no such phone call. The last phone call between the two was at 12.35, the last of Romanelli's three to Knox. In fact Romanelli was already on her way.

Neither Knox nor Sollecito saw into Meredith's room when the door was broken down and her body discovered on the floor under a quilt. Yet in the immediate aftermath it is as if they have wanted others to believe that it was they who discovered her body and in the bragging about this there have been disclosures, not only as to what they should not have been aware but also suggestive of disturbed behaviour. This behaviour was remarkable for all the wrong reasons.

(a) The police were suspicious about the fact that Knox had alluded at the Questura to Meredith having had her throat cut, but we now know from Luca Altieri's testimony that Knox and Sollecito had heard about this directly from him during the car ride to the police station. However her bizarre and grotesque allusion in the early moments of the investigation to the body being found stuffed into the closet (wardrobe) is not just

factually incorrect (it was lying to the side of the closet) but bears a striking correlation to later forensic findings based on blood swipes immediately inside the closet, and splatter on the open sliding closet door, that Meredith had been thrust up against the closet after having been stabbed in the throat.

(b) The behaviour of Knox and Sollecito at the police station is documented in the testimony of Meredith's English girlfriends and of the police. Whilst it is true that people react to grief and shock in different ways it is difficult to ascribe grief or a reaction to shock to some of Knox's behaviour. Emotionally she was cold towards Meredith's friends and occasionally went out of her way to upset them with barbed and callous remarks. The fact that Knox was not observed to cry and wanted to talk about what had happened is not of itself indicative of anything but remarks like "What the fuck do you think, she bled to death" (Knox acknowledged a similar comment to this in her interview with Diane Sawyer – See Chapter 27) and her kissing and canoodling with Sollecito (including them making smacking noises with their lips when they blew kisses to each other) in front of the others was not normal. Rather chilling in retrospect was a scene between the pair of them (as described by Sophie Purton to the author of *Death In Perugia*) when Knox found the word "minaccia" (in English - threat) amusing and made a play of it with Sollecito in front of witnesses.

That Knox would even know the meaning of the word rather dispels the notion, oft put about by her supporters, that she could barely speak a word of Italian.

© Grief is in any event reserved for friends and relations, or people one much admires. The evidence is that the initial short friendship between the two had cooled to the extent that Meredith was studiously, if politely, avoiding being around Knox. For the narcissistic and attention seeking American girl this would have been difficult to ignore and may well have offended her.

(d) The next day Sollecito was willingly collared by a reporter (Kate Mansey) from the *Sunday Mirror* and told her about the horror of finding the body.

"Yes I knew her. I found her body."

"It is something I never hope to see again," he said. "There was blood everywhere and I couldn't take it all in. My girlfriend was her flatmate and she was crying and screaming, 'How could anyone do this?'"

Sollecito went on to tell the reporter (with reference to the night of the murder) that -

"It was a normal night. Meredith had gone out with one of her English friends and Amanda and I went to a party with one of my friends. The next day, around lunchtime, Amanda went back to their apartment to have a shower."

This was not in evidence which is as well because about the only thing that is true here is that he knew Meredith.

CHAPTER 12

Curatolo and Quintavalle

Antonio Curatolo (now deceased) was an elderly tramp who regularly frequented the tiny square at Piazza Grimana, in front of the University for Foreigners, which contained a basketball court.

In this picture, taken from the basketball court, we see the gates at the entrance to the cottage highlighted in blue. The yellow object is a municipal trash bin.



Curatolo testified that on the evening of the murder (1st November) he had been sitting, as was his custom, on a bench in the square, reading a magazine and smoking cigarettes, prior to leaving and kipping down for the night in a nearby park. He had noticed a boy and a girl, “who looked like they were boyfriend and girlfriend” in a corner of the basketball court. The pair talked animatedly to each other and every so often one or other would walk towards the railings and peer over them.

“How were these youngsters dressed?” Mignini, prosecuting, had asked.

“Their clothes were a bit dark”

“Can you describe them to us, what did they look like?”

“They were a bit short, they looked nice”

“Dark hair, light hair? Can you see them in this courtroom?”

“Yes”

Judge Massei asked Curatolo to point to them.

“It’s her and him, but I’d seen them before that evening too”

It emerged, however, that he had not seen them together before.

In his deposition Curatolo had mentioned noticing the pair from the time of his arrival at 9.30 pm and then again a little before midnight. The earlier time had not been

mentioned during the examination in chief and accordingly when Mignini sat down, Bongiorno lost no time in getting Curatolo to repeat several times that he had seen the pair at the earlier time of 9.30 pm, in the hope that an alibi as to that time would establish his evidence as unreliable.

She asked him as to how he could be certain of the times and he replied that he had a watch and also there was a clock in the square.

It is true that one has to be very cautious about dock identifications because even if the witness has provided a description, the witness can nevertheless feel almost under an obligation to identify the accused sitting in the dock. They are, therefore, rather frowned on and the need for a dock identification is usually, in any event, supplanted by the witness identifying the suspect at an identity parade held by the police in accordance with codes of practice. Whether or not to allow a dock identification is nevertheless a matter for the judge.

In this case there had been no identity parade. However, Curatolo had said he had seen both Knox and Sollecito, though separately, on previous occasions, such an assertion being very probable given the location of the square vis -a- vis the cottage and Sollecito's home, and the University for Foreigners, and on that basis an identity parade would not have served much purpose, in my submission – they being usually required to identify a suspect with whom a witness is unfamiliar.

Curatolo mentioned that on the evening that he saw the pair there were other people passing through and around the square, some of whom wore Halloween masks, and that there were buses or coaches that were waiting to drive youngsters to the local discos.

This raised a doubt (See later) as to the day on which, if he had seen them, he had seen them. Nevertheless he was certain it was the day before he noticed “people dressed in white, the police, Carabinieri, a hubbub of people down there, they were by the entrance of a house, standing there”. He described the people in white as looking like aliens. They were the forensic investigators in their white anti-contamination overalls, shoes and headgear.

Curatolo would be recalled for cross examination by the defence on the first appeal and that will be examined later.

Marco Quintavalle was the owner of a small general store located in Corso Garibaldi, about half way between the cottage and Sollecito's flat. He testified that on the morning of the 2nd November he arrived at the shop at 7.45 am as was his custom. He entered with his shop assistant whose job it was to tender the till. As he activated the rolling blinds from inside the shop he noticed a girl standing outside. The girl came in, but only briefly, and left without making a purchase. He observed that she left in the direction of Piazza Grimana.

As to Raffaele Sollecito, he already knew who he was as Sollecito was a frequent customer though they never engaged in conversation other than with regard to business. He thought he had seen him with the same girl before but did not know who she was.

He said the girl remained impressed in his memory because she had very light blue coloured eyes (azzurri). He also described them as piercing blue. She was wearing jeans, a grey coat, a scarf, a hat. "I say hat; I don't remember if it was a headset/cap or something else, however she had a headcover". She could have been 1.65 to 1.67 metres tall. Her face was "bianchissimo" (very light colour) and she was about 20-21 years old. "She looked really exhausted, but that looked pretty normal to me, because students who have been out dancing or to a party stay up all night."

The description of the clothing bears a marked resemblance to clothing that was photographed on Knox's bed at the cottage.

In the picture below we see blue jeans, the inside of what could be described as a grey jacket or coat, and a scarf. Quintavalle, on being asked, said he thought the scarf was light blue, whereas, of course, it is not. There is another item of clothing, light blue, but I dare say that, like me, the reader will be unable to determine exactly what that is, though I suspect this could be a blue denim (or the like) shirt. In the picture of Knox below she is at least wearing a headwarmer and possibly that shirt, or similar.



Quintavalle recalled that a few days later, after his assistant had told him of Sollecito's arrest, he had asked her to go out and buy the newspaper in which she had read this information. He looked through all the pictures in it, including one of Knox, and said to himself "but this is the girl of the other morning". He also recognized the girl as the accused in court. His only reservation up until that moment had been as to the colour of her eyes because that had not been apparent in the picture he had seen.

This is another dock identification. However in this case we do have a particularly good description, and since Quintavalle only came forward to give his deposition a year after the murder an identity parade would also have been rather pointless. He had already seen at least one picture of her.

The defence naturally sought to cast doubt on the reliability of his testimony in view of the aforesaid fact. Why had he not come forward earlier? It was in fact the reporter, Antioco Fois, who had finally persuaded him to do so.

In particular, the defence referred to the testimony of Inspector Volturno who had questioned Quintavalle in his shop about the middle of November, and therefore after Quintavalle had seen the picture of Knox in the newspaper. Volturno said he had shown him photographs of Knox and Sollecito and had asked if either had made a purchase in his shop around the time of the murder and, in particular, whether a receipt for "Ace" bleach (found at Sollecito's apartment) had emanated from his store. However Quintavalle denied being shown any photographs nor being asked about Knox, but he did remember the business about the receipt.

On the basis that it was Volturno's memory that was the more accurate (and Quintavalle surely must, at least, have been shown a photograph of Sollecito) it is asserted that it is improbable that Quintavalle would not have mentioned seeing Knox in his shop on the morning of the 2nd, if he had.

However Massei found his evidence to be reliable in that he was being asked, and specifically, a different question, as to a receipt and a purchase, and would not necessarily have understood the relevance of Knox having been briefly in his shop, and without making a purchase. He could not have known how that related to an alibi nor how her presence could have connected her to the murder.

Indeed, it was the reporter, Fois, who had made Quintavalle aware that there was a contradiction between what he was claiming as to Knox's presence at his store and what she had reported as to her whereabouts to the police. He was persuaded, reluctantly, and after much prevarication, to go to the police with that information.

Unlike Curatolo, Quintavalle was not called by the defence for re-examination on appeal. Mistaken or not, his evidence had been particularly clear.

CHAPTER 13

The arrival of the Postal Police and the 112 Call

The issue of whether or not Sollecito had made the 112 call before or after the arrival of the postal police gets us into an interesting and lengthy topic.

Sollecito made the call and asked to speak to the Carabinieri.

Daniele Ceppitelli, at the Carabinieri, took the call, which was automatically recorded.

RS : "Hello. Good morning. Listen, someone has entered the house by smashing the window and has made a big mess, the door is closed, the street is.....what's the street?"
 AK : "Via della Pergola"
 RS : "Via della Pergola, number 7, in Perugia"
 DC : "Does anyone live there? The name?"
 RS : "Um, Amanda Knox. A group of students live here - one's Amanda Knox"
 DC : "This is a burglary?"
 RS : "No, there hasn't been a burglary, they broke the glass, they made a mess..."
 DC : "So look, you're saying someone got in and then broke a window? How do you know anyone got in anyway?"
 RS : "You can see they have from the traces they left, there are bloodstains in the bathroom"
 DC : "They went in and.....why? Did they cut themselves when they broke the window?"
 RS : "Umm"
 DC : "Hello?"

The line went dead. One can speculate, perhaps unfairly, as to why. Sollecito had clearly now connected the blood in the bathroom to the supposed intruder(s) but how had one come to cut himself when, as it turned out, there was no visible blood in Romanelli's room where the glass had been broken? Furthermore, as he would have known, the blood in the bathroom was not fresh but diluted and included the imprint of a bare foot (see the next Chapter). Did he know he had made a mistake, or was it just a moment of innocent confusion? There could have been a number of reasons.

Sollecito then called again.

RS : "Yes, hello, I called two seconds ago"
 DC : "Someone has been in the house and broke the window?"
 RS : "Yes"
 DC : "Then they went into the bathroom?"
 RS : "I don't know. If you come here perhaps..."
 DC : "What did they take?"
 RS : "They did not take anything, the problem is one of the doors is closed, there are bloodstains"

DC : "A door's closed? Which door's closed?"
 RS : "The door of one of the flatmates who isn't here. We don't know where she is"
 DC : "And this girl, do you have her mobile number?"
 RS : "Yes, yes, we tried to call her but she is not answering"
 DC : "OK, I'll send you a patrol car now and we'll check the situation"

Sollecito describes Meredith's door (in Italian) as closed rather than locked though he would have known it was locked, especially if his account that he had tried to break it open earlier was true.

If Sollecito was genuinely concerned as to Meredith and her locked door and, as the transcript tends to suggest, he (and Knox) wanted the police to access her room for that reason, then why did they not mention this concern to the postal police when they arrived, assuming their arrival to be just after making this call?

The call is an important issue as to behaviour in that both Knox and Sollecito told the postal police on their unexpected arrival that they had already called the Carabinieri and were awaiting their arrival. Why would they lie if that was not true? Obviously to distance themselves from the macabre discovery that was about to unfold. The problem for them is that one of the two postal police officers, Battistelli, insists that he was at the cottage by 12.35 pm, well before the 112 call was made at 12.51, and this is supported by images of their Fiat Punto (See below) captured by a CCTV camera situated in the parking lot opposite the entrance to the cottage.



It should be noted at the outset that the CCTV camera was not continuously filming but was activated by activity within its immediate field of vision i.e a car on the road or a person on the car park ramp, whereon it would take some stills with a time stamp.

Using these images the defence prepared a portfolio and argued that the postal police had arrived after the 112 call. This is because one set of such images showed a Carabinieri patrol car (presumably in response to the 112 call) at the entrance to the cottage with a time stamp of 13.22 (1.22 pm).

However the Carabinieri had called HQ at 1.26 pm to request directions because they were having difficulty finding the cottage.

If one accepts that the 13.22 (1.22 pm) image shows the arrival of the Carabinieri rather than a drive by then it would seem that the CCTV clock was slow by at least 4 minutes

The defence, however, also argued that because Knox was on her phone, giving directions, from 1.29 to 1.34, the Carabinieri could not have arrived until 1.34 pm at the earliest. Hence the CCTV clock was at least 12 minutes slow.

If one accepts the foregoing, then this still does not show that the postal police arrived after the 112 call. Their Fiat Punto appears on the CCTV camera at 12.36. If the clock was 12 minutes slow then it would be 12.48 (3 minutes before the 112 call).

To get round this the defence argued that a pair of legs shown crossing the road towards the entrance to the cottage at 12.41 belong to Battistelli. The defence are probably right as what we see are likely a pair of jeans and white plimsoles – which does fit with Battistelli. If so, then he is there at 12.53 (after the 112 call, it would seem).

However, during her 5 minutes giving directions Knox was not talking direct to the Carabinieri patrol car but to Ceppitelli (the same as above) at HQ. He then contacted the Carabinieri officers at 1.35 pm only to discover that they had already located and arrived at the cottage and were aware of the discovery of a body. On this information all we know is that the Carabinieri had arrived sometime between 1.26 and 1.35 pm, but probably earlier than 1.35.

Therefore we have a range of 4 to 12 minutes slow for the clock.

What to make of this?

The stills we have do not show anyone actually entering through the entrance gate and, indeed, the CCTV was unable to capture any movement, in or out of the gates, at any time, including Knox and Sollecito's comings and goings on the morning of the 2nd, and yet it had (see later) captured the legs of a Carabinieri officer (on the other side of the road) walking towards his patrol car.

Battistelli's stated time of arrival is questionable though taking into account the CCTV clock and some additional information, including the fact that during their time at the cottage, Battistelli and his colleague had not been aware of any phone calls made or received by Knox or Sollecito prior to the discovery of the murder, and yet there had been several. As of the time of arrival, and after introductions and explanations were given by both sides as to their presence, the officers were shown round the cottage noting the various bloodstains and the broken window and mess in Romanelli's room. Various discussions and activities re Meredith's phones etc took place both before and

as the additional witnesses, Altieri and Zaroli, and Romanelli and Grande arrived with, no doubt, further introductions and explanations being required. Romanelli, obviously, needed to check her room and belongings, and after that attention turned to Meredith's whereabouts and her locked door. At first glance one would surmise that all this activity would take some time.

As to the time of arrival of the postal police what do the other witnesses have to say? What they do agree on is that the postal police were already there, even if some of them were unsure as to their own time of arrival.

A problem I have with reading the depositions and trial testimony of all these witnesses is that they nearly all contain guesstimates as to the timing and duration of specific events. Unless a witness can state that his/her timing is the result of a specific time check then it best to treat their evidence with caution.

That, of course, is why Battistelli's evidence stood out at first. However we can consider other information and start with the log of Altieri's phone. This may also help with working out when Meredith's door was kicked in

Zaroli (Romanelli's boyfriend) calls Altieri (Grande's boyfriend) from his landline at 12.31pm. Call lasts over 8 minutes. It would appear that they had begun discussing a shopping expedition. This conversation may have been interrupted by Romanelli buzzing Zaroli on her mobile after having heard from Knox (at 12.35) that her room at the cottage had been trashed.

Altieri then calls his girlfriend Grande at 12.40. 1 Minute. Altieri then had to collect Zaroli in his car and so the earliest he set off to do this would have been 12.41.

Altieri estimated the driving time as 10 minutes to Zaroli and then 10 minutes to the cottage. There are those who think it could have been done quicker but even taking into account my earlier caveat about estimates, we do have an overall picture from the witnesses.

The boys and the girls arrived at the cottage within seconds of each other. Zaroli, Romanelli, Grande and also Battistelli have the time of arrival at or just before 1 pm. Only Altieri at first gives a different time of 12.45 but then he says, at the latest, 1 pm.

This additional information needs to be correlated with the information given by Inspector Bartolozzi, who had dispatched the officers in the first place, and who had testified that Battistelli called in at 1 pm to report that Romanelli had arrived and that she wanted to break down Meredith's door.

However I do not have any information as to how long the call lasted. Battistelli had much to report and could also have been reporting on developments as they happened, and it would be a reasonable supposition that Romanelli would wait until he had finished, and then make her mind up as to what to do.

The breaking down of Meredith's door now looks likely as having occurred at about 1.05 pm or a bit later.

But is anything the witnesses say really helpful?

Let us instead go back to our time frame of the clock being slow by 4 – 12 minutes, and take this in segments, using the 12.41 still of (what is probably) Battistelli crossing the road to the cottage as a rough indicator of the time of arrival of the postal police in our calculations.

9 to 12 minutes slow gives us times of arrival between 12.50, and 12.53. The 112 call (See Appendix C) actually lasted for 169 seconds from 12.51.40 to 12.54.29. A time of arrival (TOA) of 12.50 - be it would account for the postal police missing Sollecito's phone conversation with his father at 12.40 and Knox's with her mother at 12.47 - would not be helpful to the defence because it is prior to the 112 call. The other TOAs (12.51, 12.52 and 12.53) - which again miss those two calls - coincide with or are during the 112 call, something the postal police could hardly have not noticed (but did not) bearing in mind that the meeting was in a relatively small area outside the cottage.

Less than 7 minutes slow gives us a TOA of no later than 12.47 which again, obviously is before the 112 call but coincides with Knox's phone conversation with her mother.

We are now left with a clock that was, say, 7 -8 minutes slow. We have a TOA of between 12.48 and 12.49. The TOA is obviously still before the 112 call. However we can note that as Knox's 12.47 call lasted 88 seconds, it would have been ongoing during the arrival, and that again, rather surprisingly, Battistelli was unaware of it. However, with a nearly 8 (rather than 7) minute delay, that call would have been seconds away from terminating.

7 – 8 minutes slow would also mean that the Fiat Punto hoves into view at 12.43-44 and thus there is some 5 minutes before Battistelli then arrives at the cottage. However, that might be explained by it finding somewhere to park off the road, perhaps on the top open level of the car park.

Some conclusions of mine based on the foregoing –

1. I, for one, accept that the 13.22 image shows the Carabinieri actually arriving outside the cottage. That is because of the officer seen trailing the patrol car on foot. Only his legs are visible but the boots and distinctive stripe on his trousers identifies the individual as a Carabinieri officer. There would have been 8 people milling about outside the cottage which the officer on foot could hardly have failed to notice, and ignore, particularly bearing in mind that he was still trying to find an address.

2. Therefore the likelihood is that the CCTV clock was running slow.

3. That it is 12 minutes slow is not demonstrated, but it is a possibility, if an unlikely one. In fact it has to be more than 13 minutes slow if we are to place TOA the other side of the 112 call. The defence, as it is, also has some further problems.

The most obvious one is that it places a TOA of 12.53 in the middle of Sollecito's long recorded phone conversation with the Carabinieri and it is not credible that the postal police would have failed to notice this, nor that there is nothing in the recording of the call to indicate their presence. Now I accept that there is a disparity between the length of the call and what was recorded as said in it. The mundane explanation would have to be that Sollecito was put on hold for a long time whilst a carabinieri officer came free to speak to him, and that would be towards the end of the call. But that would still mean that at 12.53 Sollecito had his phone to his ear waiting to speak to Capitelli and that his conversation with the officer was likely in the presence of the postal police. On this basis it could be said that he was not lying when he said he had already called 112, but he was when he said he and Knox were awaiting the arrival of the Carabinieri as that had not been arranged until the 2nd 112 call, made some 10 seconds after termination of the first and thus at about 12.55.

The other is that with a TOA of 12.53 there is only some 12 minutes (or perhaps a bit more) until the discovery of the murder. With all that was going on including the arrival of more people to the scene, that seems rather unlikely, and more so if TOA was later than 12.53. A TOA of between 12.48 and 12.49 seems a better bet as it does fit the fact that the postal police had not noticed the 12.40 and 12.47 calls and it allows a more reasonable time frame in which to encompass all the activity that went on with the arrival of the postal police and prior to the discovery of the murder.

The defence were flying a kite but they seem to have partially succeeded. They would have won hands down if they had been able to establish it was probable TOA was at, say, 12.55. Unfortunately they had no evidence for the clock being that slow.

4. It has to be re-iterated that Battistelli's time of arrival at 12.35 does look questionable. As the clock was running slow and maybe by at least 4 minutes then we see the Fiat Punto at 12.40, not 12.36. Of course Battistelli could have easily left the vehicle before we see it and that might account for his TOA, if not actually at the cottage. But in my scenario that would be 13 minutes, or longer, before he arrived at the bottom of the cottage drive. If his time of arrival was 12.35 then what did Knox, Sollecito and the postal police do for 20 minutes until the other witnesses arrived, and for 30 minutes until the door was kicked in? That is quite a long time and the dynamic seems all wrong to me without the others arriving earlier which, by common consent, they did not. How did the postal police miss the critical first two calls at 12.40 and 12.47? Perhaps Massei took such considerations into account.

Massei concluded his brief discussion of the issue by making no finding of fact one way or the other. My submission is that this was probably the right thing to do.

CHAPTER 14

The Manipulation of the Crime Scene Post Murder

There is one activity, for which there is evidence, with which they were not charged though, as with the staging, this was likewise to ensure impunity for themselves. This is the partial clean up and post murder manipulation of the crime scene at the cottage and it is this with which I shall now deal.

Consider the 6 points below.

1. There is, of course, the bloody footprint on the bathmat in the small bathroom right next to Meredith's room.



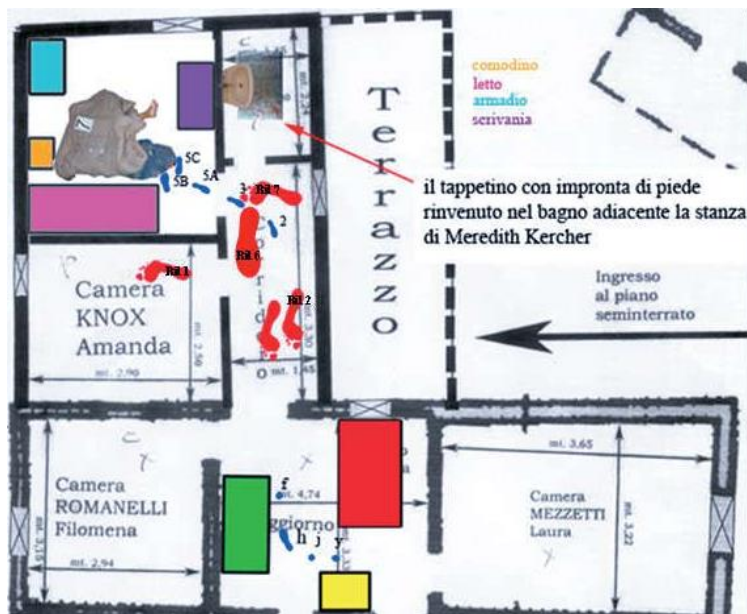
The shape, size and some of the particular characteristics of the print were determined at trial to have a much greater comparison with Sollecito's foot than Guede's and I will be looking at that evidence, and the evaluation of it, in detail in Chapter 16.

Looking at the above picture we can see the heel of the **right** foot, if it had blood on it, is missing from where it should be on the tiled floor. It is difficult to imagine, given that the imprint of the foot on the mat is contiguous with the edge of the mat, that there was not at least some blood on the remainder of the foot such that there must have been at least some blood deposited on the floor. However the mat may have moved and wiped up any blood on the tiles.

Of greater relevance though is that there were no connecting bloody footprints. Why not?

Knox's claim that she had engaged in a double shuffle with the bathroom mat to get from the bathroom to her room and back does not dispel this enigma. Not only did the double shuffle fail to have any impact upon the visible traces of Guede's bloody **left** shoe prints between the small bathroom and Knox's bedroom door (see next page), but there were no visible bloody **right-sided** shoe or foot prints leading to the small bathroom **behind** Meredith's locked door, as there would have to be.

In the picture below, an illustration taken from the Rinaldi/Boemia report (See Chapter 16), the just visible **left** shoeprints of Guede are shown in blue, and the luminol revealed prints in red. The reader can refer back to the end of Chapter 10 to marry up Guede's visible and non-visible **left shoe** prints. They are all on a direct path from Meredith's room to the front door.



Since I am introducing the illustration here I would just point out that the relevant footprints are R1, R2, and R7. Measurements, attribution and a discussion of luminol (which reveals blood that can not be detected by the eye) are in Chapter 16. As to the only luminol revealed shoeprint, R6, right footed, this was not useful for comparison purposes and was not attributed.

We can also notice that the bloody footprint (and the other blood) in the bathroom is diluted blood. Whoever left that footprint has not stepped in the blood in Meredith's bedroom (right next door) and then with a few steps deposited fresh blood on the mat. Or if he had then the mat must have subsequently been subjected to a wash. But it does not look as if that was the case, and had it been I think it would be safe to discount Guede, or another unknown male assistant, from being responsible in view of the risks they would be taking in remaining a moment longer than necessary at the cottage. Furthermore, quite apart from Guede overlooking the other visible incriminating evidence of his presence, attending to this and then replacing the mat, in that condition, would make no sense.

Could one argue that the diluted blood is due, be it that the print is not her size, to Knox (or for that matter Guede !) taking a shower, as she claimed to have done on the morning of the discovery of the murder? There are, however, problems with this. The first is the improbability that she would fail to notice the fresh blood until she emerged from the shower and stood on the mat- at any rate, as claimed in her e-mail. The second

is that even if she, with wet feet, had emerged from the shower and stepped on the outline of the bloody footprint – on the far side of the mat from the shower cubicle, and inconveniently facing the wrong way - there is no probability that she would have matched it precisely and not doing so would have left a blotched effect, which is not what we see. As for Guede there is no forensic evidence at all for his presence there.

No, this is the imprint of a foot with diluted blood on the sole when the mark was made. The dilution accounts for the extent and much of the of the uniformity of the mark.

The defences had an improbable theory - that Guede, immediately after the murder and despite his homicidal rage, was smart enough to hop out of Meredith's room on his left foot with a clean shoe on, and the other bare but covered in blood, and having by this means entered the bathroom, and having washed (in the sink, bidet or shower) his bloody right foot, but notwithstanding this disastrously leaving a highly visible if diluted imprint of his foot on the mat, he then returned to Meredith's bedroom, inadvertently standing in blood again with his clean left shoe and leaving with a trail of bloody left shoe prints - in which case the exercise of washing his foot was entirely in vain, on two counts, after all that careful hopping around. Neither is it entirely clear why his right shoe came off in the first place. His shoes were foot-hugging Nike Outbreak 2. Improbable that one could have come off even in a struggle.

One could postulate that Guede had removed his right shoe, perhaps because it was covered with blood. However, how did the blood manage to get into his shoe in sufficient quantity for his foot to require washing there and then? Exceedingly unlikely with the shoes he was wearing. One would also have to conclude, which is somewhat unlikely, that Guede was more concerned about a temporary personal discomfort than the horror of what had just occurred and escaping undetected. Furthermore had he re-shod his foot, after washing it, then he would have covered his foot in blood again. Whether he had, or had not, re-shod his foot, he would, in the former case have left the print of a shoe or, in the latter case, a footprint, unless he hopped a long way to the front door, to be discovered in the corridor by luminol.

It is patently obvious that his washing his foot was the most inept performance in all this given the mark the foot subsequently left on the mat. The same observation obviously applies to Sollecito as well but in his case, and not with Guede, or any other unknown male, it is far more credible to accept that he had diluted blood on the sole of his foot for a reason unconnected with his having just washed it.

All the above, as it pertains to Guede, or another unknown male assailant, is exceedingly unlikely and there is a far simpler explanation. Someone with more time to spare than Guede, or his unknown mate, and with less risk of discovery attached (remember the scream, in evidence from two witnesses, aside from Knox (Chapter 18, pages 127-129), could and did return at a time of his/her choosing and was responsible for the diluted blood and had inadvertently stepped in it. There had, undoubtedly, to be blood on the floor (and elsewhere) between Meredith's body and the small bathroom, probably prints, and these were deliberately and carefully removed by wiping them away with

wet towels, cloths etc. Probably whoever had done this had then stepped on one of the towels or cloths in question and then stepped onto the mat without thinking. Hence the diluted blood.

It is interesting to note that Guede, during his stay in jail in Germany, wrote (emphasis added) –

“I am asking myself how is it possible that Amanda could have slept in all that mess, and took a shower with all that blood in the bathroom **and corridor.**”

The reason for removing the blood was not just to conceal who would have made prints (the print on the bathmat was, after all, left in situ) but, from a visual perspective, to conceal any blood that might be noticeable and alarming to anyone approaching Meredith’s room. Guede’s bloody left shoeprints in the corridor, pointing to the exit, were visible but only on close inspection.

2. Take a look at this photograph. The bathroom door.



We see a long streak of Meredith’s blood. Clearly the blood has flowed some distance under the influence of gravity. A drip of that size does not appear from nowhere, in such a position, without a plausible explanation.

It is difficult to imagine how the blood got there unless it was part of a larger area of blood (deposited probably by hand) which most likely was on the face of the door and which was swiped to the right and over the edge of the face of the door. The cloth or towel used to do this was wet accounting for the slight dilution and length of the streak.

3. Meredith’s door.

It is interesting, is it not, that there is blood on the inside but not visible on the outside?



[The outside]



[The inside]

It is difficult to see how and why Guede touched the inside handle with a bloody hand (was it shut and if so, why?) and then closed the door to lock it without leaving a trace on the outside face of the door. Possibly he might have changed hands. The answer might also be that he visited the bathroom to wash his hand as well as his foot, save that none of his DNA was recovered from the spots and streaks of diluted blood in the washbasin, or bidet, whereas Knox's DNA was. All the more surprising given that Guede seems to have shed his DNA copiously in Meredith's room.

In fact, on close inspection, there is some blood on the outside face, on the edge of the door, which again might be the remnant of a larger trace.

4. Knox's lamp.

This was found inside Meredith's room behind the door. Meredith also had a similar lamp which we see resting on it's base on the floor by her bedside table. The presence and location of Knox's lamp is obviously suspicious. Bear in mind that it was the only source of illumination for her own room. So, what is it doing there?



[Knox's lamp]



[Meredith's lamp]



[Wall Light]

Clearly, had Meredith borrowed Amanda's lamp because her own was not working, then it would not have been in the position it was found. We can discount the possibility that Meredith had anything to do with Amanda's lamp being in her room. There is no evidence that her own lamp was not working and in any event she certainly (as can be seen from the photograph above) had a working wall light above her bed.

Why is Meredith's lamp not sitting on her bedside table? It might have been knocked over in a struggle by the table (there are blood streaks on the wall just above) but in

that event it is unlikely that it would be sitting on it's base.

There is a glass of water on the right side of Meredith's bedside table. It cannot be seen in the photo above, but it is there. One would have expected that to take a knock and a tumble as well. Given that it did not I can only conclude that Meredith's scope for defensive action was under active and forceful constraint in the vicinity of the table.

Knox's lamp was probably sitting upright until it was knocked over by the door being forced open.

The only plausible explanation for the presence of both lamps on the floor, and their respective positions, is that they were being used to have a close look at the floor, and in particular under the bed which would be cast in shadow with the main wall light on.

Guede had no discernible motive for examining the floor, but if he had then he overlooked the fact that he had left 7 visible prints of his left shoe next to the body. Knox, on the other hand, may well have had. She is pictured very shortly after the murder with one of her numerous earrings missing from her ear.



5. We can say that luminol (extremely sensitive to and typically used to identify blood that has been wiped or washed away) was used to identify :-

- (a) two bare footprints attributable by measurement to Knox, one in her bedroom and one in the corridor outside Meredith's door, and
 - (b) two instances of the mixed DNA of Meredith and Knox, one in Filomena's bedroom and one in the corridor.
- © a footprint attributed to Sollecito in the corridor.

6. We can also deduce that somebody other than Guede had removed his bloody left shoe prints as revealed by luminol. These (See plan in Chapter 10) are on a trajectory from Meredith's room to the front door. However, at the end of this trajectory is a **visible** left shoe print in blood belonging to Guede (marked "h" in the plan above). Thus the preceding prints must also have been in blood, however weak, and had been deliberately removed. There is no evidence from the luminol results to show that he had backtracked to do this, and indeed no reason for him to do this but leave the visible prints. Again, the more obvious candidate for this would be Knox, the removal of these and other traces in the corridor being necessary to fit with her pre-conceived account to explain her presence for the discovery of the murder.

I have covered a number of elements strongly suggesting that there was at least a partial clean up, not of “invisible DNA” as some people like to mock including, sad to say, a learned appeal judge or two, but of what would have probably in some cases have been noticeable deposits of blood that would have attracted the eye of anyone entering the cottage and which would certainly have alarmed the observer as being difficult to explain. Spots of blood, and shoe and footprints made in blood, not just in the bathroom but outside it, in the corridor, living room and elsewhere, a locked bedroom door with blood on it, and a bathroom door with blood on it’s face.

We can include Knox as one such observer given her e-mail account of having allegedly stopped by the cottage to have a shower and collect some clothing before the discovery of the body. Such physical evidence - had it not been removed - would not have sat easy with that account, however dizzy and naïve Knox presents herself. One can envisage Knox thinking “sorted” - that her story would now work perfectly.

She would now, from the position of her own narrative, be in a position to instigate and manage, and even manipulate, entirely innocently from anyone’s perspective, the discovery of her flatmate’s murder. In such a context the following sentences from her e-mail are less straightforward and more revealing than would appear to be the case on the face of them. On returning to the cottage with Sollecito - “I unlocked the door and I’m going to tell this really slowly to get everything right so just have patience with me {Ed: translation - “so pay attention to what I say next!”}. The living room/kitchen was fine. Looked perfectly normal. I was checking for signs of our things missing” Talk about milking and living the moment! – (what had to be just right? - obviously that everything would look “perfectly normal”) - followed, even before she says she discovered the “break in”, by what (we can infer) was a misdirection, that she was looking to see if there had been “signs” of a burglary. It is almost as if she cannot conceal her duper’s delight and yet it rings faux because on her own account she had already been to the cottage just an hour or so earlier, and for over an hour, when she must already have had a good look round to see if anything was missing, given the open front door (a burglary?) and no one home, but in any event her visiting the cottage to have a shower and collect a mop, with no visible blood in unexplainable places to alarm her, has to be the indispensable opening sequence of a “nothing much amiss” narrative crafted so that, with the subsequent prompts, including, finally, the belated “discovery” of a break-in in Romanelli’s room, she could draw Romanelli and her friends to the cottage for the drama of the final discovery. The narrative, being made to fit, had, of course, been constructed much earlier than in the e-mail, the latter intended as the coup de grace.

Leaving aside the crucial oversight of her lamp, there were other elements that had been overlooked, such as Knox’s blood on the washbasin faucet (see Chapters 17 & 19) and diluted blood elsewhere in the small bathroom, but at least these were elements amenable to some form of explanation from her perspective, whether or not convincing, as occurred in the e-mail. The product of a menstrual cycle (the mat and the washbasin), or blood from her ear piercings (the faucet), for instance.

Meredith's diluted blood was also found on the light switch and a cotton bud box. I have a hard time imagining what Guede would have wanted with the cotton bud box, less so Amanda given her blood on the faucet, ear piercings and a scratch on her throat



On the assumption that Guede had washed his foot and hands in the bathroom then was he also good enough to turn off the light when exiting? The problem with this defence theory is, of course, that despite all this activity in the bathroom he did not leave any of his DNA there, though he did in Meredith's room. Knox, on the other hand, did. In addition to her blood on the faucet, her DNA was mixed with Meredith's in diluted blood in the washbasin, the bidet and on the cotton bud box.

Common sense dictates that the presence of this diluted blood, and the absence of blood where one would expect to find it, is prima facie evidence of a clean up.

Massei concluded that it was likely that it was Knox who carried out the clean up, in which case why was it not central to her thinking to dispose of the bathmat with Sollecito's bloody footprint on it!? It may simply not have occurred to her that this could be used as evidence incriminating him and, of course, the absence of the mat would no doubt have been remarked on by her flatmates. Having eliminated other blood traces, removing the mat might have been conceived as being a step too far as it would have raised questions.

There is also the simple observation that Guede's bloody shoeprints are going one way only and not towards the small bathroom. They do not even turn to face Meredith's door, and again hard to imagine that this could be so if it was Guede who locked her door!

As to the locked door it might also be observed that this act must have been accomplished using Meredith's keys, which were never found. None of the three co-accused was charged with theft of the keys. Had Guede taken the keys, then to what end, and why did he lock Meredith's door but not the front door, at least if Knox's account as to the next morning is true? If the purpose was to delay the discovery of the body, to enable him to get clear of Perugia, then locking the front door (which required the use of the keys to shut it securely) was a necessary step to achieve that end. In the event, of course, he really knew not what to do because he was seen dancing the rest of the night away at a nightclub and was probably never focused enough to consider anything clever. Guede, for numerous reasons, is simply not a credible candidate for the clean up, particularly given the numerous and incriminating traces of himself that he did leave.

CHAPTER 15

Multiple Attackers and the Compatibility of the Double DNA Knife (Exhibit 36)

Before looking at the forensic evidence, which is the final theme I identified earlier, it will be helpful to take into account the wounds suffered by Meredith, and whether these suggest anything as to the dynamics of the murder, and whether any of them were compatible with the knife recovered from Sollecito's kitchen, Exhibit 36, called the Double DNA knife because the DNA of Meredith was found on the blade and the DNA of Knox on the handle.

As mentioned earlier the autopsy was carried out by Dr Lalli.

It was observed that there were no significant injuries to the chest, abdomen or lower limbs.

The significant elements in the examination were described as follows :

A fine pattern of petechiae on the internal eyelid conjunctive. Evidence of asphyxiation.

The presence of tiny areas of contusion at the level of the nose, localised around the nostrils and at the limen nasi [threshold of the nose].

Inside the mucous membranes of the lips, there were injuries compatible with a traumatic action localised in the inner surface of the lower lip and the inner surface of the upper lip, reaching up to the gum ridge.

Also found on the lower side of the jaw were some bruising injuries, and in the posterior region of the cheek as well, in proximity to the ear.

Three bruising injuries were present on the level of the lower edge of the right jaw with a roughly round shape. In the region under the jaw an area with a deep abrasion was observed, localised in the lower region of the middle part at the left of the jaw.

Once the neck had been cleaned it was possible to observe wounds that Dr Lalli attributed to the action of the point of a cutting instrument.

The main wound was located in the left lateral region of the neck. A knife would be compatible provided it had one cutting edge only which was not serrated. The wound was 8 cms in length and 8 cms deep. The width could not be measured because the edges had separated due to the elasticity of the tissues both in relation to the region and to the position of the head, which could have modified the width. The wound had a small "tail" at the posterior end. The wound penetrated into the interior structure of the neck in a slightly oblique direction, upwards and also to the right. Underneath this large

wound, another wound was visible, rather small and superficial, with not particularly clear edges, "becoming increasingly superficial until they disappeared", in a reddish area of abrasions. The knife had penetrated both Meredith's larynx and the cartilage of the epiglottis, and had broken her hyoid bone. A consequence of that damage is that Meredith would be unable to vocalise, let alone scream. There is the mention of an arterial lesion by one of the numerous experts giving evidence (which might be a nick to the wall of an artery) but no mention (other than by one defence expert) of an artery being severed. There was a copious loss of blood but not due, in my opinion, and having viewed the blood patterns, (though I am no expert on the matter) to an arterial spurt. If I am right then I submit that there is no reason to assume that the assailant or, for that matter, the knife, must have got covered in blood.

There was also a wound in the right lateral region of the neck, also attributed to a pointed cutting instrument. This was 4 cms deep and 1.5 cms wide (or long). It had not caused significant structural damage.

The presence of two relatively slight areas of bruising, with scarce colouring and barely noticeable, were detected in the region of the elbows.

On Meredith's hands were small wounds, cuts or pricks with a sharp object (7 in all) but which can be taken as showing a very slight defensive response. A small, very slight patch of colour was noticed on the "anterior inner surface of the left thigh". Another bruise was noticed on the anterior surface, in the middle third of the right leg.

The results of the toxicological analyses revealed the absence of psychotropic drugs and a blood alcohol level of 0.43 grams per litre.

Tests of histological preparations of fragments of the organs taken during the autopsy were also performed. They revealed the presence of "pools of blood" in the lungs.

The cause of death was attributed to asphyxiation and loss of blood, the former being caused by the latter.

There was nothing in the pathology which confirmed that Meredith had been raped, though we should recall that Guede's DNA was found on the vaginal swab, though not of a spermatic nature. For Massei this was confirmation that she had been subjected to a sexual assault by way of digital penetration.

There was argument in court as to whether Exhibit 36 was compatible with the main wound. There was no dispute amongst the experts that it could not have been responsible for the wound on the right. The knife had an overall length of 31 cms and the length of the blade from the point to the handle was 17.5 cms. The width of the

blade, 4cms from the point, exceeded the width of the right hand wound. The wound on the right was more akin to a pocket knife, or perhaps a flick-knife.

I shall look at the arguments advanced by the defence as to why the knife would not be compatible in a moment, but before that there is a simple logical point as to incompatibility based on measurements.

A knife would only be incompatible if the length (depth) of the wound was greater than the length of the blade of the knife, or if the width of the wound was less than the width of the blade. Exhibit 36 was therefore a priori compatible with the main wound.

On this basis I would also have to concede that a pocket or flick-knife is not a priori incompatible with the main wound, unless (though we would not know) the length of it's blade did not exceed 8 cms.

It should however be recalled that the width of the left side wound was also 8 cms. That is over 5 times the width of the wound on the other side of the neck. The width of the blade on Exhibit 36, 8 cms from it's tip - and being approximately 3.5 cms - was over twice the width of the blade on the "pocket knife". This fact, and the robustness of the larger weapon, particularly with regard to the observed butchering at the base of the left-sided cut, makes Exhibit 36 a far more likely candidate, in my submission, than a "pocket knife", and that's without taking into account Meredith's DNA on the blade.

We can also enter into a numbers game as regards the experts (8 of them) who opined on compatibility. Massei tells us that Dr Liviero concluded "definite compatibility", Dr Lalli and Professors Bacci and Norelli "compatibility" whilst "non- incompatibility" came from the 3 GIP experts nominated at a preliminary hearing. The latter were Professors Aprile, Cingolani and Ronchi.

As far as I am concerned "non-incompatibility" is not hard to understand. It simply means compatible.

Professors Introna, Torre, and Dr Patumi, for the defence, opined that Exhibit 36 could be ruled out. Their argument was twofold. First, the length of the blade was incompatible with the depth of the wound had the knife truly been used with homicidal intent. Indeed, if it had been thrust in up to the hilt then the point would have exited on the other side of the neck. Secondly, they said that the smaller wound beneath the main wound, mentioned earlier, was in fact caused by the hilt of a knife striking the surface of the neck. Obviously if that were so then the main wound was not caused by Exhibit 36.

Their argument does not consider, because we do not know, what may have been the dynamics of the knife strike. Neither can we know what was the cause of the underlying wound. As to that wound (described by Dr Lalli as small and superficial) it may have been the result of the knife edge being run across the surface of the skin, as Massei hypothesized, but in any event it may have had a number of different causes in a violent and prior struggle, for which there is ample evidence. Furthermore, on the matter of

intent, and whilst it might seem disingenuous to argue against it being described as “homicidal” (which would undoubtedly have to apply), nevertheless the intent might be considered in the light of two factors – (a) the damage done, which was considerable and fatal, and (b) the probability that Meredith, being aggressively restrained and confronted with a knife, would have screamed, for which we have in support Knox’s own (be it inadmissible) police statement, her {admissible} Memorial, and two independent witness statements. The intent may have been simply to stop her doing so again, which is precisely the effect that the knife thrust had. Hence their argument seems very weak. It certainly does not rule out Exhibit 36.

We cannot leave the topic without considering that there may have been more than two knives involved. This possibility arises from the evidence of Professor Vinci, for the defence. He considered blood stains that were on the bed sheet in Meredith’s room. These stains very much resembled the outline of a knife, or knives, laid to rest on the bed sheet.

It was Professor Vinci’s contention that the bloody outlines (a dual outline from the same knife he said) was left by a knife with a blade 11.3 cms long, or a knife with a blade 9.6 cms long with a congruent blooded section of handle 1.7 cms long ($9.6 + 1.7 = 11.3$), and having a blade width of 1.3 to 1.4 cms.

Taking these measurements as read they may seem incompatible with a pocket knife (such as Sollecito had a proclivity to carry) and they certainly are as regards Exhibit 36. It follows, he argued, that one has to infer the presence of a third knife in any hypothesis and if a pocket knife and Exhibit 36 are already accounted for by Knox and Sollecito then a reasonable inference is that the third knife would have to be Guede’s. Professor Vinci’s blade is not incompatible a priori with either of the two wounds.

The problem, and without going into detail on the matter, is that Professor Vinci’s contention and measurements are somewhat speculative depending on what one thinks one sees in the stains. It is rather like reading tea leaves. One could just as well superimpose Exhibit 36 over the stains and conclude that it was responsible for them.

Massei only briefly commented about the bloody outlines on the bed sheet. He opined that the blood stains were certainly “suggestive” but insufficient to establish any clear outlines from which reliable measurements could be established. Clearly then he did not accord any reliability to Professor Vinci’s measurements. The issue does not appear to have been referred to again in subsequent hearings.

We can now turn to the issue of whether Meredith’s injuries tell us anything about whether her attacker was a “lone wolf” or not.

Massei believed that Meredith's injuries lay at the heart of the matter. It seemed inconceivable to him that she would first be stabbed twice and that she would then be strangled. The amount of blood, being very slippery, would make maintaining pressure on her throat difficult. So Meredith was forcibly restrained and throttled first. The hypothesis of a single attacker requires that he continually modify his actions, first by exercising a strong restraining pressure on her, producing significant bruising, and then for some reason switching to life threatening actions with a knife, thereby changing the very nature of the attack from that of subjugation to that of intimidation with a deadly weapon, and finally to extreme violence, striking with the knife to one side of the neck and then to the other side of the neck.

Massei described the first knife blow, landing on the right side of her neck, as being halted by the jawbone, preventing it from going any deeper than the 4 cms penetration. The court considered that this was an action to force Meredith to submit to actions against her will. A similar hypothesis could apply, in view of the injuries to the jaw, to the lack of penetration with Exhibit 36 on the other side.

What surprised Massei about Meredith's wounds was that in spite of all the changes in approach during the attack she somehow remained in the same vulnerable position, leaving her neck exposed to attack.

Massei paid particular attention to the paucity and lack of what can be regarded as significant defensive wounds on her hands by comparison with the number, distribution and diversity of the impressive wounds to her face and neck. He found this disproportion to be significant, particularly with regard to what was known about Meredith's physicality and personality.

Meredith was slim and strong, possessing a physicality that would have allowed her to move around with agility. She liked sports, and practiced boxing and karate. In fact she had a medium belt in karate. She would, had she been able to, have fought with all her strength. How then would a single attacker have been able to change hands with a knife to strike to both sides of her neck, let alone switch from one knife to another? He would have had to release his grip on the victim to do that, unless she had wriggled free and changed position, in which case he would have to subdue her all over again, but this time, if not before, she would be ready.

Since the attack was also sexual in nature, at least initially, how could a single attacker have removed the clothes she was wearing (a sweater, jeans, knickers and shoes) and inflicted the sexual violence revealed by the vaginal swab without, again, releasing his grip? It might be suggested, as the defence did, that Meredith was already undressed when the attack began, but for this to be the case one of three possible alternative hypotheses has to be accepted. The first is that Guede was already in the flat, uninvited, and un-noticed by Meredith, which can only mean that the break -in was genuine but un-noticed by her. The second is that Guede was there by invitation and that their relationship had proceeded by agreement to the contemplation of sexual intercourse when Meredith suddenly changed her mind, unleashing a violent reaction from Guede.

The third is that, having been invited in Meredith then thought that he had left, although he had not. Having looked at the staging we can surely rule out the first hypothesis. As to the second, it does not fit with what is known about Meredith's personality and the relationship she had been developing with Giacomo. As to the third it is difficult to imagine that in a small flat Meredith would not have checked before securing the front door and preparing for bed.

Massei found it was highly unlikely that one person could have caused all the resulting bruises and wounds by doing the above, including cutting off and bending the hooks on the bra clasp. The actions on the bra clasp alone would necessitate someone standing behind her and using a knife to cut the straps, requiring the attention of both hands from her attacker, during which time Meredith would have had the opportunity to react against her aggressor. It has to be conceded though that this could have happened when she was concussed, though there is no persuasive physical evidence of a concussive blow before, during, or after she had been mortally wounded.

Massei concluded that there was little evidence of defensive manoeuvres on Meredith's part, which to him meant that several attackers were present, each with a distribution of tasks and roles: either holding her and preventing her from making any significant defensive reaction (no foreign DNA under her fingernails), or actually performing the violent actions. He concluded that the rest of the body of evidence, both circumstantial and forensic, came in full support of such a scenario. He concluded that two separate knives had been used and that one was from Sollecito's bedsit.

Although, at the trial, the defence had attempted to explain a scenario whereby a single attacker might have been responsible for the injuries, that there had been multiple attackers was not a scenario with which any court, other than the first appeal court presided over by Hellmann, demurred.

CHAPTER 16

The Forensic Evidence – The Prints, Luminol and TMB

I include in the forensic evidence analysis of the footprints found. Before the trial Mignini had charged Dr Rinaldi and Chief Inspector Boemia to undertake this task.

They were asked to :- (1) compare the shoeprints found during the crime scene inspection - in particular trace 105 found on Meredith's pillow case, attributed to the presumed footprint of a woman's left shoe - with the seized shoes; (2) compare the footprints taken from those being investigated with the footprint found on the bathmat in the small bathroom; (3) compare the footprints taken from those being investigated with the prints revealed by luminol; and (4) ascertain the compatibility or non-compatibility of the prints found in the cottage with those taken during physical examination of the persons under investigation.

I am going to take these out of sequence and look at the bloody footprint on the bathmat first.



In this picture the colour has been enhanced by Professor Vinci, for the defence. In this print the big toe, the metatarsus and part of the plantar arch are clearly visible, whereas the heel is missing completely.

The measurements quoted in their Report highlight -

For the big toe; 30 mm in width and 39 mm in length

For the metatarsus; 99 mm in width and 50 mm in length,

giving the print on the mat, according to Massei, a clear definition of the general characteristics of shape and size.

Due to the lack of minutiae found on the friction edges (“epidermal ridges”) these latter being highly differentiating elements, they decided that the print on the mat was useful for negative comparisons rather than positive ones. They were, though, able to arrive at an opinion of probable identity, derived from comparing the measurements with the measurements taken from Guede, Sollecito and Knox.

We can now consider what those comparative measurements are. Again these are to be found in the Report. We can start by excluding Knox from the comparison because her foot is significantly smaller.

Measurement (mm)	Print	Guede	% Correlation	Sollecito	% Correlation
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Big toe width	30	23	76.66	30	100.00
Big toe length	39	43	110.30	37	94.90
Metatarsus width	99	96	97.00	99	100.00
Plantar arch width	39			40	102.60
Dist point 1-2 (toe)	28	20	71.40	28	100.00
Metatarsus width 5	99			99	100.00
Metatarsus width 6	92			92	100.00
Metatarsus width 7	75			75	100.00
Plantar arch 8-9	40	37	92.50	40	100.00
Plantar arch 9-10	43	36	83.70	42	97.70

There are some measurements that I do not have for Guede, but even so Sollecito’s foot is a far better fit for that on the mat than his, and for this reason Rinaldi and Boemia came to the conclusion that the bathmat print belonged to Sollecito. That is not to say that it would not fit with any number of other people.

Massei - “The analyses of the size of the big toe, Sollecito’s being absolutely the widest, led in itself to the conclusion of compatibility between the print on the mat and the right foot of the defendant, whereas the comparison between the sole print of Guede and that of Sollecito also demonstrated the different size of the plantar arch, with Guede’s narrower one attesting to the fact that the Ivory Coast national has an altogether narrower foot in comparison to Sollecito’s foot. The sole prints of the two defendants in question therefore present considerable differences in terms of :- (1) the big toe; (2) the width of the metatarsus; (3) the width of the plantar arch; finally the width of the heel

(attention to the heel will become relevant in relation to the examination of the print highlighted by luminol, whereas the heel can not be used in the examination of the print on the mat, because, as said, the heel is not present.”

The defence had disputed the finding. They called Professor Vinci, who we have met before in connection with the blood stains on the bed sheet. Not only was the bathmat print not attributable to Sollecito but he attributed it to Guede.

Vinci stressed the value of some particularly individualising features of his own examination of Sollecito’s foot consisting of (Massei) -

“the fact that his second toe does not touch the ground (the so-called “hammer” position of the distal phalange) connected to a slight case of valgus on the right big toe, and the fact that the distal phalange of the big toe also does not touch the ground (meaning that 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). Given these two features which make Sollecito’s right foot morphologically distinctive, Vinci’s study basically arrives at the assertion that, while the second toe of Sollecito’s right foot is entirely absent from the footprints known to be made by him, on the contrary the footprint on the mat does contain the imprint of the [ed : a] second toe.....

Professor Vinci reached these conclusions based on a close examination of the weave of the mat, and also by varying the colours of the footprint, as shown in the photograph album of the Scientific Police, so that via the use of different filters it could be viewed in black and white or in a more intense red colour [ed : see picture on page 97] which emphasized the traces of blood.”

Massei - “The consultant hypothesized that the measurement calculated by the Scientific Police of the width of the big toe of the bathmat footprint was to be reconsidered; he rejected the measurement of about 30 mm in favour of a much smaller measurement of about 24.8 mm, which he obtained by detaching a mark of haematic substance which he did not consider to be a mark from the surface of the big toe, but from a separate body, namely the imprint of the second toe, which is totally absent from the print taken from Sollecito’s right foot.”

Massei was unable to agree with the operation of detaching the mark from the toe because it depended on an assumption that there was an interruption in continuity.

“The base of the material in the disputed point shows that the trace of blood is a single unit on all of the curl (flourish), and is uniformly linked, forming a single unit with all the other parts of the material on which the big toe was placed.”

We can understand now that the mark to be detached is that on the end of the outer spiral curl in the pattern of the weave (See photograph above).

Massei - "Although it is possible to agree that in the calculation of the width of the big toe the point of measuring may fall in an unstained place, nevertheless a comprehensive view of the bathmat clearly shows why this was done. Considering that the small region under discussion is part of the tip of the big toe, the point on the right of the toe giving the 30 mm measurement lies along the line descending perpendicularly from that tip, without any widening.....furthermore, the association of the bathmat footprint with Guede's foot (see the CD ROM provided by Professor Vinci showing "the superimposition sequence" for Guede's foot) appears, frankly, as strained, given that **Guede's footprint**, apart from having a morphology which is generally longer and more tapered, **also has a second toe print which unequivocally falls quite far from the big toe print, so that the small mark whose detachment from the big toe is in question here could hardly be attributed to the second toe of the defendant (Guede)**". [Ed : Bold print by me]

Massei thus accepted the finding made by Rinaldi and Boemia.

The reader might care here to jump to Chapter 25, Page 213, where I consider the bathmat print further in the light of the first appeal court's reconsideration of the issue.

As to trace 105, the shoeprint made in presumed haematic substance on Meredith's pillowcase, this was attributed by Rinaldi and Boemia to the heel of a woman's shoe, as the width of the portion of heel revealed would not match that of a man.

Professor Vinci's Report arrived at a completely different conclusion. Comparing the sole of the right shoe of Guede's Nike Outbreak model 2s with an enlargement of the 105 photograph, he reconciled trace 105 with the pattern on the sole of Guede's right shoe, by reference to the arc-like elements in the trace which the Scientific Police had attributed to the portion of heel.

It should be mentioned why the court had determined that Guede was wearing such shoes. No such shoes were recovered but the police did find an empty shoebox at his bedsit showing the make, model and size of the contents. The police had then purchased precisely such a pair of shoes from which they were able to determine the sole pattern, which had matched the bloody shoeprints in the corridor.

Massei was unable to make a finding either way, conceding that the pillow case did not rest on a flat surface when the mark was made, and the pillow case conceivably may have had a fold in it, which could result in the heel being foreshortened in width.

We turn now to the footprints revealed by luminol. Luminol is applied by spray, and the corridor, the kitchen/living room floor, and the rooms occupied by Knox and Romanelli, were sprayed when Dr Stefanoni and her team returned to the flat to collect the bra clasp on the 18th December 2007. If the luminol comes into contact with blood then a blue fluorescence occurs, lasting long enough for investigators to photograph the results.

If a shape of interest is detected then it can be measured, the investigators doing this by placing a ruler on the ground, beside the shape, to be included in the photograph. In this case the size of the tiles in the corridor was also a useful reference point.

The luminol positive findings as regards footprints, useful for negative purposes only, were as follows :-

1. In the bedroom of Amanda Knox a footprint, in which were clearly visible: the big, or 1st toe (22 mm in width), the 3rd, or middle toe, (17 mm in length), the metatarsus (80 mm wide), a portion of the planter arch. The measurements led Rinaldi and Boemia to conclude compatibility with Knox's right foot.

2. In the corridor, and facing towards the exit, the print of a right foot, with the following measurements. Big toe (28 mm wide), metatarsus (95 mm wide and 55 mm long), heel (58 mm wide), and with a total length for the print of 245 mm. The print was attributed to Sollecito whose sole print measurements were: big toe (30 mm wide), metatarsus (99 mm wide and 55 mm long), heel (57mm), and the length of the foot being 244mm. Furthermore there is a greater differentiation with the right foot of Guede, the measurements for which are:

A lesser width for the big toe (which in Guede measures 23 mm, against the 28 mm in the luminol print and the 30 mm in Sollecito's sole print).

A difference in the metatarsus (where, Massei says, Guede has a width of 93 mm, against the 95 mm finding in the luminol print and the 96 mm of Sollecito). However, the measurements mentioned here by Massei do not correlate objectively with Guede's and Sollecito's according to Rinaldi/Boemia, the former's metatarsus width being 96 mm and the latter's being 99. It would therefore appear that Massei has made an error (somehow shaving 3 mm off for both). So, in fact Guede's metatarsus width is closer to the width of the metatarsus in the luminol footprint than is Sollecito's.

That said, there is a different length of the foot (which for Guede is 247 mm, against the 245 mm in the luminol print and 244 mm for Sollecito.

A lesser width of the heel (51 mm for Guede's foot, against 58 mm in the luminol print and 57 mm for Sollecito.

Professor Vinci pointed out to the court that, despite the close resemblance between the luminol print and that belonging to Sollecito, there were nevertheless crucial differences. In the luminol print there is the mark of the second toe, and a print of the first phalange of the big toe, both of which are missing from Sollecito's footprint.

However Massei was not convinced that there was a second toe mark. He noted that in Rinaldi and Boemia's Report they had considered the mark to be the consequence of a "drag" or slip of the big toe.

Although there are differences between the measurements in the luminol print and the print on the bathmat, nevertheless the two prints correspond more closely even without the heel, to Sollecito than to Guede.

3. In the corridor, in front of Meredith Kercher's room, and facing it, R2 in the Rinaldi/Boemia Report (see page 84), the print of a right foot with dimensions which Rinaldi and Boemia again attribute to Knox.

Apart from the correlation between the bathmat print and the luminol print, both attributed to Sollecito, none of the luminol prints would be particularly significant but for the fact that they were revealed by luminol, raising the probability that they were made in blood. Indeed Massei refers to the luminol prints as being made by a presumed haematic substance.

But I have not finished describing the results of the luminol testing. Of the traces that were located that did not contain the obvious mark of a shoe or foot, or at any rate an attributable shoe or foot, one was in the corridor and two were in Romanelli's room. Swabs were taken of these traces and subjected to DNA testing. The two traces located in Romanelli's bedroom revealed Meredith's DNA in one instance and the mixed DNA of Knox and Meredith in the other. The trace from the corridor also revealed the mixed DNA of Knox and Meredith.

There were also two unattributed footprints in Knox's room, in addition to the one attributed to her (i.e 1 above), all revealed by luminol. All three footprints were sampled and the analysis revealed Knox's DNA profile alone.

Luminol contains a reagent, hydrogen peroxide, which reacts with the iron in blood (in the red blood cells) to produce the blue fluorescence. However it is a presumptive test only because there are other substances which contain iron, such as bleach, rust, sweat and vegetable matter. Fruit juice will cause a reaction, and the ceramic of some floor tiles. The possibility that the luminol was reacting to such substances would therefore have to be considered and ruled out as unlikely. I think we can start by ruling out floor tiles (in the corridor) as had that been the case here then the whole corridor would have glowed.

A word about sweat here. Sweat is basically water containing body cells from exfoliated skin and minerals naturally found in the body such as calcium, magnesium, potassium and iron. Because of the iron element luminol will therefore react with sweat but because the amount of iron in sweat is fairly negligible the blue fluorescence effect of the reaction will not be as pronounced as with a substance, such as blood, containing a greater quantity of iron. Iron is an essential element for blood production and about 70% of the iron in the body is found in the red blood cells and in muscle cells called myoglobin.

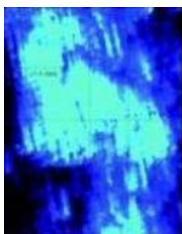
DNA can also be extracted from sweat but usually because of the exfoliated skin cells.

Because the test is presumptive, the presence of blood can only be confirmed scientifically by taking swabs of the traces and then testing the material on the swabs for human protein, as well as haemoglobin. It does not seem that it was possible for Stefanoni to do a biological test, perhaps because the amount of material available was too small. However, the fact that she obtained DNA results from some of the luminol hits is, of course, confirmation of biological material, and that human. However it is not recorded, it has to be observed, that she obtained any DNA profiles from the luminol enhanced **attributed** footprints in **the corridor**. Presumably she took swabs from these traces, but did she test the swabs for DNA, without result, or did she not test them for DNA at all?

Some scientific facts about luminol –

As blood dries, it turns brownish and rusty coloured. Consequently, the older the bloodstain, the more intense the reaction with luminol. Stefanoni may always have intended to return to the cottage for luminol testing, and in the event left it until she could secure the agreement of all parties for collecting the bra clasp. Other reactive substances tend to deteriorate over time by comparison. For instance bleach which will dissipate quite quickly. Forensic investigators like to say that in the right circumstances they can tell whether the fluorescence is blood or not simply from the brightness of the fluorescence.

Amanda Knox's footprint.



Luminol is extremely sensitive; studies have shown that it can detect blood in one part per 5 million (1 : 5,000,000).

The position for the prosecution, however, is complicated by the results of the TMB testing.

The TMB test is on the material gained from a swab of the trace.

Tetramethylbenzidine is another presumptive test for blood, a catalytic test which is based on the peroxidase-like activity of haemoglobin. Haemoglobin, which is the iron-containing oxygen-transport metalloproteinase in red blood cells, has the ability to cleave oxygen molecules from H₂O₂ (hydrogen peroxide), the reagent in the TMB solution, and catalyse the reaction which we see, which is that the TMB solution turns a bluish green colour. However this is because of the peroxidase enzyme, and not the iron, in haemoglobin.

It would be more accurate in fact to say that TMB is non-specific for blood but specific for peroxidase. It can also be said that TMB screens out other luminol positive substances whereas luminol does not.

The results of TMB testing on the presumed haematic substances in the luminol traces were negative. Does that mean that there was no blood? What then could have been responsible for the DNA extracted and the profiles obtained? Perhaps sweat?

Would the fact that the TMB testing was done on swabs that had been taken from traces that had been subjected to luminol testing make any difference? Looking at the trial documentation I can only find one reference to this, where Massei is summarizing the evidence of Dr Sarah Gino, for the defence.

“She added that, in her experience, analyses performed with TMB on traces revealed by Luminol gave about even results : 50% negative, 50% positive.”

It is not stated, for the purpose of the above analyses, that the luminol traces were definitely known to be blood, but if they were not then her observation would have been fairly meaningless. But if they were, then I am surprised by the even split. This would suggest that the TMB tests conducted on the two luminol revealed footprints in the corridor attributed to Knox and Sollecito, and being negative, would appear to have an unacceptably high level of chance about them for the negative result to be considered definitive. On the other hand all the TMB tests on the luminol enhanced traces were in fact negative - other than for Guede's disappearing shoeprints.

Furthermore, although luminol and TMB share a common reagent in hydrogen peroxide, the reaction that occurs depends on a different catalyst in the trace, iron for luminol, and the peroxidase enzyme for TMB. Accordingly it has to be the case that the TMB test is unaffected by prior use of luminol.

Could the peroxidase enzyme have deteriorated? It is known that it denatures at high temperature, between 94 and 98 Celsius, and part of the process of amplifying a sample for DNA analysis is to heat the sample up to about that temperature. However, for this to be relevant one would have to assume that Stefanoni performed, in relation to each trace extract, or swab, a preliminary amplification (see next Chapter) of the entire trace, used it for a DNA test and then for a TMB test on what was left of the amplified but untested solution. This is possible but would seem most unlikely. Also we would have to assume that Stefanoni had only taken one swab from each luminol trace of interest when it should have been easy to take more than one, so that she had one for DNA analysis and one for TMB or other testing.

As with luminol, studies have been done as to how sensitive TMB is. It can detect blood in one part per 1.5 million (1 : 1,500,000). Not as sensitive as luminol but still very sensitive. However perhaps the lesser sensitivity explains D Gino's remark.

The negative results do not categorically exclude blood, but I would opine that the luminol positive presumption is displaced by the TMB negative presumption except when DNA can be extracted from the trace, and it seems that when DNA was extracted, with a human profile, Stefanoni simply ignored the TMB test results, no doubt for the reason that the trace was clearly biological, and human, and because it had been revealed by luminol. To her, in her experience and given the degree of fluorescence, that equalled blood. To my mind that is a reasonable inference, in context at any rate because it could be sweat or saliva, but it only applies to the traces located by luminol in Romanelli's room, and the one in the corridor, from which DNA was obtained, and not to the two attributed footprints in the corridor which seemingly were not subjected to DNA analysis.

It does have to be said that Stefanoni was naughty. She excluded the results of the TMB testing from her Forensic Report for the trial court. The court had to be adjourned at the request of the defences for her to produce the lab records (referred to as the SAL cards – Stato Avanzamento Lavori – “Work Progress Status”) but in any event, at the end of the day, those negative tests were disclosed and the issue they raised fully discussed at trial.

However, is the testing the only factor to take into account? Context is relevant when one has competing presumptions and just because one test seems to have the advantage of the other does not mean that context must be excluded, at any rate not, I would submit, in a court of law.

If the fluorescence was due to non-haematic substances, such as bleach, fruit juice, sweaty feet etc, due to the fact that the flat was lived in, then it is remarkable is it not, since the investigators could not see what they were looking for, and thus sprayed everywhere in the corridor and in the rooms occupied by Knox and Romanelli (but not in Meredith's room it would seem), that fluorescent patches did not appear all over the place but, as far as the corridor was concerned, were mostly limited to what were clearly footprints? There is a specificity about those luminol revealed footprints which clearly distinguishes them from a general layering or treading over a period of time.

The luminol hits took place on the 18th December whereas the murder occurred on the 1st November. The hypochlorite in bleach, responsible for the luminol emitting light, dissipates naturally after just a few days and therefore the fluorescence could not be due to bleach. Furthermore no-one noticed a smell of bleach on the day of the discovery of the murder.

One also has to consider what rational explanation there would be for not just Knox, but Sollecito as well, having fruit juice or some vegetable matter on the soles of their feet or, given the presence of DNA in a trace, sweaty feet. What would be the explanation? No explanation was ever advanced, least of all by either of them. On the other hand Meredith's blood had clearly travelled out of her room, as we have seen from previous Chapters and we also have the evidence as to removal of blood traces (the use of luminol being part of that and without which we would never have known that Guede's

visible left shoe prints in blood extended invisibly on a direct path to the front door). Furthermore we have a correlation between the luminol enhanced trace attributed to Sollecito with the footprint, in diluted blood, on the bathmat.

For Massei, the presumptions had shifted back in favour of the luminol traces being blood; still a presumption, and largely context based, but nevertheless circumstantial evidence against Knox and Sollecito. I discuss this issue further, starting at the bottom of page 319 to page 320.

CHAPTER 17

The DNA

The DNA results were the subject of scrutiny and criticism, particularly with regard to the method of collection and possible contamination. This aspect was highlighted, at least for the media, with the appointment of “independent experts” at the first appeal. Therefore I intend to leave that aspect for later Chapters dealing with that appeal.

What I will look at here is what the main results were. Should the reader not be an expert in the forensics of DNA then we need also to know what DNA is, and how the analysis is, and was, done.

To this end I feel I can do no better than to quote from the book “Darkness Descending”, in which there is a layman’s guide to the subject. The guide is not entirely accurate but it is certainly helpful. DNA is short for deoxyribonucleic acid, the long molecule present in nearly all living organisms and which gives each individual his or her special characteristics.

“The building blocks are four protein molecules called adenine, thymine, guanine and cytosine. Every person has a different specific combination of these blocks, known as a sequence, running up the DNA chain. Most of all human DNA is the same but there are sixteen molecules or combinations of the building blocks that are repeated a different number of times in each individual. These are called loci. It’s a DNA profiler’s job to identify this bar code for a person under suspicion and then match it to the bar code found in a sample at the crime scene.”

“For example, one individual might have ten repeats of a specific locus while another thirteen. But they may have the same number of repeats of a different locus. Out of the sixteen loci for which an analyst looks, no one will have the same number of repeats for every locus. It is a highly discriminating test.”

“DNA investigators therefore look for the quantities of each of these sixteen repeat sequences in order to establish the identity of a donor. There are two of each loci we are looking for because we all get one half chromosome from our mothers and fathers.”

“The DNA sampling process involves several specific steps: isolating the DNA from the rest of the cell content; diluting this extract in a solution containing enzymes that break the DNA coil into segments or repeat sequences that correspond to individual loci; amplifying the signal, during which the repeat sequences are “photocopied” using what is called a polymerase chain reaction or PCR. These sequences are given a fluorescent “tail” using a primer so that we can evaluate the quantity of material we are measuring.”

“A DNA molecule looks a bit like a ladder that has been twisted into a spiral, or helix.” During the PCR process this ladder is split down the rungs by heating it. “Both sides of

the ladder consist of a strip of the bar code like repeat sequences. When the DNA cools, the enzyme rebuilds the missing sides of each half ladder, so that you're left with two new strands of DNA. By heating, reacting and cooling again you get four new strands from the two, and so on. The result is that the whole sample is amplified hundreds of times over, but the repeat sequences remain in the same proportion to the original sample. This makes the search for each individual repeat sequence easier given the mass of material created."

"The solution of enzymes containing molecules or loci is then passed through a capillary tube and subjected to a technique called electrophoresis which gives the molecules an electric charge. The heavier molecules move more slowly, the lighter ones faster. The machine [detects this movement with a laser and] then measures the amount of each of these molecules along a grid and creates graphs with peaks [called alleles], the height of which for each individual locus – there are sixteen, remember – reflects the quantity of material we are working with. These are called relative fluorescence units or RFUs. Next to each peak we also find the number of repeats existing in that sample of that locus which is the distinguishing value we are looking for."

"So we have two values: the height of the peak, which is the quantity of material, and, at the base of each peak, the number of repeats, which is the individual characteristic we are looking for. [In the graph the number of repeats will come in pairs because there will be two peaks in each loci] Obviously the greater the quantity of material, so the higher the peak, the more reliable the reading is. The graph is called an electropherogram."

"There is another technique that saves time; a specific generic test for a Y chromosome, left only by males. Men have a Y chromosome, so called because one of it's legs being shorter."

In the scientific literature the repeats that are referred to above, being short tandem repeats, are known as STRs. Generally what the profiler is looking for are the STRs known as autosomal STRs, to be distinguished from Y-STRs from the Y chromosome, which we will encounter later with regard to the bra clasp.

Before moving on to the results for the knife and the bra clasp let us recapitulate the results that have already been mentioned, and mention some that have not.

The DNA results concerning Guede were mentioned in Chapter 8. The results from the samples taken from the blood found in the small bathroom were as follows –

Meredith's DNA in the blood on the bathmat, the door and on the light switch.

The mixed DNA of Meredith and Knox in blood in the washbasin and bidet, and on the cotton bud box.

Knox's DNA in the blood on the washbasin faucet.

The DNA results from the luminol traces have just been covered.

As to the mixed DNA in the visible blood in the washbasin, bidet and on the cotton bud box, the science here does not confirm that these were mixtures of their blood, which is what the prosecution contended. It does not even, by itself, confirm that any of it was Meredith's blood! However there are other factors to be considered, and in this respect interpretation of the scientific results plays a part, along with context, logic and one's natural intuition based on experience.

It is not difficult to infer that it was Meredith's blood, given the quantity in her room, and only her DNA in the blood forming the bathmat footprint, on the bathroom door and on the light switch.

As to Knox's blood, there is only her DNA in the blood on the sink faucet, in close proximity to the mixed samples. So that may be how there is mixed blood there. Indeed, the electropherogram readings for the mixed samples show that Knox's alleles, in many cases, are not just high but higher than Meredith's. Blood is, of course, a rich source of DNA. The prosecution experts contended that in their experience this showed there was a mixture of blood in the mixed DNA. Disputing that, the defence contended that since it was a shared bathroom there were many innocent explanations for the presence of Knox's DNA which could pre-date the deposit of Meredith's blood, and that as to Knox's undoubted blood on the faucet this, and perhaps elsewhere, was due to her ear piercings.

However there is a problem for the defence. Knox herself testified that there was no blood in the bathroom when she used it, the once, the day before the discovery of the murder, and in her e-mail she mentions no bleed at the time of her alleged shower on the morning of the discovery and opines that the blood she noticed was unlikely to be from her ear piercings given both the amount and that, as to the faucet and sink basin, it was caked on.

Accordingly, we are entitled to infer, on the basis of the above information and observations, and taking into account what Knox and Sollecito, supported by witnesses (i.e Popovic and Sollecito's father), say they were up to after leaving the cottage, that Knox's blood was deposited on the faucet in the period of time intervening between the two occasions she claims to have used the bathroom. That is evening/overnight, for which she had no alibi but when, according to her, she was not there. That is a lie exposed by the science and, rather carelessly, by her own account and the other testimony.

The DNA results from the luminol traces have been covered, but we can recall that there were 3 footprints revealed in Knox's bedroom with only her DNA in them and, we can add, with high alleles.

A DNA test not hitherto mentioned was in respect of scrapings from under Meredith's fingernails, which tested positive only for Meredith's DNA, a point which perhaps amplifies the restraint to which Meredith was subjected during the attack on her.

Six cigarette stubs were found in an ash tray in the kitchen area. Three yielded the same genetic profile of an unidentified male. One of them contained a mixture of saliva and genetic profiles from Knox and Sollecito. The others revealed the genetic profile of an unidentified woman.

Sollecito's Audi was examined. 16 interior locations were swabbed. Apparently no TMB tests were performed but the samples were analysed for DNA. Nothing in the way of a profile was found, not even Sollecito's. Other than on the kitchen knife referred to below, no forensic trace of Meredith was discovered at Sollecito's bedsit.

Likewise no trace of Meredith, blood or DNA, was discovered at Guede's bedsit.

Of the visible traces of blood in Meredith's room, the corridor and in the kitchen/living room, the shoe prints and spots of blood, these only yielded the genetic profile of Meredith.

Exhibit 36

This is the knife seized from Sollecito's flat. It had aroused the suspicions of the police because, they said, it looked cleaner than the other cutlery, looked compatible with what was known as to the victim's main wound, and because Sollecito's kitchen smelt of domestic chlorine, or bleach.

In a work session on the 12th November 2007, Dr Patrizia Stefanoni performed her analysis of the Knife. Stefanoni was a biologist who worked at the State Police Scientific and Forensic laboratory in Rome. She had worked on a number of high profile murder cases and had also undertaken the genetic profiling and identification of bodies from mass graves in Serbia and Bosnia-Herzegovina.

In addition she had given notice of the intended testing to all parties under Article 360 of the Italian Penal Code. We shall discuss the ramifications of this later but need only note here that experts from the Kercher and Sollecito families were in attendance. Professor Toricelli was present for the Kerchers and Professors Pascali and Patumi for the Sollecitos. No one was specifically present for Knox.

Stefanoni noticed that there were striations on the blade of the knife and these aroused her interest. She was only able to see these under an intense light and because shadows were created by changing the angle at which the light hit the blade. These striations ran from the middle parallel to the upper part of the blade and down towards the point. As the knife looked clean these striations were an obvious place to look for DNA material, including the handle of the knife. In addition to taking swabs for DNA analysis she also took swabs to test for blood with the TMB test. These tests were negative. I will evaluate the significance of the negative results further in Chapter 33, Pages 306-8.

As to whether the point in the striations from which she took the sample for a DNA test was tested for blood, she said -

(Massei) - "the test for blood had to be carried out on a small portion of this striation, because otherwise.....we would remove the probable genetic material which would no longer be available for the genetic test, because after examination of the blood derived material, it is not possible to preserve the same material and use it for a genetic analysis, And so we, to try this kind of analysis, an analysis of the kind of specimen, we sacrifice a small part of the specimen.....after which, I went ahead and sampled the rest of the striation with this swab, because this was the main purpose of the genetic analysis, to establish a genetic profile. Therefore, the origin of the specimen is sacrificed for the benefit of the possible identification that you get with DNA examination, because knowing that it is blood, but not knowing who it belongs to, means very little."

I am not sure that the statement "after examination of the blood derived material, it is not possible to preserve the same material and use it for genetic analysis" is correct because the TMB test works on the red blood cells whereas DNA profiles are obtained from the white, and from blood plasma.

However, doing only a genetic analysis of the sample was really the only option she had given the very low quantity of DNA determined as available, and because using it all and getting a profile, if there was one, was the priority consideration.

It was certainly a propitious decision.

Stefanoni took four swabs from the blade (denoted by the letters B, C, E and G), being at least one from the striation and one from the tip, and three from the handle (A, D and F), for genetic analysis. As for the known sample from the blade striation, B, and also for sample C (I think from the tip of the blade) she noted on quantification that both recorded "too low" though whilst C was in fact negative, B was positive (meaning it was quantifiable for DNA). It does however appear that Stefanoni omitted to record the quantification.

When the amount of DNA is minimal this is referred to in the trade as Low Copy Number, or LCN DNA for short. However LCN DNA is not automatically excluded from analysis. If there is a problem with LCN it is that sometimes it is not possible to repeat the DNA analysis, which is recommended by most guidelines, or if it can be repeated, with exactly the same result.

Nevertheless she decided to proceed with the analytic process but committing the entire sample from swab B (and, it seems, for separate analysis, C as well) to the amplification and test. It would be normal practice, if the material was sufficient, to divide it into more than one solution so as to have a back up for a re-test, but she rationalised that she stood a better chance of obtaining a profile, if there was one, if she used all of it for one amplification. I explain the scientific aspects to this on page 295.

Of the samples analysed, seven in all, two yielded a genetic profile. Sample A from the handle, on the inside of the hand guard next to the blade, yielded the genetic profile of

Amanda Knox. Sample B, from the striation on the blade, yielded the genetic profile of Meredith Kercher. In court these were to be referred to as exhibits 36A and 36B.

Stefanoni did do a re-run of the test for B from the same amplification without finding anything different in the result that would alter her interpretation.

We can now consider the electropherogram chart and STR data pertaining to 36B. As one might expect with a low quantity of DNA the peaks reveal low heights (RFUs). An RFU of 50 is usually, as a guideline, the minimum to be considered reliable. The peaks in question averaged around 50 but some with lower peaks. However of the 15 (having excluded the sex chromosome) individualising loci that can be found there was an almost complete match with Meredith's genetic profile in all of them, only one having a match for one allele but not for it's pairing. In saying that there were matches we are saying that the STR repeats in each allele in a locus (other than for one allele) were identical with the profile. That is, in 29 out of 30 (30 plus the sex chromosome is a complete genetic profile, or fingerprint as it used to be known). It amounts to an astonishingly accurate match and the point about the height of the alleles, indicating the quantity of DNA, and more appropriate to consider alongside the issue of contamination, pales into insignificance by comparison.

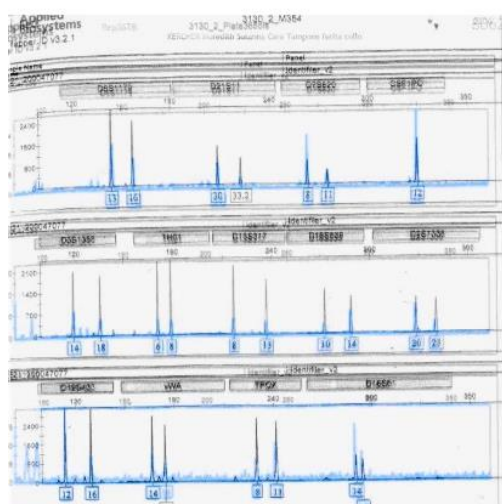
Here are the actual results.

MARKERS	KERCHEMEREDITH	THE RESULT
D8S 1179	13,16	13,16
D21SW11	30,332	30
D 7S 820	8,11	8,11
CSF1PO di	12, 12	12
D3S 1358	14,18	14,18
TH01	6,8	6,8
D 13S 317	8,13	8,13
D16S 539	10,14	10,14
D2S1338	20,23	20,23
D 19S 433	12,16	12,16
VWA	14,16	14,16
TPOX	8,11	8,11
D18S51	14,15	14,15
D5S 818	11,12	11,12
FGA	20,21	20,21
AMELOGENINA	X,x	X

The markers referred to above are among established core STR loci for inclusion within a database known as CODIS (Combined DNA Index System). These particular STR markers, the fifteen as above, amongst others (there are 20 in all in use for identification purposes), have STRs which are highly variable among individuals and thus are internationally recognized as the standard markers for human identification.

In addition these markers and their alleles will appear in a different sequence on the DNA thread for each individual, and there is a match here as well, given graphic illustration (as to sequence and the placement of the allele peaks – two for each marker) by a transposition of the respective print outs from the electropherogram.

In the image below the two print outs have been transposed.



The markers match as to their sequence (though, for convenience, only 13 of the 15 are being shown here), as does the positioning of their alleles, and the STR data (the number below each allele) is the same. Some of that information is a bit fuzzy in places (even if you zoom in) due to the transposition and size of the image. Incidentally, zooming in makes it pretty obvious which is the representative profile and which is 36B.

Nevertheless one still has to calculate the statistical probability of someone else having the same match.

Continuing with Stefanoni's evidence:-

(Massei) - " A complete genetic profile, consisting therefore in 16 points from 15 pairs plus the sex chromosome pair, yields the identity of a specific person so precisely that to have a probability of finding another person with the same genetic profile, one would have to imagine seeking that individual in a population of a trillion people."

(Massei) - "It can happen that not all 16 points are amplified, so that it is not possible to see all 15 pairs and the sex pair, but only some of the pairs. This can happen if the sample is too scarce or if the DNA was damaged by some external cause (excessive heat or contamination by bacteria).....However with more than 11 or 12 pairs of alleles, the probability of identification remains high...."

Indeed there are jurisdictions where a match of less than 11 is accepted as a reliable identification (the UK, for instance, where it is 10 - See Crown Prosecution Guidelines), particularly in cases where there is no suggestion of a mixed profile, as there was not with 36B.

At the trial defence experts were called to criticise the findings, concentrating on 36B. The result with 36A was not considered as damning because it was, of course, a perfectly reasonable hypothesis that Knox had at some time used the knife for the preparation of meals at Sollecito's bedsit. The prosecution, though, would argue that the point on the hand guard would not be where someone using it in the kitchen would be likely to leave his or her DNA (and in fact would be more consistent with a stabbing

action) and point out that Sollecito's DNA, expected given that it was his knife and that, according to Knox, he had prepared and cooked fish on the evening of Meredith's murder, had not been found on the handle, lending credence to the hypothesis that it had been cleaned more meticulously than usual. Not a strong argument, but made.

The defence experts did argue, nevertheless, with the interpretation of the 36B electropherogram graph, arguing that some of the lower alleles were indistinguishable from "stutters" in the graph, and should therefore have been discounted. In my opinion the argument, based on the 50 RFU guideline, was posited more in hope than realistically.

Stutter (also often referred to as "noise") is referred to as a stochastic effect in the PCR process. We know that the DNA strand contains coding for the body's cells. However there are segments in the strand that do not contain that coding but contain "junk DNA" that does not contain any coding that the scientists know about. The amplification process creates STRs (short tandem repeats) and there are STRs present in the DNA of every individual, including the junk DNA, and, despite counter-measures, stutter may appear from them as a consequence, showing as shadow bands, which often align with common alleles. The question is how to identify stutter and discount it.

Stefanoni made the following observations on stutter -

(Massei) - "When the quantity of DNA is very small, all the peaks are lowered, She explained that the criterion of 50 RFU gives a measure of confidence. There can be lower alleles in some loci but that would not be reason to say that they should not be included in evaluating the diagram....in order to identify a peak as stutter it is necessary, therefore, to consider it's height and it's position. The interpretative criteria derive from international studies made by organisations in charge of specifying the rules in this field. With the term "stutter", it was subsequently specified, one refers to smaller peaks which are always found at exactly one position before the main allele, and furthermore this peak must not rise to a height of more than 15% of the height of the main allele, within a tolerance of plus or minus 0.5%".

Applying this guideline, she said it was not possible to mistake a stutter for an allele.

She was not alone in her interpretation. She had support from Professor Novelli, and Professor Torricelli for the Kercher family. Torricelli can be regarded as having no dog in the race.

"I would simply like to emphasize the fact that from the analysis of the electropherogram of trace B, in spite of the fact that the RFU values are indeed very low, allelic peaks emerge clearly from the homogeneous level of background noise of the machine, and these peaks are attributable to the genetic profile of the victim."

Professors Gino and Tagliabracci were the main experts for the defence. Since these two experts were largely to agree with each other I will deal with Tagliabracci's evidence.

He said that the amplification process was known to contain problems in that sometimes there was an imbalance in the alleles and sometimes an allele would “drop out”. Accordingly it was absolutely necessary to obtain confirmation of the data by repeating the analytic test, starting with separate amplifications, which was not the case here.

He criticized the data, or lack of data, in Stefanoni’s technical report for the court, and in the SAL cards that were completed in the laboratory. In particular trace C, from the tip of the knife, also appeared to be a case, like B, of “too low”. However the quantification data for trace B was positive whereas that for trace C was negative, yet both were amplified.

He emphasized that the expression “too low” was used for amounts of less than 10 picograms and also for 0 picograms. He also pointed out that Dr Stefanoni had affirmed, in her verbal testimony, that in trace 36B the DNA was in the order of some 100 or so picograms and that the quantification had been done through Real Time PCR, but that this did not appear from the cards that had been provided.

On being asked whether the quantities used by Stefanoni were in conformity with those prescribed by the kit in question, he said he had information to say that they had not been respected with regard to 36B, for which it was said that the volume of amplification had been reduced to less than the 25 microlitres prescribed by the manufacturers of the kit; the volume in this case had been reduced to 20 microlitres.

Thus there were perceived flaws in recording some data pertaining to the analysis, and in following the kit recommendations. This is a criticism of process but none of it, however, even begins to explain how the kit managed to produce the unambiguous result that it did. The STR data, producing a match even with a wide parameter of possible repetitions, effectively disposes of the defence concerns. There was only one unique contributor in the result. It is clear that Meredith’s DNA profile was on the swab for 36B. Furthermore, that 36B may not have been blood did not exclude that it’s origin was some other cell from her body or, in blood, a white rather than a red cell.

The question then to be addressed was whether there was another reason for this. Contamination of the sample in the lab or contamination from non-primary transfer, we will come to later.

Could there be an innocent explanation for primary transfer? Knox herself testified that Meredith had never been to Sollecito’s bedsit. Sollecito would come up with an explanation. On the 18th November 2007 he wrote in his prison diary -

“I am convinced that she could not have killed Meredith and then return (sic) home. The fact that there is Meredith’s DNA on the kitchen (sic) is because once while cooking together, I shifted myself in the house handling the knife, I had the point on her hand, and immediately after I apologised but she had nothing done to her. So the only real explanation of the kitchen knife is this.”

The DNA was not, of course, from the point of the knife but Sollecito would probably not have known this. This alleged incident would also have occurred at the cottage and it is not understood why it would have been necessary to transport the knife there for cooking when there was already adequate cutlery there.

Exhibit 165

This is the bra clasp, being the small rectangular portion at the end of the bra straps to which the hooks, to clip and unclip the straps, were attached. There is a picture of the clasp in Chapter 24.

The delay in collecting it would obviously arouse suspicions of contamination but we are only concerned with the analytic data here. Again Article 360 was invoked but I am unable to confirm from my research that any experts for the two defendants were present for the analysis or, for that matter, for the analysis of the luminol findings. If none were present they may well have decided not to attend for tactical considerations.

Two samples were taken from the bra clasp. One was from the fabric and yielded the genetic profile of Meredith Kercher. The other was a single swab of both the hooks and yielded, according to Stefanoni, the genetic profiles of both Meredith and Sollecito. The latter was referred to in evidence as Exhibit 165B.

Stefanoni said that 165B was not blood. She presumed it likely that the origin was epithelial cells from the skin of the donor. This would seem likely in view of the force that must have been used in severing the clasp from the rest of the bra.

Using her Applied Biosystems' Quantifier she found that the quantity was suitable for amplification. There was sufficient quantity for an analytic test to be repeated but in the event she did not consider it necessary to do this. She calculated the proportion of Sollecito's DNA to Meredith's as being 1 : 6, in other words there was 6 times more of Meredith's DNA there than Sollecito's. She did this with a formula comparing the different RFUs of each profile, be it that it was the different heights that had made the detection of different profiles much easier in the first place.

(Massei) -

"As far as the quantity is concerned, she indicated it as above a nanogram, since "the quality of this electropherogram is due to the fact that the peaks, both the principal ones and the secondary ones, are however of a certain height, are of a good height; this result is obtained with a quantity of at least a nanogram or more or less, which is that advised by the manufacturer."

All the alleles were in excess of 50 RFUs, the lowest being 65. Although a matter of interpretation in a mixed sample, all the 15 pairs plus the sex pair were in place for Sollecito's genetic profile, at a lower level of RFU than for Meredith's genetic profile.

She clarified that a genetic profile that has more than two peaks for each gene locus, is a mixed specimen.

However Stefanoni did think it was possible that there was another profile there.

(Massei) - "She could not exclude a third person because, in at least one case, it was a matter of very equal profiles."

We now encounter the Y haplotype and its Y-STRs. The 16 pairs of autosomal STRs are a better indication of an individual's genetic identity because, taken as a group, they can be considered as pretty much unique. The Y genetic profile is not as unique as the autosomal genetic profile, as it is shared with other persons, specifically the donor's paternal male line. A male gets his Y haplotype from his father.

Massei refers to Professor Torricelli's evidence for assistance -

"She stated that in the field of genetic diagnostics, her own specific area of expertise, "we actually work with DNA that is derived from a single cell, so we do work with minimum quantities". Recalling the concept of mixed specimens, she paid particular attention to analysis of the Y chromosome. She then pointed out that the haplotype analysis of the Y chromosome is an important analysis because it can be used to confirm a generic profile that has been found through analysis and study of the autosomal markers; furthermore analysis of the Y chromosome serves to rule out the presence of a male donor, thus allowing it to be determined that a given specimen contains only female type DNA."

Somewhat confusing that last bit but thus, I take it, the two profiles found could be distinguished as male and female and the profile attributed to Meredith was definitely female.

"She specified that, when the Y chromosome is examined, a check is made to see if that haplotype is present in the databank, to which "we all refer to determine whether a profile can be found, a Y haplotype that matches this DNA" which is being analysed. She stated that recently there had been an increase in [the number of loci being examined] from 11 to 17, and this made it possible to distinguish one subject from another with greater precision. She stated, with regard to the case in question, that 17 loci had been measured on the Y haplotype concerning the clasp."

"She stressed that the kit used for studying Y haplotypes was much more sensitive than that used for the DNA profile and is therefore able to detect the presence of the Y even with a very tiny specimen. For the autosomal markers there is a need for a greater quantity of DNA. As for the possibility of repeating the test, she pointed out that the

quantity of DNA does not always make repetition effectively possible. This should not, however, mean that the results should not be considered as reliable. She stated in this regard that, in the diagnostics of hereditary diseases, for prenatal diagnoses, nothing is done in duplicate. So, if the test being carried out were not valid “we might just as well put an end to any genetic diagnosis for hereditary diseases, in prenatal diagnosis or in pre-implantation genetic diagnosis.””

“... therefore, while on the autosomes we had markers present in all of the loci, although with a lower quantity, but sufficient to be detected for at least one profile, in the Y haplotype, all 17 loci are present,” with the peaks well defined.

She “then affirmed that on the clasp there was unquestionably the presence of at least two individuals, one of whom is of the male sex; then comparing the profiles, she pointed out that the major DNA is from a donor who has a profile equal to that of Meredith, as for the other loci, all present, the profile was certainly compatible with that of Raffele Sollecito. In confirmation of this, she pointed to the presence of the haplotype of the Y, very clear.....in all of its 17 loci; a haplotype which is equal, when compared to the haplotype obtained from the saliva swab taken from Sollecito.”

She went on with reference to the databank, and the 17 loci that had been detected, (Massei) -

“... and with reference to the latest update of the databank, consisting of a population of 15,956 individuals, no one was found who had the same haplotype (in 17 loci) as Sollecito; she also noted that, if 11 loci, rather than 17, had been found, and then inserted, 31 subjects with the same haplotype would have been found. She referred to this circumstance in order to highlight how particularly sensitive and selective the current analysis of 17 loci is.”

The defence would have scope for arguing contamination which will be considered later. Professor Tagliabracci did not disagree that there were at least two profiles but disagreed with Stefanoni’s interpretation of the autosomal markers in several loci, as he considered that she had been influenced by a suspect centric method in her interpretation of the secondary profile relating to his client.

It was a case of (Massei) -

“... forcing the profile obtained.....eliminating or leaving out alleles solely for the purpose of making that profile compatible with Raffaele Sollecito’s profile.”

“He pointed out that interpreting a peak as an allele or as noise, results in the identification of a different profile. He then indicated in the electropherogram, various peaks which were considered noise, whereas they ought to have been considered as alleles, and specified that “this is especially so for locus D21S11, where there was a peak present the height of which exceeded the 15% that constitutes the threshold between noise and the allele. The peak’s height is 15.8% with respect to the reference allele, and

therefore could not be considered as noise” which is what the Forensic Service had considered it.”

In addition there were 4 other loci where he was of the opinion that Stefanoni’s method of interpretation had led to incorrect conclusions.

Even so, that would only be 5 possible misinterpretations and, even if the Professor was right, and he did not dispute the remaining loci, that would still leave an acceptable number for the identification of Sollecito’s profile on the bra clasp.

Nevertheless Tagliabracci argued that the proportion of the quantity of Sollecito’s DNA to that of Meredith, which he said was more in the proportion of 1 : 10, rather than 1 : 6, was less than 200 picograms (as a matter of arithmetic this was not an accurate observation – using his ratio the quantity was in fact 577 picograms - as we shall discover later) which meant, he said, that the DNA attributable to Sollecito was low copy number DNA, even if the trace was not, and that again, as with trace 36B on the knife, trace 165B should have been retested.

In my submission that would be quite unnecessary as there was already a separate and more sensitive test on the Y haplotype which confirmed the genetic profile analysis. Professor Tagliabracci tried to argue otherwise.

(Massei) - “With reference to the Y haplotype, Professor Tagliabracci declared that, because of it’s particular nature, the Y haplotype can not be used to confirm but only to exclude, because it is not possible to know which of the subjects, present in a given area, have this specific haplotype that is transmitted unchanged through the generations. He thus affirmed that, in the area of Perugia, there could be dozens of subjects with the same haplotype as Sollecito. In fact, he added, “all the Sollecitos who have spread throughout Italy, probably all share the same haplotype.””

He also criticised the databank as containing too few haplotypes.

In my submission the statistical probability that the profiles were not that of Raffaele Sollecito (and that, as to the Y haplotype, some distant male relative of his, who just happened to share a significant, and sufficient, number of the same autosomal markers, was in the cottage on the night of the murder, rather than Raffaele) is so exceedingly low, that it can be accepted that his DNA was on the bra clasp.

This is also the independent opinion of David Balding, a Professor of Statistical Genetics at University College, London, though his opinion was not offered in evidence. However, see his article “Evaluation of Mixed-Source, Low template DNA Profiles” on the internet, which deals specifically with trace 165B.

CHAPTER 18

Time of Death and Other Witnesses

Time of death, if this can be ascertained with any degree of reliability, would be relevant if the accused had an alibi for it. The topic was discussed fully at the trial and covered again on the first appeal before Judge Hellmann. However it was dealt with relatively briefly by Hellmann and accordingly I think it would be more convenient to bring his observations forward and include them here, rather than leave them out until we arrive at a discussion of the first appeal.

All the expert evidence we have on the subject was heard at the trial. Massei used (inter alia) the expert's findings to corroborate a time of death (TOD) being after 11pm, well more 11.30pm, whereas Hellmann argued an earlier TOD as follows -

"... it is more consistent... to hypothesize that in fact the attack, and hence the death shortly thereafter, occurred much earlier than the time held by the Court of first instance, certainly not later than 10.13 pm".

Here Hellmann refers to the time of the last interaction on Meredith's English phone on the 1st November, before it rang again and the ringing was noticed by Mrs Lana's daughter the next morning.

The first thing to notice about Hellmann's observation is that it does not, in itself, provide an alibi for Knox and Sollecito. Remember, the only corroboration that at least one of them was at Sollecito's bedsit is the interaction on Sollecito's computer at 9.10 pm. There may have been another at 9.26 pm but this was not a confirmed human interaction.

If Hellmann's above observation is credible, and more consistent with the evidence, then the attack and TOD would be between 9 pm, when Meredith was last seen alive, and 10.13 pm. However for a workable alibi TOD would have to be between 9 pm and, pushing it for their benefit, just after 9.30 pm, as we have to allow for one or the other, or both, to get down to the cottage after the last human interaction with the computer, and that is assuming the two were together when the latter event took place

There are others who have made a better stab at forcing an alibi out of the evidence than Hellmann made, and so, to be inclusive, it would be as well to consider this as well.

Fitting TOD into the half hour between 9 and 9.30 pm requires a consideration of Meredith's stomach contents, which in turn brings us to the autopsy and a general consideration of the experts' calculations with regard to TOD. Also witnesses heard a penetrating scream on the night of Meredith's death which we will also have to take into account. Knox herself alluded to Meredith screaming in her statements to the police and

in her Memorial which, it is interesting to note, she did not, therein, nor in her testimony, indicate was suggested to her by the police. That she did so later, in her book, we can take with more than a pinch of salt. The police did not have verification of any screams until afterwards.

We will look at an argument put forward by Professor Introna (Sollecito's expert) during the trial. This argument is to do with the time it takes for the stomach to empty from the start of a meal, and relating this to the autopsy findings and in particular that of the pathologist Dr Lalli who found that Meredith's stomach was 500cc full but that there was no material to be found in the duodenum. The argument is that this demonstrates conclusively that Meredith was attacked shortly after her return to the cottage at 9pm and would have died shortly thereafter.

It might be helpful, for those who do not know much about these things, just to give a brief outline of the digestive system. Food, already masticated, passes through the oesophagus to the stomach, where it is broken down by acids, from where it then passes to the small intestine from whence the body extracts the nutrients it needs. The duodenum is that part of the small intestine right next to the stomach and its function is to dissolve the food "juice" further with enzymes before passing it on to the rest of the small intestine. For what it is worth I hope that helps, but first a summary of the other evidence at trial.

Massei considered the experts' findings in the following areas to determine a likely TOD, a matter complicated by the delay in the pathologist being allowed access to the body until some 10 hours after his arrival, perhaps at about 2.30 am.

The first is temperature decrease, "taking the Henssge nomogram into account: rigor mortis; hypostatic marks" etc.

We can start by ruling out that rigor mortis and the hypostatic marks can be helpful, and this has nothing to do with any delay. For instance rigor mortis was observed when the pathologist got to see the foot protruding from the quilt on arrival at the cottage. Rigor mortis normally sets in 3-4 hours after death and then typically lasts for 48 – 60 hours. The hypostatic marks were already resistant to touch when the pathologist was allowed access to the corpse. Hence she had died at least 8-12 hours before.

That apart, nevertheless -

"These led Dr Lalli to conclude that death may have occurred between 21 hours and 30 minutes, and 30 hours and 30 minutes, before the first measurement, and thus between approximately 8pm on November 1st 2007, and 4am on November 2nd....The intermediate value also indicated by the mathematical reconstruction (26 hours prior to the first measurement) puts the time of death at approximately 11pm."

Just how one works out TOD on temperature decrease indicators, especially in the absence of a pathological examination earlier than that which took place here, is pretty

technical. I will not attempt to present the data (some of which is missing i.e Meredith's actual body weight) or explain the mathematical models (so as to calculate body weight and the rate of cooling) (the Henssge nomogram appears to be one such mathematical model that converts to graph form) that the experts used. Nearly all the experts, other than Professor Introna, whilst having marginal disagreements about data and formulae, were not in fundamental disagreement about the wide parameters of or even Dr Lalli's conclusion of a TOD of approximately 11pm

Professor Introna departed from the other experts to use an "ideal weight" and a specific formula to calculate the ideal weight, to produce a TOD of 8.20pm when of course we know that Meredith was still very much alive. Thus Massei ruled out ideal weight calculations as unreliable and used a median weight based on Dr Lalli's guesstimates of Meredith's weight (as used by the other experts) on first examination and at autopsy. She was not actually weighed at all.

The second area is gastric emptying of the stomach.

It was acknowledged by nearly all the experts that there seems to be something like a standard average period between the time that food enters the stomach and it then being processed through into the small intestine. Or, to put it another way, the foregoing would generally be the case. There was, however, some disagreement as to the parameters, ranging from 2-3 hours and 3-4 hours. One could therefore say 2-4 hours. But even this is subject to variables.

Most of the experts agreed though that individuals are different, and there are variables leading to wide discrepancies including the type of meal eaten. A number of the experts heard said that the state of digestion was probably the most unreliable indicator of all as to the TOD.

All agreed that acute stress, psychological as well as physical such as an attack, would likely inhibit the digestive process. As we do not know actually what went on that night it is difficult to say when such a variable may first have come into play.

Now back to the argument developed by Professor Introna as to the gastric emptying of the stomach.

At the autopsy Meredith's stomach was found to be full (or at least had 500 cc of contents) but the duodenum had no material in it. As the duodenum had no material in it, Professor Introna deduced, the stomach had not started to release any part of the meal Meredith had consumed earlier at the home of her friend, Robyn Butterworth, into the small intestine by the time she was attacked and died. A violent attack would likely inhibit digestion and death more or less stops the digestive process.

When Meredith ate her last meal and the parameters for gastric emptying now come into play.

The contents of the stomach observed by Dr Lalli – (Massei)

.....”containing 500 cc of alimentary bolus, green brown in which were recognizable caseosis [ed: cheesy looking substance – possibly mozzarella?] and vegetable fibre...”

Professor Introna observed – (Massei)

“Stomach contents contained a piece of apple and floury fragments which might have been from the apple crumble or the pizza”.

Meredith and Sophie had eaten pizza at Robyn Butterworths’ home, followed by apple crumble. The pizza had toppings of cheese, mozzarella, eggplant and perhaps also onions.

The evidence as to when Meredith had eaten her pizza and the apple crumble is rather vague. It seems that the girls had started eating at about 6pm (some accounts have it earlier at 5.30pm) or maybe 6.30pm, putting on a DVD to watch a film (The Notebook : circa 123 minutes), then eating the apple crumble, and finishing at 8pm or perhaps 8.30pm. The times here are an indication if anything and are not to be treated as completely accurate.

The first thing to be observed is that the apple crumble, on the basis of the standard initial parameters, would not have liquified sufficiently to enter the duodenum by 9 or 9.30pm as at least two hours is required for this to happen. So it is the first meal, the pizza, which is relevant to the argument, though it should also be noted that on the basis of the initial standard parameters the apple crumble could still have been in the stomach up to midnight.

If it was 6.30pm when Meredith began to eat then using the standard initial parameters discussed by Massei we have sometime between 8.30 and 10.30pm for when material from the stomach should (under normal circumstances) have started to enter the duodenum, and obviously earlier if she had eaten earlier. If the duodenum was empty, and death stops the digestive process, then it can be inferred that TOD could be as early as (in Meredith’s case, and to be realistic) say 9.30pm but no later than 10.30pm, certainly not as late as 11 or 11.30pm.

However it is not as simple as the standard initial parameters might indicate, even after observing that the foregoing does not actually provide an alibi, except hypothetically.

Massei quotes two experts as to the unreliability of even standard initial parameters.

“Professor Umani Ronchi testified that digestion is determined by a whole series of absolutely individual conditions and that these are not constant even for the same person. Moreover, he added that the stomach may need three, four, five, or even more, hours to empty itself (hearing on September 19, 2009). Even under standard conditions he indicated that a considerable and variable period of time was necessary. In the report lodged during the pre-trial phase [*incidente probatorio*] there was also a table and the

[reference] literature relating to gastric emptying times, from which it followed that variability is substantial, depending on the type of meal, with the opinion that the said indications were of dubious value. In any case, it was indicated that a farinaceous meal [ed: starchy, or floury food eg pizza base] would require 6 to 7 hours (see report of Umani Ronchi, Cingolani, April, page 45). Consequently, assuming that Meredith began to eat at around 6 pm, the gastric emptying could have occurred around midnight, or even later. The responses given by experts, on precisely this point, at the November 27, 2007 hearing before the GIP during the pre-trial phase were even more clarifying. Specifically, with reference to the pizza and thus to the foodstuffs that Meredith would have begun to eat at around 6 pm on November 1, 2007, Professor Umani Ronchi spoke of a gastric-emptying time of 6 to 7 hours (page 46 of the transcripts of the statement of said hearing). With even greater expository efficiency, Professor Cingolani emphasised that the criterion of stomach contents is the most untrustworthy, the most unreliable criterion for determining the time of death, since it can result in variations that can go from 1 to 12 hours, or even more (see the hearing testimony of November 26, 2007, page 55)."

Also, the whole argument potentially falls apart given that Dr Lalli admitted that he had not tied the duodenum off from the intestine before dissection, so there could have been a loss of content for that reason. However I suppose we must credit the pathologist with the power of observation.

Furthermore there is the hypothesis that Meredith may have eaten a further snack on her return to the cottage in that at the autopsy the pathologist found a mushroom in her oesophagus. Mushrooms specifically had not been a topping on the pizzas baked at Robyn's home.

Who knows whether or not Meredith, on her return to the cottage, grilled a quick snack of pizza toppings on toast which was mistaken for pizza still in the stomach.

That Meredith might still have been hungry might be because she had not, until eating at Robyn's, eaten for a considerable time beforehand. She had been partying all night on Halloween and had gone to bed at about 4 am, rising at about midday, and then leaving not so long afterwards to be with her friends. Whether she had anything to eat at the cottage before leaving on the afternoon of the 1st, we simply don't know. Knox tells us in her e-mail that she and Raffaele cooked and ate there but does not mention Meredith having anything to eat.

All in all, Massei did not regard the information as to stomach contents, gastric emptying times, and the hypotheses arising, as being helpful and reliable, preferring to rely on body cooling.

Indeed Hellmann did not either, nor did he refer to the observation about the duodenum at all. He had different observations to make about the calls logged by Meredith's phone and the reliability of the witnesses as to the scream.

What was Meredith doing when she arrived back at the cottage? Apart from the evidence of the mushroom in the oesophagus, we only have the activity of her English phone to assist us. The memory of that phone is as follows -

1. At 8.56 pm on the 1st November, an attempted call was made to the family number, referable to Meredith's mother's number.
2. At 9.58 pm there was an attempted call to the mobile phone's answering service.
3. At 10 pm the number which, according to the phonebook of both the phones she used, corresponds to the user "Abbeybank", was dialled.
4. At 10.13 pm, a GPRS connection (to the internet) lasting 9 seconds to an IP address. (Massei) - "This connection took place, as has been said, under the coverage of Wind cell. 30064 which is compatible with the cottage at 7, Via della Pergola, while the scientific Police's instrumentation did not register this signal in the site where the mobile phones were found" (Mrs Lana's garden).

The first call was just before she arrived home. Meredith was in the habit of staying in contact with her parents but in particular she liked to check up on her mother who was not well and on dialysis.

We can speculate as to what this data tells us. However, a technical engineer for the defence, by the name of Pelleri, paid the matter particular attention. His evidence is summarised by Massei.

As to the internet connection at 10.13 pm -

"Three hypotheses were elaborated with regard to this connection, which should explain its significance.

1st Hypothesis - Meredith's English mobile phone may have received a multimedia message (MMS) - which would be confirmed by the number of bytes received, 4708, and transmitted, 2721 - where such reception would not have called for any manual intervention by the user. (The MMS therefore arrived automatically but the decision of whether to connect to the internet to see the message was up to the user, who could alternatively erase the MMS to avoid the cost of reading it)

2nd Hypothesis - There was a connection to the internet via WAP of a very brief duration. And in truth, the limited quantity of data exchanged would not have allowed the actual use of any service, given that even such a short access required in any event a human interaction.

3rd Hypothesis - There was an involuntary activation of the internet WAP access followed by a not rapid disconnection (in total 9 seconds) which Pellero attributed to a hand unfamiliar with the phone, namely that of Meredith's killer, who was struggling to end the connection."

The defence scenario was therefore that the two attempted calls at 9.58 and 10 pm were during the attack on Meredith, and the last at 10.13 pm when her phone was out of the cottage, in transit with her other phone, before they were both discarded by throwing them over shrubbery and into the garden of Mrs Lana. Indeed the phone could have been well away from the cottage when last activated at 10.13 pm. The area between the cottage and Mrs Lana's home is largely open land, and mostly it consists of St Angelo Park. Pellero conducted signal tests in the park and was able to receive a signal from the same cell tower as covered the cottage.

Does the data really suggest anything other than that Meredith was perhaps just lying on her bed and idly fiddling with her phone? Hellmann thought it odd, having once attempted to call her mother, but failing to make contact, that she would not try again. Well, having done so at 8.56 pm there was an attempted call to the answering service at 9.58 pm. Why an attempt only? However it might also have been around this time that she found her money was missing (See the next Chapter). We do not know, but there was a call two minutes later to Abbeybank, which failed because the British country code had not been used. As to the 10.13 pm interaction, was this just the arrival of a multimedia message, or is there a more sinister explanation? What was going on? It was said that Meredith kept her English phone in the back pocket of her jeans all the time. Was the Abbeybank number accidentally activated when she was being attacked or, on finding her money missing, was she concerned about her debit/credit cards, muddling a call to Abbeybank before realizing that her cards were safe? Was the 9 second interaction at 10.13 due to the unfamiliar hand of her killer?

In all, not a bad defence hypothesis, but it does not matter because nothing substantive can be derived from this speculation. It cannot determine TOD (or rather, when she was stabbed, which could be a while after, say, a wresting of the phone away from Meredith) and the critical thing is that none of this gives Knox and Sollecito an alibi.

We do, however, have factual testimony as to a harrowing scream, heard after the above phone activity, and placing TOD closer to the prosecution's idea of it having occurred after 11 pm. There are three witnesses who testified as to sounds they heard late on the 1st November, but the main witness is a lady by the name of Nara Capezalli.

Capezalli was a 69 year old widowed pensioner who lived with her daughter in an apartment fronting onto Via del Melo, the rear of her home overlooking the S. Antonio car park, which in turn overlooks the cottage. She had lived there for 20 years. From a

balcony inset in the back of the building she can see the roof of the cottage, about 45 metres away.



In the above picture we see the cottage and above it, in the middle, the building in which Capezalli lives. She lives on the ground floor, which we can just see, with two floors above

She remembered that on the evening of the 1st November she had gone to bed at around 9 or 9.30 in the evening. She had first taken some diuretic pills, this being her habit, and which habitually forced her to have to visit the bathroom about two or three hours later. She said that on this evening she slept, woke and prepared to go to the bathroom as per usual.

Both her dining room and bathroom are at the rear.

“What happens is that getting up I’m going past the window of the dining room, because the bathroom is on that side, and as I am there I heard a scream, but a scream that wasn’t a normal scream. [Ed : A terrifying and agonising long scream as she describes it elsewhere] I got goose bumps to be truthful. At that moment I no longer knew what was happening, and then I went on to the bathroom. There is a little window with no shutters, none at all.”

In her testimony she referred to having double glazing.

CDV - How are your windows made?

Ans - My windows are made of wood. They have double glazing and they have a shutter.

CDV - When you say “they have double glazing” do you mean that every single window has two panes, or are there two windows, one in front of the other?

Ans - No, two panes in each side and opening in the middle.

Confused? What is she really describing?

She may have shutters and double glazing at the front of her house but she does not at the back.



In the above picture we can see Capezalli with two of the presenters from a Channel 5 documentary.

We can see how large the windows are on either side of the balcony. As to the window on the right it is also apparent that this has been blocked up save as to four panes in the middle so that now there is only that smaller window there.

Let us now look at that window from the inside



She is standing inside her bathroom and the bathroom window looks over the car park. Also, if we look closely, we can see that her wall is tiled or wall-papered with a tile design befitting a bathroom. Probably that wall is also made of little more than plasterboard.

One thing is quite certain though and that is that the window, which opens in the middle, is not double glazed. Nor, for that matter, is the large window of her dining room on the other side of the balcony.

She testified that after a while she heard the metal stairs to the side of and immediately below her building making a tremendous noise as if someone was running up them followed, a little later still, and in a different direction, by the sound of gravel being crunched underfoot. She did not open the bathroom window to look out because of the succulent plants she had there to get the light. Indeed we can see them in the

photograph. She said that she was so bothered by what she had heard that she went and made a cup of tea for herself to calm down. Her daughter, however, had heard nothing.

She did cause some confusion during questioning when she said that the next day she went out to buy some bread, and that was when she saw the news as to the murder on a newsagent's placard. That could not have been the case as the newspapers did not carry the news until the morning of the 3rd.

She was considered a reliable witness by Massei, be it that we have to rely on her diuretics and body clock rather than any precise time check for when she heard the scream. Neither is it, of course, proved for certain that the scream heard emanated from Meredith rather than another person.

Her evidence did, however, receive support from another witness, Antonella Monacchia. Monacchia said that from her residence located in Via Pinturicchio she could see the balcony at the back of the cottage. She said that on the evening of the 1st November she went to bed at about 10 pm. She then continued, adding what follows:

"I looked at the clock and it was late; after, I can't say the precise time, I woke up hearing two people arguing in an animated way, a man and a woman in Italian; after which I heard an extremely loud scream and, seized by anxiety, I opened the window and looked to see if there was someone outside, but I couldn't see anything and closed the window."

She confirmed that the voices and the scream had emanated from the direction of the cottage.

If one were to place the scream at about 11 pm, that would, however, create a difficulty. Alessandra Formica was walking down the steps in Grimana Square with her friend Lucio Minciotti. A man whose appearance she described as dark bumped into them as he rushed past up the stairs. She and her friend were returning to the St Antonio car park after having had a meal in a restaurant. At the bottom of the stairs she noticed a car parked up and the driver calling for a tow. This was at about 10.40 pm. This coincides with the evidence of Giancarlo Lombardi, a mechanic, who says that he received the call at about that time, and he arrived with his tow-truck and hitched the car on to his truck and left with it. He placed that activity as being within a period of 11 to 11.15 pm. He did not notice much else when he was there as he was paying attention to the job. He did, however, say that, because he had to drive past and then back up, he did see a dark coloured car parked in the slip entrance just in front of the gate to the cottage. However the driver of the broken down car, and his wife and daughter who were with him, also had company who had their own car. That may have been the car Lombardi saw, but the issue of the "mysterious" car was seemingly never resolved.

Mignini's answer was to place the scream, and hence, the murder at about 11.30.

Finally there is the evidence of Hekuran Kokomani. Kokomani, an Albanian, had already been discounted as a reliable witness by Judge Micheli when he tried Guede and committed Knox and Sollecito for trial. Mignini, however, thought his evidence should be heard again. He told the court that he had driven past the cottage on the night of the murder, or the day before, he did not know exactly when. It was raining. He had to stop his car because there was what appeared to be a large bag in the middle of the road. In fact it was two people huddled together, a boy and a girl. Pointing to Knox and Sollecito he said they were them. The boy walked towards him and punched him in the face. The girl waved a long knife at him and Kokomani hurled some olives at her. He just happened to have a bucket of olives in front of the car seat. At this point a black boy who he knew to be Rudy Guede, approached him from the cottage. He said he already knew who Guede was because he had worked as a waiter at the farmhouse bed and breakfast where Guede also worked. Guede demanded the loan of Kokomani's car but he refused. Guede then offered to buy it from him. Kokomani heard a girl shouting for help or quarrelling and he thought these sounds came from the cottage. The voice he heard was not in Italian. He then drove away.

Kokomani had refused the services of an interpreter and his evidence suffered for it. But he was also bombastic and, frankly, lacking in credibility. He said that the girl had lacked a front tooth but when Knox was asked by her lawyer to smile for the court, displaying a perfect row of front teeth, Kokomani observed that they were now stuck back together again. Hilarious laughter accompanied his evidence. To make matters worse he had also just been arrested for drug dealing, which he had denied being involved in.

As with Micheli, Massei discounted his evidence.

Much time has been spent by commentators on the time-line for murder and with reference to an alibi. Mignini's scenario that the murder had occurred at around 11.30 pm certainly had the benefit of fitting together the evidence. However it could equally have occurred earlier between 9 (when Meredith returned home) and 10.40 pm (when Formica was approaching the car park - was it Guede, running away, who bumped into her and her friend?). What we can say, though, is that the time frame for the murder (9 to 11.30 pm, or even later) is impacted by three factors for alibi purposes. There was a human interaction on Sollecito's computer at 9.10 pm and Curatolo (if his evidence is accepted) said that he saw Knox and Sollecito together in the Square after 9.30 pm and that the next time he noticed them it was a little before midnight.

On the basis that Knox and Sollecito were involved it is also perfectly possible that they, and Guede, were at the cottage, in the unaccounted for time available to them, including even later than 11.30 pm, not once, but twice, or even more, but we will probably never know what the build up to the fatal blow was, and it is unrealistic to expect anyone to know other than the perpetrators.

Hellmann derided the significance of the scream, as it could have come from anywhere, and from anyone. He failed to pick up on the fact that it was Knox herself who first mentioned it. Although this was in her statements to the police on the morning of the 6th

November and which were inadmissible in evidence against her, she also mentioned it again in her Memorial (“I saw myself cowering in the kitchen with my hands over my ears because in my head I could hear Meredith screaming”), which was admissible. Hellmann also misrepresented Massei’s observations about the pathological evidence, and that Massei only used the scream as corroborative evidence, not as the determinative factor for TOD. Even then, as I have argued, the matter is far from crucial.

CHAPTER 19

Closing Considerations on the Massei Trial

For the presiding judge, to whom it befell to write a detailed report of the reasons for the outcome, the evidence against Knox and Sollecito - the lack and indeed falsity in some respects of their mutual alibi, the lies and obfuscations in which they indulged, their suspicious behaviour and the contradictions to their alibi arising from the testimony of witnesses, and from the phone and computer records, the evidence as to the post murder manipulation of the crime scene, the forensic evidence as to Meredith's DNA on Sollecito's kitchen knife and Sollecito's on the bra clasp, the mixed DNA of Knox and Meredith in the luminol findings and in the blood traces in the small bathroom, the footprints in the corridor, the bloody footprint on the bathmat attributed to Sollecito, and the obvious staging of a break-in at the cottage, and finally, though perhaps the least important for trial purposes, as it was the basis for a separate charge, Knox's fabrication of Lumumba's prime responsibility for Meredith's murder - added up to an overpowering case as to their culpability.

According to Massei a strong picture emerged as to events on the night Meredith was killed, be it that, inevitable in cases like these, there had to be some uncertainties. There would never be a complete picture as only the perpetrators could supply that.

In the following extracts from Massei's concluding observations I have, in the main, not repeated such of his observations on the evidence with which I am in agreement, and which have already been discussed in previous Chapters.

(Massei) -

"Even if it is accepted that Rudy and Raffaele did not know each other, such a circumstance can not lead us to arrive at the outcome desired by...[the] defence, for whom the lack of acquaintance would rule out complicity in the hypothesized crimes. In fact, it must be highlighted that the circumstance that Rudy knew Amanda allowed the former to approach and greet the young woman 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 Amanda had met Rudy: he was introduced to her by the young men from the downstairs apartment, who knew both the one and the other."

"With regard to the complicity of persons in a 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 of which one had no foreknowledge."

“Therefore Amanda and Raffaele, most likely accompanied by Rudy, who had asked or who had been invited to go with them to the house on Via della Pergola, arrived [there] at around 23:00 hrs.....It is not possible to know why Rudy came to be in the house.....Rudy, who had been asked to testify, refused to reply and the defence teams of the defendants did not consent to him giving testimony.”

“Amanda and Raffaele, having arrived at slightly after 23:00 hrs, it should be considered that they went into Amanda’s room with the intention of being together, in intimacy. Amanda, moreover, had reported that that evening they had “made love”, although in Raffaele’s house, after having consumed drugs (hashish) prepared by Raffaele Sollecito. Besides, as Laura Mezetti had testified, Raffaele Sollecito and Amanda Knox, when they were together, were very affectionate towards each other; Raffaele was always “stuck” to her, and even in the Police Headquarters, during the afternoon of 2nd November, the behaviour of the two young people was evident: they were very close to each other, caressed each other, kissed each other. Conduct which is scarcely appropriate in that environment and that situation; and yet it carried on.”

“Meredith was in her own room and Rudy, as previously mentioned was in the bathroom. It is therefore very probable that Rudy, 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 (she never closed it unless she was going away for several days).”

“ Speaking of Meredith, there has already been occasion to mention her personality (serious, not superficial, with a strong character), her romantic situation (she had not long beforehand begun a relationship with Giacomo Silenzi), of the plans she had for that evening (studying, preparing for the following day believing [incorrectly] that there would be classes at the University, finishing a piece of homework....and resting. None of the people she frequented, and in whom she confided (her relatives and her English girlfriends) testified that Meredith had made any mention of Rudy...it must be considered that Meredith could only have made an outright refusal to Rudy’s advances.”

“That Rudy then yielded to his lust...is revealed by how Meredith’s body was found.....It is not possible to know if Rudy went to Meredith’s room on his own initiative.....or instead went.....at the urging of Amanda and/or Raffaele.”

The court was inclined towards the 1st hypothesis.

“The court can not see, in fact, the motive for such an invitation on the part of Amanda Knox and/or Raffaele Sollecito. Besides, Rudy does not seem to have needed to be encouraged. Abukar Barrow, [who was] interrogated on the 11th December 2007 (and whose testimony was acquired with the consent of the parties) testified that Rudy, when he was drunk or under the effects of drugs, “bothered people, especially young women. He blocked them off physically and tried to kiss them”.

“Nevertheless it should also be considered, and this is the most probable hypothesis, that [Amanda and Raffaele were disturbed and intervened]backing up Rudy who they had brought into the house, and becoming, with Rudy, Meredith’s aggressors.”

Why?

“..this court can only register the choice of extreme evil that was put into practice. It can be hypothesized that this choice of evil began with the consumption of drugs which had happened also that evening, as Amanda had testified. On the effects of drugs of the type used by Amanda and Raffaele, such as hashish and marijuana, we heard the testimony of Professor Tagliatela who, while underlining the great subjective variability, specified that the use of such substances has no effect on the cognitive capacity but does cause alterations of perception and of the capacity to understand a situation. In his turn, Professor Cingolani who together with...[others] had also dealt with the toxicological aspects, responding to the question he had been asked as to whether the use of drugs lowers inhibitions, replied “That is beyond doubt”.”

Here Massei refers to the the Manga comics found at Sollecito’s bedsit, with their depictions of fantasized sexual violence, and the trouble he had been in with his University administrators over his collection of pornographic videos, adding -

“the prospect of helping Rudy in his goal of subduing Meredith in order to sexually abuse her, may have seemed to be an exciting stimulant which, though unexpected, had to be tried.”

Having found that Meredith’s injuries required the dynamic of at least a second attacker, and a second knife, Massei then turned his attention to Exhibit 36, which he had found compatible with the main wound to Meredith’s neck and, because of trace 36B, had been used in the attack.

Because the DNA of Knox was found on the handle to the knife, and there was no dispute as to this, and in a position which did not suggest that it had come to be there from normal manual interaction in the kitchen, chopping up vegetables, say, but likely from a knuckle thrust against the guard where the trace was sampled, he considered it likely that it was Knox who had held it during the attack on Meredith.

“The owner of this house [Sollecito’s bedsit], were this knife not to be found, would have been able to remember it’s presence and note the absence of this utensil, and this circumstance would have been able to constitute a trace, an investigative hypothesis upon which Raffaele Sollecito may have been called in to supply an explanation for. In relation to this, it is to be held that Amanda and Raffaele would have evaluated it as opportune to carry the knife back to the house from which it had been removed, considering also that it’s cleaning (it was in fact extremely clean, as has been noted) would have ensured the non-traceability of the wounds suffered by Meredith, to it.”

In fact the knife was listed on Sollecito's landlord's inventory of contents. However, it seems unlikely that his landlord would have noticed, had Sollecito disposed of the knife and had purchased a similar one to replace it. On the other hand disposing of a knife of that size might have been difficult. A pocket knife, presumed to be responsible for the other wound, would have been easier to conceal in some random object which could then be discarded.

"Now, concerning how this knife could have found itself in the house at Via della Pergola when Meredith was killed, and in the custody of Amanda, the following must be observed: Amanda had with her a very large handbag, and in this handbag there could have been found a place for the knife in question. Amanda, in her various movements about town, as for example, to take herself to the Le Chic bar, could have found herself walking alone, even late into the night [she worked late, until about 2 am, handing out flyers] on roads that could have seemed not very safe for a girl. It is thus possible, considering the relationship that Sollecito had with knives, that Amanda...." [had been advised and convinced by Raffaele to carry a knife in her handbag, for her protection]



Knox and Sollecito with Monica Napoleoni, the head of the Murder Squad.

Handbag, bottom right.

It might be presumed that if Knox had carried the knife to the cottage in her handbag, and it had been used to stab Meredith with, then she might have concealed it again in the handbag to carry it back to Sollecito's to clean. The handbag was, of course, forensically examined, and apart from Knox's DNA nothing else was found, no blood or other DNA.

The knife might, of course, have been cleaned at the cottage, by holding it under running water from the tap, dried and then wrapped and placed in the handbag,

"The death of Meredith, while not constituting the primary end, became an eventuality..... [and consequent upon Meredith screaming] followed through by both

Amanda and Raffaele...who acted pursuing the same objective that made them similar to Rudy: there is therefore the awareness and the will to cause death in the context of sexual assault.”

As to the diluted blood in the small bathroom, in which the DNA of Knox and Meredith was mixed, Massei noted that the mixed trace in the washbasin and the mixed trace in the bidet, were contiguous, that is, they lined up with each other, as if they were derived from a single swipe of a hand that had been washed but had not been dried. Meredith's DNA was undeniably from Meredith's blood, but Knox's DNA was probably from exfoliated skin cells that had come away from Knox's hands whilst scrubbing the blood off them.

As to the mixed DNA of Knox and Meredith, and the sole DNA trace of Meredith, highlighted by the luminol in Romanelli's bedroom, the presence of these traces there has to be explained. The single trace of Meredith could only be her blood.

“These traces, besides constituting further evidence of Amanda's presence in Meredith's room, when she was killed, lead us to believe that Amanda and Raffaele, before deciding to break the glass in the window of Romanelli's room and leave the house, wished to make sure that there was no-one in the street; a worry that may have had its basis in the scream let out by Meredith and which could have been heard by someone who, being in the street, had stopped in curiosity, and in the presence, only slightly earlier, of a broken down car, in the very near vicinity of the house, a car which both Amanda and Raffaele must have noticed when they entered the house; in fact it should be considered that Raffaele must have already noticed the presence of such a vehicle when he was in the square in front of the University when, as Curatolo testified, he went close to the grating located there in order to look below, where that same broken down car, causing an obstruction to the traffic, may have caused horns to be blown.”

“The biological traces attributable to Amanda (one to Amanda alone and one to Amanda and Meredith)...and present in the rooms of Amanda and Romanelli can therefore be adequately explained by the need to check what the situation outside the house was, and to do this Amanda had to look from the window of her own room and from the window of Romanelli's room, leaving in these areas the prints that were then highlighted by luminol.”

“The situation outside the house must have seemed quiet. The tow truck had arrived and left by 11.15 pm, and there was no-one in the street looking at the house. It was then decided to break the glass in order to create the staging of an unknown criminal entering from the window, and they decided they could go outside. It is to be believed that Raffaele Sollecito who, in the meantime, after having been in the small bathroom, must have put shoes on again, went around the outside of the house to look for the big stone (subsequently found) to use to break the glass, and Amanda could, in her turn, go to the bathroom to wash her hands and feet; when Raffaele came back in with the big stone the disorder in Romanelli's room was created, and the shutters pushed towards the exterior.”

“Before leaving the house, it is to be held that both went back into Meredith’s room, taking care not to put their feet in any splashes of blood that were present there, to take the mobile phones, and they decided to cover Meredith’s body, which was almost completely nude, with a duvet and then they left, locking this room’s door with the key. It is likely, moreover, that in returning to Meredith’s room at that point, one of the little pieces of glass from the broken window ended up, inadvertently, in that room, where it was later found.”

“While Amanda and Raffaele were carrying out these actions, Rudy immediately left by St Antonio street until he reached the steel stairs of the car park, and climbing these stairs made the noise heard by Capezalli. The latter, in fact, declared that first she heard the noise on the steel stairs, and then she heard the shuffling noise, as of someone walking on leaves and gravel, a shuffling which was, therefore produced by someone who had just exited the house on Via della Pergola.”

“This reconstruction, according to which Meredith’s death occurred a few minutes after 11.30 pm is also confirmed by the thanato-chronological data, as there has already been occasion to note, as well as by the following circumstances -”

Rather surprisingly, for me at any rate, Massei had not much to say about the dollop of Knox’s own blood on the sink faucet, or her lamp on the floor of Meredith’s room – these being, to my mind, very incriminating taken in the overall context of the evidence.

Massei continues by referring to his belief that the 10.13 pm action on Meredith’s phone, the connection to the internet, was nothing more than the arrival of a multimedia message from the internet or, alternatively an innocent and involuntary WAP access caused by Meredith, and that this was when she was at home and in her bedroom. The next activity on her phone was, however, at 1.10 am connecting to a signal which could not be received at the cottage but which could only have been received at Mrs Lana’s address, where it was found. Accordingly Meredith must have already been dead by then, and a TOD later than 10.13, around 11.30 pm, would still be as likely giving time to effect the staging and it would have taken Knox and Sollecito just a matter of a few minutes to cover the distance between the cottage and Mrs Lana’s home which, indeed, as they would both have known, was not at all far from Sollecito’s bedsit.

As to the taking of the phones, the court held that it could have been to prevent the two mobile phones from ringing as a result of calls which Meredith might have received, which thus because of the insistent ringing and lack of an answer might have brought forward the discovery of Meredith’s body to a much earlier time. In particular, Knox and Sollecito may have thought that Mezzetti or Romanelli, or one of the young men from downstairs, particularly Giacomo Silenzi, might have returned to the house in the morning and if they had heard the telephone ring without answer, might have gone to check. Although the phones were found in Mrs Lana’s garden, the probability is that they were destined for what the thieves considered dense thicket and bracken in a gully

which adjoined the garden, so that the noise of a ringing phone would have been unlikely to result in an attempt to find them.

The taking of Meredith's phones, and the locking of her door, had the same objective - to isolate her and delay the early discovery of her death.

"It should therefore be considered that the taking of the phones and the locking of the door were aimed at preventing someone from prematurely entering Meredith's room and discovering what had happened there.....[and this necessitated a] need to check for possible compromising traces left behind, and eliminating them."

"A plan which, as has been said, is confirmed by the testimony of Quintavalle; Knox entering the shop which also sold cleaning products at opening time, shows an unquestionable urgency which is easily explained by the objective indicated."

Massei concludes -

"All the elements put together, and considered singularly, create a comprehensive and complete framework, without gaps and incongruities and lead to the inevitable and directly consequential attribution of the crimes to both the accused"....other than the theft of the money and credit cards, in respect of which "no evidence emerged".

Amanda Knox was also found guilty of the crime of calunnia.

Thus reasoned the judges at trial who convicted Knox and Sollecito, and so might have a jury under our own criminal system though we would not have been privy to their deliberations. Here we know precisely the thinking. It is in the nature of inferences, and some speculation if you like, but based on and consistent with known facts. One might disagree with aspects of it, or all of it, and even question the significance, relevance and reliability of some of the known facts. Clearly one unknown fact is precisely when poor Meredith died.

I myself have some criticism, some of which I have already included. In particular I find the suggestion of a sudden erotic motivation for Knox and Sollecito engaging in aggression towards Meredith somewhat weak. Clearly there was a sexual assault and there is enough evidence to infer that it was Guede who was a sexual aggressor. There are also aspects of Sollecito's background character that are disturbing and which might indeed have inclined him to join in with, or at least encourage, what Guede was doing. It is, however, at least on the basis of the known facts elucidated by Massei, rather difficult to think that Knox would have been similarly encouraged and stimulated by the unfolding events, as described above, and with that in mind would Sollecito have acted differently from her?

What would have been Knox's motive at all? Although not specifically referred to above, Massei did ask the question: Did Knox "egg" Guede on as to the "availability" (my word, not his) of Meredith during or prior to their presence at the Cottage?

It is a bit difficult to figure out why Knox and Sollecito would otherwise wish Guede to join them at the cottage. I doubt that Knox and Sollecito would have wanted Guede around if they were just going there to have an innocent cuddle and sex and to smoke cannabis, as Massei implies. The evidence is that Sollecito hardly knew Guede and in the presence of Amanda was very possessive, and perhaps jealous, of her. If he had known of Guede's interest in her he would have been even less keen to have Guede around.

Also, if all was so innocent beforehand, then why would Guede have tried it on with Meredith and then pressed the situation in the face of her refusal to co-operate, knowing that there were two others there who could have come to her assistance?

The far more probable answer is that Guede knew full well in advance that there would be no problem with Knox and Sollecito. He had been invited there and primed to act precisely in the way he did, at least initially. Why?

In addition, there is the speculation that Guede may have been, at least for the night in question, dealing in drugs, which may have been another reason for him to be invited to the cottage.

I am going to advance a different scenario from that postulated by Massei and in doing so I must first acknowledge that it is speculative, and will be subject to criticism for that reason, but it is worth considering as it has some foundation in known facts.

What does not get much attention in the Massei Report, other than a terse Not Proven at the end, is the matter of Meredith's missing rent money and credit cards. It is as if the court felt that this was a trivial issue that brought nothing much to the case and thus it was not necessary to give it much attention. And indeed there is no summation of or evaluation of that evidence.

A theft just prior to the murder significantly ups the stakes for Knox and Sollecito and produces a dynamic, which, threaded together with a sexual assault, makes for a far more compelling scenario to murder. It also leads one to conclude that there was a greater degree of premeditation involved : not premeditation to murder but as to an assault, rather than the more spontaneous " let's get involved" at the time of the sex attack as postulated by Massei.

We know from the evidence of Romanelli and Mezetti that two days before the murder the four flatmates had met together and discussed the upcoming payment of rent, and that Meredith had mentioned that she already had most of the cash to hand for her contribution.

Is there a problem with this evidence? Is it hearsay and thus inadmissible under Italian law?

Perhaps it is not enough by itself because of course had Meredith not in fact withdrawn the money from her bank, or sufficient funds to cover the stated amount, then that would be a fatal blow to that part of the theft charge. Her bank manager was summoned to give evidence, essentially to corroborate or disprove their testimony. I do not know what exactly that evidence was. One would assume that at the very least it did not disprove her testimony. Had it done so that would, as I have said, been fatal. It is also unbelievable that Massei would have overlooked this in the Report. I am assuming that Meredith did not tell a white lie and that the bank records corroborate this.

There may of course be an issue of timing as I understand that the bank manager told the court that transactions at a cash machine are not necessarily entered on the customer account the same day. However that does not seem to me to be significant.

One must also think that the bank manager was asked what other cash withdrawals had been made if the credit cards were taken at the same time as the money.

We do know that the police did not find any money or Meredith's credit cards. Had Meredith, a sensible girl, blown next month's rent on a Halloween binge? Unlikely. So somebody stole it. And the credit cards.

The missing money also figured in the separate trial of Guede. He made a statement which formed the whole basis of his defence. Basically this was that he had an appointment with Meredith at the cottage, had consensual foreplay with her and was on the toilet when he heard the doorbell ring. What he also added was that just before all this Meredith was upset because her rent money had disappeared and that they had both searched for it with particular attention to Amanda's room.

Now why does Guede mention this? Remember this is his defence. He had plenty of time to think about it or something better. His defence was moulded around - (1) facts he knew the police would have ie no point denying that he was there or that he had sexual contact with Meredith - his biological traces had been left behind, and (2) facts known to him and not to the police at that stage ie the money, which he could use to make his statement as a whole more credible, whilst at the same time giving the police a lead. Is he shifting the focus, if the police were but to follow it up, on to the person he was really blaming for his predicament, Knox?

I have to accept, in Massei's defence, that Guede's statements were not in evidence at the trial of Knox and Sollecito.

Yet if all three, Knox, Sollecito and Guede, went to the cottage together, as Massei has it, then Guede learns about the missing rent money not in the circumstances referred to in his statement but because Meredith has already discovered the theft and worked out who has had it and challenges Knox over it when the three arrive. Perhaps this is when

Guede goes to the toilet and listens to music on his Ipod. After all he is just there for, hopefully, sex, and perhaps drugs, and this is all a distraction.

I have also to accept that as to the money at any rate a theft prior to the murder is critical to sustain the hypothesis. The credit cards were in any event probably taken after the attack on Meredith.

According to Knox and Sollecito they spent Halloween (other than the evening) together at his bedsit and the next day went to the cottage. Meredith was there as was Romanelli. Romanelli left first, followed by Meredith to spend the evening with her friends, and Knox and Sollecito left some time afterwards.

So Knox and Sollecito could have stolen the money any time after Meredith left and before she returned at about 9 pm - the day of her murder. Incidentally Romanelli testified that Meredith never locked the door to her room except on the occasions she went home to England. Meredith was a very trusting girl.

What motive had Knox for wanting the money apart from the obvious one of profit?

There are numerous plausible motives.

To fund a growing drugs habit which she shared with Sollecito? Not an inconsiderable expense for a student. Both Knox and Sollecito explained during questioning that their confusion and hesitancy was due to the fact that they had been going rather hard on drugs. Mignini says that they were both part of a drugs crowd.

Because her own financial circumstances were deteriorating and to fund her own rent contribution? She was probably about to be sacked at Le Chic where she was considered by Lumumba to be flirty and unreliable and to add insult to injury would likely be replaced by Meredith. In fact Meredith was well liked and trusted by all whereas Knox's star was definitely on the wane.

But maybe Knox just also wanted to get her own back on Meredith. There were, after all, "issues" between the pair, as has been previously mentioned. There has been much speculation that Knox has always had deep seated psychological problems and that just after several weeks in Perugia her fragile and damaged ego was tipping towards free fall. If so, this would in itself be a motive leaving aside the hypothesis about the missing money and credit cards, which, it has to be conceded, could have been taken as part of the attack, and by Guede.

Massei does draw inferences from the diluted blood in the small bathroom but has nothing to say about the blood on the washbasin faucet. This was Knox's blood. Surely this was a highly significant find in the context of the scene of a murder?

The blood was a noticeable amount, dry, rich and recent. Knox said she had not noticed it (nor any other blood), when she used the bathroom for a shower the day before the discovery of the murder.

Her defence tried to explain this as blood from her pierced ear. In her e-mail three days after the murder she says of the blood observed in the bathroom during, she says, her 10.30 am visit to the cottage –

“It was on the mat I was using to dry my feet....at first I thought the blood might have come from my ears which I had pierced extensively not too long ago, but then I knew immediately it wasn't mine because the stains on the mat were too big for just droplets from my ear , and when I touched the blood in the sink it was caked on already. There was also blood smeared on the faucet. Again however I thought it was strange, because my roommates and I are very clean, and we wouldn't leave blood in the bathroom, but I assumed that Meredith was perhaps having menstrual issues and hadn't cleaned up yet. EW! But nothing to worry about”

At the time of her e-mail she certainly had not been told that the blood on the faucet was her blood and yet she would have known that it was, since it was her blood, and most of us are cognizant (if needs be after investigation) of the where, when and how, of our bleeds. What therefore must be of concern to her is whether the blood would be traced to her and whether an innocent explanation could be given for it in that event. In this extract she deals with the issue in a typically obtuse and unconvincing way, crafted in a feigned spirit of childlike and innocent curiosity, to confuse and lead the reader away from guessing the truth (EW!) as to her own knowledge on the matter, and yet, in doing so there are the revelations to which I have already referred in Chapter 17, page 108, to wit : no mention of a bleed from ear piercings just before or after her alleged shower, despite the obvious insinuation she was trying to make, but as to which she self destructs with her observation that the blood on the sink was “caked on”, leaving us with an obvious inference to draw. How likely is it that she would have thought the dollop of blood (all the other samples being diluted) was due to menstrual issues?

Have a look at the photograph below of the bathroom that Knox and Meredith Kercher shared and ask yourself whether the close position of the faucet to the wall, and the position of the overhead shelf and mirror above, makes it likely that the blood on the faucet would be a drop from anyone's ear. Far more likely to be a drop from, say, a nose bleed. If the blood was from her ear, then it is more probable that it was transferred by finger to faucet which, had that happened, could not have gone unnoticed by Amanda at the time, with the consequence that she would have either rinsed it off or, if not, it would have featured as a specific explanation in her e-mail. Such action could also have left the suggestion of a print and there was none.



In this picture ignore the pink coloured spray (phenolphthalein) used by the investigators. That was another means by which to highlight blood.

I think any forensic expert can tell the difference between menstrual blood and blood from a cut or, say, nose bleed, or, for that matter, a bleed to the ear caused by an earring being ripped off.

It is true that Massei held that Amanda had no wound but that does not preclude that she bled (as she obviously did) and that the wound had healed before a medical examination took place, though had her hands been nicked or cut I would have thought that would have been noticed the next day by the investigators.

She might have got a bloody nose during the attack in Meredith's bedroom save that there is no evidence of her blood there. There was, of course, so much blood there, that any belonging to Knox could have gone undetected even if random samples had been tested.

On the other hand if she got into a tussle with Meredith (say in the corridor outside their rooms and where there was little room for other than the two to be engaged) and was fended off with a reflex blow that accidentally or otherwise connected with her nose, Amanda's natural reaction would be to disengage immediately and head for the bathroom sink and staunch the flow of blood.

A nose bleed need not take too long to staunch especially if not serious and there is no cut (certainly none being visible the next day). Just stuff some tissue up the offending nostril. A nose bleed is not necessarily something of which there would be any sign the next day.

Sollecito fusses around her whilst Guede briefly plays peacemaker. But Knox is boiling. As furious with Sollecito and Guede as she is with Meredith, she eggs Guede on and pushes him towards Meredith. Sollecito proudly produces his flick-knife, latent erotic-sadistic instincts surfacing.

Is a scene like this played out inside the cottage or outside? I think of the strange and discredited tale told by Kokomani.

In any event motive is satiated and the coil, having been tensed, is sprung for what may have been a pre-conceived, if only fancifully, but now extremely violent, hazing of poor Meredith.

Yes, of course, as I said, this is all speculative. Could it really have happened this way? Who knows? However the point is that it could have, and the speculation becomes relevant for the reason that those who believe that Knox and Sollecito are innocent point to “no motive”. Indeed this was argued by their lawyers in court. What they mean, of course, is that the prosecution failed to prove a motive, but as the above demonstrates, it is at least possible to countenance a few.

There is, of course, some puzzlement as to why, if Knox participated in a post murder manipulation of the crime scene, she failed to remove the incriminating trace of her own blood. Why, if Sollecito did so likewise, did he leave his bloody footprint on the bathmat? Again who knows? Did they not have time, or was this just an oversight brought on by their level of fatigue, or was it just through an ignorance of the science of forensics and what it could achieve?

The further question is whether a motive needed to be demonstrated. Was not the other evidence quite sufficient to place both of them at the scene of the crime, and what else does one need?

What the prosecution did need, and what they got, was the court’s acceptance that there had been more than one attacker.

Nevertheless, it is true that there was no forensic trace of Knox in Meredith’s room. Nor was there any trace of Sollecito other than on the bra clasp. If there was no evidence that Knox was in the room where the murder took place, then does that establish, or at least create a reasonable doubt as to, her involvement in the murder?

On the other hand what innocent explanation could there be as to Sollecito’s DNA on the bra clasp, and why would he be there without Knox?

I take the view that it is specious to argue as a matter of fact, without any proper evaluation of the other evidence and circumstances pertaining to the crime scene in general, that just because there is DNA evidence within a confined space as to one perpetrator, Guede, and not as to others, that there was only one perpetrator – though on the face of it that might seem a reasonable proposition.

There have, since the introduction of DNA forensics, been many examples of violent and bloody murder where the DNA of the perpetrators was non-existent or, at any rate, was not found.

There is some evidence for the hypothesis that the fatal attack in the bedroom was not just vicious, but swift, limiting the window of time in which DNA would be deposited and narrowing the focus for its placement. DNA may have been obscured by the

plentiful presence of the victim's blood which, it seems, because of its quantity, was not tested for foreign DNA.

As for a post murder partial clean up, the evidence relating to Guede's presence would probably have been fairly obvious to another participant in the attack and known to be incriminating only of Guede. For instance as to the bloody palm print on the pillow and the DNA on the handbag and bra, both Knox and Sollecito may have known that neither of them had touched these items but that Guede had or may have done so.

As to the tracksuit top, it seems that nothing but blood was visible on this and as to the presence of incriminating DNA on it, or any other item of clothing or fabric, this may have been (or not in Guede's case) just a matter of luck (or probably because of the degree of pressure or friction required to deposit DNA on fabric) and/or down to the role that each participant was playing.

For instance, if Knox and Sollecito each had a knife in hand, jabbing at and intimidating Meredith (remember the wounds on Meredith's hands), then one might expect that it was Guede (the more athletic and stronger) who was the more physically engaged with Meredith (and indeed the evidence is that it was he who was sexually assaulting her) and hence the more likely to deposit his DNA on her than the other two. Indeed this is more than probable and yet only two instances of his DNA were found on her clothing, and nothing on her jeans which must have been removed during the assault.

It is also interesting in view of the evidence of strangulation (spots inside the eyelids indicative of asphyxiation, bruising to nostrils, swelling on the neck etc) and bruising round the lips (suggesting compression by hand to silence her) that Guede's DNA was not identified round her neck and on her face. Of course some of the evidence, if any, (i.e on the neck) would have been obliterated by the knife wounds, or by wiping blood away in the autopsy, but why no DNA elsewhere? This surely demonstrates (as with Meredith's jeans) that depositing DNA is not only a matter of chance but also, as likely, a matter of chance between individuals depending on disposition and what exactly it is that one is doing.

In any event it is unlikely that Knox and Sollecito knew much about DNA. In a clean up they would be more likely to simply pay attention to what they could see, and what they could not see would only have had their attention, if at all, from the point of view of, say, incriminating fingerprints. Such lack of awareness would account for the lack of attention to the bra clasp though this was in any event hidden by the body and pillow, if not the quilt, by that time.

There is indeed a distinct and suspicious lack of fingerprint evidence in the case. Just Guede's one palm print in blood and one fingerprint identified as belonging to Knox on a glass on the draining board of the kitchen sink, though this is only suggestive to a limited extent.

If there had been a single attacker then in the struggle which would have ensued one might expect there to be some evidence of disruption, impact, and damage to objects in the room, of which there was not much sign. Indeed (or alternatively), apart from the obvious mess engendered by the blood, and clothing and belongings strewn on the floor (as can be seen in the crime scene photographs), Meredith's room bears some signs of objects having been tidied up afterwards. Meredith's chair appears to have been rammed back under her desk with a piece of newspaper stuck to the bottom of a leg. A square clear patch in the blood on the floor suggests an object (her Oxford dictionary?) having been moved afterwards. If so what was Guede's motive for attending to these things in the immediate aftermath before leaving? Subjective observation maybe but nonetheless relevant to the hypothesis of someone paying attention to things awhile later.

The area of floor immediately behind Meredith's door was relatively clear of blood. If Sollecito had tracked Meredith's blood on his feet to the small bathroom (where he leaves the footprint on the mat), and Knox likewise in the corridor, then these bloody footprints started from the bedroom and would be obvious targets for removal, there and in the corridor.

Therefore a partial manipulation by the removal of blood traces is not limited to the corridor and small bathroom.

Such would, a priori, unless the participants were idiotic, involve great care in not depositing further incriminating evidence. Some surfaces are more amenable to fingerprints than others. Glass and metal, being smooth, are usually ideal, and for this reason I have found it surprising that no fingerprints were found, it would appear, or at least of which we have been informed, on Knox's black metal reading lamp in Meredith's room.

Considerations such as these must surely inform the mind of a juror, but perhaps they would draw different conclusions. Does absence of evidence mean evidence of absence?

Massei assimilated the separate charge of sexual assault within the crime of murder, but as a special aggravating circumstance of the murder. However, he granted extenuating circumstances equal to the aggravation. The extenuating circumstances were -

1. Neither of the defendants had a relevant criminal record.
2. Both defendants were very young, and younger still when the event took place. The inexperience and immaturity characteristic of youth were accentuated by the situation in which they both found themselves because it was different from that in which they

had grown up and did not have the usual points of reference (family, friends and acquaintances etc).

3. The criminal acts were carried out on the force of purely chance contingencies (i.e no premeditated plan of action).

4. The covering of Meredith's naked body was a sign, of sorts, of remorse.

Sollecito was condemned to a total of 25 years imprisonment. Knox received 26 years which included an additional one year for the crime of calunnia.

The base penalty was 24 years, increased to 24 years and 6 months for the staging, increased to 24 years and 9 months for the carrying of the knife, increased to 25 years for the theft of the mobile phones.

We need not concern ourselves with the various damages and costs awarded by Massei other than concerns Lumumba – as Knox's calunnia conviction is definitive.

Massei liquidated Lumumba's legal costs for trial purposes at 40,000 euros. As to damages he said that he could not definitively assess this (this would have to be done by another court) but he provisionally assessed damages at 10,000 euros to become immediately enforceable.

I have not been able to find any record of a subsequent court assessing and liquidating the damages due to Lumumba.

CHAPTER 20

Reaction in the Media and on the Internet

Worldwide media interest had started almost immediately once news of the murder broke, with the photographs of Knox and Sollecito taken of them by the Italian press as they stood together outside the cottage on the day of the discovery of Meredith's body, made public. In particular the media from three different countries ran and stayed with the development of the story, because of the three different nationalities involved: a murdered British student, her American flatmate and her Italian boyfriend.

Initial coverage, particularly in England and Italy was not favourable to Knox and Sollecito, and the situation was not helped by the Perugia Police Chief, Arturo De Felice who, on the arrest of Knox, Sollecito and Lumumba, promptly briefed the press as if the case was closed. He congratulated his detectives for their "magnificent work". "The City needed a result quickly" he said. Largely due to this Curt Knox, Amanda's father, took the step of hiring a public relations agency to help present a more favourable picture of his daughter back in the States. He engaged David Marriott of Marriott and Company to handle this aspect having approached Marriott within three days of Amanda's arrest and detention. It was, Curt was later to remark, the smartest thing he had ever done.

Interest from the media in the States, and particularly curiosity as to Amanda's parents' reaction to what had happened with their daughter was, of course, intense, and the first call for the Marriott public relations strategy was to ensure that not only did the parents get time on television but that their interviewers should be sympathetic and go easy with the questions. It was not long before they knew who to trust or not. Marriott was in a position to negotiate the terms of these interviews and he also undertook the press releases on behalf of the Knox/Mellas family. Accordingly Edda and Curt started a series of brief television appearances.

Neither was it long before others sprang forward with their support. Some were family friends and acquaintances and some just had the feeling that the young woman abroad, and her family at home, needed their support. Some were as convinced as they could be, for their own reasons, that Knox was completely innocent. This umbrella group came to be known as the "Friends of Amanda" or FOA, for short.

It was easy for many Americans, watching Edda and Curt on television over their breakfast, and viewing coverage of a young and pleasingly attractive Amanda in handcuffs, bouncing into court with her flowing hair and wide smiles, to think of the girl next door, and to start to wonder whether this one had received harsh treatment from a foreign law enforcement system that they did not know much about, and did not entirely trust. It was not long before commentators were peddling the notion of a "Rush to Judgement", and denigrating the Italian police and, in particular, the Public Minister, Giuliano Mignini. Mignini is friendly and approachable, but through no fault of his own

he also has an unfortunate photogenic quality, in that sometimes he appears stuffy and a bit sinister.

A Seattle reporter by the name of Steve Shay was soon sowing the seeds of doubt about Mignini, posting the following on the West Seattle Herald's website -

"As I reported accurately, I was told by people attending the charity [a fund raiser for Knox] that Mignini is mentally unstable. His over-the-top-response seems to indicate that this is so, but (disclaimer) I am not degreed in the field of psychology and therefore cannot for certain diagnose Mignini as having the mental problems others have said they have noticed he has. Ironically I have heard numerous reports on American and European TV that claim Amanda Knox is "a sociopath" because we do not see her cry on camera. I wonder if Mr Mignini has objected to all these reporters calling her this?"

Evidence that Mignini was being targeted also appeared on the website of Seattle lawyer Anne Bremner, who was representing the Friends of Amanda. They included accusations that he had leaked false information to the press, and that he was under investigation for abuse of office, to which we will come in a moment.

Senator Maria Cantwell wrote three letters on behalf of Knox. The first two were dated 3rd September 2008 and addressed to his Excellency Giovanni Castellaneta, the ambassador of Italy in Washington, and a second letter was addressed to Honourable Spogli, the ambassador of the United States in Italy, The third, on the 15th January 2009, was addressed to Silvio Berlusconi, the Prime Minister of Italy.

I reproduce the first by way of example -

Dear Mr Ambassador,

I am writing to express concern about the case of University of Washington student Amanda Knox who is accused of murdering Meredith Kercher in Perugia, Italy. Ms Knox has been held without a formal charge in an Italian prison for the last 10 months. An Italian judge will decide whether she will be formally indicted on the September 16th 2008. If her case moves to trial, I urge the Italian government to ensure that Ms Knox receives a fair trial by an impartial tribunal as required by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 47 of the Charter of Fundamental Human Rights of the European Union.

Press reports raise questions about whether Ms Knox's rights have been adequately protected. Confidential information about her case was leaked, resulting in false and misleading media reports in Italy and other parts of Europe. According to some U.S press reports, evidence in Ms Knox's case may have been mishandled during the initial investigation. It also appears Ms Knox was subjected to a difficult 14 hour interrogation, without a lawyer present, by at least eight police officers and only one interpreter.

I recognize Italy and the European Union want to safeguard the rights of persons suspected or accused of, and prosecuted or sentenced for, crimes. As Ms Knox's case moves forward, I seek your assistance to ensure that she receives fair treatment and due process.

Sincerely
 Maria Cantwell
 US Senator

There is perhaps nothing much wrong with this (though it is rather condescending) except that the senator has been fed incorrect information about the Knox interrogation, which we looked at in detail in Chapter 4. The letters do reveal that various myths about the case were taking hold in the media in America. One was the length of Knox's interrogation. At first 52 hours was ludicrously banded about, which is pretty much a reference to the number of hours, excluding those for refreshment, sleep, travel and rest, which would be encompassed by the 4 days until her arrest. The figure was then reduced to 24 but it was obviously much less than that. Of course for the entirety of the alleged interrogation she was not in custody, and no lawyer was present, so no records would be kept. However, we can pin Knox down a bit. This from her interview with Mignini on the 17th December 2007 -

Mignini : After having talked, after you were heard at the Questura, did you go away or did you wait?

AK : The first day I was questioned I was there for hours.....maybe 14

Mignini : But questioned?

AK : No, maybe they questioned me for 6 hours but I stayed at the Questura for a very long time.

In all, it is likely that that she spent no more than 12 hours in company with detectives and/or Mignini, and fielding questions, concentrated or occasional, including two trips to the cottage and back, but in the absence of more concrete information we do not know for sure and her proponents were able to invent what they liked.

In December 2008, a Superior Judge in the King County State of Washington, Judge Michael Heavey, whose daughter had gone to Seattle Prep with Knox, wrote the first of three letters to Italian officials including a judge, a little more loaded than, but yet in much the same vein as, Maria Cantwell's letters, but in which he nevertheless requested that the case be transferred out of Perugia in order for Knox to receive a fair trial. In doing so he used his employees' time and used the official letterhead of his position. This may have backfired as one reason given for refusing house arrest for Knox was the fear that she would take flight, and that a home judge in the USA would complicate, and indeed refuse, extradition proceedings. Heavey was also a frequent speaker on behalf of

Knox at local Rotary Club meetings. With the matter made public he reported himself to the State Commission on Judicial Conduct and received an admonishment.

In October 2009, during the trial, the FOA struck gold with the American viewing public with the airing of a documentary on CBS television called "48 Hours Mystery : American Girl, Italian Nightmare", presented by the network's news presenter, and correspondent, Peter Van Sant. The "documentary" deliberately set out to be sensational and to provoke outrage. Voiceovers spoke of "a lynching", conspiracies and witchcraft theories on the part of the prosecution. Throughout the documentary we listened to selected snatches of recordings from the trial of Knox's tremulous voice, telling us that she had been confused, frightened, and had been hit during her interrogation by the police.

Paul Ciolino, a Chicago based private investigator, straight from central casting, was hired by CBS to interview witnesses in the case for the documentary. He coined the phrase "Railroad Job from Hell" to describe the case against Knox. One of the witnesses he wanted to interview was Nara Cepazelli but despite knocking loudly on her door at night and trying to question her, she refused to talk to him. Ciolino described her as a "crazy woman" and undeterred gained access to the top floor flat of the building in which Cepazelli lived, and which, to no doubt his surprise, was occupied by a pleasant American woman, also from Chicago. Small world. Suitably mollified by this encounter with civilization in the dark heart of medieval Europe, he then proceeded to conduct an experiment as to whether it would have been possible for Cepazelli, two floors below, to hear a scream and sounds outside. He had arranged for some young men to run along the road outside the cottage and, listening intently, concluded that he had been able to hear nothing, which was not surprising as the American really did have double glazing whereas, as we know, Cepazelli did not.

Douglas Preston, an author of crime and adventure fiction and who co-wrote "The Monster of Florence" was also interviewed in the documentary. He described how, whilst investigating and researching the facts relating to the Florence serial killer with his colleague and co-author, an Italian reporter called Spezi, he had been "hailed" in for an interview with Mignini, who at that time was investigating a death thought to be related to The Monster of Florence affair. He said he was warned off by Mignini and told to stop meddling. In fact that part was perfectly true. However Preston laced the documentary with his description of a harrowing interview with Mignini. "*I was terrified. I thought these people have the power to put me in prison for the rest of my life.*" He said he was threatened with arrest and was so frightened that he decided to return to the States.

However the picture painted by him of Mignini does not gel with what he said about Mignini in an interview with the Atlantic in 2006 -

Question : "Judge Giuliano Mignini, the public prosecutor who interrogated you, is another important player in the case. Was Mignini just doing his job? How much weight do you give to the idea that Mignini had it in for Spezi and you?"

Preston : “As for Mignini himself, I think he’s a sincere man and an honest and incorruptible judge. I don’t think that he’s a bad man.....I think he was doing his job the best he could. I think that in many ways he was misled by Giuttari, the police officer who was running the investigation”

Preston had already brought out a revised edition of “The Monster of Florence” with an Afterword about the Meredith Kercher case, in which he tied together the alleged incompetence of the police in both investigations. His book, he was later to reveal, was in the planning stage for a movie to be directed by Tom Cruise. Preston was to be played by George Clooney. To date the movie has not materialised.

When the verdict of guilty was reached Ciolino and Van Sant appeared on television to denigrate it. According to Van Sant it was “disgusting” akin to “a mob carrying torches”.

The list of people wanting to pitch in and appear on television began to grow.

Ted Simon, a Philadelphia lawyer, asked to comment on the case on NBC Dateline in December 2008, pronounced that the evidence against Knox and Sollecito was “daunting”. Then he had a change of mind and became attached to the pro-innocence camp, pronouncing on the Oprah Winfrey show in February 2010, with Curt and Edda sat beside Oprah, and looking on appreciatively, “The case makes no legal sense, and no common sense. There is insufficient evidence and whatever evidence there is, is unreliable.”

Warming to this success, he told CNN’s Today’s Savannah Guthries -

“There was no hair, fiber, footprint, shoeprint, handprint, palm print, fingerprint, sweat, saliva, DNA of Amanda Knox in this room where Meredith Kercher was killed. That, in itself tells you unassailably that she is innocent.”

Judy Bachrach, a contributing editor for Vanity Magazine, appeared on CNN breakfast time TV and propounded the novel idea that in Italy, if you are accused then you will be found guilty or, to put it in another way and with the help of her interviewer, as she looked slightly drunk, that the burden of proof in Italy lies with the defence rather than the prosecution.

And so on. If Simon at least added some gravitas to the debate, Steve Moore did not, Let Moore introduce himself -

“My name is Steve Moore, I retired from the Federal Bureau of Investigation (FBI) in 2008 after 25 years as a special agent and supervisory special agent. My entire investigative experience was in the investigation and prosecution of violent crime, from murder to mass murder, and terrorism.

In my last such assignment I was the supervisor of the Al Qaeda investigations squad, following which I ran the FBI’s Los Angeles-based “Extra-Territorial Squad” which was

tasked with responding to any acts of terrorism against the United States in Asia and Pakistan”

With an impressive resume like that one wonders why, as he was still only in his late forties/early fifties, he had ended up as a caretaker cum security guard at Pepperdine University.

“The more I investigated the more I realized that Amanda Knox and Raffaele Sollecito could not have had anything to do with the murder of Meredith Kercher. Moreover, one reason they were falsely convicted was that every rule of good investigation was violated.”

“In the U.S, the totality of the evidence and the hunches of the investigators in this matter would not have been sufficient to get a search warrant, much less take somebody to trial. The case is completely flawed in every way”

Really? With his casual self-confidence and buffoonery, Moore became something of a celebrity on TV programmes, blithely repeating many of the myths around the case such as “no evidence” and that there was a conspiracy against Knox and Sollecito.

However the quality of some of the contributors began to improve even if their contributions did not reflect that, and the TV programmes in which they appeared were still lacking any semblance of balance.

Knox and Sollecito’s appeal was due to commence in November 2010, and in April 2010 CNN produced it’s own one hour documentary on the case entitled “Murder Abroad : The Amanda Knox Story”, presented by Drew Griffin. Those who contributed, with brief appearances, included Douglas Preston, Mignini, and Greg Hampikian, a prominent biologist and DNA expert from Boise State University and a director of the Idaho Innocence Project. Mignini had in fact been interviewed by Griffin at length in Perugia and CNN did release a transcript of the interview contemporaneously with the airing of the documentary. However the soundbites from these contributors fell in line with the biased and error strewn commentary from Griffin.

Greg Hampikian said that finding DNA (Amanda’s and Meredith’s) but no blood made it highly unlikely that the knife was used in a bloody murder. He also said that it was surprising that the prosecutor was even allowed to admit “such a small unexplainable sample (Meredith’s on the blade) as evidence.” “Would this have made it into a US court? I don’t think it would have made it into a US lab report”.

Griffin claimed that the case was falling apart and depended on two tiny traces of DNA.

He said that the testimony of Antonio Curatolo was laughable.

DG – “He revealed that he was under investigation by Mignini’s office at the exact moment he became his star witness”

DG – “Did he get any favours?” He asks Mignini, and.....

DG – “So you believe the testimony of a homeless heroin dealer?”

That was just one example of the tenor of the documentary.

One might expect this sort of one-sided presentation from American TV desperate for ratings, but articles criticising the verdict and the case also appeared in the British newspapers.

Bob Graham of the Daily Express was not adverse to biased comment and inaccurate and poorly researched news in his articles on the case. Peter Popham of the Independent was an advocate of innocence.

The Independent ran with an article by David C. Anderson: “Amanda Knox is a Victim of Italian Pride”. Anderson, a retired endocrinologist, living in Italy, had been involved as a witness in a notorious miscarriage of justice in England, in a murder case, the case of Stefan Kiszko. The miscarriage had turned on a paucity of evidence and on non-disclosure of exculpatory evidence.

Anderson was at the time of the murder treating Kiszko for Klinefelter’s syndrome, a sex chromosome disorder. It was because of this condition and/or the treatment which he was receiving that Kiszko was unable to produce sperm and therefore could not have been responsible for the sperm that was ejaculated over the victim by the killer. The presence of the sperm was a vital piece of evidence that was withheld by the prosecution and, it seems, deliberately, as Anderson says he had been asked by the police beforehand as to whether the sperm could have belonged to Kiszko.

The real killer was only much later convicted on the basis of DNA evidence. The technique for extracting and profiling DNA was not available at the time of Kiszko’s conviction.

Haunted by the experience and convinced that the same shocking failures and non-disclosure were being repeated in the Meredith Kercher case, he castigated the convictions as another such travesty of justice.

The unbiased and factual reporting of three reporters who attended most if not all of the court hearings, must be mentioned and credited at this stage - Andrea Vogt for the Seattle Post Intelligencer, Barbie Nadeau for the Daily Beast, and John Follain for the Times.

However, most of the media, faced with the language difficulties, and the cost of having an on the spot reporter, took the lazy approach of relying on press releases from Reuters and the Marriott PR agency pushing FAO memes.

Inevitably there were books about the case published after the trial. The first out, published in the UK, was "Darkness Descending" by TV producer Paul Russell and crime writer Graham Johnson, with a contribution from the Italian Carabinieri's leading forensics expert Luciano Garofano.

In the States, Candace Dempsey, "an award winning writer", as she described herself, produced "Murder in Italy", a take down on the prosecution case, and this was soon followed by "Angel Face" by the reporter Barbie Nadeau, and a year later by "The Fatal Gift of Beauty" by Nina Burleigh and "Death in Perugia" by John Follain. There were also a number of self-published tomes.

I mentioned earlier that Mignini was reported to have a cloud hanging over him as a consequence of "an abuse of office" allegation, as reported by the FOA lawyer Anne Bremner. This is a diversion but it became another stick to beat him with. What actually happened is a bit confusing, byzantine and, one might think, typically Italian, but it does need to be cleared up, and the following article from Italian journalist Andriano Lorenzoni should assist -

"The Perugian investigation of the instigators of the crimes of the Monster of Florence has, in effect been stopped."

"In January of 2010 the Public Prosecutor of Perugia, Giuliano Mignini, and the former head of the Flying Squad of Florence, Michele Giuttari, were sentenced by the Court of Florence on the charge of abuse of office in an investigation into some Perugians connected to the "instigators" of the crimes of the Monster of Florence. According to the prosecution's theory, Mignini and Giuttari illegally wiretapped and investigated journalists and law enforcement officials to influence their activities."

"These are abnormal proceedings, since the Public Prosecutor, Mignini, had been properly authorized by the investigating magistrate of Perugia to use wiretaps for his investigation, actions that he had the duty to carry out. Abnormal proceedings also because leading the investigation against Mignini and Giuttari was [conducted by] the same Public Prosecutor's Office that Mignini had investigated the head of, Ubaldo Nanucci. Not by chance did Mignini object to the jurisdiction of that Office to carry out the investigation and raise objections to the legitimacy of the judgement."

"This all springs from a recording made by Michele Giuttari of one of his conversations with a deputy prosecutor of Florence, Paolo Canessa, in which Canessa states that his boss, Nanucci, was not a free man and admits to having been hindered by him regarding the requests of Giuttari into the investigation of the crimes of the Monster of Florence."

"Giuttari then sent the recording to Mignini who turned it over to the Prosecutors' Office of Genoa which had been authorized to investigate the magistrates of Florence. Nanucci was then investigated for having slowed down, or rather obstructed, the investigation of the Monster of Florence. Genoa promptly dismissed it."

“Giuttari continued to complain to Mignini about the conduct of the police commissioner for Florence, De Donno who, as ordered by the Ministry of Internal Affairs, should have set up a new wire tapping room for the GIDES (serial crimes investigative unit) where Giuttari and his men were working. De Donno never set up the new room. Mignini charged him and sent the file to Florence.”

“A question comes to mind. Where is the abuse of office in all this?”

“According to Mignini, Francesco Narducci, [a prominent doctor whose death he was investigating] was connected in some way to the Monster of Florence case.....Among other things Francesco Calamandrei [a suspect for the Monster] and Narducci knew each other. Narducci then died in unclear circumstances on October the 13th 1985, drowned in the waters of Lake Trasimeno, one month after the last murder committed by the Monster of Florence.”

“Mignini and Giuttari were acquitted of the charge of abuse of office because it was not proven that any crime was committed. The “aberrant” conviction of Mignini did not carry any immediate disciplinary consequences of any kind. The disciplinary proceedings were in fact suspended pending resolution of the criminal case on which it depended.”

So, at the time that Mignini walked onto the Meredith Kercher case he had, effectively, a “turf war” between different law enforcement jurisdictions hanging uncomfortably over his head on an entirely unrelated matter but that was no reason, as it would come to be suggested that it was, for him declining the Meredith Kercher case.

But that was not the end of the accusations that Mignini had to face.

Towards the end of March 2011, during but before the first appeal had really got underway, The Committee to Protect Journalists e-mailed an open letter to the President of Italy ostensibly on press freedom in the Meredith Kercher case. This letter was also copied to a number of worthy notables worldwide and also posted on-line.

From the CPJ letter to the President of Italy and 20 other European and international figures -

“Dear President Napolitano,

The Committee to Protect Journalists, an independent, non-partisan organization dedicated to defending the rights of journalists worldwide, is deeply concerned about local authorities’ harassment of journalists and media outlets who criticise the official investigation into the November 2007 brutal murder of British exchange student Meredith Kercher in the central Italian city of Perugia, in Italy.

The Kercher murder investigation was headed by Mignini and conducted by a Perugia Police unit known as the Squadra Mobile. Mignini was also in charge of the latest

investigation into the unsolved murders of eight couples in Tuscany between 1968 and 1985, collectively known as the Monster of Florence killings.

The anti-press action of the Squadra Mobile under Mignini's supervision, coupled with Mignini's long-standing record of harassment of journalists who criticise his conduct on the job, cause the press to stay away from sensitive subjects, including important developments in the Kercher case such as the appeal of two defendants in the case.

CPJ is particularly concerned about the impact Perugian authorities repressive actions have on local journalists and local bloggers, who lack the support and backing of major publications.

Of the cases that have come to CPJ's attention, one stands out because of the abusive actions employed by members of Squadra Mobile to punish a critic of the official Kercher murder inquiry. Local freelance reporter Frank Sfarzo (real name Sforza) created his English-language blog "Perugia Shock" in 2007, days after Kercher's gruesome murder.

Sfarzo told CPJ his troubles started on October 28th, 2008, the day Knox and Sollecito were indicted and a third defendant was convicted of murdering Kercher. Several members of Squadra Mobile, Sfarzo told CPJ, approached him just outside the city court and started to push and hit him. "You are pissing us off!" they told him, referring to his coverage.

When the trial of Knox and Sollecito began that December, Squadra Mobile continued to harass him. They regularly tried to prevent him from entering the court, mouthed insults at him from across the courtroom: and stared over his shoulder as he took notes. "This was done in the presence of the judge, the Carabinieri and the court guards, but they would do nothing," Sfarzo told CPJ.

The Harassment reached its peak on September the 28th 2010, when five officers of Squadra Mobile forcibly entered Sfarzo's apartment. They did not produce a warrant or show their badges, Sfarzo told CPJ. Four of the five shoved Sfarzo to the ground, struck him, handcuffed him, and climbed on top of him, crushing his air supply, Sfarzo told CPJ.

Next the officers took Sfarzo to the Perugia city hospital, where they claimed he had attacked them. They persuaded a doctor to issue a medical report for the injuries Sfarzo was alleged to have caused. In addition, the Squadra Mobile officers brought Sfarzo before a psychiatrist, demanding that they issue him with a certificate of insanity.

From the hospital the officers brought a handcuffed and injured Sfarzo to their headquarters where, in the blogger's word, they "displayed me as a trophy", referring to him as "the bastard who defends Amanda Knox". The officers refused Sfarzo's requests to call his lawyers or his relatives, and put him in a cell for the night.

Sfarzo was released pending a trial in May. He faces up to six years in prison if convicted. "The police can count on the complicity of the judges", Sfarzo told CPJ.

Preston, Spezi's co-author [of *The Monster of Florence*], who suffered harassment by Mignini himself in 2006 - and eventually was forced to leave Italy for fear of imprisonment - told CPJ that he was still in fear of going back. He has been unable to clarify his legal status in Italy. In the summer of 2008, Mignini told third parties that he would have Preston arrested if the writer returned, Preston writes in the Afterword to the *Monster of Florence* paperback edition in 2009.

We ask you to ensure that the politically motivated lawsuit against Perugia blogger Frank Sfarzo is immediately scrapped and that outside investigators are assigned to conduct an investigation into the September 28-29, 2010 abusive actions of Squadra Mobile officers against him.

It is unacceptable that journalists, bloggers and writers on both sides of the Atlantic should censor themselves by staying away from subjects of public interest such as the Meredith Kercher murder case and the *Monster of Florence* killings because of Prosecutor Mignini's inability to tolerate the scrutiny that comes with public office."

Thank you for your urgent attention to this matter. We await your response.

Joel Simon
Executive Director

The above is a truncated version of the letter which can still be found on the CPJ website. I have left out a number of passages to do with the *Monster of Florence* affair.

It is not known whether President Napolitano, and the 20 other intended recipients, ever read the e-mail. I suspect that if they did, they then deleted it.

The CPJ is certainly a reputable organization with which genuine journalists will be acquainted. It has done good work protecting their interests. That it should traduce the reputation of an Italian prosecutor in this way, relying on the word of an internet blogger - not an accredited journalist and someone with serious personal issues to boot - without any research or fact checking, and without even giving the prosecutor in question a chance to comment before publication, is quite startling, and certainly a departure from good journalism in itself.

Further, and in view of the fact that at the time Douglas Preston, via his wife, was a financial contributor to CPJ and had a financial interest in the success of (a) his book "*The Monster of Florence*" with Afterword, and (b) the movie rights, it would have been prudent, surely?

What evidence did the CPJ have that the press were intimidated into staying away from sensitive subjects, including developments in the Meredith Kercher case? Really?

The suggestion that the police, or a section of it, are somehow Mignini's personal hit squad, is silly. This is Italy, a democracy subject to the rule of law, not a totalitarian state.

Was anything done to check whether Sforza was perhaps, to put it kindly, confused about the circumstances of his arrest? I understand that he was living with his mother and sister and that the latter had called the police due to an alleged incident of domestic violence. Sforza subsequently had a pending prosecution against him in that respect, though as nothing more has been heard about that it probably lapsed some time ago, as domestic violence cases are prone to do. However he still has a pending case against him for assault in the States and there is a warrant out for his arrest due to his failure to turn up in court there.

As to his being denied access to the courtroom and being abused and pushed about by Mignini's henchmen - though in the next breath he is referred to as being inside it as well - again we only have his word for the allegations, but if CPJ had viewed the video which Sforza took, where he does fall backwards, then it would have been noted that this was during a media scrum, or frenzy, as people, including the Kerchers were emerging from the court, and whereas there may have been minders present, there do not appear to have been any police near to him.

Did the CPJ check as to what were the criteria for allowing access to the courtroom. Did people not have to carry accredited identification? It was a small courtroom and not big enough for everybody. Presumably the press, and the families of the accused and of the victim, would want and be granted access, but a local blogger?

It did, of course, come to the attention of Mignini who took the opportunity to deny many of the grotesque allegations it contained. What motive would he have to harass Sforza when the trial had concluded 9 months earlier? He denied that he had told Preston, or anyone, that if he returned to Italy he would be arrested. In fact Preston returned to Italy with NHB Dateline and a film crew three months after allegedly leaving for fear of being arrested.

Attentive readers will also have noticed other inaccuracies and unsubstantiated claims in the letter.

Publicity about the letter was, of course, to put the squeeze on the prosecution during the appeal, cement negative reaction to the case back in the States, and to advance a measure of self interest on Preston's part. Mignini did not, in fact, have much of a part to play in the appeal.

A factor that may have also played a part in negative perceptions abroad, and in particular in America, was that in the same month that Knox and Sollecito were sentenced, Guede lost his appeal but had his sentence reduced from 30 years to 16. How could that be fair when Knox had been sentenced to 26 years even after the grant of

extenuating circumstances? We know why, of course. That is how the fast track system works but it played to notions of inherent unfairness and of a conspiracy against Knox because she was an American.

Much was also made of certain issues propagated in the media purportedly to show the unfairness of how suspects are treated by the police, and how the accused is treated by the judiciary, in the Italian system, by comparison with the American equivalent. Much of this relied upon misinterpretation and ignorance.

The picture painted in the US media and online was that Knox had been subjected to days of harsh interrogation and ultimately her "confession", involving tag teams of police officers, had been coerced by police misbehaviour amounting to torture. She had been given no warning that she was a suspect, that she had the right to remain silent and have a lawyer present – all Miranda violations that in the USA would have resulted in the evidence against her (the admission that she was at the cottage at the time of the murder, at any rate), being excluded. The interrogation had been illegal and without the evidence arising from her confession she would not have been convicted.

In addition prior character evidence had been admitted which was clearly prejudicial and which would not have been admitted in a US court.

Furthermore, her trial for murder was corrupted by hearing the charge of calunnia, and the civil claims for compensation by the Kercher family, and by Lumumba for the defamation against him, at the same time.

The trial had occurred against a backdrop of media character assassination and the jury had not been sequestered.

Some of this I have already shown is false, but it is surprising how much of it all is still accepted by talking heads.

It has taken some time coming but there is quite a good article by Danielle Lenth, presented to the Kentucky Bar Association Annual Convention in June 2017, a comparative study in the Amanda Knox case, in which she argues that the Italian system actually has more safeguards for an accused than in the USA, and that most of the above concerns would still arise and not necessarily be treated any more favourably for the defence had the same trial occurred in America.

In the States not all police questioning triggers the need for a Miranda warning, any more than it does in the UK for a police caution under PACE. In both cases there has to be a formal arrest or a restriction of free movement comparable to a formal arrest. The question is whether Knox would have felt, at any juncture whilst being interrogated, that she was not at liberty to leave. That is doubtful given that she attended the police station and submitted to questioning voluntarily, and after all she had made it clear on numerous occasions that she was eager to assist in the investigation. She had been questioned at the station on prior occasions and been allowed to leave. Why should the

night of the 5th be any different?

In *Oregan v Mathiason*, the US Supreme Court found that Miranda warnings had not been triggered when a Defendant, invited to come to the station by the police, did so voluntarily and, when questioned in circumstances which did not constitute a significant coercive environment comparable to having one's freedom of action restricted, made self-incriminating statements. Whatever one makes of this decision, as far as I am aware it is still the law.

In the event, and as we saw in Chapter 4, the fact that Knox placed herself at the crime scene and accused Lumumba of murder, came as something of a surprise to the police who, up to that point, and whatever suspicions they may have had, were treating her as a witness, but who was being less than co-operative (or, at least, having a problem with her memory) about text messages on her phone. It is arguable whether this alone could have made her a formal suspect necessitating a formal warning and arrest though of course the police by then had prior knowledge that her alibi was in doubt due to Sollecito's admissions. According to Knox she had already been told that. Nevertheless it may be likely, in America, that she would have been given a Miranda warning for that reason. However in the USA and the UK one's "rights" can be waived by the defendant and it may have been that Knox would have done so and the evidence (Anna Donnino's testimony) is that she did indeed waive her rights (to a lawyer) before her first written statement to the police. Once she had named Lumumba and placed herself at the scene of the murder, the need for a formal warning would likely be deemed requisite, both in the States and in Italy, but not given in this case as the police needed context (to wit, a witness statement) as grounds for pulling Lumumba in for questioning. It would be reasonable for the police to assume that this would be necessary for Lumumba's arrest. The situation can be contrasted with that where Knox, following Sollecito's verbal statement contradicting Knox's alibi, was already in the police station and co-operating with the investigation. It was reasonable for the police to first seek Knox's explanation for that, before an arrest, and before taking a signed statement from Sollecito, and furthermore, I very much doubt that the police, at that time, really thought that Knox, or Sollecito for that matter, had a hand in the murder, but that Knox, for whatever reason, may well have known who had, or at least had information as to who had, and had been misleading and deceptive about that, a suspicion which would have increased with her inability to recall the exchange of texts.

To say that the interrogation was "illegal", in the sense that it should never have happened, and could never have happened in the US or elsewhere, that it was, in itself, a crime, is of course nonsense. What was an issue was whether her "confession", oral and in two signed statements, was admissible in evidence and it was ruled that it was not as far as the charges connecting her to the murder were concerned. In large part this was because waiver of rights is not an option under Italian law once the person being questioned is deemed a suspect, as the Supreme Court, prior to trial, deemed her to be.

All her statements to the police were in evidence as far as the charge of calunnia was concerned. This offence was a stand alone matter in that one can commit the offence whilst being entirely innocent of anything else. Whether being tried on this charge at

the same time as that for murder and other linked offences was prejudicial, we can look to the Motivation of the trial judge and note that he did not motivate her conviction for calunnia until after he had motivated the reasons for her convictions for the murder and related charges. It did not receive anything like the prominence (a page at most – in a document nearly 400 pages long) that the evidence in the rest of the trial had.

It is also fairly obvious that the lack of a Miranda warning can not in any way excuse, or exclude the evidence for, the offence which she then committed; naming and blaming Lumumba, effectively as a witness, for a horrible murder. A Miranda warning can only be referable to the basis on which it would, or should, have been given at the time - in this case, in a murder investigation, as a warning to a person in custody and under suspicion of some involvement with the offence re self incrimination. Falsely, and knowingly, incriminating someone else of murder falls into a different category. No warning can be given for that. One cannot be a suspect for a crime before it has occurred.

There was quite a lot of character evidence against Knox at the trial. I mentioned some of this in my background on Knox, and on Sollecito, in Chapter 1, as well as elsewhere. Character can be gleaned from behaviour, and her post murder behaviour was of course relevant. It should also be borne in mind that the defences produced their own character witnesses to counteract, as they would have it, the prejudicial character assassination in the media, and that being so the prosecution would be entitled to respond. What was mentioned in the media was not, of course, evidence.

I should start by saying that all such evidence produced by the prosecution is relevant unless the probative element of such evidence is outweighed by its prejudicial element. It could, for instance, be relevant to propensity and motive. In America, and in the UK, it is a matter for the trial judge to determine. In Italy, as a general rule, it is admitted, to be heard but not to form the reasons for the jury's verdict. The difference lies in each system's safeguards against a jury's improper use of prejudicial evidence. In America, if admitted, it is usually accompanied by a jury instruction, which some juries might (we would not know) disregard. In Italy, the judge sits with the jurors and any mention of character evidence in the Motivation for the verdict can be reviewed by the Appellate Court to ascertain whether it was considered in its proper light in relation to the evidence as a whole.

In the trial Motivation there was no mention of any prior prejudicial character evidence, or of any of the prejudicial media headlines.

In Italy press and TV coverage during the court case seems to have been rather muted, simply reporting developments. However Telenorba showed pictures of Meredith, naked and with her wounds prominently visible, on late night television, provoking a whirlwind of disgust. The Oggi magazine did, however, give prominence to criticism of the case.

What impact would this coverage and criticism have on the case?

CHAPTER 21

The Italian Judicial System, “Reasonable Doubt”, and the Commencement of the Hellmann Appeal

“What did the Ancient Romans do for us?” A familiar, if ironic, question. Well, for a start they advanced the development of law as we know it today. Their system - the codification of law with a judiciary - was applied throughout the Empire, and persisted, even after it’s collapse in the West, except in the North of Europe where Roman rule had not reached, and in the British Isles. In the latter case, although subject to Roman rule for four hundred years, it did not outlast the effect of invasion by the Saxons, Angles and Jutes.

In England, under Saxon and subsequently Norman (originally themselves Norsemen) rule, a different system of justice developed to that in France, Italy and southern Europe. It was based on common law, essentially decisions made by courts, incorporating the edicts of monarchs (who, for the most part, would largely consider themselves as beyond the law) but acquiring the force of precedent, and in time modified occasionally by the monarch acting with the consent of a nascent parliament. In time this system became what we know it today - common law plus legislation passed by Parliament and an independent largely professional judiciary.

This system was also exported to the colonies in America and underpins the legal system of the United States but with it’s own necessary innovations and modifications.

We are now used to criminal trials taking place on an adversarial basis before a professional judge and jury of laymen. Prosecution versus Defence. We are used to hearing the concepts of “the burden of proof” and “reasonable doubt” articulated. The trial itself is the final determination on issues of fact and appeals by a convicted person are on issues of law unless some material new fact has since arisen. An appeal is not always automatically granted. In England a judge must grant leave in most cases. We are also conditioned to think that our system is the best in the world.

Napoleon did much to improve the old Roman system, which under feudal monarchs had suffered to the same extent as the common law system had done, with his own updating and revision of it. Thus we speak of the Napoleonic Code and this was exported around those parts of a Europe which he and the Republic had conquered, including back to Italy. Even after Napoleon’s defeat it remained the basis for the judicial systems of countries which were hitherto unused to the system.

Thus the Napoleonic Code, subject to the inevitability of territorial modification in a Europe now consisting of Nation States, and the introduction of new legislation within the State, has a singularity and accessibility, not only to the benefit of practitioners but

available to every citizen of the State, and its practice and procedure is clear and concise.

The system was largely inquisitorial rather than adversarial. An official was charged with examining whether charges should be brought and then another was charged with conducting a trial in which the court itself would try to get at the truth of the matter.

Turning our attention now to the Italian system we can make the following comparisons and distinctions.

The central and fundamental principle of the Italian legal system is that of legality. There is little flexibility. Italian criminal law is governed by the Criminal Code and the Code of Criminal Procedure, both guaranteed and protected by the Constitution of the Republic.

A trial is conducted before a jury of “judges” consisting of two professional judges, one of whom is the presiding judge, and six lay judges, sitting together as to what we would call a jury of the facts and as to the verdict. Thus the lay judges have the continual benefit of the input of professional advice as to the law, replacing what happens when, in our system, and in open court, the judge directs the jury, as and when requested by the jury, and in any event as to the law before they retire to consider their verdict.

The verdict is a majority decision with the lay judges casting their vote before the professional judges. Despite that, a drawback of the system is that it is likely that the lay judges will already have an understanding of the professional judges’ stance and vote accordingly. As the voting is seemingly not recorded anywhere to which the public has access, the verdict is usually regarded as unanimous.

A person who is convicted only has to request an appeal and it is automatically granted. Likewise, if a person is acquitted the prosecution can appeal. The appeal goes before the appeal court, constituted in the same manner as at trial.

The appeal court has the power to reconsider the findings of the trial court, recall witnesses and call additional witnesses. It is in that sense, a hybrid trial and appeal on issues of law.

There is a final appeal to the Supreme Court, often referred to as the Court of Legitimacy. Even if neither of the parties were to request this step it would still occur, as a case is not finalised until the Supreme Court has “signed off” on it. There are, I believe, currently around 396 judges allotted to the Supreme Court, a reflection of the extensive administrative work it has to undertake due to the nature of the system. Compare this figure to the number of judges who constitute the Supreme Court in the USA or in England & Wales. The Italian Supreme Court judges are sectioned into fields of expertise with each section constituting pools from which panels of judges can be drawn. One drawback of the system would be, I would submit, that there is scope for inconsistency

and possible rivalries and factions within and between the various sections, or Chambers.

The system, then, has more built in safeguards and advantages for a defendant than his equivalent has in our own system.

What makes this three step process work is that each court has to follow its decision within 90 days with a detailed report on the reasons for its decision, and this is called a "Motivation". This is always written by either of the two professional judges and is probably a joint collaboration in many cases. For the sake of convenience I have been quoting extracts by reference to the presiding judge.

Thus when the appeal in this case opened the appeal judges would not only have had access to all the documents available, the transcripts of the witness testimony etc from the trial, but could read the detailed reasons given for the conviction.

The Supreme Court has a more limited function than the lower appeal court but I will take that up later in connection with our discussion of the final outcome.

Raffaele Sollecito is hardly an intellectual and so my interest was piqued by the observation in his Book "Honour Bound" that, to use his words, for reasons deeply embedded in the country's history, the concept of proof beyond a reasonable doubt scarcely exists in Italy.

Food and drink to Knox supporters. But is he right? Not really, though in part, yes.

The current Italian system is the result of a procedure code reform, subject to further modification, introduced in 1989. This reform introduced several features of the adversarial system into a new criminal procedure code. One of the features of the new code was the abolition of the "not proven" verdict". This factually had been working very effectively as the version of "reasonable doubt" in the Italian system.

The reform still required a Motivation, previously delivered as a written rationale or dossier aimed to provide "a judicial truth". Typically "reasonable doubt" is a formulation coming from systems where juries do not issue a written rationale while systems that have motivation reports on verdicts usually don't have to refer to the concept: it was commonly agreed that the absence of doubt should be understood from the rationale. Absence of doubt is not a quality that is inherent in the internal conviction of a juror, but instead is understood to be a feature of the logical proof provided by the written rationale. It was believed that the absence of doubt in the judge's mind should be shown by the fact that a motivation report is logical.

Thus no Italian scholar would ever maintain that the "reasonable doubt" standard is a recent introduction in the Italian system. Only the acknowledgement of its wording is

relatively recent. In the Italian system the formulation “reasonable doubt” was starting to be used explicitly in Supreme Court jurisprudence in the early nineties; a change of wording in honour of the adversarial reforms, but in fact a continuation of the long jurisprudence tradition of the “not proven” standard.”

In fact in the adversarial system “beyond reasonable doubt” is really an instruction to the jurors that they must arrive at a certain evidentiary standard if they are to convict. Any system that would produce a “not proven” verdict would mean that the standard had not been met.

In the adversarial system no written rationale for a verdict is required to accompany the verdict. That the Italian system retains this requirement is very much a safeguard for the accused as well as for the State both being thereby protected from perverse or capricious convictions or acquittals.

Lucky Sollecito, one might think, but in fact his luck is derived from the following quotes from the opening, at the end of 2010, of the Hellmann (the presiding judge) appeal in Perugia.

“The only certain and undisputed fact is the death of Meredith Kercher.”

So said Judge Zanetti (Hellmann’s professional colleague) on the opening day of the appeal. It was a statement that brought gasps of astonishment from those in court, particularly from the reporters present who deemed it to be an admission that reasonable doubt existed.

In fact, of course, there were a lot of certain and undisputed facts. No one denied that there was evidence, most of it undisputed. What was disputed, it seems, was the interpretation of that evidence.

In time it would come to be understood that these words were in fact code for an acquittal.

“Compliance with article 533 of the Code of Criminal Procedure (Judgement of conviction only if the defendant is guilty of the offence complained of beyond a reasonable doubt) does not allow us to share fully the decision of the Court of Assize of First Instance.”

So said Judge Hellmann on the third day of the appeal before even the evidentiary and discussion stage had opened.

It seems that the presiding judge had felt compelled to expand upon his colleague’s stark opening remark but in doing so he had opened a can of worms. He had just made

things even worse. Unfortunately the prosecution decided not to challenge the remark and the appeal proceeded. They should have done so.

Article 533 relates to verdict. The verdict (to be) is not to be hinted at or discussed at the opening of any trial or appeal and certainly not as pointedly as this. So serious is this faux pas that I have been advised that the prosecution considered impeaching the presiding judge for incompatibility and incompetence. It seems that they did not because of the furore this might have caused and perhaps also because they were confident of the strength of the case in any event. In retrospect a mistake.

What in fact was Hellmann saying? Let us consider.

“Compliance with article 533 does not allow us to share fully the decision of the Court of Assize of First Instance.”

I believe that what we see here is the first indication of the judges’ manifest misunderstanding of what should have been the correct approach to an evaluation of the evidence in the case and the application of the “reasonable doubt” standard, both aspects of which were to be criticised by the 1st Chambers of the Supreme Court when the prosecution appealed the subsequent acquittal.

Suffice to mention here that the “reasonable doubt” standard applies only to the culpability of the accused for the offence with which he/she is charged. Article 533 makes this abundantly clear and this is no different from how our own adversarial system deals with it. It is not a standard to be parcelled out to each item of evidence or inference drawn. That the appeal judges thought they could do precisely that, and did, is implicit in Hellmann’s remark.

How can one not “share fully the decision of the lower court”?

Hellmann may have meant, and probably did, that he did not fully share the decisions of the lower court as regards each element of evidence rather than “the decision”, which can only be a reference to the actual verdict. But “the decision” is what he says, linking it specifically to article 533 where only the singular use of the noun would have any meaning. So on the face of it this can only be about the verdict of the lower court. And yet, how can one not fully share a verdict? A verdict cannot be parcelled out. One either agrees or disagrees with it.

Despite the confusion, no doubt the remark was meant to acknowledge that there remained some doubt about the validity of the verdict in their minds. Well at least that’s honest, but in that case it should have been incumbent on them to specify what it was that concerned them, although some of that obviously did become apparent through the conduct of the appeal as the DNA on the knife and bra clasp, and Curatolo’s credibility, became specific issues.

However, I find it difficult to avoid the conclusion, given the above, that Hellmann and Zanetti were already looking to overturn the result of the trial. However they would need something substantive to work with but perhaps in acceding to defence requests for :-

1. A review of the DNA evidence on the knife and the bra clasp
2. A re-hearing of Curatolo
3. Hearing from new witnesses Aviello and Alessi,

they could be confident in obtaining that elusive “reasonable” element of doubt to motivate in support of an acquittal. Or am I being harsh? In the event that is precisely what happened.

The prosecution team were to be, again, Mignini and Comodi, but led by Giancarlo Costagliola.

There is speculation as to how Judge Pratillo Hellmann came to be chosen to preside over the appeal. Only a month before the commencement of the appeal Umbria’s top criminal judge, Sergio Matteini Chiari, was to preside. Then he was forced aside without any public explanation from Chief Judge de Nunzio. Chiari was rumoured to be angry at the decision. Hellmann, with just two criminal trials in his past, was selected instead.

Andrea Vogt, from the Seattle PI commented on the change of judges -

“PERUGIA, Italy - As grieving family members mourn the third anniversary of Meredith Kercher’s murder, Italian court officials have changed the judge who will preside over the appeal of her convicted killers, Knox and Sollecito, just weeks before the highly anticipated appeal is due to begin.....In Umbria the last minute shuffling of magistrates in one of Italy’s most high profile international cases has some wondering what kind of behind-the-scenes manoeuvring might be happening on the eve of the appeal.

Legal observers in Perugia maintain the change of magistrates from Sergio Matteini Chiari to Claudio Pratillo Hellmann was simply an “internal administrative issue”.

Matteini Chiari, a judge who prosecuted the controversial Andreotti appeals trial over the mafia murder of an Italian journalist, is apparently in line to head the juvenile court. Knox’s attorney, Luciano Ghirga, referred to both judges as “respected and experienced”.

The new judge assigned (Hellmann) is no stranger to allegations of judicial error. In fact he was one of three judges who, in 2000, overturned a controversial conviction in the stabbing murder of Cinzia Bruno, setting free a man who had been jailed for more than

7 years.....[he had been] sentenced to life, a ruling upheld in all three phases of the Italian court process, including the Supreme Court.....

The Bruno case is, of course, no indicator of how Pratillo Hellmann might approach Knox's case. However it shows a willingness to go against the judicial grain that is likely to please hopeful Knox supporters."

We might remember that Sollecito's lawyer, Bongiorno, had political connections and had been part of the defence team in the Andreotti trials. Bongiorno certainly seems proud of her involvement in the Andreotti case. Even today her chambers are in the exact same room, and she works at the exact same desk, that had once constituted Andreotti's prime ministerial office.

Andreotti, the Prime Minister of Italy, had been charged with links to Cosa Nostra but the courts found that although he had those links at one time, the charge was out of time and furthermore he had renounced the links. The more sensational charge, brought by prosecutors from Perugia was, as Vogt mentions above, that he had been involved in the mafia murder of an Italian journalist. He had been convicted on trial and appeal but had been acquitted by the Supreme Court.

The most important decision by Hellmann was of course to order a review of the evidence relating to the DNA on the knife and the bra clasp.

Hellmann justified this decision as follows -

(Hellmann) - "By a decree dating from 18th December 2010 , this court, in ordering the independent expert review, explained the reasons underlying the need for this measure; the identification of DNA on certain exhibits, and it's attribution to the accused, is particularly complicated due to the objective difficulty of people without scientific knowledge to make evaluations and select options on particularly technical matters, without the advice of a court appointed expert."

"The fact that this question is particularly complicated is also due to that which was observed on this point by the Court of First Instance. In fact, in confirming the reason for which the request for an independent expert review was rejected, [that court] wrote textually....."At this point it also 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 simply have found ourselves confronted with yet another interpretation, which would have fully or partially confirmed one or the 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"".

“In substance, this is like saying that the question, which is already complicated given the opposing evaluations.....would have ended up by becoming even more complicated due to the possible formulation of a third evaluation by the expert who could have been appointed by the court, which would surely have partially or fully confirmed one of the different positions, so that the court might just as well solve the problem directly by itself.”

“In fact, the court of First Instance decided to solve a scientific controversy that it itself recognized as being particularly complicated, based on scientific evaluations directly formulated by that court. Contrarily, this court does not hold that the personal knowledge of either the professional or lay judges is sufficient to allow them to resolve a controversy on a scientific matter, meaning to resolve it properly on the basis of scientific criteria, without the advice of experts appointed by the court, and able to perform the task entrusted to them in the context of a full debate between the parties”

I do not find this explanation at all convincing. I can only understand it in the context of an implicit admission by Hellmann that he did not understand the expert evidence previously advanced during the trial, and possibly did not appreciate the evaluation of that evidence in the Massei Motivation Report. That is like saying (to use an expression of Hellmann’s), that he lacked, with his background, the same criminal trial experience that Massei had possessed, and Chiari would have possessed had he been presiding in the appeal. It is ironic that he actually quotes Massei as to why he had refused the previous request for such a review, in terms which provide a perfectly clear and logical explanation for that decision. It is, I would say, a clear abrogation of a judge’s role not to evaluate whatever evidence he has before him, scientific or not, but instead to delegate that function. It was to become abundantly clear that this was in fact where Hellmann was heading.

He also misrepresents Massei. Massei did not say at any time that the question was particularly complicated; but that there had been competing views on the evidence, he acknowledged. It is also a presumption to suggest that in evaluating the evidence Massei employed a “personal knowledge” (as to the science, it is insinuated, from Hellmann’s remark) that would “permit him to resolve a [scientific] controversy”. As to “the scientific controversy” to which Hellmann keeps alluding, what is that? It is not specified but what he had in mind, of course, (whether or not the following can be adequately described as a scientific controversy) was (a) the interpretation of the results from the electropherogram, and (b) more pertinently, whether the results were reliable, particularly with regard to a low copy number sample which was not re-tested, and finally with regard to the possibility of contamination, issues as to which numerous amply qualified experts, of certainly equal, if not greater, distinction than the court appointed experts, had already opined at trial.

In the event, the decision to appoint independent experts was not criticised by the 1st Chambers of the Supreme Court when it annulled the Hellmann outcome. It fell within the discretion of an appeal court to do this even if, they added, the reasons given for the

decision lacked logical clarity. Indeed, there was, to be fair, always the possibility that something new might be learnt from the review process.

The appeal court appointed Professors Vecchiotti and Conti from La Sapienza University to undertake the review. Bongiorno's father, Girolamo Bongiorno, was also an emeritus professor of civil procedural law at La Sapienza, but I am not, of course, suggesting any impropriety was ever involved.

The precise terms of reference were:-

1. Whether it is possible, by means of a new technical analysis, to identify the DNA present on exhibits 165B (the bra clasp) and 36 (the knife) and to determine the reliability of any such identification.
2. If it is not possible to carry out a new technical analysis, to evaluate, on the basis of the record, the degree of reliability of the genetic analysis performed by the Scientific Police on the aforementioned exhibits, including with respect to possible contamination.

CHAPTER 22

The Other Evidence presented at the Appeal

It would take a while for the Independent Experts to lodge their report in court and in the meantime the Appeal Court proceeded with the hearing of witnesses, as requested by the defence.

One was a recall, Antonio Curatolo, who had testified at the trial. Curatolo immediately confused the court by saying that he had seen Knox and Sollecito on Halloween, "because there were lots of kids around." However, once again, he placed the sighting as being on the evening before the day he had seen the Carabinieri and "the aliens" down by the cottage. He was asked whether he knew when Halloween was and he replied "On 1st or 2nd November". In fact for the older generation of Italians Halloween, being a relatively recent introduction to Italy, does tend to get confused with All Saints Day (Nov 1st) and All Souls Day (Nov 2nd) which are holidays in Italy.

He remembered it had not been raining on the day he had seen them. In fact it had not been raining on the 1st November whereas it had done so on Halloween.

He told the court that on the evening he had seen them there were kids around in fancy dress, and also he had seen buses taking people to nightclubs on the outskirts of Perugia.

Prior to his recall the defence had produced staff from several nightclubs located on the outskirts who had testified that their clubs had been closed on All Saints day (1st Nov) and that shuttle buses to the clubs had not been in operation either, though they conceded that they were not in a position to say that other nightclubs known to be open (there were in fact several in addition to the Merlin - to which Guede went) had not had them nor that buses may not have been hired for a private party.

Judge Zanetti was particularly harsh with Curatolo as to his lifestyle. He wanted to know where Curatolo went to relieve himself.

"In the thickets, by the side of the road."

"So, you'd move away?"

"Yes, I would move away, but I was always close to it." [the square]

"Why did you choose to be a tramp?"

"Because I'm an anarchist by nature. Then I read the Bible and I became a Christian-Anarchist."

"Did you take drugs?"

"I have always used drugs"

"Now?"

“No.”
 “In 2007?”
 “I took heroin. Heroin isn’t a hallucinogen.”

The Court then heard from “the prison snitches” as they came to be called. Their evidence was nothing if not grotesque and entertaining, and wholly unbelievable. The reason for the defence calling these witnesses was to establish doubt as to whether the other or others who had acted in complicity with Guede were Knox and Sollecito.

First up was Mario Alessi. Alessi was serving a life sentence for the kidnap and murder of a 17 month old boy. He had stove the child’s head in with a shovel. On taking the stand he had turned pale, said he was ill, and was allowed to step down in order to recover. An hour later he returned to give his evidence.

He told the court that he and Rudy Guede had been in the same prison together, Viterbo, and that Guede had approached him and that conversations between the two had taken place in November 2009, a month before Knox and Sollecito had been convicted.

He said these conversations had started when Guede had linked arms with him one day whilst they were in the prison exercise yard, inviting Alessi to walk with him as he had something important to tell him. Guede wanted to talk about the Meredith Kercher murder, saying that he did not know whether to tell the truth or not, and that things were not as had been reported on the TV. Guede then went on to tell him that he and a friend of his had gone over to the cottage with the intention of having sex with Meredith. Guede had gone to the bathroom and when he returned he had found his friend holding Meredith down on the floor. His friend had then produced a knife. Meredith started fighting and in the struggle she had her throat slit by his friend although Guede had tried to intervene and help Meredith.

“Guede asked me what benefits he would get if he told the truth. He then said he had met Meredith in a bar with some friends of his - one was called The Fat One. He said that one had got drunk and that he had followed Meredith home to see where she lived. A few days later he and this drunk friend went back to the house to see Meredith. They asked her if she would like to have a threesome and she told them to leave.

Rudy said that he then went to the bathroom and that when he came back the scene was very different. He said that Meredith was on the floor, back down, and that his friend was holding her down by the arms. He said that they swapped positions, Rudy then told me that he had put a small ivory handled knife to her throat and that it had cut her and his hands were full of blood. He said that his friend had said “We need to finish her off or we will rot in jail.””

A fellow Viterbo prison mate was called to back up Alessi’s story. Castelluccio said that he had heard the same story from Alessi and had that he had heard Guede say from his prison cell that Knox and Sollecito were innocent.

From the above testimony if it was Guede who had followed Meredith back to see where she lived, or if Guede had had to rely on his friend for that information, then that would be a huge inconsistency, because we know that Guede had already met Meredith and knew where she lived. Neither does the description of the assault tally - certainly not as to the detail - with what we know about the crime scene, the sexual assault, Meredith's injuries and the DNA. There is also the damaging admission as to who was holding the knife and did what. What benefits did Guede imagine could possibly emerge from him telling this story to the police, when it made him out to be much worse than in the account he had already given? It would have destroyed any chance he had on appeal and would probably have resulted in an increased sentence.

Alessi was shown a photograph of the toddler he had murdered and was asked if he knew who it was. "No", he said, turning his head away. He was confronted with the numerous lies he had told in connection with his crime, including trying to frame an innocent person, and appearing on TV to make an appeal. "Let him go now: free Tommaso!" (the name of the toddler), he had exclaimed to the camera.

Guede was called by the prosecution to rebut the allegation which he did in the most absolute terms. We shall look at that testimony in a moment.

The next witness was Luciano Aviello. He was serving time in jail for being a member of the mafia known as the Camorra, in Naples. According to Aviello, his brother and a friend had murdered Meredith whilst attempting to steal "a valuable painting" from the cottage. The friend, an Albanian, had roped his brother into this job but had inadvertently jotted down the wrong address for the house to be burgled, and had ended up at the cottage by mistake.

Aviello said that he was from Naples but that he was living in Perugia at the time of the murder. He claimed that his brother, who had been staying with him at the time, had come home with an injury to his arm and his jacket covered in blood. He did not know where his brother was now because he was on the run from the police in connection with another matter.

He said that his brother and his friend had been disturbed by a woman wearing a dressing gown.

"My brother told me that he had put his hand to her mouth but she had struggled. He said he got the knife and stabbed her before they had run off. He said he had also smashed a window to simulate a break-in," he testified. His brother had hidden the knife behind a loose stone in a wall near the cottage. "Inside me I know that a miscarriage of justice has taken place", he told the court.

Aviello had been in the same jail as Sollecito and had told him "I believe in your innocence".

Under cross-examination from the prosecution it emerged that Aviello had seven criminal convictions for defamation, to which he angrily replied “That’s because all of you, the judiciary, are a clan!”

A few days after he had given this testimony Aviello was interviewed in prison by Mignini who reminded him of the penalty for defamation. Aviello then told him that he had told Sollecito about the fact that he, Aviello, wanted to have a sex change operation but that he could not afford one. He then received a visit from Sollecito’s lawyer, Bongiorno, and it had been arranged that he would receive the finance for the operation. He had then made up the story about his brother as a favour. Mignini took a statement to that effect from Aviello but Hellmann declined the prosecution’s request to recall Aviello, on the grounds that his evidence had already been sufficiently proved to be unreliable. That would be a point of appeal by the prosecution in due course.

One has to question the defence tactics in producing two unbelievable witnesses with entirely different stories.

Rudy Guede was called to the stand in connection with Alessi’s allegation concerning him. Guede had written a letter to his lawyer on hearing of Alessi’s allegation and that was read out in court once Guede had confirmed it’s authenticity. A selective quote from it -

“As this individual is now falsely stating things that I never told him and that I have never said, things that are not in heaven or on earth except in his or, rather I should say, their rotten declarations, it is my intention to state black on white that I have never confided anything to this filthy person, since I have nothing to confess, or anything else, and all that I had to say I’ve already told to the judges....”

The letter concluded -

“I hope that sooner or later the judges realize my complete lack of involvement in what was a horrible murder of Meredith, a lovely wonderful young woman, by Raffaele Sollecito and Amanda Knox.”

Was this an allegation in respect of which Guede had some personal knowledge? If so, was it a statement that was admissible in evidence? To clarify this, and perhaps knowing it would turn out to be inadmissible, Guede was questioned further by the defence lawyers.

Bongiorno : “I believe it is my right to at least ask Mr Guede whether, after years in which we pursued it, if he wants to tell us the truth about this murder.”

RG : “May I respond? Well, since this letter has been read, I think I’m here today to answer Mario Alessi’s false statements in criminal proceedings. And therefore, just as is written in the letter everything I had to say I have already told the judges, already told my lawyers, therefore I don’t plan on answering this topic.”

Bongiorno : “Therefore you don’t plan on answering?”

RG : “Yes.”

That one answer should have been enough to render any allegation against Knox and Sollecito, in so far as it was evidence at all, inadmissible. As to why we shall mention later.

However Dalla Vedova, lacking experience in criminal advocacy, pressed on. Alluding to the statement of Knox and Sollecito’s responsibility -

Vedova : “Well, why did you write it?”

RG : “ I wrote it because it was a thought that has always been in my mind.”

Vedova : “But therefore it is not true ?”

RG : “No, it is absolutely true.”

RG : “If I am permitted one final word, you see, the problem is this; it’s not as though there is my truth, or the truth of Tom or Dick or Harry. There is only one truth; the one I lived through that night, the one I have always described, that’s all.”

Prior to Guede’s last remark, as above, Della Vedova had pressed on with some more questioning to elicit what was meant by his “thoughts” and “the truth”, to which Guede had responded in much the same vein as before, acknowledging, as he had always said, that he was there.

The exchange is interesting for juridical reasons, the issue, and the reasons for which became important later, being whether or not Guede had submitted at any stage to a cross-examination. In his exchange with Bongiorno Guede had made it clear that he was not going to answer any questions from the defence pertaining to his “evidence” as to what had happened on the night of the murder, but in his exchange with Dalla Vedova it appears that he did exactly that. It was put to him that what he had written was not true, and he had denied that. In short, be it very briefly, he had been cross-examined. Or does that seem too contrived? See later Chapters for how the matter became an issue.

Hellmann was to determine that Curatolo’s evidence was unreliable, as one might have guessed, but apart from that nothing much had emerged from the hearing of witnesses so far.

CHAPTER 23

The Independent Experts' Report

The contents of the Independent Experts' Report had been leaked to the news media before the Appeal Court even came to consider it. The media reported that the conclusions were a damning indictment of the work of the Scientific Police. We, therefore, need to consider the contents of the Report and, along with this, the verbal testimony of the experts in court. As the experts were Professors Carla Vecchiotti and Stefano Conti, I shall henceforth be referring to them frequently in this Chapter as C&V.

In the nature of things, much of the content comes across as rather technical and could, I think, be difficult for the reader to follow. It will be necessary to use selective quotes to summarise it.

The report contains much detailed information – some of which I found helpful - but as the reader might expect I have some trenchant criticisms myself, to which I will come.

Laboratory Analysis of Item 36 (The Knife)

The areas of interest were indicated with the same letters assigned by Dr Stefanoni. Thus the areas on the handle were indicated by the letters A-D-F and the areas of interest on the blade by the letters B-C-E-G. A swab was taken from each of these areas and indicated by the relevant letter.

With the agreement of the parties, two new areas were swabbed for testing, taken from the part of the blade where it meets the handle, but from both sides of the blade, and these were indicated with the letters H-I.

On each individual area of interest C&V conducted the generic test for blood, the results of which were negative.

Laboratory Analysis of Item 165 (The Bra Clasp)

C&V performed the generic test for blood on two distinct parts of the clasp (the metal grommets) indicated by the letters L-M. In both cases the test was negative. Again swabs were taken.

Testing of all samples from the knife and bra clasp

They then proceeded to the testing at a different place and time from the sampling. They proceeded to DNA extraction and quantification by Real Time PCR (they recorded that Dr Stefanoni had observed that the Real Time PCR reaction was prepared on a counter without a fume hood to ensure against possible contamination!).

Quantification by Real-Time PCR Technique

Using the Applied Biosystems 7500 Real Time PCR system during the amplification of the sample to be tested they were able to observe the amount of amplified DNA during the reaction. The system also allowed them to determine the initial amount of DNA in a sample with high sensitivity and accuracy.

For the analysis of DNA samples they also used the Quantifiler Duo Quantification kit. This kit allowed them to simultaneously identify the total amount of human and male human DNA in a sample. C&V said that the results obtained by using this kit allowed them to determine whether the sample contained sufficient quantity to proceed with the STR (short tandem repeats) analysis.

Negative control samples were prepared and tested before proceeding with any of the above. This means that a sample for analysis, prepared as it would be for DNA analysis, but with a measure of water and a buffer rather than any DNA Extract, was subjected to the entire process with the PCR machine or relevant kit to establish whether there were any contamination issues. There would obviously be a problem with the equipment if anything like a DNA profile were to emerge from this.

Analysis of Individual DNA Extracts (Samples A-M)

With regard to samples A to M, the Real Time PCR analysis revealed a very low initial amount of DNA, with the maximum measurable DNA concentration at 0.005 ng/ul (5pg/ul) in sample I from the knife. [There are a thousand picograms to a nanogram] The concentration of DNA in the majority of the samples examined turned out to be undeterminable.

Cytological Analysis

Cytological analysis of cotton fragments taken from the swabs was carried out. Slides relative to Items 36 and 165B were prepared and examined with a microscope.

Analysis to detect cellular material was conducted via the technique of citrocentrifugation, using an instrument which employs centrifugal force to isolate and prepare a cellular monostrate on appropriate slides, and at the same time, allows integrity to be preserved.

In order to detect the presence of cellular material under the microscope each slide was treated with Hematoxylin. C&V noted that none of the Consultants for the parties were present for this analysis.

C&V found no evidence of cellular material present in any of the samples A-M. Some samples (A-E-F-H-I) and in particular sample H, showed granules with a characteristic circular/hexagonal morphology and a radial central structure. A more in depth microscopic study, along with a review of the data present in the literature, allowed it to be determined that the structures in question were attributable to starch granules, therefore material of a vegetable nature.

Samples L and M, under microscopic examination, displayed metallic oxidation i.e rust.

C&V - "Taking note that no DNA suitable for further laboratory investigations (amplification, electrophoresis) was present either on the swabs (A-B-C-D-E-F-G-H-I) taken from Exhibit 36 (the knife), or on those (L-M) taken from Exhibit 165B (the hooks of the bra), the experts verbally informed the consultants of the parties that they would proceed to a detailed examination of the Technical Report drawn up by the Scientific Police..."

What C&V meant by "no DNA suitable for further laboratory investigation" was that it was Low Copy Number, that is, under 200 picograms, according to the literature they quote (Caddy B., Taylor D.R., Limcare A.M., 2009). C&V's own quantification for the DNA in sample I was 5 picograms.

The decision that there was no DNA suitable for further laboratory investigation was to come back to haunt the independent experts as sample I was to be the subject of a further laboratory investigation in 2013 at the Florence Court of Appeal with a result which will be discussed in Chapter 28. In addition it would transpire that none of the consultants were, at the time, even given the opportunity to comment on, let alone agreed with, C&V's decision not to undertake a further investigation. Although the DNA profile that was discovered in sample I was not actually an inculpatory finding, nevertheless, the two things mentioned reflect poorly on the experts' investigative ability, impartiality and competence.

In a legal case, *The Queen v Sean Hoey*, arising from the Omagh bombing in Northern Ireland, the defendant was convicted but then released from prison because, amongst other things, it was held there had been inadequate precautions for LCN typing. The case is referred to by C&V because it is an important case in forensic work with LCN

DNA. A Commission was set up by the UK Government to review LCN DNA as it applied to evidence in criminal cases. The Commission, in 2008, went on to state that LCN typing, as practiced specifically in the UK, was “a robust method” and “fit for purpose”. However, at the same time, it offered a series of useful recommendations to improve the reliability of the method, whilst emphasizing the following problems with LCN typing -

- Greater potential risk of error in comparison with conventional STR typing protocols
- Errors of interpretation could arise due to allele drop-in, allele drop out, peak height imbalance and large stutter peaks
- There was a need for a robust and reliable quantification method in order to determine the amount of DNA available for analysis
- LCN profiles are generally not reproducible, and due to the potential for error, the probative value of the results may not be evaluated correctly
- The interpretation of results derived from mixtures [mixed DNA] using LCN typing is problematic, and at the moment there are no interpretation guidelines based on reliable validation studies
- Due to the sensitivity of the method and the types of samples analyzed (for example “touch” samples), the LCN profile may not be specific to the case
- The evidence can not be used for exculpatory purposes

These issues were in fact known about and discussed, in 2009, at the trial.

C&V then discuss Inspection and Collection Techniques for Investigators at a crime scene, referring to Barry Fischer’s “Techniques of Crime Scene Investigation” with his list of things to do and not to do. It should be mentioned that C&V are not professionals in this particular field. They are primarily academics.

(C&V) - “The starting point is always Locard’s Principle, according to which two objects which come into contact with each one another exchange material in different forms. Equally the same principle scientifically supports the possibility of contamination and alteration of the scene on the part of anyone else, investigators included, who come into contact with the scene.”

C&V carry on with the general To-Do’s and Don’t’s highlighting fairly uncontentious examples from numerous sources but also guidelines from the Louisiana State Crime Police Laboratory, from the U.S Department of Justice, and from Evidence Manuals from the New Jersey State Police, Missouri State Highway Patrol and North Carolina State Bureau of Investigation. There is a predominance of American references but they do also refer to the Good Practice Manual for Crime Scene Management promoted by ENFSI (European Network of Forensic Science Institutes).

The report also largely contains a far more detailed and lengthy description of the DNA analytic method and the apparatus and kit available than I produced, as a Layman's Guide in Chapter 17.

We can now move on to their examination of the Technical Report. Not surprisingly, as the Report and attendant SAL (Laboratory data) cards were available and discussed by the experts from both sides at the trial, most critical comments are the same as had arisen then. However, some additional information emerges, such as they claim that Dr Stefanoni had performed a "species-specific" test on the samples B-C-E-G from the knife blade, and the results were negative for the human species. A negative result for the human species in respect of sample 36B is obviously at odds with the human DNA profile belonging to Meredith that was found in the sample.

I rather think that they had misinterpreted the information in the SAL cards. Here, under Human Antibodies Test, Stefanoni had written "No". Under "TMB Test" she had also written "No". As we know that 36B was not tested with TMB "no" probably just means "not done". Indeed, human species testing at the time was a destructive biochemical test carried out on blood and blood testing had been carried out on other areas of the blade with negative results. That would explain Stefanoni's reluctance to perform anything other than the single (DNA) test on the samples quantifiable for DNA, namely 36B and 36C.

Exhibit 36 (The Knife)

We have criticism of some gaps in the data for the analytic process and therefore criticism of certain aspects of Stefanoni's testimony in so far as the absence of recorded data does not support the testimony. However, does that make her testimony, as the principal biologist and technician, unreliable? C & V mention the problems associated with low template quantities (Low Copy Number or LCN), the stochastic effects, the detection threshold criteria, DNA profile interpretation, and stutter etc, all of which we have encountered before in Chapter 17.

They mention good laboratory work practices to avoid the risk of contamination.

Nothing much new there.

They then turn to the issue of replicate analyses which is important because as we know, the analysis of sample 36B, the more important of the two samples from which a DNA profile emerged on the knife, was not replicated.

"Most scientists who work with LCN stress the need to perform 2-3 replications and state that an allele must be observed at least twice to be denominated as such (Taberlat

P. et al, 1996, even invoke up to 7 replications to increase the reliability of allele denomination) : allele redundancy is therefore the cornerstone of reliable DNA typing.”

“Due to the small quantities of DNA contained in LCN samples and the extreme sensitivity of the method (due essentially to the “optimization” of the PCR and capillary electrophoresis protocol), levels of “background” DNA as well as DNA from casual contact may be detected; thus profiles possibly emerging from these analyses may not relate to the specific case being examined.” [i.e contamination]

The above two quoted extracts are the basis of the criticism.

Incidentally, it can be noted that the research article by Taberlat P. et al, 1996, was about 10 years after the first introduction of DNA testing. It was also 15 years before the C&V Report, and 11 years before Dr Stefanoni’s analysis of Exhibit 36. Improvements in the efficacy and reliability of the technology have been considerable since Taberlat, which probably explains why in 1996 Taberlat was suggesting up to 7 replications to increase the reliability of allele denomination. No one would suggest that now, nor would have done so even in 2007, and of course the UK Government Commission’s report on LCN DNA in 2008, following the collapse of the Omagh bombing trial, was available for Knox and Sollecito’s trial.

In addition C&V list the following concerns with regard to sample 36B –

1. They had no information to confirm that inspection procedures were carried out according to international protocols in order to minimize environmental contamination;
2. International protocols of collection and sampling of the item were not applied in order to minimize contamination from handling;
3. They did not know whether rigorous decontamination procedures were applied in the laboratory to minimize laboratory contamination;
4. A reliable method for quantifying the DNA from samples A-B-C was not employed and the quantification performed with the Qubit Fluorimeter gave the result “too low” for samples B-C, indicative of a probable LCN sample.
5. The sample should have been tested in a laboratory other than where the sample was taken. On the contrary the sample was tested in a context where a considerable number of samples from items belonging to the victim had been tested.
6. There should have been negative controls but none were reported.

These “concerns” were, or would turn out to be, misleading, if not disingenuous.

As to 3 above, there is a considerable difference in the time that can be expended by two academics in recording every step taken in their laboratory on a series of limited tests asked for by a court, and the time that can similarly be expended in a laboratory that will deal with hundreds of such tests per week. In the latter, anti-contamination protocols can be expected to be routine. Dr Stefanoni's lab was actually undergoing a certification procedure at the time of her testing in 2007 and this was on the record in the Massei trial. In the circumstances one would expect the protocols were being tightly enforced. It was not beyond C&V's remit and investigative ability to have obtained confirmation of that and the protocols in force at the time. Furthermore, during the testing of sample 36B it is known that, pursuant to Article 360, there were other experts present to observe the procedure, none of whom lodged any objection as to an absence of anti-contamination protocols.

As to 5, the risk of laboratory contamination, this was rebutted by the lapse of time between testing, as referred to in subsequent Chapters but already in the evidence, and embarrassingly for Vecchiotti the point had to be conceded, with some churlishness, in cross examination.

As to 2, it is not understood what is meant by "international protocols". There were, at best, guidelines independently prepared by different agencies in different countries, though common sense would to a large degree dictate a measure of agreement as to what the guidelines would be. C&V do not specify in their report what protocols were not applied and in what instances. They were to leave that to their court appearance and a powerpoint commentary on the Scientific Police video of the actual collection, at any rate with regard to the bra clasp.

As to 6, the negative controls, they were simply wrong and had not taken the trouble to find these. This will be discussed later on in connection with the Florence Appeal court when the C&V report was analysed in some detail by that court.

Their final conclusions on Exhibit 36 (the Knife) were as follows. The 36B finding was unreliable because -

" 1. There does not exist evidence which scientifically confirms that trace B is the product of blood

2. The electrophoretic profiles exhibited reveal that the sample indicated by the letter B was a Low Copy Number sample and, as such, all of the precautions indicated by the international scientific community should have been applied

3. Taking into account that none of the recommendations of the international scientific community relative to the treatment of Low Copy Number samples were followed, we do not accept the conclusions regarding the certain attribution of the profile found on trace B to the victim Meredith Kercher, since the genetic profile, as obtained, appears unreliable insofar as it is not supported by scientifically validated analysis

4. International protocols of inspection, collection and sampling were not followed
5. It cannot be ruled out that the result obtained from sample B derives from contamination in some phase of the collection and/or handling and/or analyses performed”

It is not understood what “Taking into account that none of the recommendations of the international scientific community relative to the treatment of Low Copy Number samples were followed” means, other than that, obviously, there is a recommendation to repeat the analysis where possible.

Amazingly, they had made no attempt to analyse or evaluate the data from the single test on 36B, having precluded that the result was “supported by scientifically validated analysis”. If this was a reference to something other than the recommendation to have a repeat, then they do not say what this “other” was. The bald assertion, “not supported by scientifically validated analysis”, could not override their precise remit, which was to evaluate, “on the basis of the record”, the degree of reliability of the genetic analysis. The result (the profile) was certainly unambiguous and the underlying data, the STR repeats for each allele in the profile, and the loci sequence, meant that it was statistically exceedingly improbable that this was some random, and hence unreliable, result that the analysis equipment had produced. They did not mention any of this, nor opine on the relevance, in the circumstances, of the recommendation for a re-amplification. The remit required so much more from them than they provided, but of course had they fulfilled the remit it would have destroyed their conclusion.

Exhibit 165 (The Bra Clasp)

C&V note that no generic test for blood or morphological test as to the nature of the biological trace B was performed. They note that it was an arbitrary decision not to do this as the tests could have been performed without compromising the trace for DNA testing.

The total amount of DNA in the trace was 5.775 ng/ul - “certainly a meaningful amount, permitting the amplification to be repeated.” [It is also worth remembering this]

On examining the electropherogram chart and data C&V found that there were four loci in which there had been “an erroneous interpretation” in that in these loci there were peaks considered as stutter with a height of over 50 RFU (D19S433), or which exceeded the threshold of 15% of the major allele (D8S1179 and D21S11), or where the allele was not in stutter position (D5S818), and which peaks, therefore, should have been considered as alleles when in fact they had been discounted.

C&V refer to the “DNA Commission of the International Society of Forensic Genetics : Recommendations on the Interpretation of Mixtures”, a publication which came out in 2006, and in particular Recommendation number 6.

“If the crime profile is a major/minor mixture, where minor alleles are the same size (height or area) as stutter of major alleles, then the stutters and minor alleles are indistinguishable. Under these circumstances, alleles in stutter position that do not support the prosecution’s hypothesis should be included in the assessment.”

C&V continue -

“Thus, the interpretation of the electropherogram is rather more complex and involved than is reported in [The Technical Report]. Indeed, even if one were to arbitrarily limit the application of Recommendation 6 to peaks in stutter position above the threshold of 50 RFUs, this still reveals a profile deriving from the mixture of several individuals consisting of a major contributor and several minor contributors.”

As to the analysis of the Y haplotype, and taking into account recommendation 6, C&V state -

“It follows from this that several minor contributors of male sex are present in the DNA extracted from Exhibit 165B, confirming what was already observed in the electropherogram of the autosomic STRs and which was not revealed by the Technical Consultant.”

“Thus we agree with Dr Stefanoni’s assertion regarding the extrapolation of a genetic profile deriving from a mixture of biological substances belonging to *at least* two individuals, at least one of male sex, but we cannot accept the conclusion that “the genetic profile is compatible with the hypothesis of a mixture of biological substances (presumably flaking cells) belonging **only** to Raffaele Sollecito and Meredith Kercher.”

In the Florence Appeal C&V were criticized in no uncertain terms for misrepresenting Dr Stefanoni in the terms embolded (as used by C&V) above. In any event, it is self evident that the last statement contains two separate assertions which directly contradict each other, which is rather idiotic.

“The genetic profile thus derives from a mixture of unidentified biological substances, whose larger component is represented by the DNA of the victim and whose smaller component is represented by DNA from several individuals (cf autosomic STRs) of male sex (cf Y chromosome), of which one of the Y haplotypes corresponds to the Y haplotype of Raffaele Sollecito.”

“Regarding the reliability of the item with specific reference to “possible contamination”, we find it appropriate to examine the means by which and the circumstances under which Exhibit 165 was acquired. The item was recovered 46 days after the crime, in a context highly suggestive of environmental contamination. The DNA

obtained, though sufficient to permit of analysis, does not satisfy the minimum quality requirements, due to clear environmental contamination.”

“The item was recovered on the floor, where it predictably had contact with ambient dust which, in closed environments, frequented by humans, is composed to a large extent of elements of human origin (cells, hairs etc). It has been demonstrated that dust from closed environments can contain 10s of micrograms of DNA per gram.....It has been thoroughly demonstrated that the presence of ambient dust constitutes a significant source of contamination in forensic investigations, since the DNA deriving from such dust can present itself in the form of alleles in analyses of polymorphisms.”

In the opinion of C&V control tests should have been done by way of multiple amplifications of trace 165B and these compared with multiple amplifications of ambient dust from Meredith’s bedroom in order to determine which alleles on 165B should have been considered as of evidentiary value.

I submit that control tests on ambient dust would have been both impracticable and pointless, and that the concerns expressed are exaggerated. C&V do not cite any research papers to back up what they say “has been thoroughly demonstrated”, but in any event the statistic to which they allude rather makes their concern about ambient dust somewhat redundant. A gram is a lot of dust, certainly far more than the invisible speck with which we are hypothetically concerned, but as there are a million micrograms to a gram, 10s of micrograms of stray DNA to a gram of dust (most of which would have to be in a biological substance likely, as it is dust, to be keratinized and thus, without treatment, not likely to affect the standard electropherogram analysis) would not appear to be that significant. As for the ratio nothing can be known of the measure of concentration in any part of a gram, nor in our speck of dust, and they have demonstrated nothing as to it’s probable quantity and quality, which is likely to be very poor (indeed - as C&V say- just fragments of stray alleles) and which is usually understood as being little different from the usual background noise in the electropherogram chart. The amount of DNA in trace 165B (5.775 ng) was significant for the purpose of analysis but under six billionths of a gram (there are a thousand nanograms to a microgram) which together with the fact that the contested contribution was maybe as little as a tenth of this, makes the prospect of stray alleles from dust floating unexpectedly into and complicating a clear enough profile somewhat unlikely.

Of course we also have to consider how any DNA in dust would be transferred to and remain in place on the hooks. We are invited to surmise that our hypothetical speck of dust somehow got stuck to a hook, went unnoticed, and after it’s long journey from the cottage to the scientific lab in Rome, was accidentally swabbed up for analysis. I consider contamination by transfer in the next Chapter, but merely make the point here that the keratinized nature of dust makes such a transfer exceedingly unlikely.

Indeed, Professor Novelli testified at the appeal that there was a greater chance of the courthouse being struck by a meteorite than that there had been contamination by dust.

Their conclusions on the bra clasp were as follows :-

- “ 1. There does not exist evidence which scientifically confirms the supposed presence of flaking cells on the item
2. There was an erroneous interpretation of the electrophoretic profile of the autosomic STRs
3. There was an erroneous interpretation of the electrophoretic profile relative to the Y chromosome
4. The international protocols for the inspection, collection and sampling of the item were not followed
5. It cannot be ruled out that the results obtained derive from environmental contamination and/or contamination in some phase of the collection and/or handling of the item.”

Again there is not much here that did not arise and be evaluated in the trial.

This brings us to the end of the Independent Experts' Report per se. As previously mentioned they did also give testimony in which they pointed out what they considered were potential lapses in protocol during the collection of the bra clasp and they were cross-examined by a rather exasperated Manuela Comodi for the prosecution.

I have not quite finished with the Independent experts, as I will be looking at the issue of contamination in the next Chapter, and then there is the Hellmann Report to discuss in general, but I would mention here that :-

1. C&V did not dispute that one can see a profile for Raffaele Sollecito on the bra clasp. Even if there was a mistaken interpretation of the autosomal markers at four loci there were still sufficient matching loci to make identification very probable. However, to raise doubt, and notwithstanding the Y haplotype, they disingenuously hypothesize that the others may have been misinterpreted due to a misreading of alleles from other minor contributors and alleles obtained from ambient dust, and in any event the profile may have got there via “touch transfer” contamination during collection.
2. They did not cite any authority for their assertion that the presence of ambient dust is a significant source of contamination nor that DNA in it could be misread when interpreting the results from an electropherogram.
3. I am unable to determine on what basis C&V conclude that there was an erroneous interpretation of the electrophoretic profile relating to the Y chromosome, other than that they erroneously say that Stefanoni said that there were only two profiles, one of which was male, whereas C&V conclude that there are several minor contributors in respect of whom it can be affirmed that there was a contributor, in addition to Sollecito,

who was male. That was not an erroneous interpretation because that is not what Stefanoni said - See Chapter 28.

4. Their discounting of trace 36B from the knife as attributable to Meredith Kercher was due to the fact that the test was incapable of repetition, in other words, as they would have it, “not supported by scientifically validated analysis”. The method of analysis, the equipment used, is of course all scientifically validated, otherwise it would not be used. The mantra above demands an explanation, a scientific one, relevant specifically to the test result under consideration, but they could not be bothered with that. I refer the reader to pages 295-6 where I argue that the one-time test result in fact effectively validated itself and the science underlying it.

5. In considering the issue of contamination C&V refer to a surprising number of evidence collection manuals from the USA to bolster their reference to protocols. It is not as if these are not also available in Europe. The Good Practice Manual for Crime Scene Management promoted by ENFSI (European Network of Forensic Science Institutes) should have sufficed. This raises, for me, the suspicion that there was some input from America in the preparation of the Report, and that C&V were receptive to this.

6. There are (or were) a number of prominent American biologists in the field of forensic genetics who have concerns about Low Copy DNA typing, one of whom is Bruce Budowle, whose articles expressing doubt about the value of the technique in criminal proceedings, were cited and quoted from several times in the C&V Report and in Hellmann’s Motivation. Indeed, at the request of Dalla Vedova and Ted Simon, Knox’s lawyers on either side of the Atlantic, Budowle published an open letter, expressing his concerns on the case, which was clearly intended to find it’s mark in Italy. Budowle, however, might be thought to have a bone to gnaw, in that he had just been the expert on the losing side of a case on LCN DNA in America. This was the case of *People v Megnath*, in 2010, in the Supreme Court of Queens County in New York. The judge in that case ruled that LCN DNA was generally accepted as reliable; it consistently yielded reliable results and was not a novel scientific procedure, and the results were admissible at trial. Budowle’s opponent in that case was Theresa Caragine of the Office of the Chief Medical Examiner of the City of New York who, as a consequence of the ruling, successfully submitted data in court from LCN DNA testing techniques. Caragine herself authored a powerful rebuttal of Budowle’s article “Low Copy Typing Has Yet To Achieve General Acceptance”. Caragine went further in pointing out that the article was not even a research article but a non-peer reviewed submission presented at the 23rd Biennial Worldwide Conference of the International Society of Forensic Genetics, in Buenos Aires, in 2009. But even if it is true that there is still some resistance to the probative value of LCN DNA in criminal proceedings in some States in America, (which is surprising given the Omagh Bombing Commission’s conclusion and the *People v Megnath* case) that is certainly not true in Europe and other parts of the world where it has already gained a measure of acceptance for that purpose. Each instance of LCN DNA would, of course, have to be tried as to it’s merit.

7. Greg Hampikian, of Boise State University and the Idaho Innocence Project, who became involved with the case between the trial and the appeal, was quite open after Knox and Sollecito's acquittal about his involvement in briefing the defence on aspects of contamination; he said that he had done just that, in a number of lectures and media appearances. Nothing wrong in that but Boise have refused Freedom of Information requests as to the exact nature of it's, and Hampikian's, involvement with the case.

8. With regard to the ISFG 2006 publication and in particular Recommendation 6, a recommendation only as to the interpretation of alleles in mixed samples, which publication was discussed at a meeting in Rome of the European Profiling Group, and which publication was criticised in some of it's recommendations, C&V were to criticise Stefanoni for a number of her conclusions on the interpretation of the mixed DNA on the clasp because she had not strictly adhered to the recommendations, even though they were guidelines. The defence experts at trial had also criticised some of her interpretations, but at least they acknowledged that much of the science here had, and indeed has, not reached a general level of acceptance, and thus it is misleading to talk of anything being mandatory or international scientific protocols which, as we shall see, some judges in the case were inclined to do off the back of the C&V Report.

9. At one point in her evidence Vecchiotti pronounced that, as to the mixed DNA on the bra clasp, even her own DNA could be found there. A facetious and misleading remark that was quite unprofessional. She was prone to this as we shall see in the next Chapter.

10. Vecchiotti had a poor track record in forensic DNA analysis. There had been a couple of cases where her partiality and work had been severely criticised. In one case, the murder of Countess Ogliata, she was sued and ordered to pay substantial compensation for her gross negligence. The prosecution asked for these cases to be taken into account but that had no bearing on the outcome. However there does seem to have been insufficient vetting for competence in the appointment of these two independent experts.

An interesting sidenote is that in March 2015 the Rector of La Sapienza closed down the Legal Medicine Department at the University in anticipation of the publication of critical findings by health and safety investigators. These findings related to unhygienic conditions and out of date equipment in the morgue and autopsy rooms which, if not addressed immediately, and quite apart from the risk to staff working there, could render the resulting forensic pathology unreliable.

Vecchiotti's lab re-opened 18 months later, but under different management.

Corriere reported – "University's Polyclinic takes over management of Rome's mortuary instead of Sapienza University, while the forensic pathology department is now overseen by the three relevant Public Prosecutor's Offices (Rome, Tivoli and Civitavecchia)"

CHAPTER 24

Contamination by Transfer of DNA

When Carla Vecchiotti and Stefano Conti walked into court on the 25th July 2011, they publicly shook hands with Francesco Sollecito and prepared to give their evidence and be cross-examined.

I made several references earlier in this book to the DNA results being due to contamination and it is now time to give that due consideration. To do that I will thread together what C&V had to say, and Hellmann's observations on the topic in his Motivation, though we are yet to come to that Motivation in general.

I will start with the bra clasp.

Comodi asked Vecchiotti about the alleged contamination of the bra clasp.

"Is it possible for [Sollecito's] DNA to end up only on the bra clasp?"

"Possible", Vecchiotti said.

Comodi insisted: "Probable?"

"Probable", Vecchiotti retorted. [Ed : probable contamination, in other words]

The issue of what is possible and what is probable is clearly important in evaluating the probative value of a piece of evidence. We should also ask ourselves why Vecchiotti took the extra step of evaluating contamination of the bra clasp as being probable, when, if we recall, the Report merely stated that it could not be ruled out. Surely that just makes it possible?

Worse was to come with Hellmann's conclusion that contamination was probable. This, though, was not surprising in as much as Hellmann had already indicated in the reasoning underlying the need for an independent report that they would accept the independent experts' conclusions. Which they did, apparently accepting Vecchiotti's above statement on oath as definitive and which, as we can see, he appeared to subsequently improve on.

(Hellmann) -

"In the opinion of this Court contamination did not occur during the successive phases of treatment of the exhibit in the laboratory of the Scientific Police, but even before its collection by the Scientific Police."

A very definitive statement for so much guesswork.

“..it is certain that between the first search by the scientific police, directly after the discovery of the crime, and the second search by the police, on the 18th December, the house at Via della Pergola was the object of several other searches directed towards seeking other possible elements useful for the investigation, during which the house was turned topsy-turvy, as is clearly documented by the photographs projected by the defence of the accused, but actually made by the Scientific Police. And, understandably these searches were made without the precautions that accompany the investigations of the Scientific Police, in the conviction that at that point the exhibits that needed to undergo scientific analysis had already been collected. In this context it is probable that the DNA hypothetically belonging to Raffaele Sollecito may have been transported by others into the room and precisely onto the bra clasp.....the fact that [this] is not an unusual occurrence is proven by studies cited by the expert team and also by the defence consultants.....”

What we know of the police searches is as follows -

(Massei) - “ While forensic activity was still in progress” [Note: it having been going on since the 2nd] “the house was accessed on November 4th 2007 involving, accompanied by staff from the Perugia Police Headquarters, the three occupants and housemates of the victim...”

“...the entry on November 4 was in the presence of the Public Prosecutor, for the purpose of showing the knives to the three occupants; they all remained in the living room-kitchen and all had shoe covers and gloves. The Scientific Police were still in the house, in the murder room, and nobody approached this room.”

- “The days of November 6 and 7 were taken up by the search activity of personnel from the police headquarters of Perugia...on November 6” [Note: the day after conclusion of the Scientific Police activity] “no-one entered Meredith’s room other than the three performing the search. On November 7 there was another entry into the house “for the problem of the washing machine, to collect the clothes; but ... they did not go into the other rooms.”

- “They wore gloves and shoe covers.”

Massei also records that Profazio (Commissioner and head of the Flying Squad) stated that whilst he was aware from Stefanoni that the bra clasp had not been collected, nevertheless he had not seen it on the 6th .

As we know, the Scientific Police returned to the house on the 18th December specifically for the purpose of collecting the bra clasp (the first thing they did) and using luminol, and in addition to this being on video the defence lawyers were watching the live recording outside. It was observed by the defence lawyers at that stage that

Meredith's mattress was in the living room and that articles had been moved around ("topsy-turvy") in her bedroom.

(Massei) - "Recalling the search entry on November 6-7 by staff of the Perugia police headquarters it was stated that objects were moved, drawers opened, clothes looked through and that all of this was done with gloves and shoe covers on Nothing was collected from Meredith's room on that occasion..... it was also stated that whoever was doing evidence collecting in one room did not enter any other rooms and that the objects being moved were moved only inside the room in which the various staff were working, without moving them from one room to another..."

From the above it might be reasonable to conclude that it was not only the Scientific Police who took the photographs but that it was predominantly they who had already moved items around (eg the mattress, and thus prior to the access by police (non-scientific) personel on the 6th and 7th - the work of the Scientific Police having concluded on the 5th) and taking - it not having been demonstrated to the contrary (because not on video) - such precautions appropriate to their field of expertise (or at least such as may be determined from the video we do have).

However the point is, of course, what entitles C&V and Hellmann to talk about probable contamination at all?

Incidentally, pause here to notice that Hellmann gives no credence to environmental contamination, in the sense of DNA in specks of dust, by virtue of not mentioning this at all. It would seem that the notion that a speck of dust, with Sollecito's DNA attached, floated into the room and landed bang on a tiny metal hook, somehow adhering to it, is improbable to even him. It is transfer by touch (tertiary transfer, about which more later) - basically that someone must have stepped on or touched the bra clasp or hook - about which Hellmann is talking, and as a result of which he deems contamination to have probably occurred.

Without that probability - that is if it remained only a possibility - then the case for direct transfer (directly from the owner of the DNA to an object), rather than tertiary transfer (where the DNA is collected after direct transfer and transferred to another object), would not be undermined as the more probable scenario. This is because, in this context, no-one can rule out possibility, "possibility" being firmly rooted in the abstract.

What Hellmann thinks entitles him to talk about the probability of contamination are the precautions which C&V say were not followed in collecting and handling the exhibit and for which Hellmann supposes the non-scientific police were most likely responsible.

(Hellmann) - "Regarding above all the identification of a genetic profile in an exhibit, it is important that the entire procedure be followed with complete observance of the rules dictated by the scientific community, which are not, to be sure, juridical rules (it is not a law of the State, as Dr. Stefanoni observed), but which do represent a guarantee of

the reliability of the result. And since these rules also contain precautions necessary in order to avoid possible contamination, one can understand that the respect of these precautions cannot simply be assumed, but must be proven by anyone who bases his accusations on this result.”

They are guidelines rather than rules but let me not be too picky.

In their powerpoint presentation, C&V listed, apparently, some 54 examples of breach of the aforesaid guidelines.



Significant among these (because we know of them and the most was made of them) are

1. The team failed to put on new gloves after bagging each sample (probably, as with 2 below, accounting for the great majority of the examples, and Stefanoni admitted this did not happen every time).
2. Items were handled by more than one person without changing gloves (again, as above, admitted).
3. There was a smudge on one of the fingertips of one of the gloves which touched the clasp, so the glove was dirty (but if so, was this “dirt”, or blood, derived from the clasp itself, and if it was dirt what of it?).
4. The officer who picked up Meredith’s bra clasp passed it to a colleague before placing it back on the floor, to be photographed, and then bagging it.
5. Stefanoni’s gloves were smudged with blood and split over her left index when she picked up a sample (the notion that Stefanoni’s glove had a split in it is highly speculative and prejudicial based on what can be seen from the video, and it is hardly likely that Sollecito’s defence would assert that the blood, if that is what it was, was his).



6. The officer filming the police video walked in and out of Meredith's room without changing his shoe covers.

7. No security corridor was created for internal access with anti - contamination criteria between the various environments.

8. The initial position of discovery on the floor of the clasp was not the same after 46 days.

As for 1 and 2, there was only one item to collect on the 18th December, the bra clasp, but of course they had to find it first, so other objects in Meredith's room had to be touched in the process. But if Sollecito's DNA was inadvertently collected on a glove in this manner, then it was in a trace already in her room somewhere. Such a hypothesis is hardly exculpatory.

However, the criticism is also a reference to the period of inspection and collection just after the discovery of the crime. The same point can of course still be made. It is the range of hypotheses as to how his DNA got into the room and not the glove changing process that would be necessary that would be more pertinent.

Hellmann, in his report, mentions two specific cases only, 3 and 8 above. In respect of "the smudge" he acknowledges, interestingly, that there is an issue of interpretation as to whether this is a shadow or prior staining. But why even posit a prior staining as indicative of possible contamination when it is obvious the operative had to finger the fabric of the clasp (which was "dirty" - with spots of dried blood?) in order to be able to hold the clasp and show it to the camera? What was the dirt and what was the meaning of this in the context of a transfer of Sollecito's DNA to the hook? Hellmann neither discusses or evaluates this. He simply accepts C&V's observation as being pertinent and requiring a change of gloves, as if that ends any further evaluation.

In contrast to Hellmann, Massei does evaluate the logistics and the probability of

contamination. In fact he spends quite a lot of time on the subject. But before turning to that, let's have a brief look at the subject of DNA transfer.

Primary transfer might occur between a subject (such as myself) and an object. I touch it or sneeze over it. Secondary transfer could occur if the said object was then moved and placed against yet another object so that my DNA is transferred from the first to the second object. Tertiary transfer could occur if someone touched my DNA on the first object and then touched the second object. There are three steps there but one can imagine scenarios with four or perhaps more such steps but with the inherent limitation that the quantity of DNA being transferred is going to reduce with each step.

It is obvious that when the prosecution are going to produce DNA evidence they are going to argue primary transfer by the accused, and just as equally obvious that the defence are going to try and argue contamination i.e that the presence of their client's DNA is the consequence of secondary or, most likely, tertiary transfer.

In her testimony Stefanoni said, and remember that the clasp was collected 46 days afterwards, that secondary or tertiary transfer is quite unlikely to happen unless (1) the DNA is in a substance which is still fresh and reasonably watery, not dried, and/or (2) there would have to be more than mere touch but friction, or at least pressure, as well. I note that she was not contradicted, at the trial, by any of the defence experts, nor has she been contradicted by C&V in their report.

Returning to Massei.

Sollecito had been to the cottage 3 or 4 times prior to the discovery of the murder though on each occasion with Knox. It is thus possible that he left his DNA somewhere there. There is no evidence that he was ever in Meredith's room before the murder. Thus one must hypothesize that his DNA from somewhere else in the cottage was transferred into Meredith's room and onto the bra clasp by someone or something else.

Apart from the clasp there was only one other place where his DNA was to be found, mixed with Knox's DNA, on a cigarette stub in an ashtray sitting on a table in the kitchen.

(Massei) - "Certainly, it can be observed that every single place in the house was not tested, and one might think that Raffaele Sollecito's DNA might have been located in some other places. One can consider the possibility that his DNA from some other place that was not found was transferred onto the bra clasp, but this would have to have been done by someone manipulating the object."

"But simple contact between objects does not transfer DNA. Amanda's and Raffaele's DNA were both found on the cigarette stub, not just one of them, transferred by the other. It is also important that the bra was the one that Meredith was actually wearing, and the clasp was found under the pillow which was under Meredith..... At this point it

should also be mentioned that the clasp was (then) found under a small rug in Meredith's room [which protected it]

“It is also observed that the small rug did not show itself to be a good transmitter of DNA. Underneath it there was a sock, and analysis proved that on this sock there were only DNA traces of Meredith. Also the circumstance by which DNA was found on the (tiny) hooks - so on a more limited and rather less absorbent surface than the material attached to them - tends to exclude that Raffaele Sollecito's DNA could have landed on the hooks, precisely on the hooks, by contamination or by transfer from some other unspecified object.”

“.....any transfer of DNA from the surface of the rug under which the small piece of bra was found would imply that between the two objects there was more than simple contact, touching of each other, but an actual pressure exercised on the rug under which the piece of bra lay. This hypothesis was set aside after Dr. Stefanoni reported the deformation of one of the hooks was the same. Vice versa, if some pressure had been exerted on top of it, if in one of the police activities someone had stepped on it -- then that deformation would not have remained identical; but the small piece of material and the hooks and eyes had the same form, the exact same type of deformation she additionally stated that, having seen the small piece of bra in the early hours of November 3rd rather quickly, the images of it taken on that occasion allowed her a more prolonged and attentive observation, enabling her to declare that the deformation had remained unmodified and unchanged, as did the side on which it was set on the floor.”

“Objects were moved, necessarily moved, but every object that was in a room, if it was not actually taken away, remained in the same room, without ever moving to another room, or being taken out of the room and then back in. The only parts of the house through which operators from the various places all passed were thus the living room and corridor. One might thus assume that some DNA of Raffaele Sollecito that had been left somewhere in the living room or corridor was moved, and ended up on the hooks. Such a movement of DNA and its subsequent repositioning on the hooks would have had to occur either because one of the technicians walking on the floor on which the DNA was lying hit it with his foot or stepped on it, causing it to end up on the hooks, or because by stepping on them, he impressed onto them the DNA caught underneath the shoe-cover he had on in that moment. But these possibilities cannot be considered as concretely plausible: to believe that, moving around the house, the DNA could have been kicked or stepped on by one of the technicians, who in that case would have been moving about, and to believe that this DNA, instead of just sticking to the place it had been kicked or stepped on by (probably the shoe, or rather, the shoe-cover), having already been moved once from its original position, would then move again and end up on the hooks, seems like a totally improbable and risky hypothesis.”

“.....and more importantly, none of the operators, after having touched some object which might have had Raffaele Sollecito's DNA on it, then touched the hooks of the small piece of bra so as to make even hypothetically possible a transfer of DNA (from the

object containing Sollecito's DNA to the gloves, from the gloves to the hooks). In fact, none of the operators during the search of November 6th and 7th even took note of that little piece of bra, and thus in particular no one picked it up.”

Note that this observation is a direct contradiction of the unproven suspicion that this had in fact occurred - Massei had, of course, also watched the crime scene videos, seen the relevant clip and heard the argument.

“Movement of objects, in particular of clothing, may have induced the movement of other objects, and this is what the Court considers to have occurred with respect to the piece of bra which was seen on the floor of Meredith's room on November 2nd-3rd and left there. Deputy Commissioner Napoleoni, referring to the search of November 6th, has declared that she recalled the presence of a bluish rug; one can thus conclude that this rug was looked at during the search and entered into contact with the operators making the search, and like other objects, was moved from its original position, but always remaining on the floor of the room; during this movement it must have covered up the piece of bra (which was on the floor of the same room and yet was not noted during the search), thus determining by its own motion the accompanying motion of the small piece of bra, making it end up where it was then found during the inspection of December 18th: under the rug, together with a sock, in the same room, Meredith's room, where it had already been seen. So it underwent a change of position that is, thus, irrelevant to the assertion of contamination”.

Now, whatever one makes of Massei's observations he has at least considered, on a plausible level, the dynamics of DNA transfer, generally and in this case, unlike Hellmann or C&V. Furthermore, and in consequence, he concluded that contamination was not probable.

We should also recall the following words with regard to secondary and tertiary transfer, in the quote from Hellmann above.....“the fact that this is not an unusual occurrence is proven by studies cited by the expert team and also by the defence consultants....”

What studies? Unfortunately Hellmann does not elaborate on these studies and neither do I see them cited in the C&V Report, or elsewhere. C&V do, however, refer to Locard's Principle. What C&V wrote in their report was –

“The starting point is always Locard's Principle according to which two objects which come into contact with each other exchange material in different forms. Equally the same principle scientifically supports the possibility of contamination and alteration [of the scene] on the part of anyone else, investigators included, who comes into contact with the scene.”

Incidentally it is science that supports a principle and not the other way around, but even then, more pertinently, it is not just a possible exchange of materials in some

form or other, microscopic or not, but DNA transfer, a subject which, in this specific case, has quite a different set of parameters and considerations.

Yes, certainly secondary and tertiary transfer does happen but the circumstances as to when this is likely, or not, is not seriously discussed by Hellmann, or C&V, let alone evaluated. It seems to me that this is not unimportant, and the omission is surprising.

Which leaves the “probability” element of contamination undemonstrated.

But for Hellmann, there is no need to demonstrate anything, because of the following.

(Hellmann) - “Now, Prof. Novelli and also the Prosecutor stated that it is not sufficient to assert that the result comes from contamination; it is incumbent on one who asserts contamination to prove its origin.”

“However, this argument cannot be accepted, inasmuch as it ends up by treating the possibility of contamination as an exception to the civil code on the juridical level. Thus, one cannot state: I proved that the genetic profile is yours, now you prove that the DNA was not left on the exhibit by direct contact, but by contamination. No, one cannot operate this way.”

“In the context of a trial, as is well known, it falls to the PM who represents the prosecution before the court (the terminology is used in Art. 125 of the implementing provisions of the Code of Criminal Procedure), to prove the viability of all the elements on which it is based, and thus, when one of these elements is completed by a scientific element represented by the result of an analytic procedure, the task is also to prove that the result was obtained using a procedure which guarantees the purity [genuinità] of the exhibit from the moment of collection right through the analysis when there is no proof that these precautions guaranteeing that the result is not the fruit of contamination were respected, it is absolutely not necessary to also prove the specific origin of the contamination.”

Certainly the burden of proof remains with the prosecution but that does not alleviate the defence of any burden with regard to an issue such as contamination. I should add that “proof” is proof established on the balance of probabilities.

There is, in my opinion, some nonsense being talked on all sides here. The reality is that the issue is more complex and some common sense has to prevail. How are the prosecution supposed to “guarantee the purity of the exhibit”? Surely the burden, in so far as it can be discharged, is to show that all reasonable steps were taken to avoid a possible contamination? Even if there is some doubt in that quarter it is still for the party alleging contamination to demonstrate, if not the probability, then at least the plausibility, of contamination, viewed in the context of all the evidence.

At this point I should mention that certain hypotheses as to allegedly credible contamination routes were subsequently conceived and entered the public domain

prior to the final appeal. These were because of Professor Peter Gill's involvement in the case, but for chronological reasons I leave these for mention and discussion in Chapter 30.

There is a general principle to which even criminal proceedings are subject. "Onus probandi incumbit ei qui dicit, non ei qui negat" - "the onus of proof is on he who says it, not he who denies it."

Galati, in his Appeal Submission on the point, put it this way –

"In other words, if a piece of circumstantial evidence must be certain in itself, and if therefore even scientific proof must be immune to any alternative-explanation hypothesis, this does not alter the fact that this hypothesis ought to be based on reasonable elements and not merely abstract hypothetical ones. And if the refutation of a scientific piece of evidence passes via the affirmation of a circumstance of fact (being the contamination of an exhibit), that circumstance must be specifically proved, not being deducible from generic (and otherwise unshareable) considerations about the operative methodology followed by the Scientific Police, absent demonstration that the methods used would have produced, in the concrete, the assumed contamination."

That is putting it somewhat stronger than I would myself. I do not myself think it is realistic for the defence to have to prove a specific contamination path from point A to point B. That would be unrealistic but certainly if the issue of contamination is to be raised the defence must go beyond an abstract hypothetical allegation that in the event, as is the case here, is devoid of known origins for the contamination, save for the trace on the cigarette stub, where even if that was the source there would be Knox's DNA mixed in with Sollecito's on the clasp.

By the same token, though, it would be unrealistic for the prosecution to have to prove that, despite reasonable precautions being taken, contamination had not occurred.

The alleged breaches of crime management guidelines are in themselves only circumstantial, requiring, for any weight to be attached to them, corroborative or supporting elements as to which, as I see it, there are none.

There is nothing, as I see it, and taking into account what is discussed in Chapter 30, that leads me to conclude that trace 165B is unreliable as an element in the circumstantial case against Knox and Sollecito, and certainly not just because there is a "possibility" of contamination.

I will now turn to the Knife.

We need not spend as much time on the issue of secondary or tertiary contamination here. The facts are far simpler. The knife was taken from a drawer in Sollecito's kitchen. The participants in the search were Inspectors Finzi and Passeri, Superintendent Renauro and assistants Camarda, Rossi, and Sisani, none of whom had been to the

cottage. Everyone had gloves and shoe covers on. Finzi, who was in charge of the search, said that in addition to the kitchen knife there was also another knife in the bedroom. However the kitchen knife was the first one he touched. He picked it up and put it in a new paper bag he had with him, and then the bag, with the knife inside, into a folder. After the search had concluded he went back to the Questura with the others and handed the bag to Superintendent Gubbiotti.

(Massei) - "Stefano Gubbiotti.....confirmed the formality of the search on 6th November. He said that upon returning to the police station, Finzi handed him the material seized in the home of Raffaele Sollecito. The first thing he handed over was the knife which was inside a new bag which was well wrapped and submitted closed, and thus had no contact with the exterior. He specified that when the knife was handed over he had new gloves on which he had taken from another office and which he had not worn before."

"Therefore, with those gloves on, he removed the knife from the bag and put it inside a box that he sealed with scotch tape. He specified that the box had previously contained a "desk diary" and no other items. The box was then sent, along with other findings, to the Scientific Police in Rome."

There was not much opportunity there for the contamination of the knife with Meredith's DNA, even though Gubbiotti had been in the party which had visited the cottage on the 4th Nov. He had worn gloves then, as they all had. Contamination could, hypothetically, have occurred prior to inspection and collection of the item, or at the end of it's journey, in Rome. Could Knox have touched Meredith, shaking hands with her, say, and deposited Meredith's transferred DNA on to the blade of the knife? How often does one hold a kitchen knife by the blade? If one were to do this, one would think pressure would be required so as to avoid any accidents with it. On the hypothesis that this could be the case, where is Knox's DNA? Absent. There was not even the suggestion of another profile. Meredith, herself, had never been to Sollecito's apartment.

As for lab contamination, Meredith's reference DNA profile was analysed in the lab on the 6th November. The knife was swabbed and the sample from the swab analysed on the 13th November. In the intervening week there were 103 other findings from samples in the case (and from other files) analysed in the lab and Meredith's profile did not appear in any of them. That, the negative controls, and the fact that the analysis was carried out in front of experts for the defence, all make it extremely unlikely that 36B was the consequence of accidental lab contamination. Hellmann himself held that lab contamination was improbable.

A similar exercise for Exhibit 165B (Sollecito) was carried out with the same result.

CHAPTER 25

The Acquittal and the Hellmann Motivation

On the 3rd October 2011 Judge Pratillo Hellmann and his seven fellow judges filed into court late at night to pronounce the verdict in the appeal. Amanda Knox and Raffaele Sollecito were acquitted on counts A, B, C, D and E. However Count F, Knox's conviction for calunnia, was upheld. Indeed the appeal court extended the sentence, from the one year to which she had been sentenced at trial, to 3 years. However, as she had already served that time she was free to leave together with Sollecito. There was intense emotional joy, surprise and relief on Knox's face. Sollecito looked strangely detached. Both were hustled swiftly out of court by court staff to return to prison, collect their belongings, book out, and return to the welcoming arms of their jubilant families.

As judge Hellmann read the verdict there was some confusion as to the basis of the acquittals. Had he acquitted on the basis of paragraph 1 or paragraph 2 of Article 530 of the Italian Criminal Procedure Code? The distinction - somewhat difficult to grasp, and not one with which we are familiar - is that if it was under paragraph 1 the court had held that there was no crime committed by the accused, and if it was under paragraph 2 the court had held that there was insufficient evidence with which to convict. The distinction is generally reduced in most people's minds, whether rightly or wrongly, to proven innocent as against not proven guilty. As far as I am aware Hellmann never made the basis of the verdicts clear officially, it being usual to specify which paragraph had applied. Instead he was to employ the wording "for not having committed the crime", but then in his Motivation talk about "reasonable doubt" as being the basis for the acquittal. However, as far as we need be concerned they were both acquitted and therefore (for now) innocent.

Outside the courthouse a crowd some 4,000 strong had gathered to hear the verdict. When the lawyers for Knox and Sollecito emerged they were greeted with whistles, booing, and chants of "Assassini, assassini" ("murderers, murderers") and "Vergona, vergona" ("Shame, shame"). Perugians, having read all the reports of this internationally famous trial in their City, were not disposed to think that either of the pair were innocent. An American TV reporter on the scene bizarrely interpreted the crowd's reaction as fury with the prosecutors, but that was pretty much a fair representation of how the American viewing public had been seeing the case.

Donald Trump, then a reality TV host, was quick out of the blocks, telling his interviewer on TV how he had given the Knox family his personal support throughout, how Mignini was an unbalanced individual, and that the treatment Knox had received was outrageous.

Hellmann told Italian radio two days after the verdict that the pair could be guilty of murder even though his court had acquitted them. He said Guede knew what happened but had refused to give evidence against them.

“Maybe Amanda Knox and Raffaele Sollecito also know what happened, but our acquittal verdict stemmed from the truth established at the trial. But the real truth can be different. They may be responsible but there isn’t the evidence. So, perhaps they too know what happened that night but that’s not our conclusion.”

This rather sounds like a paragraph 2 acquittal, or the old version of “not proven“, but off the record.

It is surprising to me that Hellmann would make himself available to the media in this manner, at any time let alone so soon after the verdict. Judge Nencini, who presided over the Florence appeal, likewise injudiciously granted the media a few brief words as he was door-stopped in a corridor. It is asking for trouble. Massei, on the other hand, has maintained silence, leaving his own Motivation to do the talking.

With the evidence still fresh in our minds we can now look at Hellmann’s Motivation, and he is to be congratulated for producing his report well within the 90 days allowed.

Reasons for Decision

Hellmann first turns his attention to Guede’s conviction, which had been rendered definitive by the Supreme Court by the time of his appearance at the Hellmann appeal. Guede, of course, had a separate trial. This meant that the Guede sentencing report could be acquired by the Hellmann appeal court pursuant to Article 238 of the Criminal Procedure Code and be considered as a corroborative probative element where appropriate. The definitive guilty verdict against Guede, in itself, would not have much significance but the appeal could consider the reasoning that upheld that verdict and that, as the prosecution pointed out, by a court superior to it.

I think it is worth having a short digression as to Guede’s separate trial and two subsequent appeals. There are some American proponents for Knox who have argued that Guede’s earlier separate trial had unduly influenced Knox and Sollecito’s prospects of a successful defence at their own trial, in that there was pressure on Massei and his fellow judges to uphold some tenets that had arisen as a consequence of Guede’s trial. They point to the fact that Guede was charged with murder “in complicity with others” and that he had been convicted on that basis, Judge Micheli upholding the prosecution’s hypothesis that Meredith had been subjected to an assault from multiple attackers. They point to the fact that Guede had been at liberty, if not to positively ID Knox and Sollecito at the cottage when Guede was there during the murder, to at least give evidence, unchallenged, which was suggestive of that being so. In so far as Guede had identified

Knox at the scene it was as a silhouette which is, of course, featureless other than as to the outline. Therefore useless as to a positive ID. Even though the evidence as to the latter could not be, and was not, acquired for their trial, perhaps it too had played into Micheli's reasoning on the point of multiple attackers?

I regard such concerns as disingenuous. There is nothing to suggest that Massei was under any such pressure from, or was even influenced by, the earlier fast track trial. It was Massei who had to sit and listen to highly qualified experts disputing the evidence as to Meredith's injuries, and what had or might have happened. Such argument had not been raised at the fast track trial. There had been no need for that as much of the prosecution evidence went undisputed there, Guede having tailored an account to that evidence. Nothing had been set in stone. There was no definitive version of anything at the time of Knox and Sollecito's trial.

Guede's conviction at the fast track trial was not a disadvantage to Knox and Sollecito. It was, if anything, an advantage. Their lawyers were able to point to the fact that **the murderer** had already been caught and convicted.

As Massei pointed out -

".....the reconstruction of the facts leads to the unavoidable conclusion that he (Guede) was one of the main protagonists; thus it is not possible to avoid speaking of Guede in relation to the hypothesised criminal facts. The defence of the accused in particular have requested the examination of texts concerning only Rudy, and have demanded the results, specifically concerning Guede of the investigative activities carried out by the police in particular. In fact they have expressly indicated Guede as being the author, and the sole author, of the criminal acts perpetrated on the person of Meredith Kercher."

One can speculate how the trial might have proceeded had Guede been tried together with Knox and Sollecito. Guede would not have been obliged to give oral testimony any more than were Knox and Sollecito, and in the event that he had done so (and it had to have been in his interests to do so) his evidence, in chief and on cross-examination, would have stuck to the account already given in his statements to the police, and it would have been subject to the same limitations, which would have been zealously protected by his lawyers, that had protected Knox when she gave oral evidence.

On due consideration it might have been a somewhat tetchy and jumpy affair for the lawyers but it would not have been in the interests of any of the respective teams of lawyers for there to have been any surprises such as Guede moving from beyond what he had already said in pre-trial statements to a solid ID of Knox from the witness box. That would not have particularly helped Guede as it would have affected his credibility even further. They all had prepared positions to protect and Guede's presence would probably have been neither that much of an added threat nor an advantage for Knox and Sollecito. However there would always have been an inherent risk for the Knox and Sollecito camps with his presence, and Guede would certainly have had the opportunity to challenge the proclivity evidence that was introduced against him.

As it was, one might think that Guede had cause to complain about the indictments for Knox and Sollecito, in that both were indicted, and subsequently convicted, with the crime of murder “in complicity with Rudy Hermann Guede”, although he still had two appeals left and theoretically (though not realistically) it was still possible for him to be acquitted of the crime. However the drawing up of indictments in separate trials, and how the judiciary would deal with an outcome such as above should be a topic for another discussion.

This is what Hellmann said about Guede’s definitive judgement –

“..... in truth, this judgement, acquired pursuant to article 238 and so utilisable under the probative framework only as one of it’s evaluative elements pursuant to article 192..... already appears in itself a particularly weak element, from the moment that this judgement related to Rudy Guede had been carried out under the fast track procedure.”

Hellmann continued -

“.....the analysis of each of the individual elements, on which the complicity hypothesis rests, leads one to doubt the necessary participation of more than one person in the perpetration of the charged felonies and to exclude, moreover, that, even under this single aspect (complicity of persons) the judgement concerning Rudy Guede could represent a determinative element of weight for the purpose of ascertaining the responsibility of the current defendants; and in any case, even assuming the hypothesis of the necessary complicity of persons, as being true, the judgement does not, through this, assume any probative determinative value in recognizing the current defendants as the accomplices of Rudy Guede.”

On this last point, as to a probative determinative value, as regards the culpability of Knox and Sollecito, I of course agree.

Knox’s conviction for calunnia may have been a slam dunk but Hellmann had at least to consider the reasons for her accusation against Lumumba.

(Hellmann) -

“ ...it is understandable that Amanda Knox, yielding to pressure and fatigue, hoped to put an end to this situation [concerning the exchange of texts with Lumumba] by giving the people interrogating her exactly what they basically wanted to be told : a name, a murderer..... By feeding that name to the people interrogating her so harshly, Amanda Knox hoped, probably, to put an end to the pressure, now a veritable torment after so many long hours, while adding details and constructing a brief story around that name was certainly not very difficult, for no other reason than many details and inferences

had appeared already the day following (the crime) in many newspapers, and were circulating all over the town, considering the small size of Perugia.”

“So, for Amanda Knox, had she been in the house at Via della Pergola at the time of the crime, the easiest way to defend herself would have been to indicate the real perpetrator.....because this would have made her credible, rather than indicating a person absolutely unconnected to the event, whom she could not have had any reason to hope would not have an alibi, and thus be able to prove that the story she gave to the police was false.”

“This court thus holds that Amanda Knox indicated Lumumba as the perpetrator only because at that moment, as those who were interrogating her were insisting on an explanation of the message she had sent him, it seemed to her like the shortest and easiest way to put an end to the situation in which she found herself.”

As to this last comment I cannot disagree, but as to “the situation in which she found herself”, here, in my submission, we see the first instance of the special pleading and imbalanced argument, the tendency to take everything the defence had to say as a given, rather than weigh it, that permeates much of the Report. Was not the “See you later” (in the text to Lumumba) easy enough to explain? What evidence was there, apart from the claims made by Knox herself, that she was being interrogated “so harshly” and “after so many long hours”, and what inferences had already appeared in the newspapers? Would Knox not - the better to maintain a defence, and to have appeared more credible - have continued to maintain, as she had already told the police many times already, that she was not at the cottage, and that the exchange of texts meant nothing? Would not the inference be that, subject to the hypotheses we considered in Chapter 4, she named Lumumba precisely because, had she named Guede instead, she knew that would have rendered herself liable to counter allegations from a perpetrator she would have known had no alibi? However Hellmann does not consider that. Instead we have this bizarre counter-intuitive “logic” that is nothing but a series of manifestly dubious presumptions. It is, of course, true, if not in evidence, other than via his prison diary (See Chapter 7), that Sollecito had undermined Knox’s alibi, which is the underlying context for Knox’s subsequent fabrication.

Hellmann then considers the Statements made by Rudy Guede at the appeal (which we looked at in Chapter 22) and in his recorded Skype chat with his friend Benedetti.

Hellmann cannot be criticised for regarding the letter Guede had written to his lawyer, and his comments in the appeal court, as inadmissible, at least in one context. As regards the Skype chat, Hellmann notes Guede’s comment “Amanda non c’entra” and further regards it as improbable that - not knowing that his talk with Benedetti was being recorded - he would not tell his best friend that Knox was in fact there, if she was,

since he admitted to his friend that he was. Guede had nothing to gain in withholding such a confidential detail. An interesting point but does that really add up? Would not Guede want to refrain from naming Knox as being at the cottage during the murder, for the same reason that Knox would want to not name him?

“In that chat, furthermore, Rudy Guede states that he was in Via della Pergola between 9 and 9.30 pm; and this fact which significantly brings forward the time of death of Meredith Kercher, in respect of that held in the sentence under appeal, does not reconcile with the prosecution hypothesis in regard to the present accused who, even with the desire to recognize as credible some elements held by the prosecution in support of it's own hypothesis, at the time were certainly at the house of Raffaele Sollecito and not at Via della Pergola.”

Here Hellmann attempts to provide an alibi for the accused but does not mention a critical part of Guede's Skype chat. This –

“So we went in, and I think it was about eight-thirty, or eight-twenty, they're saying that she told her friends she was tired and wanted to go home. But in fact no, we were supposed to see each other, we had made an appointment the evening before during the Halloween party, at the Spanish kids' house, and I can also say, well I don't know the street but I can say where it was.”

Although this does not exclude Hellmann's time frame of 9 to 9.30 there is a manifest problem with Guede's account. He has himself and Meredith meeting up at the cottage by prior appointment at a time when Meredith could not possibly have been there, because she was still at the house of her english friends and she and Sophie Purton did not part ways until they were near the cottage at 9 pm.

Guede goes on to say that it was while he was on the toilet that he heard Meredith scream which he says, confusedly, was sometime between 9 and 9.30. This is where Hellmann gets his time frame for murder from. However even if any of that were to be true it does not give Knox and Sollecito a complete alibi. It can not be held to be certain that Knox and Sollecito were at the latter's flat, other than for the first 10 minutes of this time frame (the manual intraction on Sollecito's computer at 9.10), which probably only applies to Sollecito.

We discussed Time of Death in Chapter 18. Remember it was Hellmann's hypothesis that the murder had occurred no later than 10.13 pm. Now, here, he has TOD at least 45 minutes earlier than that. Hellmann brands Guede a liar on every aspect of his account, but then, making a lone exception for the timing of the scream, and without any evidence to back it up other than this, he asserts, without ambivalence, the earlier TOD despite Guede's own Skype time of arrival at the cottage being demonstrably unreliable and untrue. According to Guede he did not have a watch, but even if he did would he have checked the time on going to the toilet and then on hearing a “really loud” scream?

As Meredith actually arrived at 9, not 8.30, we can add on half an hour making the timing of the scream between 9.30 and 10 pm.

Furthermore the timing of the scream by Guede's account does not accord with the testimony of the witnesses Capezalli and Monacchia, who have it much later.

Hellmann doubted the reliability of the witness Curatolo for the following reasons.

"In the first place, the deterioration of his mental faculties, revealed by his answers before this court in the course of his testimony resulting from his way of life and his habits.....today he is detained, serving a sentence for dealing in drugs"

Hellmann observed that Curatolo's idealistic incentive to follow Jesus was rather undermined by the crimes he had committed. Questioned about the type of crimes he had committed, Curatolo had replied: "Several, several, well some previous convictions for drugs, some previous for political reasons....."

For Hellmann it is important that Curatolo seemed, he says, confused as to the day on which he said that he saw the pair, particularly as for him, a tramp, time, or rather dates, did not seem to hold much relevance. Was it Halloween or was it the 1st November? [In Italy the 1st November is All Saints Day, also known as All Hallows Day, or Halloween. Halloween is a recent import from America] Hellmann observed that there was some incidental and confusing information in the case, as to Halloween masks, buses for nightclubs, whether it had rained or not on the 1st November as well as Halloween, and determines that this renders the witness's memory unreliable [See Chapter 22].

"Furthermore, once it has been accepted that the date of the episode was October the 31st, and not November the 1st, it would appear more logical to position the sighting of the two young people in that context, and therefore on October the 31st, precisely because, contemporaneous to the sighting, rather than the next day, in that it is before the arrival of the Scientific Police, but thus necessarily extrapolated from context. Therefore this court does not recognize the statement by the witness Curatolo as credible, it not having been possible to place any confidence in verification of the episode, and, above all, in the identification of the two young people as the present accused."

The above is, in my submission, another good example of what Hellmann came to be criticised for in the Supreme Court 1st Chamber's decision to annul the Hellmann appeal. The logic of the paragraph quoted is defective for a number of reasons. First, it is not entirely clear what Hellmann means, as the syntax is quite confusing, but in any event he is certainly begging the question as to which date the episode of the sighting was, and furthermore he has not supplied anything like the full evidential context. He has entirely overlooked the fact that the court had evidence that Sollecito was at a graduation dinner out of town on the evening of Halloween, and thus Curatolo could not have seen them together in the evening on that date and, indeed, had not seen them

“together” before at all. Nor is it just a matter of Curatolo having seen the pair before the arrival of the Scientific Police, which could be a day or two before, but having seen them, and the witness was very explicit about this, “the day before”, *whatever date* that was as far as Curatolo was concerned. And finally, Hellmann does not say why there was an identification issue, no point of contention (other than not being there) having been raised by the defence, and this being an entirely different issue from that as to dates.

Neither is Hellmann giving the witness any credit for his testimony nearly two years earlier, as to which there was no evidence as to a decline in his mental faculties.

We then move on to the witness Quintavalle. We considered the issues as to this witness’s evidence in Chapter 12. Accordingly it will not be necessary to go over that again, but let us record some of Hellmann’s views on the matter.

“...this was a witness who - taking into account what he himself explained - took a year to convince himself of the precision of his perception, and the exactness of the identification of Amanda Knox with the girl that he saw, although he was able to appreciate the relevance of his testimony already in the days immediately following the murder.”

“Furthermore, his employees, who were certainly inside the store on the morning of November the 2nd, and who, however, did not notice anything particular, stated that he (Quintavalle) indicated to them, in the days immediately following the event, his doubts about the identification of Amanda Knox with the young girl he had seen entering into his store; he did not express any certainty to them that it was her, but only the possibility.”

“But these doubts about the reliability of the witness increase if it is also taken into consideration that he only caught a glimpse of the girl, first “out of the corner of his eye” and then from a bit nearer for a few moments, but never from the front....”Yes, then she entered, I saw her, let’s say like this, three quarters left, three quarters of the left side. I didn’t see her from the front”, and there is no indication that the grey coat which, according to the witness, the girl was wearing was ever owned by Amanda Knox.”

“ Quintavalle cannot maintain that he did not mention what he saw on the morning of November the 2nd to Inspector Volturmo because he did not think it was a relevant circumstance.”

“.....the testimony of the witness Quintavalle does not seem reliable and, in any case, represents an extremely weak piece of circumstantial evidence.”

I raise no comment here but see Chapter 26 and Judge Chieffi’s scathing comments.

The Murder Weapon.

“.....setting aside the genetic analysis (these will be discussed soon, and the reasons for which this court shares the conclusions of the court appointed experts holding the results given by the Scientific Police to be unreliable, will be explained), there remains in reality no objective element signifying the fact accepted (by the Court of 1st Instance) that the above mentioned knife was used in committing the murder.”

“But also, the large woundcould not, according to the defence consultants, have been caused by that knife [Exhibit 36], as the depth of the wound is significantly shorter (8 cms compared to the 17.5 cms of the blade of the knife) and the presence of a bruised area bordering the wound, corresponding to the entrance of the blade, would signify that the handle of the knife, struck that spot, the blade having been introduced to it’s full length.”

“Furthermore - observe the defence consultants, in particular Professor Torre - since the larger wound is, in reality, a consequence of re-iterated blows so as to be widely diasasterized laterally, it seems even more difficult to hypothesize that a knife with a 17.5 cms blade was introduced several times to a depth of only 8 cms.”

Actually the pathologist Dr Lalli, who performed the autopsy, described the larger wound as follows-

“....a wide wound of clean edges of length 8 cms, obliquely positioned, in the caudal and lateral directions widely gaping, exposing the underlying tissues which appear to be sectioned right up to the osteo-cartilage. The edges present minimal haemorrhagic infarction predominant at a distance of 3 cms from the extreme lateral edge, where a small tail is detectable. Very small excoriated and ecchymotic edge with maximum width of 0.2 cms is present at the extreme anterior of the upper edge.”

There is nothing in that description to suggest, be it the wound was wide, and be it there were two incisions on, and some butchering of tissue, in the region of the epiglottis, and by diastasis Professor Torre means a separation of the edges, that the point of a blade had been “introduced” a number of times.

Indeed it would be difficult to hypothesize that a blade could be introduced several times without butchering the line of the cut in a manner that made it obvious to observe and, that not being the case (Dr Lalli made no such observation), by a perpetrator whose sight of the target, and surprising clinical precision, would surely have been obscured and hindered by the blood that would inevitably have arisen over even the first cut. Hellmann’s inclination seems always to be to misrepresent and misinterpret the evidence purely on the basis of a contrary opinion expressed by the defence.

“.....the presence of the aforementioned knife in the house at Via della Pergola is explained by the possibility that Amanda Knox normally carried a knife of those dimensions in her capacious bag for reasons of personal defence, as she had to go out late in the evening to go to work. No proof has been given of such habits, however, that a young girlwould [have been afraid] and decide to accept the invitation of

Sollecito to carry a knife of such dimensions for her personal protection, with the very real risk of being arrested and incriminated for illegal carrying of a knife.”

“Is it really probable that two young people, certainly very shaken by what had happened, but still two normal young people, “good guys”, (“bravi”), one should even say, (involved in studies, helpful to others, to use the words of the Court of 1st Instance, very young and yet already ready to accept the strain of work) after having participated in such a barbarian murder would not only have had the cold and diabolical mind not to get rid of the knife, but would have put it back with the other cutlery in the kitchen where it came from, and also the hardness of soul (and stomach) to go on using that cutlery, even that very knife, to prepare meals in the days following the murder.”

“In the present case, even when the above mentioned result is placed in the context of the other evidence, what remains definitely proven is precisely it’s unreliability. In the first place the cytomorphological investigations performed by the expert team on the blade of the knife did not evince the presence of cellular material; in particular there was no presence of blood. Certainly the presence of grains of starch on the blade found after the microscopic examination, whose structure shows that they arise from vegetable material, and which are located particularly at the place where the blade is inserted into the handle, reveals that the knife was not washed, so that the absence of blood on the knife can not be attributed to washing. Furthermore, these grains of starch having a very large capacity for absorption if placed in contact with liquid, they would probably have absorbed the blood on the knife if it had been used to wound or kill, whereas in fact, the grains observed did not prove to contain any blood.”

“It is true, thus, that the only element that could reasonably relate the knife to the crime is represented by the results of the genetic investigation performed by the Scientific Police, which will, however, be held unreliable below.”

Hellmann’s logic, and definitive assertions, would only be shown to be acceptable, in my submission, if one was to mention and exclude other relevant logical considerations. Why should the absence of blood on the knife, but not of the microscopic starch grains, not be attributable to the knife being washed after the murder and then being used in the kitchen, other than that the murderers (these “bravi”) must be thought to have had an aversion to that, despite, as alleged, having been involved in the barbaric act?

In addition the knife had a blade length of 17.5 cms and the depth of the wound was 8 cms. We can not say that blood would necessarily have travelled to the area of the knife next to the handle, at the time of or after the strike, at least whilst it was still being held, although it would not be an implausible assumption to imagine that it had. But in any event Hellmann ignored the evidence that the knife was handled on collection by operatives and then on analysis by Dr Stefanoni using latex gloves powdered with cornstarch. Such gloves are in common use in medicine and forensics.

However he is also right. That Exhibit 36 is, for a fact, the murder weapon does depend entirely on trace 36B.

Having justified their decision to appoint the Independent Experts, Hellmann proceeds to draw conclusions from the Report. In this respect the unbalanced prominence given by C&V to American sources, and in particular the controversial Bruce Budowle, comes into play, not just as to another opinion, but in order to determine, that is, to resolve, any argument.

“Budowle B. et al (2009) call for prudence, and suggest the use of LCN exclusively in cases of identification of missing people and for research purposes. The above cited authors, however, advise against the use of present methods in LCN analysis in penal trials, since the methods, the technology, and the present recommendations are not yet able to overcome the problems characterizing LCN identification. In particular, because by definition LCN identification cannot give results that are reproducible, so that the same result cannot be attained even if the same sample is analyzed a second time, the method cannot be considered reliable according to accepted standards (Budowle B. et al (2009)).”

The arguments here have in fact been reviewed in past Chapters in this Book, and it will not be necessary to go into detail again, even in the context of the Hellmann report. Suffice to say here that Budowle’s views and assertions are somewhat dogmatic and contentious and are not accepted in the world of forensics.

There would be no point in having a recommendation to repeat the analysis in LCN cases if it were true that “**by definition** LCN identification cannot give results that are reproducible”(and thus reliable). Certainly there could be some variation in the result on a re-test, but that is not to say the result is unreliable. Not only is that one in the face for the Omagh Report but this section, with its conclusion that LCN is unreliable per se, and without any reference to what may be the accepted standards, renders any scientific analysis of the result, including with a re-test, redundant. That is nonsense.

However, we can consider Hellmann’s concluding arguments.

With regard to the knife (Exhibit 36) and the unrepeatable analysis of trace B, Hellmann wrote -

“In substance, this court holds that the risk of obtaining a result that is not particularly reliable, not having been obtained by the correct methodology, (in particular because two amplifications were not done), though the quantity of extract was small (LCN), it could be accepted merely for orienting purposes in a 360 degree investigation - as one says - but cannot be accepted when it is a question of basing a proof of guilt beyond a reasonable doubt on the result of the genetic expertise. It turns out in fact, also, that in the presence of a small quantity of extract, less than the one suggested by the kit as ensuring a good result, it is necessary to lower the threshold of sensitivity of the machine, but this increases the presence of stochastic phenomena which only a comparison of the graphs of more than one amplification would reveal, and makes it impossible to exclude that a particular profile, even if hypothetically actually

attributable to an individual, actually arises from contamination that occurred in one of the phases of collection and analysis procedures.”

“This explains why the expert team did not proceed further with an analysis of the sample it collected itself from the knife: the quantity was found again to be LCN, and altogether insufficient to make two amplifications possible, so that if they had proceeded further, the independent experts would have committed the same error as the Scientific Police.”

“In truth, Professor Novelli did argue that there do exist systems that can analyze such low quantities, even if they are still in an early state. However the court holds that this fact of being in an early, still practically experimental state, excludes the possibility of basing any conviction of guilt on a result obtained by the application of such systems, since the judge can only base his convictions on technical systems and scientific knowledge that are fully consolidated in the particular historical period in which he is called to judge, not on other ones which are still in the experimental stage. Adherence to the rules created by the scientific community is thus the main guarantee of reliability of a result, and this leads this court to accept the conclusions of the expert team.”

I may be no more of a DNA expert than Hellmann but it is a pity that he had not the opportunity to read my foregoing Chapters on DNA analysis and in particular the sections relating to the analysis of Exhibit 36B. He talks about the possibility of increased stochastic phenomena (the appearance of random variables) due to a lowering of the threshold of the machine, as if that might mean something, but without further explanation. He would have you believe that, without a repeat analysis, we cannot be sure that the short tandem repeat data from the machine, exactly matching the STRs in 14 of Meredith’s individualising 15 loci, is not stochastic phenomena, and that as a result, though he does not explain how, we might have misread the data and misinterpreted the paired alleles that constitute a discriminatory locus. That is highly unlikely to be the case. Of course as to the STR data, that cannot be misread, as it consists of clear numerical data produced by the machine. It cannot even be misinterpreted given the sequence (given by markers as to the loci) from which the data arises in the electrograph, which again exactly matches Meredith’s profile.

The odds on random variables matching the paired STR data in not one but - for it to be problematic in this case- in at least four of the matched markers, are such that one would have as good a chance of winning the National Lottery. A judge should know that, as it is a matter of probability, even if two cloistered academics may not.

It is only the amplification process with LCN DNA which may produce a different result when analysed by the machine, and I go into detail on that in Chapter 33 page 295 .

There is more illogical nonsense here because Hellmann avers that the inability to do a repeat analysis “makes it impossible to exclude that a particular profileactually arises from contamination that occurred in one of the phases of collection and analysis procedures”. However, it is fairly self evident that no amount of re-amplification and

testing of a specific sample would be able to determine whether the sample was the result of prior contamination, that is prior to analysis with the testing equipment, or exclude such contamination, whatever the re-test results. A perfect match on a repeat could not exclude prior contamination. Neither would discrepancies establish, or even make it probable, that there had been prior contamination. If such were the case it is more likely that there were other reasons i.e inherent in the amplification process, or possibly lab contamination. If the re-test results were not to match then there could be an issue as to a reliable profile for ID purposes, or possibly, as I have said, laboratory contamination, but neither of which Hellmann goes on to argue, other than by this sort of vague and disingenuous insinuation, was actually likely to have been the case.

If Hellmann was ill-advised by C&V as to the suitability of sample I for further analysis, here he alone is responsible for misrepresenting Professor Novelli who had testified that the new systems, whilst “leading edge”, were reliable in that they had already produced reliable results accepted by most, if not all, practitioners. His evidence was not contradicted. There is clearly a difference between “leading edge”, meaning at the forefront in this field of analysis, and “experimental”. The prosecution request during the appeal for an analysis of that sample, declined by the appeal court, was fully in accord with the terms which the appeal court had itself set the court appointed experts.

As to the bra clasp (Exhibit 165) and trace B thereon, we have discussed this and the issue of contamination extensively in preceding Chapters. Hellmann noted -

“...the expert team could not extract from the [hooks] any DNA useful for DNA analysis.” [ed : did not try to, because of rust]

However, even if they had been able to do so, and even if it had confirmed the presence of Sollecito’s DNA on the hooks of the bra clasp as, hypothetically, per Hellmann, the first test had, that would not have made the profile any more reliable due to the conclusion the appeal court drew, that this was all the consequence of the tertiary transfer contamination which had probably occurred.

“This removes the possibility of using this evidence to prove the presence of Raffaele Sollecito’s genetic profile on the bra clasp.”

Humpff!

The bathmat print.

Hellmann considers the topic of the detachable, or otherwise, mark of diluted blood, on a curl in the flourish of the weave, which Rinaldi and Boemia considered belonged to Sollecito’s big toe, and hence not detachable, but which the defence consultant, Professor Vinci, attributed to a second toe, noting that the comparison print for his

client's right foot showed that his second toe did not meet the ground on a flat surface due to it being held in a "hammer position".

Hellman's argument here is simply a reprise of Professor Vinci's arguments for the defence which were considered in Chapter 16. Noting that there is an unstained section of the bathmat print, where apparently Sollecito's toe should be, were we to have a complete print of his big toe on the mat, Hellmann disparages what he considers is Massei's assertion that one can simply draw a line down from the disputed mark of blood in accordance with the shape of Sollecito's toe, hence arriving at a measurement for the width of the big toe coinciding with Sollecito's.

Looking back I think that Massei did leave himself open to criticism with that suggestion, but more particularly because (unlike Guede) the vertical axis of Sollecito's big toe (see below) does have a more obvious tilt to the left (which might be a consequence of the valgus and consequent "hammer position" of the second toe) and which, together with the blood on the flourish of the weave (on the right) does give a reading for the width of the big toe, without relying on part of that measurement falling in an unstained section. Indeed, that Sollecito's 2nd toe is held in a hammer position merely adds credence to the big toe width on the bathmat, rather than detracting from it.

However there are a number of other reasons which Massei believed were persuasive, and which Hellmann ignores. I refer the reader back to Chapter 16. The first is a disparity in the length of the respective big toes, Guede having a longer toe than Sollecito. Secondly, the position of the left hand curve of the ball of the foot, and the lower section (the left side of the plantar arch – there can be a number of measurements here as the plantar arch tapers off significantly in width), on the bathmat is fairly clear and if one lines up the suspects' curves with that on the bathmat, then the tip of Guede's big toe is noticeably higher than the mark of the toe on the mat, whereas Sollecito's coincides. In addition, the top of the ball of Guede's foot is noticeably higher whereas Sollecito's more or less coincides.

Furthermore the measurements I have (and as Massei confirmed) show that Guede has an altogether narrower plantar section which does not fit the bathmat print as well as Sollecito's.

Below are the respective representative prints for Sollecito and Guede. Superimposed upon them is an outline of the stain to illustrate the points made above. Of course, to some extent the outline of the stain is subject to one's own interpretation, but I believe it is reasonably accurate.

Sollecito



Guede



Guede's print has 7 points of disparity with the stain – Sollecito 1 as below.

Hellmann draws attention to the fact that the comparison print for Sollecito's right foot shows that the distal phalange of the big toe (the part of the big toe which connects it to the ball of the foot) is absent on a flat surface but is present on the bathmat. Guede's distal phalange is present.

However this, by itself, would be insufficient, given the other data available to us, (the width of the respective big toes, for instance) to establish the identity of the owner of the print, so he continues with the following assertion.

“Now, [ed : talking about Sollecito] since the contact of the foot with blood took place on the floor of Meredith's room, namely on a flat and rigid surface, the distal [phalange] would not have been able to have become stained, and thus it would not have been able to leave the very visible trace on the bathmat.”

I do not accept that Sollecito (or Guede) would necessarily have stood barefoot in blood in Meredith's room (and remember that the mark on the mat was diluted blood, which aspect modifies, if not negates, any direct correlation), nor, if either did, that it was on a flat and rigid surface there, since there was blood on Meredith's clothing on the floor, and indeed there were towels soaked in blood in her room, although it is not, at first sight, an unreasonable hypothesis. Hellmann's assumption (which does not explain the diluted blood) is based on the fact that Hellmann does not want to accept that the print on the bathmat is Sollecito's. However his argument, such as it is, is flawed. The logic is presumptuous and deficient given the foregoing and that there are no connecting footprints in blood between the blood in Meredith's room and the bathmat print.

He could, of course, try to explain that, but not without giving credence to the removal of blood traces (see Chapter 14) which he ignores altogether in his report.

Hellmann also ignores the pertinent, indeed crucial, and obvious point made by Massei that the point of Guede's second toe falls some distance from the big toe such that it is unlikely to be responsible for the width of the big toe on the mat.

"Still from the morphological point of view, Professor Vinci also maintained that, unlike Sollecito's reference print, the bathmat print shows point of contact of the distal phalange of the "second" toe. Attentively examining the images.....of the technical report, one remains convinced that this conviction [Vinci's] is well founded. In fact, one notes that there is a round trace flanking the one made by the big toe which is in a slightly lower position than the tip of the big toe itself."

Try as I might I do not get any of this. He needs glasses, and a brain. On the contrary the distal phalange of the 2nd toe is not evident in the bathmat print (see the colour enhanced picture on page 97). The distal phalange of Sollecito's "second" toe does not show in his representative print, perhaps because of the hammer position of that toe, but it is also true that neither does it show with Guede's representative print. The disputed "round trace" (shown arrowed 3 as above, if that is what he is referring to) could not possibly be the distal phalange of Guede's 2nd toe, and is more likely to be part of the big toe.

"Rinaldi and Boemia objectively emphasized some points of considerable discrepancy in the dimensions of the bathmat print and Sollecito's reference print, which are actually in opposition to their conclusion of probable identity."

Like what? Can we expect a perfect match between a representative print and the bathmat print? "Considerable discrepancy" is certainly an exaggeration, and yet there are of course, discrepancies. This might be relevant on the supposition that there could have been a perpetrator other than Guede, Sollecito and Knox. Hellmann misses the point that the measurements are being used for comparative purposes in respect of those three.

"Neither does anything of this appear in the sentencing report."

There was a lot of detail in the Massei Report. In Chapter 16 I discussed the findings with regard to the footprints. As regards the footprint on the mat, I exhibited a table of the comparative measurements of Guede and Sollecito with the footprint on the mat. It is the case that there were some measurements which I was unable to obtain for Guede, but I strongly suspect that these would not have been significant. The reader can check and make his own mind up.

As to the luminol revealed footprint no.2 I did see Massei had made an error re Rinaldi and Boemia's measurements.

"As this court must reach a conclusion on this topic, it holds that the bathmat print made with Meredith's haematic material has no value as a piece of circumstantial evidence against the accused Sollecito."

Hellmann concludes by mentioning the possibility that Guede did make the print on the bathmat, having (the probability of which we discussed in Chapter 14) lost his right shoe in the struggle with Meredith, and having gone to the small bathroom in order to wash his right foot. This, as with the aforesaid, is no more than magical thinking.

Footprints and other traces revealed by Luminol.

We have discussed the luminol findings in Chapter 16 and also, earlier, briefly considered their relevance to a post murder manipulation of the crime scene in Chapter 14, by the removal of blood traces to which the findings relate.

Hellmann reminds us again, however, that the swabs of the luminol traces were all tested for blood (the TMB test) and the results were negative. He then has some interesting observations to counter those which we raised with regard to the negative tests.

“The limited number of footprints detected can be explained by a treading [which took place] at different times and by the use of bleach in particularly dirty areas.”

This comment about bleach is speculative, no more than special pleading, since there was no evidence at all that the floors, or shower basin, had been cleaned with bleach, or any other agent with similar properties. No-one noticed a smell of bleach on the 2nd November but more significantly than that bleach would have dissipated in the 46 days between the murder and the luminol testing, and accordingly it seems implausible that the bright fluorescent glow could have been due to that.

“The first level sentencing court arrived at an implausible explanation; Amanda, with bare feet, washed of Meredith’s blood, but on the soles of whose foot some residue of Meredith’s blood must have remained, went into her own room, into Romanelli’s room, and passed through the corridor and in certain points of the room, where she had passed, she left the traces that were detected.”

We do not know for sure whether feet (whether washed or not, and Massei did not say) were responsible for the mixed trace in Romanelli’s room, since no luminol enhanced footprints were found there, though that would be one hypothesis, but that does beg the question as to what happened to the linking footprints.

“Even neglecting to consider that, as has been seen, the footprint on the mat has been attributed to Raffaele Sollecito, and not to Amanda, the explanation for the inconsistency highlighted by the 1st Instance court can be found in the statements of Amanda herself, who said that she took a shower the following morning and that she went back to her room, dragging the bathmat with her bare wet feet, which was then put back in its place. A confirmation of the above has been given by Professor Vinci, who examined and photographed the mat, highlighting that it showed blood stains on the bottom side, which did not correspond with those shown on the top side.”

“To overcome this contradiction, the court of 1st Instance goes as far as stating that during the clean up the shoeprints were purposely spared, in order to direct suspicions towards others. But knowing that the owners of those shoes, once identified precisely thanks to those prints, could have then made a devastating accusation of complicity, would certainly have deterred [them] from such a design. It would have been much better to erase everything.”

It is also just as likely (See Chapter 14) that Knox’s account of the bathmat shuffle is in fact hogwash, the shuffle being somewhat contradicted by the fact that somehow the shoeprints (Guede’s) remained in situ, but not the footprints later revealed by luminol. Indeed that does suggest the shoeprints may have been spared deliberately. As to Hellmann’s reasoning as to why they would be deterred from sparing the prints, they would have to know, or guess, at that time (and why?), that the police were going to have Guede in the frame at some point, otherwise the police would never find any shoes to compare with the prints. In the event, as we know, Guede was only identified because of a palm print in Meredith’s room, and might have escaped justice altogether but for that print (not his DNA) being in State records. I am less than impressed by Hellman’s capacity for logic. This is yet more special pleading and sophistry. Surely believing the foregoing to be unlikely, would be a reason for leaving the prints, not to mention the other evidence as to this as yet unidentified person. If the break in is a staging, then leaving the shoeprints would be considered, surely, as an additional element.

“Another important fact remains unexplained as well ; only two traces contain a Meredith-Amanda mixed profile, Exhibit 177 in Romanelli’s room, and Exhibit 183 in the corridor. The others can be attributed to Amanda alone, and Exhibit 176, in Romanelli’s room, even to Meredith alone. If the first degree court’s explanations were plausible, they should all contain a mixed profile, or at least, of only Meredith as well.”

Seemingly a good point. If the traces are made in blood then the probability that Meredith’s DNA would be recovered from more than the three in which her DNA was found, would likely, would it not, be higher? But what prompts this observation? No doubt the Appeal Court had noticed from Stefanoni’s lab records that there were 3 presumed blood stains in the shape of a foot in Knox’s bedroom but only her DNA was found there. Revealed by luminol, of which one is attributed by way of measurement to Knox, are these traces in fact blood, or false positives? Could it just be that she has sweaty feet and the luminol was reacting to the iron in that? As to the DNA, that would have to be from skin cells secreted in the sweat, and typically with a low level of RFU. However again the RFUs are high but TMB tests were negative.

With reference the above findings the absence of Meredith’s DNA does cast doubt on Knox’s account of the bloodied bathmat shuffle from her shower to her bedroom as she would be expected to get some of Meredith’s blood on her feet as a result.

It also casts doubt, to be fair on Massei's scenario that after the murder Knox had stood barefoot in her room, likely with some residue of Meredith's blood on the soles of her feet, looking out of her window to see if the coast was clear outside.

However, and the Appeal Court did not pause to consider this, the absence of Meredith's DNA can be considered evidence that Knox had bled before Meredith's blood had been spilt, and the offending evidence was later removed – this being all part of the subsequent manipulation of the blood evidence. The hypothesis of a physical confrontation between the two we had considered towards the conclusion of Chapter 19.

The traces left in the small bathroom.

“The defence counsels of the accused have sharply criticised the method of evidence collection used with respect to the basin and the bidet. The part of the video relative to this procedure was screened in the courtroom. There the assistant Brocci can clearly be seen passing and passing again the same swab of absorbent paper from the edge of the sink down to the drain opening and vice versa, and this on both sides with a wiping movement. The same procedure is used for the bidet, where the swab - supposedly a different one from the first - is used for a thorough cleaning of the area of the drain plug. With regard to this point, Dr Stefanoni noted “that apparently it may seem unsuitable for collection” but in that specific context it was [suitable] “for the type of traces that were found” that “were very clearly pink, therefore they were traces that appeared as if they were certainly diluted and were all apparently of the same origin because they were dropsthey had a sort of trickle down effect that started at the top and ended at the drain hole.” In her view it was unlikely that they were from two DNA, separate at the start and then joined to form a single trace, and that, as can be read in the sentencing report, “both because of the same point being involved, and because of the same appearance of very much diluted blood.”

Hellmann makes the obvious point that as the small bathroom was shared by the two girls, Meredith and Knox, then would it not be natural for their DNA to be found on the sanitary installations, such as the washbasin and the bidet? The DNA would be found in skin cells rubbed off whilst washing, or from hair, or sweat or even saliva. He also makes the point that Knox's DNA was not found in what was obviously blood on the light switch, whereas, he says, if Knox had been washing blood off her hands, accounting for her DNA in the blood streaks in the washbasin, bidet and on the cotton bud box, then one would expect that her DNA would be in the diluted blood on the light switch as well. That would of course depend on who actually left the diluted blood on the light switch and the order of events, but it is a reasonable, if unpersuasive, point.

It was also confirmed by all the experts that in relation to mixed samples it is not possible to say whose DNA was there first, as the substance containing it cannot be dated. Accordingly it is a perfectly reasonable hypothesis to say that Knox's DNA was in the washbasin and bidet prior to the blood streaks being deposited on top.

Hellmann also mentions (Stefanoni's testimony) that there are differing ratios for the mixed samples on, say, the cotton bud box on the one hand and in the streaks in the washbasin and the bidet, on the other hand. As to the latter there were, he says, two different profiles with uniformly, and significantly, different RFUs which had made it easy to make the two attributions. However in the case of the cotton bud box, although there are two mixed profiles the RFUs for each profile are not so significantly different, and with some alleles are so much the same that it could be that there is the DNA of a third person, still a female, present. Hellmann therefore infers that if the trace of a third person can be present, and clearly not the murderer, then it predated the deposit of Meredith's blood, in which case the same could be said for Knox's DNA in the trace.

However that is hypothetical as it was not actually established that there was the DNA of another female present.

Hellmann avoids mentioning that the reason that the samples from the washbasin and bidet were easily differentiated is that many of the peaks in Knox's profile, in each sample, were considerably higher than the peaks relating to Meredith's profile. Now that is interesting because what gives a clearer and stronger signal than blood? We know that Knox had bled because of her blood on the washbasin faucet.

Hellmann asserts that it was likely, given the way that the blood was sampled, that DNA already there was unavoidably gathered up with the blood, and thereby creating the mixture. This assertion would have some force were we not discussing Knox's DNA for, as has been mentioned previously, the diluted streak in the bidet is contiguous with the streak in the washbasin and there is no evidence that Knox ever used let alone understood the point of a bidet, the use of bidets being very rare in the America, as they are in the UK.

It would indeed have been useful, though Hellmann does not say this, if control samples had been taken from other areas of the washbasin and bidet, close to the streaks, to establish if there was indeed DNA belonging to Knox there, and if this could be the explanation.

If the above are good points for the defence then the presence of Knox's recent but "caked" blood on the faucet is undoubtedly not (I refer the reader back to page 108 and the inference that can be drawn as to when the blood was deposited on the faucet, courtesy of Knox's own detailed account and observations), and this fact gets a complete pass from Hellmann, as does the point about Knox's high peaks in the mixed samples.

The staged break-in and burglary.

This I personally consider to be one of the strongest of the proven facts to arise from the trial. The reader is advised to recall our discussion about this topic in Chapter 10. Not

so, however, if we recall judge Zanetti's opening remark at the appeal when he said "The only certain and undisputed fact is the death of Meredith Kercher."

"But what may seem a laborious task to someone with no experience in the matter [ie breaking in through windows] may reveal itself to be feasible, although not particularly easy, for someone who has accrued such experience."

It would appear, therefore, that it is a given, for Hellmann, that Guede had accrued such experience.

".....the existence of the inner shutters could not have constituted an obstacle to breaking the glass: it does not appear that these shutters had in turn been pulled shut and, on the other hand, the mark in the wood corresponding to the breaking of the glass is indicative of the force of impact of the rock against the glass and then against the inner shutter. But the sovereign proof of the simulation is supposed to be - according to [the Court of 1st Instance] - the lack of glass under the window sill, outside the house, and the presence of glass on top of clothing and objects that were inside the room, which is supposed to demonstrate that the breaking of the window pane was after and not before the ransacking, clearly carried out at the point to stage an attempted theft. On this point, however, this court disagrees, since the dynamics of the throwing of the stone and the force of impact did not make it necessary that some broken glass should end up outside, rather than inside, where the broken glass not only appeared on top of the items or clothing, but also underneath."

"And the jumble [inside the room, as referred to in the testimony of Romanelli and others, who noted that there was at least some glass under items and clothing as well] can be explained by the fact that the height of the window, higher than at least some objects in the room, can have permitted the broken glass, because of the effect of the impulse gained from the force of impact of the stoneto end up on top of rather than under some objects, but also the activity of ransacking, obviously carried out in a frenzied way, if performed in an environment where there is broken glass around, to the point that some glass fragments end up on top of some items or clothing rather than underneath."

This is a spurious way of perceiving the matter, dispensing, as it does, with any investigative insight, but in particular with the eyewitness testimony of the occupant of the room, and the others there, whose own on-site observations and hence knowledgeable evaluation is second guessed and shunted aside by Hellmann. Is it just me but how is the "jumble inside the room" (the jumble presumably being the disorder of clothing and some other items other than the broken glass, which was not how Filomena had left things) explained by a rock, cast by the intruder, breaking the glass from outside? Particularly as the rock was in a bag under the window? Certainly the glass would have ended up on top of the clothing but only if the clothing was already on the floor, which it was not. What about the computer being knocked over (certainly not by the rock), the lack of any genuine aspect of ransacking or attempted theft as noticed by Romanelli, and noted by Massei? In fact, everything that works against the

hypothesis of a genuine break-in, as discussed in Chapter 10, other than that Romanelli acknowledged that there was indeed some glass under some items, is excluded from mention, let alone evaluation.

On that point, seized on by Hellmann, that Romanelli acknowledged there was some glass underneath (though most, she said, was on top), it would seem more probable that this was due to some additional and final staging, than that the majority of the glass had, via the ransacking activity of an intruder (basically no more than throwing clothing from the closet and some other items down on to the floor – hardly an intensive and proper, let alone frenzied, search for valuables), somehow found its way on to the top of this disorder. That notion, credited by Hellmann, flies in the face of common sense. Also why would there be a ransacking of items of clothing, once thrown down on the floor, when there were other more obvious items and locations of interest, which were not disturbed by ransacking, within the intruder's sight? But if so, it might also explain why some glass was underneath. This crass nonsense and his casual dispensing with the testimony of the several eye witnesses, all in agreement with each other, is perverse.

Neither is it a case of “the force of impact” making it “necessary” that shards of glass should end up outside, but rather that shards of glass were on the windowsill, the presence and the impediment of which Hellmann does not bother to evaluate from the point of view of an intruder scrambling to gain entry.

As a further example of the special pleading in which Hellmann is engaged he also refers to a small fragment of glass found beside Meredith's body, asserting, as seems most likely, that this came from the broken pane of glass, the fragment having been tracked, or carried on clothing, into Meredith's room but, he claims, if the break-in was a simulation then the simulation would have occurred after Meredith had been covered with the quilt, and thus there was no reason to return to her room, tracking the glass there. Why does one have to accept that the quilt was so placed before the simulation of a break-in? Indeed, the removal of Meredith's bra, the forcible severance of the clasp from the fabric, and the positioning of her body, all indicative of a violent sexual assault, if not rape, are factors suggestive of a staging to mislead investigators into thinking that she had been so assaulted after a genuine break-in. If so, one might be inclined to think that such staging would be after staging a break-in. And then, of course, Meredith's door was locked, suggesting that the stagers may have returned to her room, to view their handiwork, and to collect her keys for this final act before leaving.

Perhaps doubting the plausibility of his own speculation, Hellmann also considers the possibility that Guede may have, instead, been invited into the flat without him needing to break in through Romanelli's window. Why then, would he have simulated a break-in? Again we discussed that in Chapter 10 as well.

“And then one could argue that, at that point, after the tragic event, Rudy Guede, for the very reason he was let in through the front door, decided to distance himself from any suspicions of someone, perhaps unknown to him, who had by chance seen him when the

door was opened for him, simulating that other unknown persons had entered the house through the window.”

“The Court of the Assizes of First Instance ruled out that Rudy Guede could have had an interest in simulating the theft by means of breaking in through the window, recalling that just days before he had been caught in a nursery in Milan where he had entered illegally at night and that he had been indicated as probable perpetrator of other thefts, so that it would have been really strange, thus that Court argues, that to divert suspicion from himself he would have simulated the carrying out of an illegal activity that was usual for him. Actually, one might answer that it is precisely those facts which should lead the Court to hold that this is clearly a simulation, to make one think that Rudy Guede, staging an obvious simulation, had believed this would distance suspicions from him, since a professional thief does not simulate a theft, but actually commits it.”

Hells bells! The hypothesis is that Guede might have simulated an obvious staging to cover up the actual break-in – the actual break-in being his trade mark and a clear clue of his involvement. No one had him “indicated as a probable perpetrator of other thefts” other than, later, the defence lawyers. There was, at the time of the murder, only his known involvement in the Milan nursery case which had not involved a broken window, or other breakage. That he was involved in “others” was argued, unsuccessfully, at trial by the lawyers for the defence. One must also assume that Guede would be attempting to implicate one of the female occupants of the flat in a sexual assault. Genius!

The other possible motive given for Guede simulating a break-in is unlikely. Had Guede been invited in through the front door, and had he thought he might have been observed by someone, then he might have thought there was the possibility that he could be identified. But then again, not. But if he had been seen and could have been identified, how would simulating a break in really have assisted him? What guarantee was there that this hypothetical witness, on learning of the murder, would not report who he had seen anyway? The argument is feeble, and it is ludicrous that he would hang around and go to all that trouble, for that reason, but leave the other evidence of his presence alone.

Hellmann then focuses on Guede as having both the ability and the proclivity to have actually performed the break-in via Romanelli’s window. Guede was an athletic basketball player. He had broken into other properties. The lawyers’ office, Tramontano’s home, and the Milan nursery. Be it that the evidence is singularly circumstantial, and lacking in the necessary proof, Hellmann’s conviction as to his guilt is definite.

“Rudy Guede, several times, **in fact**, had been the protagonist of burglaries in apartments or offices.....”

Further, Hellmann then picks on a straw man argument that no one, to my knowledge had actually ever raised before.

“But - it is said - is it possible that Rudy Guede, being known since he had sometimes visited the house, did not experience a psychological scruple in surreptitiously entering it because of such visits? The answer, however, is yes: the personality of Rudy Guede as

it emerges from the testimony of witnesses, does not show any particular respect for others. He not only, as already mentioned, had accrued experience as the perpetrator of thefts in buildings owned by others.....but time and again, in the street, above all when drunk, he had also bothered young women.....”

Now, I am by no means inclined to defend Guede, and perhaps he had burgled properties before, but surely it is perfectly obvious that all these aspersions cannot be entertained as both factual and relevant to whether the break in at the cottage was genuine or not? What is the relevance of Guede bothering young women when he was drunk? Surely undertaking such a precipitous and dangerous climb so as to break in to the cottage via Romanelli’s window would not best be accomplished when he was drunk?

What in fact we see, if we had not noticed it already, is that Hellmann feels justified in interpreting the evidence without any pretence that this needs be done by just being objective - that is, with plausible and logical inferences - but that he can throw into the mix his own subjective stereotypical character analysis which has, at its root, social and racial prejudice. Guede is black, an immigrant, only good at sport and a burglar, who bothers white women. Knox and Sollecito are white middle class young people, studious and clean living, yes, these “bravi” though, as we have already seen, there is much doubt as to that on closer examination. Curatolo was treated by Hellmann in much the same dismissive fashion, subjected to a class bias instead because, of course, he was white.

In truth Hellmann probably felt he had to resort to this objectionable approach, because his contention that the break-in was genuine, or that Guede was responsible for a simulation, is exceedingly weak and myopic, set against the evidence and argument to the contrary. The aforesaid was discussed at great length in Chapter 10.

Falsity of the Alibi.

“In truth the falsity of an alibi - under the hypothesis that it is actually false - could represent an indication, to be evaluated in the context of other and more significant indications, but certainly in itself it is not proof of guilt. Moreover a conviction for the crime of murder cannot constitute punishment for proposing a false alibi, as this can only be the arrival point of a proof of guilt beyond every reasonable doubt, whereas in fact proposing a false alibi could also find an explanation in the fear of being involved in the crime of murder by the sole fact of being at the house Via della Pergola, even without having participated in it.”

I am reminded of Hellmann’s comment, a little earlier, when he was discussing Knox’s accusation against Lumumba, that had Knox been in the cottage at the time of the murder, the easiest course of defence for her would have been to tell the police who really was responsible for the murder, as that would have made her more credible. It appears he does not regard that as having been a reasonable proposition now, at least from her point of view.

“...once the most important and relevant elements of evidence have failed, such as the results of the tests performed by the Scientific Police, the asserted falsity of the alibi proposed by the two present accused cannot of itself alone constitute a proof of their responsibility. In any case this court does not hold that their alibi is demonstrably false.”

It does not have to be demonstrably false, not for the whole period for which the alibi pertains. It is true, of course, that the burden of proof, to the extent that the prosecution are alleging the alibi to be false, lies with the prosecution. It can, however, be reasonably demonstrated by the prosecution that the alibi should not be taken to be reliable, given that it is contradicted in certain respects.

There is no need to rehearse those aspects. We considered this in some detail in Chapter 11. Let us consider how Hellmann attempts to undermine the point. We need not be reminded, though he does remind us, of the fact that Curatolo has been judged unreliable, and Quintavalle not so reliable, but we are then flannelled with further comforting considerations which, unfortunately are not, on analysis, what they seem.

“That the two of them dined before the time they indicated does not seem decisive, but in any case it is not proven that at 8:42 pm, when Raffaele Sollecito informed his father on the telephone that he had noticed that the sink was leaking while he was washing the dishes, the two had already dined. It could very well be that he was washing the dishes that had remained dirty from lunch before starting to have dinner, or it could have happened that some cutlery or dishes were being washed before dinner was actually finished..... The fact is that Raffaele Sollecito is not known to have said to his father that they had finished dinner, merely that he was with Amanda.”

Really? Well what about Knox’s testimony? Her timing was well out but she was clear as to the sequence of events We can recall she said - “We ate around 9.30 or 10, and then **after** we had eaten...well, he was washing the dishes.....and the water was coming out.....”, this testimony being in accordance with her e-mail when she wrote “I also needed to grab a mop because **after** dinner Raffaele had spilled a lot of water on the floor of his kitchen by accident and didn’t have a mop to clean it up”.

Furthermore, though irrelevant given Knox’s testimony, I seem to recall that Knox and Sollecito were supposed to have eaten at the girls’ flat at lunchtime. Yes, I am being picky, I know. Perhaps it was breakfast that was in need of washing up?

And then, if I may mix my metaphors, we have this positive gem of soft soap.

“In reality the trace of an interaction [on Sollecito’s computer] at 5.32 am is more surprising than the lack of interaction in the preceding hours, but this can be explained by Raffaele Sollecito waking up in the night without being noticed by the girl who was with him, and an impulse, on a night that was after all romantic (having spent it together with the beloved girl), to listen to music whilst waiting to fall asleep again. Anyway, it would be less understandable that a young man who was undoubtedly unaccustomed to crime, on the same night that he would have been involved in such a

serious crime (he, also, thus a victim of a dreadful tragedy, even if hypothetically guilty) would have had the desire and the heart to entertain himself, just hours after the tragedy, by listening to music at the computer as if nothing had happened.”

Now, perhaps Hellmann can be excused from not having an appreciation of the music that was being listened to for half an hour in the morning. We noted the play list in Chapter 11. A moment’s research on the internet reveals what that music was but, of course, such research was not for him to undertake. It certainly was not the romantic relaxing music he obviously had envisaged. What sort of music would one listen to after having been involved in such a brutal murder? Well, how about the music they were in fact listening to?

But in any event the fact that the mobile phones of Knox and Sollecito were turned off, or that there is no evidence that there was manual interaction with Sollecito’s computer, for the pertinent period when it is considered likely that Meredith was being attacked and killed, is not of itself suspicious, in Hellmann’s opinion, unless one factors in proof positive that both were at the cottage during that time. Otherwise what the Court of 1st Instance deemed to be suspicious, by virtue of absence of proof of an alibi, is anything but since it can be easily explained as two young people settling down to a romantic evening together, in respect of which they did not wish to be disturbed.

“The reality is that we are in the presence of circumstantial evidence which is ambiguous at best, and that in the interpretation given by the Court of 1st Instance, found a meaning indicative of the falsity of the alibi only because at that moment, it was being considered in the light of the genetic test being performed by the Scientific Police and held to be reliable. Thus, once that reliability failed, the aforementioned elements are now interpretable in an entirely different manner that is in agreement with the proposed alibi.”

Behaviour following the verification of the Murder.

Hellmann, with what can only be described as a cursory analysis of the phone records pertaining to the morning of the discovery of the murder, and excluding entirely witness testimony and Knox’s own account of their behaviour as contained in her e-mail and trial testimony, does not find anything suspicious or incriminating in them. We have devoted several pages to this aspect. Hellmann ignores much, focusing on just a few points from his limited choice of selection.

“It is not logical to deduce.....that the only purpose of the [first call at 12.07 pm] was to ensure that the cell phone had not been recovered, since, if on the contrary the cell phone had not been recovered it could be presumed that the ringing of the cell phone would facilitate it’s recovery (which is what in fact happened): this would have been the opposite result of the one desired, in the event that they had been guilty.”

It was Massei's inference that Knox had placed that call, a call which might, in itself, have had a perfectly innocent explanation, to ascertain whether or not the cell phone had been recovered, obviously nefarious, an inference drawn from a host of suspicious circumstances as we discussed previously, most of which, as I have said, received a pass from Hellmann.

As to a call, to Meredith's english phone, facilitating it's recovery with potentially adverse consequences, Hellmann would have a point unless Knox herself would have had reason to think otherwise, as the phones were disposed of late at night, cast away into the darkness, and Mrs Lana's garden, where the phones were found, is next to a steep gully of bracken and shrubs which most probably was the intended destination for both phones. In any event the timing of the call, and it's consequent discovery, would not be disadvantageous to her, being only an hour before the discovery of the body, as it might have been if made earlier. Hellmann does not explain how and why "the opposite result of the one desired" could be significant in that context.

Of course, for all we know, the phones might have been thrown away by Guede, in which case Knox would not have known where they were, in which case, were she guilty she would have had an interest in ascertaining that they had not been found or that Guede still had them in his possession.

As for the 112 call to the Carabinieri, Hellmann has the following points to make. He starts by misrepresenting Massei who, he incorrectly claims, had held that the call was before the arrival of the postal police. He then presupposes that the prosecution case is nothing more than an inconsequential contradiction between what Sollecito had actually told the Carabinieri (no burglary, glass broken, nothing stolen but blood and a flat mate missing who cannot be contacted) and what he had initially told the Postal Police on their arrival, that there had been a burglary (concern about a flatmate being omitted). Hellmann tries to waive this away as being unimportant, but if Sollecito had called the Carabinieri first then the subsequent omission with the postal police (as to Meredith's welfare) is important. Another concern is why Sollecito would have presumed to let it be known, both in the 112 call and as Romanelli's room was being inspected, that as far as he was concerned there had been nothing stolen despite it being, to all intent and purpose, and as the Postal Police had been told, a burglary. Given that Meredith's room was locked, why would he have presumed to know that nothing had been stolen from that room or, for that matter, from the mess in Romanelli's room? Given that in fact nothing had been stolen from the flat, how did he know that?

After what I can only describe as an extremely convoluted portrayal of the issue, as presented by the prosecution, according to Hellmann, he finds what he thinks should be regarded as an innocent explanation. The prosecution argument.....

"gives credit to individuals unqualified as legal experts in the terminological and conceptual skills typical of the former.....in fact, for those not legally skilled, the expression "there's been a burglary inside the residence" corresponds to a succinct

portrayal of the situation they had observed: “breaking into the residence by means of breaking a window pane, turning the room upside down.....” not having neither the ability nor the desire to begin debating the difference between mere trespassing, attempted theft or the actual commission of theft. What really mattered in that moment for those young people was, above all, to point out that the Carabinieri had been called.”

This passage would be unremarkable but for what I see as an element of obfuscation, given what we have already discussed, but Hellmann also arrives at a solution that begs a further question. Why would it really matter to these two defendants for the postal police officers to be told, at the very moment of their arrival, that the Carabinieri had already been called and that they were waiting for them? Hellmann does not explain his remark.

Concluding judgement.

“The Court of 1st Instance, in order to reconstruct the case brought before it, believed that it could put together matters of fact, held to be certain in themselves but each carrying a not entirely unambiguous significance, into a unified framework within which each of those elements could achieve a final clarification. And all of them, collectively, would become unambiguous, so as to give rise to proof of guilt. Now, however, “the bricks” themselves have vanished from that building : this is not only a question of a different relocation of those “bricks” so as to not permit the realisation of the planned architectural project, but rather a lack of material for it’s construction in the first place. And the absence of substantial evidence in the prosecution theory obviously does not allow this court to reach a guilty verdict beyond all reasonable doubt.”

Buildings and bricks are in fact rather useful metaphors to aid our understanding of the thinking of the Hellmann Appeal Court. Of what should these bricks be fashioned? Are they only to be examined if they are of a certain size and weight? And what of the mortar to hold them together? How many bricks did he ignore? How many did he fumble and drop?

There follows, as part of the concluding judgement, a discourse as to what Hellmann avers was what the prosecution held was the correct burden of proof with regard to the case, and Hellmann’s disagreement with the proposition. Reading this one would conclude that the prosecution entirely mismanaged their closing submissions. I rather think that is unlikely. What I think we see is Hellmann mismanaging the closing submissions by misrepresenting the prosecution’s position. The prosecution would surely have pointed out that a proven circumstantial case has to rest on findings that each of the elements in the prosecution’s case were more likely to be probable than not, and that each of the elements so found to be probable corroborate and are concordant with each other, in a manner that leaves no reasonable doubt, on the totality of the

evidence, as to the culpability of the accused. Hellmann, however, does not see the balance of probabilities as being the correct methodology pertaining to each and every one of the elements in the circumstantial case. For him, that is like arguing that all the prosecution has to do is demonstrate a case that, overall, is more probable than that offered by the defence. Rather, he avers, the certainty required in a juror's mind that there is no reasonable doubt, applies to all the elements, and none more so than when the evidence is based on a scientific result.

Indeed, we have seen him say so a number of times, and particularly with regard to the scientific evidence, but also in relation to the other elements where even any doubt is sufficient to render the element unreliable.

There is a distinction here between a broad approach to the evidence, which is not to exclude discounting an element of evidence in the prosecution's case where it is improbable, weighed against the alternative, and taking each element as a "brick" in the building.

In any event, for Hellmann, the DNA evidence as to the knife and the bra clasp are more than just a couple of bricks; they are supporting pillars without which there is no building.

We shall consider how courts, in several different jurisdictions, deal with circumstantial evidence in another chapter, and we shall find that there is a broad measure of agreement as to what is the correct approach, but with some differences as to what we might call "critical" evidence. We shall also see that Hellmann came in for criticism from Italy's Supreme Court, precisely on his methodology, when annulling the verdict from his appeal court.

Finally, it is to be observed that Knox had her conviction for calunnia increased from one year to three, and she was ordered to pay costs to Patrick Lumumba in the sum of 22,170 euros. Together with the costs of the trial in the sum of 40,000 euros and damages provisionally assessed, but immediately enforceable, in the sum of 10,000 euros, Knox now had judgement against her in the total sum of 72,170 euros. [A further 4,000 euros in costs was then added to that on her unsuccessful appeal to the Supreme Court.]

Reflections on the Hellmann Appeal and the C&V Report.

The contents of the Independent Experts' Report, and the testimony of those experts in court, clearly had a significant impact on the Appeal Court, whether by design, and whether as expected, or not. However, there were gaps in the assistance which the experts might have given the court, and perhaps this was excusable for lack of knowledge derived from appropriate research. For instance, the issue of contamination,

that is, tertiary transfer of DNA, clearly played a prominent part in the concerns expressed by the experts. It is not as if there was really any doubt that on the one hand the DNA profile of Meredith had been obtained from the sample lifted from the blade of the knife, and on the other, that Sollecito's DNA profile had been found mixed with that of Meredith, and perhaps an other, on the hooks of the bra clasp. The defence and independent experts, with some reluctance, and with caveats, acknowledged that. However, in their opinion, those results were still not reliable.

I have already mentioned that there was no research cited for DNA in ambient dust. Dust may contain fragments of DNA in the form of disparate alleles which, if quantifiable, would be at a very low level indeed. This would likely show up as "noise" in the electropherogram and usually be discounted in any interpretation. Ambient dust does not explain Sollecito's profile and even if there could be any validity to the hypothesis then, since dust is ubiquitous, the suspicion of at least a profile for him (or for, say, Knox, Romanelli or Mezzetti, for that matter) should have arisen on the other numerous items that were removed and tested for DNA, which was not the case. We are talking, it would seem, of a specific, isolated, tiny speck of dust carrying a complete profile of the autosomal and Y haplotype which just happened to float into Meredith's room and adhere to a metal hook. How likely is that? Not very likely even according to Hellmann.

Nor was there any research presented by these experts as to the ease, frequency, and likelihood of touch transfer, and with reference to the optimal conditions in which this is likely to occur, or for that matter the non-optimal conditions for such an occurrence. Nevertheless it would seem to be common sense that each time touch transfer occurs, the amount of the DNA containing substance being transferred, and hence the quantity of DNA available for analysis, will decrease. It is that premise which leads one to have concerns about LCN DNA; that the very fact that it is LCN DNA potentially means that the sample has arrived in its incriminatory location by means of repeated non-primary touch transfer. However it is by no means established that just because it is LCN DNA, it is there by non-primary touch transfer.

The LCN DNA with which we have to concern ourselves is exhibit 36B on the blade of the knife. We can only approach the issue as to whether this is touch transfer DNA by considering, on the balance of probabilities, whether it could be there by touch transfer. The objective data we have rules this out, and it is not the function of a court of law to indulge in wild speculation in defence of the accused.

Nor is it the function of an independent expert to speculate on laboratory contamination of the sample without some fact checking first, since the sort of information they are looking for is not necessarily to be found in the SAL cards relating to the specific analysis conducted. Such fact checking would not even be exclusively the remit of scientists, but is a matter to which any judge should give some consideration.

In my submission the C&V Report was poor, even amateurish, an aspect not diminished by the technical detail. Worse, it can be described as deliberately misleading in places. As

explained before, it did not fully comply with its remit either, leaving big holes in the data it should have provided to the appeal court, and a proper evaluation of it. I have little criticism of the actual laboratory analysis of the knife and bra clasp, nor can I express any criticism of the fact that they pointed to gaps in the data on the SAL cards, but C&V did not even attempt to bring any balance to their observations presaging their final conclusions. Had they done so then that at least would have required the judges, who, it seems, had jettisoned from their minds everything that they had ever read in the expert testimony introduced at the trial, to exercise their brain cells a bit.

Instead we are treated to, for instance, Hellmann's bizarre conclusion that with regard to the bra clasp, contamination had occurred by touch transfer "***even before its collection by the scientific police.***" Indeed, he points to the police as being responsible for this during their two visits to the cottage immediately after the forensic investigation had closed down on the 5th November. This, of course, has no foundation other than in speculation and it is contrary to the police testimony that they had not seen the bra clasp on either occasion. It was probably hidden under the small rug where it was, many days later, in fact found. But the sample taken from the hooks was not LCN DNA. It was over 5 nanograms (5.775), and even if Sollecito's contribution to the mix there, at its lowest, was in a ratio of 1 : 10 (according to Professor Tagliabracci for the defence) then his DNA was still not LCN. As a matter of simple arithmetic his proportion on a ratio of 1 : 10 means that the quantity of his DNA was over 577 picograms, well over the 200 picograms as the guideline below which we could, at that time, talk about LCN DNA. That lessens the suspicion that it was there as a consequence of non-primary touch transfer. As to the presence of another individual's DNA in the mix, and as it was male, it might have been from Meredith's boyfriend, Giacomo Silenzi. That would, presumably, be by primary transfer but perhaps degraded by washing and/or Meredith's own habitual manipulation of the hooks.

Hellmann made much of the non-repeatability of the DNA analysis, especially with regard to the knife. His one concession to an evaluation of such a requirement was to point out that with LCN DNA one often encountered the phenomenon of allele "drop out" and stutter. This is known to occur but it seems exceedingly unlikely that with a repeat amplification, from the original sample taken, there would be such a host of drop outs that one would no longer be confident of the initial profile interpretation.

Remember that of the 15 individualising loci that can be found, there was a precise match for 14 and a half, and the stochastic phenomena of stutter and noise was so low that no one could mistake this for an allele. No one ever argued, other than in the abstract, not even C&V, in the specific case of Exhibit 36, based on research or otherwise, that there would still not be an acceptable profile for Meredith Kercher even if the match was not as precise as the first due to the aforesaid phenomenon.

As I explain on Page 296 it would be highly improbable that would be the case. In fact all Hellmann has here is a hypothetical possibility which on evaluation is not plausible. Yet it is entirely on this basis that he adopts C&V's terminology and characterises the result

as “unreliable”. The 5th Chambers, in the final appeal, were to do exactly the same.

Furthermore, a point I amplify in Chapter 33, the unarguably clear profile is such that a repeat where the same identity could not be established, would have to lead to a conclusion that there had been laboratory contamination, which Hellmann does not argue, indeed which he rejects, and which no judge in the case had a reason for thinking possible, especially given the negative controls and that the knife was tested pursuant to the conditions required by Article 360 of the Italian Penal Code.

On the subject of bricks and mortar, and pillars, it becomes easier to deconstruct a building if one ignores much of the material that belonged there according to the prosecution’s case. I refer to the material in support of the themes behind the prosecution case which I dealt with at length in preceding Chapters on the trial. There is much there that gets a pass from Hellmann, or which is disingenuously evaluated, and when we come to look at the 5th Chambers annulment we will see that they also follow the same playbook. For instance, what about Knox’s blood on the washbasin faucet and her lamp on the floor, behind the locked door, in Meredith’s bedroom? What of the fairly easy inference one can make as to the removal of blood traces?

It is a bit rich to complain about a lack of bricks when one’s own edifice is constructed from a pack of cards. In reality Hellmann’s Motivation is all about (another metaphor) the flying of some very flimsy kites,. There is hardly any aspect of his Motivation which does not come apart or get blown down when countered by the actual evidence and the significant probability of inferences to the contrary to be drawn therefrom. He also displays an abject misunderstanding of how the law operates in cases built on circumstantial evidence.

Finally, the practical significance of the outcome was not so much the verdict but the fact that Knox was free and wasted no time in returning to the USA. This was not an advantage available to Sollecito but nevertheless he too probably benefited from Knox’s removal from the jurisdiction.

Hellmann retired from the judiciary six months after his court’s verdict having, he complained in an interview with the press, suffered a hostile reaction to it from his professional colleagues and having, he claimed, found that his prospects of advancement had been blocked. It is unclear what promotion within the judiciary he was expecting, and so soon.

CHAPTER 26

The Galati Appeal and Chieffi Annulment

In February 2012 the prosecution lodged an appeal against the acquittals with the Supreme Court. An appeal was also lodged on behalf of Knox against the confirmation of the conviction for calunnia. It would be over a year before the 1st Chambers of the Supreme Court delivered its judgement.

In the meantime, Knox and Sollecito could recuperate from their experiences and enjoy their freedom. Knox moved out of the family home to live on her own, attended Washington University to complete a creative writing course, and relaxed in the company of close friends, dating a young musician she had known before she left for Perugia. Sollecito enjoyed the comfort of his family, and their lifestyle, pursued his University course, and sought out a girlfriend.

Sollecito was also busy writing a book of memoirs and this was published in English in September 2012. Entitled "Honour Bound: My Journey to Hell and Back with Amanda Knox", it was ghost written by Andrew Gumbel, a British born author and journalist based in Los Angeles.

The book was an uncompromising rant at the Italian Justice System and within weeks a central claim was under scrutiny in Italy, where the book, wisely, was not in fact distributed. Sollecito claimed that back-channels, of which he had himself been unaware, had been established between Mignini and his father, through an intermediary close to Mignini, and that Mignini had offered a deal provided Sollecito testified as to Knox's involvement in the murder. When he had discovered this, he says, he had reacted with horror and refused to countenance the proposal. On an Italian current affairs TV programme, Porta a Porta, Sollecito's father, Francesco, was quizzed as to the claim and was forced to disclaim the allegation. With that a central tenet of the title to the book, "Honour Bound", began to topple.

It was also to suffer a further knock. Sollecito alleged in his book that he had not said anything to gainsay Knox's alibi, through him, that she had been with him all evening and night on the 1st/2nd November 2007 until, that is, he had been pressured and deceived by the police into signing a statement at 3.30 am in the morning of the 6th November at the Questura.

Knox was also busy on her own book of memoirs which was to be published in April the following year, shortly after the judgement handed down on appeal by the 1st Chambers. Before publication Raffaele and his father, on a visit to the States, stopped over in Seattle to visit the Knox/Mellas family. The media was rife with reported claims of a \$4

million advance for Knox's book. If Knox, and her family, had ever read Sollecito's book then it had not mattered to them that in her book Knox completely undermined Sollecito's claim about his 3.30 am statement.

We can now look at the Galati appeal.

I have referred to this as the Galati appeal although it was in fact prepared by Galati and the lead prosecutor at the Hellmann appeal, Costagliola. The appeal can, however, be considered to be, in the main, the work of Dr Giovanni Galati, who had only recently moved to Perugia, having until 2011 worked as a procurator general at the Supreme Court in Rome. He had therefore developed an expertise in handling legitimacy issues and had also dealt with several high profile cases.

It is important to recall, as was discussed in Chapter 21, that Italian jurisprudence places considerable emphasis on the reasons for a verdict having their own internal logical consistency and balance as well as having a relationship with all the evidence. In so far as a Motivation can be said to achieve this then there should be no doubt about the verdict, either way.

Appeals to the Supreme Court are governed by Article 606 of the Criminal procedure Code. The grounds for appeal, under paragraph 1 of the Article, are specified as follows:-

(a) if the judge has exercised a power that is reserved to the legislative body or an administrative organ under the constitution.

(b) if there has been an inobservance or erroneous application of the criminal law or other juridical rules which must be taken into account in the application of the criminal law.

© if there has been an inobservance of the procedural rules established on pain of nullity, of unusability, of inadmissibility or of decadence.

(d) if there has been a defective assumption resulting in non-disclosure of a decisive piece of evidence, when a party has asked for it, limited to an exculpatory fact.

(e) if there is defect, contradictoriness or manifest illogicality in the judgement reasoning, when the error results from the text of the provisioning appealed, or from other documents in the proceeding specifically noted in the reasons of encumberment.

Most appeals are founded on sub-paras (b) and (e), with (e) being the most common.

Galati's appeal was a general attack on Hellmann's Motivation, both as to its methodology, illogicality and incompleteness, but also with the aforesaid in mind, on a number of specific fronts.

The general criticism could be summarised as -

1. The appeal court had already exercised and expressed a bias about the case, a bias always in favour of the defence, manifest in the doubt that had been expressed, even before the evidentiary and submission stages had opened, as to any certainty pertaining to any fact (other than the death of Meredith Kercher) and which bias became evident in the procedural conduct of the case.
2. That Hellmann had fallen into errors of method and erroneous evaluation of acquired data; demonstrating inobservance of and mis-application of the law and procedural rules, pertaining, and in particular, to the Supreme Court's own jurisprudence concerning the probative weight of circumstantial evidence, both as to the individual elements, their linkage and as to the totality of the evidence, and as to what amounted to reasonable doubt. As to the erroneous evaluation, attention was also drawn to Hellmann's habit of positing the conclusion as a premise (the *petitio principii* fallacy, otherwise known as "begging the question" or the "boot straps" methodology of arriving at a conclusion) and in so doing ignoring the acquired data ("the fulfilment of the evidence") that could, and indeed would, invalidate the said reasoning.

Specifically, Galati linked these errors to the following steps and/or reasoning in the appeal hearing, in order to show that they were flawed in law -

1. The admission of the expert witness testimony (C&V)
2. The rejection of new expert witness testimony (re sample I from Exhibit 36)
3. On the rejection of further evidence from the witness Aviello
4. On the unreliability of the witness Quintavalle
5. On the unreliability of the witness Curatolo
6. On the Time of Death
7. On the genetic investigations
8. On the analysis of the prints and traces
9. On the presence of Knox and Sollecito at Via della Pergola
10. On the simulation of a break-in and burglary
11. On the definitive judgement re Guede.

It will not be necessary to follow the detailed argument he made in each case because, with the exception of the first, the referral to the Independent Experts, the Supreme Court agreed with the prosecution submissions.

We can now look, with selected quotes, though there is no need to cover all the above related topics, at the Motivation of the Supreme Court, via it's 1st Chambers panel presided over by Judge Chieffi, and following it's annulment of the Hellmann acquittals on the 25th March 2013. The sections in bold type are references to specific jurisprudence.

Generally -

“The body of evidence drawn up in two stages of judgement on the murder of the young English student is without a doubt circumstantial in nature; since no one directly saw or recorded it, there is no description of how the crime was carried out. That does not mean that so-called circumstantial evidence has less validity than direct evidence. What is noteworthy is the logical procedure through which, starting from certain premises, the existence of further facts is affirmed **“to the standard of rules of probability with reference to a possible, likely connection of events, whose sequence and recurrence can be verified according to the rules of common experience.”**

“Living law has devised strong evaluation guidelines which are in complete accordance on the subject of circumstantial evidence trials, which require the trial judge to carry out a twofold operation; first of all the trial judge must proceed with the evaluation of the circumstantial piece of evidence on its own, to establish its probative value, which is usually in terms of mere possibility, Then it is necessary to carry out a global examination of all the pieces of circumstantial evidence, in order to determine whether the margins of ambiguity, inevitably connected to each one (if demonstrative uncertainties were not present one would be dealing with outright proof), may be overcome **“with a unitary vision, so as to allow for the attribution of the illicit deed to the accused, even in the absence of direct proof of guilt, on the basis of a totality of facts which, fitting together among themselves without gaps or leaps of logic, necessarily lead to such an outcome as the strict consequential result.”**

“The purview of legitimacy of this court with respect to the logical procedure followed to arrive at the judgement of attribution of fact through the use of inferences or rules of experience consists of verifying whether the court judge has indicated the reasons for his conviction and whether these are plausible: the verification must be carried out in terms of ascertaining whether the judge took into consideration all the relevant information present in the court files, thus respecting the principle of completeness; whether the conclusions reached can be said to be consistent with the material received and prove themselves to be founded on inferential criteria and logical deductions that are beyond criticism from the perspective of respecting the principles of the non-contradiction and of the logical consistency of the reasoning.”

“It is according to these valuation parameters, in strict compliance with the route marked by legislation that does not allow digressions, that this court has conducted an examination of multiple profiles of violation that the Prosecutor General and the defences of the civil parties have advanced in the seat of recourse, coming to the firm conclusion that the contested judgement suffers from an incorrect processing of all available evidence, not coordinated properly, having drawn conclusions incompatible with the acquired data, in open violation of the principle of the completeness of the evaluation and the principle of non-contradiction, shown to have overlooked significant evidence that had been placed at the base of the evidential reasoning of the First Court, without adequate justifying arguments. In addition, the contested decision presents a fragmented and atomistic evaluation of the evidence, items considered one by one and

with their demonstrative potential then dismissed, without a broader and more complete evaluation, so that the fragmentation of the individual elements has chipped away at the value and depth of the whole, such that there inevitably follows a disjointed scrutiny of their necessary synthesis, ignoring the value that the pieces of the mosaic take when evaluated synergistically.”

Specifically -

1. The simulation of a break-in and burglary.

“The Appeal Court decision on the point is in patent collision with objective data contained in the acts of the process, rejecting an interest in simulation and being already deficient in terms of logic. The reference to the personality of Rudy Guede and the fact that he was accustomed to commit crimes of trespass and had also accumulated experience to climb walls of three metres and a half to launch from the ground, late at night, using stones of 10 pounds to break window panes, certainly can not be considered to reinforce the weakness of the method used, since these are really conjectural driftings, without dignity in a discourse of justification duly anchored to all the objective evidence that emerged in the process, coordinated with each other in an excursus lineare, with no falls. The argument below shows the multiple factures in logic: even if it were assumed that the thief had made the first ascent to open the shutters just pushed together and then still in the dark was back on the mound to throw the stone.....data with a demonstrative attitude listed in the judgement of first instance cannot be neglected: lack of shards on the outside, the difficulty of access to the interior for the thief in the presence of fragments on the sill, failure to alarm the young woman Meredith from the noisy launch of a stone of four kilograms, and the presence of numerous shards over the clothing. Such junctions in the argumentative discourse have been completely neglected. Instead the personality of Guede, which could not form a solid inferential base, has been pivotal in the reasoning of the Court of Appeal.”

2. The Testimony of Curatolo.

“The method of analysis of the testimony, as detected by the petitioning Prosecutor General, is absolutely reprehensible, a manifest failure of a thorough examination of the data and circumstances.....the claim, according to which the sighting of the two young people by the witness went back to October the 31st, because it was suited to the context, rather than the next day, as previous to the arrival of the forensic scientists, but taken out of context, is a manifestly illogical statement, not only because it conflicts with the data which substantiates unequivocally the distance of the two from the square on the evening of the 31st October, and then the inability to make square the circle in the way suggested, but because it fulfils the rules of inference with absolute weakness. The Court of Appeal, after hearing the witness in renewed testimony, and after hearing that he had confused Halloween with the 1st or 2nd November, nevertheless heard the witness re-iterate its timing was anchored to what he described as actors all dressed in white that afternoon, the day after his sighting of the two young people; the court nevertheless concluded that the testimony could not be accepted, due to the decay of

the mental faculties of the man, accustomed to heroin and his modus vivendi, being held in custody at the time of his second deposition, for drug trafficking.”

3. The Testimony of Quintavalle.

“.....the inference used by the judges of the Court of Appeal.....that the claim that Knox had shown up in the early morning to buy detergents, the day after the act of violence, even if established, was not of any significance.....[is illogical].....On this point it is worth noting that not only the reality, once established, would have destroyed the negative alibi (as regards the alleged continuous presence of Knox in Sollecito’s home from the previous evening until ten o’clock the next morning), but it would have attested to the need for urgent cleaning in the early hours of the morning, on it’s own absolutely without significance, but of a different impact in an integrated assessment of the integrated pieces of the puzzle, since plausibly connected to an urgent need for elimination of traces on clothing, given the time when the purchase would have taken place. But what is more serious is that the information has been completely misrepresented: in fact, the Court has based its assessment on the distance of the testimony from the event, stating that the witness provided the information at a distance of one year, spending all this time convincing himself of the accuracy of his perception and of his identification of Knox with the young woman who he had seen the morning after the murder: and therefore wondering how the memory of Quintavalle, not unequivocal at the time of the offence, such that he had not been able to provide clear guidance to investigators in the immediate aftermath, become consolidated with the passage of time, given that he had reported seeing the girl only in passing, in the corner of his eye and not full on. In fact, the receipt of information from the witness, as maintained by the Prosecutor General, is absolutely biased, since the view from the corner of the eye was referring to when the girl came out of the shop, while the witness pointed out that he saw the young woman at close range (70-80 cm.), that the memory was imprinted in the mind "from her clear blue eyes" to her "very white face", and to her "very tired expression." Not only that, but the witness had clarified in the course of his testimony, that he was convinced of the identity of the girl shown in the newspapers with the one who appeared to him in the early morning Nov. 2, 2007, seeing that the colour of the eyes was not shown in the photo, but it had acquired certainty, once he had seen the girl directly in the courtroom. The selection made from the pool of information was absolutely biased, which distorted the evidence to make it appear uncertain, whereas the witness explained the reasons for his perplexity and the evolution of his belief to the point of certainty.”

“As is noticed by the Prosecutor General, this portion of the Report assumed relevance within the framework of the reconstruction and required an explanation based on an examination of the entire testimony ; instead through a process of unacceptable selection , only some of the testimony was considered to be of value, indeed only that portion considered to be consistent with a conclusion, one that in fact required rigorous demonstration. The result is one that is, again, blatantly and manifestly illogical. What is at issue is not a re-evaluation of the evidence - which is obviously prohibited - but rather the need to point out a glaringly evident flaw that consists in an intolerable

chasm between what is stated by the witness and what is acknowledged in the justifying arguments, on a point of significant importance, since it concerns the foundation of the alibi.”

4. Failure to evaluate the content of the Final Judgement against Rudy Guede.

“The observation of the Prosecutor General on the violation of Article 238 of the Criminal procedure Code is correct; the Hellmann Appeal Court, even though it admitted as evidence the definitive judgement pronounced by this court against Rudy Guede, after having correctly stated in advance that the judgement was not binding, completely ignored it’s content, also neutralizing it’s undeniable value as circumstantial evidence, on the presupposition that it stood out as a particularly weak element, since the judgement against Guede was based on the documentation at the state of the proceedings, without the benefit of the information acquired after the renewed investigative proceedings put in place by the appeal. In reality the court was not authorised at all, for this reason alone, to ignore the content of the definitive judgement which - even if relevant only to the position of Guede, and pronounced as the outcome of an abbreviated trial procedure - reached the conclusion that the accused was guilty of murder “in complicity with others”.

5. Appointing new genetic experts to report and rejecting the request for a report on the analysis of Sample 36I.

“Apart from the inadequacy of the grounds, this court cannot censure the decision to proceed with a new expert opinion which, however, even aside from the unfortunate rationale adopted, reveals the uncertainty of the judges regarding previous results - as they held the evidence to be incomplete - and thus also regarding the necessity of a decision in favour of a new acquisition, which cannot be questioned on the grounds of legitimacy. Having said this, it must be added that what certainly must be censured is the management of the mandate conferred on the chosen experts”

“A third trace [36I] was not submitted for genetic analysis due to a decision made unilaterally by one of the experts, Professor Vecchiotti, without written authorisation from the court, which had, in fact, precisely charged her with the task of attributing the DNA found on the knife and the bra clasp because (the previous traces) were deemed to be of insufficient quality to yield a reliable result, being low copy number. Her decision was later approved by the Court of Appeal on the assumption that the new quantity was also too small to permit the two amplifications permitted needed to ensure reliability as to the result.....All in all the modus operandi of the Appeal Court which, unacceptably delegating it’s own function, entrusted to the unquestioned evaluation of the expert the decision of whether or not to submit the new trace for analysis, is open to understandable and justifiable censure, considering that the test requested should have been done, lying, as it did, within the scope of the experts’ mission, subject to a discussion of the results if they were not deemed reliable.”

6. Genetic Investigations.

“Similarly well founded is the objection raised on the fact that the Appeal Court passively accepted the assertions of the experts of a vague inadequacy of the investigations carried out by the Scientific Police. The experts did not redo these tests because they deemed the two samples from the knife and the bra clasp inadequate for obtaining a genetic profile, and also because it could not be ruled out that the result that was obtained could have derived from “contamination phenomena occurring in any phase of the sampling and/or manipulation and/or the analyses carried out.””

“From page 75 to page 85 the court reiterated the considerations expressed in the experts’ report, which in truth were the subject of severe disagreement by professors Novelli and Torricelli...whose authority was completely ignored. Prof. Novelli did agree with the fact that there are protocols and recommendations but added that above all the technician’s competence and common sense must come into play, otherwise every DNA analysis from 1986 onwards could be called into question. Not only that but he added that taking Sollecito’s alleles from trace 165B and making a statistical analysis, one finds a probability of one in three billion, meaning that there is one person in every three billion compatible with that profile. Also, Prof. Torricelli, who participated as a reviewer in the preparation of the guidelines invoked by the experts, clarified that it is permissible to depart from guidelines out of necessity on a case-by- case basis. She also gave precise arguments underlining the fact that on the bra clasp (trace 165B) the important factor was the Y haplotype, which was very clear in all its 17 loci.”

“These observations, made by experts with the same amount of expertise as the ones who wrote the expert report, were not even quoted in the Appeal Court’s Motivation, let alone dealt with, in view of their undisputable evidentiary importance, a *modus operandi* that demonstrates an unacceptable incompleteness in the evaluation, which affects the correct application of the rules for interpreting evidence. On this point it should be recalled that on the subject of examining the statement of reasons, a judge who decides to adhere to the conclusions of a court appointed expert against the opinions of the consultants of the parties is not bound to provide an autonomous demonstration of the scientific validity of the former and the error of the latter; it is enough for the judge to demonstrate that he has not ignored the opinions of the consultants, especially when they are in irredeemable disagreement, and are stated by reputed experts with a level of expertise at least equal to that of the court appointed experts.”

“Even more surprising was to accept, without any critical thinking, the thesis of the court appointed experts on the “possible” contamination of the samples, a thesis which is completely disconnected from any scientific basis suitable to adequately justify it in concrete terms. The unproven hypothesis of contamination was taken as an axiom, once again despite the available information, to nullify the probative value of the data collected by the consultants as per Article 360 of the Criminal Procedure Code, although the data acquired did not support this conclusion.”

“Laboratory contamination was also excluded by these experts. Prof. Novelli said that the origin or vehicle of any contamination must be demonstrated: he added that at the

Scientific Police laboratory he had seen the 255 samples extracted, had analysed all the profiles, and had not found any evidence of contamination; he ruled out in an absolutely convincing manner that a contamination agent could be present intermittently, or that DNA could remain suspended, and later fall down in a specific place. Dr Stefanoni (the technical consultant who wrote the report as per Article 360 (CCP), who was also heard in the appeal trial, reiterated that there was no evidence of any contamination: the analyses on the knife had been carried out a full 6 days after the last previously tested DNA trace of the victim; the investigations had been at a standstill for 6 days, as proven in the SAL records (at first wrongly indicated as unavailable), a lapse of time that even the expert Vecchiotti deemed sufficient to avoid lab contamination. In particular, regarding Sollecito, the saliva swab was extracted and tested on 6 November 2007, sample 165B was extracted on 29 December 2007; another profile related to Sollecito's shoe was on 17 December 2007.

From 17 December 2007 to 29 December, there were 12 days in which no trace from Sollecito was analysed. Sollecito's DNA was never found alone [at the crime scene], as the only trace of his that was collected and analysed was the one on the cigarette stub found in the ashtray of the kitchen in Knox's flat, mixed with Knox's DNA. Thus, even if perchance we wanted to assume that DNA had migrated from the kitchen to the room of the young Englishwoman, we would also have had to find Knox's DNA on the bra clasp. Nor could it be stated, as it was, that in the lapse of time between the first and second inspections of the crime scene, which were more than 40 days apart, "everyone had run about", since the flat had been sealed and nobody had had the opportunity to enter, as shown in the case file."

"The Hellmann Court of Appeal accepted the thesis of probable contamination proposed by the court appointed experts, based on their claim that "everything is possible", which precisely because of its generality is not a usable argument, leading again to an error that is both logical and legal in nature. The vehicle of contamination would have had to be identified in order to be used to weaken the facts offered by the technical consultant; it was not sufficient to make a hypothesis about insufficient professionalism of the technicians involved in the sampling, above all in a situation in which any laboratory contamination - i.e. the type of contamination which is easier to demonstrate and more common - was mathematically excluded, since all the negative controls to exclude it had been done by Dr Stefanoni, controls which the court appointed experts, a bit too superficially, considered to be lacking, simply because they were not attached to the consultancy report."

"As stated by the parties submitting the appeal, the judicial reasoning did not take into account the authoritative opinions disagreeing on the subject of the presence of contamination agents, and no adequate explanation was given on how the assumption [of contamination] could concern only a few traces (precisely the most burdensome ones from the point of view of the Defence) and not others. But above all, it was founded on the wrong belief that it was for the prosecution to prove the absence of contamination, whereas the probative facts revealed by the technical consultant

[Stefanoni] were based on investigative activities that were adequately documented : sampling activity performed under the very eyes of the consultants of the parties, who raised no objection, and laboratory activity in an uncontaminated environment, activities which were carried out using methodologies already tested, whose results could certainly be challenged as to their probative value, but not for the preliminary technical activities executed in the technical debate phase, from which it appears that no criticism was expressed at the time, but only later (the first instance opinion dwelled at length on this point [See Chapter 25] with a wealth of arguments that were only partially adequately refuted; the observations made by Dr Stefanoni to the Court of Appeal in the hearing of 6 September 2011 were just as important). This situation was such as to validate a correctness of procedure which inevitably placed the burden of identifying and demonstrating the contaminating factor on the person maintaining its existence, since it cannot be acceptable that the outcome of a scientific investigation could be made invalid on the basis of a “falsificationist” approach based on hypothetical theories of contamination of the sample, as with this opinion every laboratory result could easily be attacked and deprived of probative value. The principle which must be followed, as mentioned by the public party submitting the appeal, is the “onus probandi incumbit ei qui dicit, non ei qui negat” [“the burden of proof lies upon the one who asserts, not the one who denies”]. Therefore, by the nature of things, the refutation of the scientific proof would have had to be accomplished by a demonstration of the concrete and specific factual circumstances establishing the claimed contamination.”

7. Analysis of footprints and other traces.

In this section, to be fair, I find errors of fact and interpretation, which no doubt the reader will also notice. I will, accordingly, point these out.

“The [appeal] court evaluated two technical consultancies on the footprint in the victim’s blood left by a bare foot on the bathmat of the small bathroom of the flat where the crime was committed, with [identification] capacity limited to negative comparisons. As a matter of evaluation, this in itself is not subject to censure, however the court has again fallen into [the error of making] a statement in open contradiction with the available evidence, ending by attributing the contested footprint to Guede, by making an assumption contrary to all the evidence that “after having left a print on the pillow”, he slipped out of his right shoe “in the course of the violent aggressive manoeuvres to which he subjected Ms Kercher” and stained his foot with blood, which he supposedly then washed in the small bathroom, since if it had not happened this way, his right shoe would have also left some bloody traces in the corridor. Not only is this assumption deeply implausible, considering that the print left by Guede on the pillow was made by his hand, which is easily explained by the dynamics of the event, but it is much harder to explain how he might have lost his shoe, given a situation in which Guede, jointly with others, as stated in the verdict that convicted him, overpowered the young Englishwoman so as to immobilise her. Not only that, but the above assumption also clashes with the available evidence regarding the bloody shoe prints which indicate

that he left the room where the crime was committed to proceed directly to the exit door of the flat. The fact that only the left shoe was stained does not signify that his right foot was unshod, since at most it proves that only his right (sic) shoe stepped in the pool of blood which formed due to the numerous wounds inflicted on the unfortunate victim, very probably with two knives.”

There was, of course, a palm print, in blood, left by Guede on the pillowcase, but it is also true that there was also a print, presumed to have been made in blood, of the bottom of a right Outbreak Nike 2 size 11 shoe, on the pillowcase, which is to what Hellmann was presumably referring. However, what the connection was supposed to be between this fact and Guede losing this shoe in a struggle, was not clarified by Hellmann. We did, of course, discuss the ramifications of this, and other related matters, in Chapter 14.

“Just as deficient is the logic adopted in a further step of the statement of reasons, relating to the discovery of the presence of traces revealed by luminol (not visible to the naked eye), which yielded Knox’s profile and the mixed profiles of Knox and Kercher, found in Romanelli’s room, in Knox’s room and in the corridor. These traces could not be attributed to footprints left on other occasions, as the appeal court implausibly accepted [them to be], since luminol reveals traces of blood and it is not really conceivable that Knox’s feet might have been stained with Kercher’s blood on some other occasion.”

Luminol is also susceptible to false positives with substances other than the red cells in blood. The subject was discussed in depth in Chapter 16.

“As pointed out by the party submitting the appeal, no justification is given for the coincidence of the presence of Knox’s DNA in every trace mixed with the blood of the victim....”

N.B - there were no scientifically validated instances of blood outside of Meredith’s room, other than the obvious visual traces in the small bathroom, and shoeprints in the corridor, or spots there and in the kitchen - and it was only in the visual traces sampled from the washbasin, bidet and cotton bud box that the DNA of Knox was found; her DNA was not found in the visual trace of blood on the light switch.

“.....whereas the hypothesis formulated by the judgment of first degree is much more plausible: it emphasized the mixed nature of the traces (including those found in the small bathroom) which, via adequate inductive logic, led to the conclusion that with feet washed of the victim’s blood but still bearing some residue, Knox went into her own room and Romanelli’s room passing through the corridor during the staging operation as assumed in the initial reconstruction, which is based on the objective fact that only after midnight did the victim’s telephones stop connecting to the cell tower of via della Pergola and connect instead with the one on via Sperandio, where they were eventually found; this meant that only after midnight were they removed by unknown hands from the flat in via della Pergola.”

It does not, of course, follow that only after midnight were the phones removed from the cottage. We should also recall that technical evidence was given for the defence to show that the calls on Meredith's phone at around 10 pm on the night she died could have been made outside the cottage and, specifically, from the area known as St. Angelo Park, which was covered by the same cell tower as covered the cottage.

"While according to the prosecution's hypothesis, the mixed traces found in the small bathroom suggested a cleaning activity by Knox, who transferred the victim's blood from the crime room to various points in the small bathroom (on the sink faucet,

[ahem I think Chieffi means in the washbasin rather than on the faucet]

on the cotton swabs box, the toilet seat, the bidet, the light switch, the bathroom door) where the traces were collected, the Court of Appeal entrenched itself behind a position of absolute certainty, without acknowledging what the First Instance Court had observed in disagreement with the defence arguments espoused by the Court of Appeal, which decided, in essence, that if the two defendants had remained in the flat of Via della Pergola to clean themselves up from the victim's blood traces, thus functioning as vehicles carrying blood to the small bathroom, then some trace of Sollecito would have been found, whereas in response to this objection the First Instance Court plausibly noted that Sollecito could have washed himself in the shower stall with an abundance of water, so as to eliminate traces, perhaps without even any rubbing, leaving to Knox the task of cleaning the sink and bidet with the traces of the victim's blood. The alternative explanation offered in the first instance judgment to the Defence's objections was not taken into consideration, and thus the Hellmann Court of Appeal fell into another error of reasoning, having neglected various circumstances which, in the course of their analysis, they should have examined and if necessary refuted with more weighty arguments."

"In conclusion, the challenged judgment must be annulled due to the numerous deficiencies, contradictions and manifest lack of logic indicated above. Using the broadest faculty of evaluation, the remanded judge will have to remedy the flaws in argumentation by conducting a uniform and global analysis of the evidence, through which it will have to be ascertained whether the relative ambiguity of each piece of evidence can be resolved, as each piece of evidence sums up and integrates with the others in the overall assessment."

"The outcome of such an organic evaluation will be decisive, not only to demonstrate the presence of the two defendants at the crime scene, but also possibly to clarify the subjective role of the people who committed this murder with Guede, against a range of possible scenarios, going from an original plan to kill to a change in the plan which was initially aimed only at involving the young English girl in a sexual game against her will

to an act with the sole intention of forcing her into a wild group erotic game which violently took another course, getting out of control.”

The Chieffi Report was to be viewed by proponents for the innocence of Knox and Sollecito as being too harsh, pronouncing on the merit, and almost inviting the remand appeal court in Florence to convict, whereas it should, they said, have been limited to discussing only those procedural irregularities and illegalities which might have prejudiced the prosecution in the appeal. Above all it came as a surprise to some that the prosecution could mount such an appeal as this. However this is a logical, and indeed perfectly fair, consequence of a system which requires the reasons for every verdict to be explained in detail and made public. Everything is governed by the provisions of the Italian Criminal Procedure Code. It is certainly true that the 1st Chambers retraced much of the evidence and inferences (and making some mistakes here) that worked for the prosecution during the trial, but even if it sometimes appeared that it did so without bothering to disguise its own preference, nevertheless it was making a valid point, highlighting as it did, the incompleteness, illogicality, and partiality of the Court of Appeal's own, and now annulled, reasoning.

The Supreme Court dismissed Knox's appeal against the conviction for calunnia and specifically requested that the remanded appeal in Florence examine whether there would be a teleological link between the calunnia and a conviction, if any, for murder.

Being the last unsuccessful step in the appeal process for the conviction for calunnia, that conviction became definitive.

CHAPTER 27

Reaction in America and in Italy

Whether the Hellmann annulment was a boost or otherwise to sales of Knox's book, "Waiting to be Heard", is difficult to know, but it was not in any event a bestseller. The book was published on the 30th April 2013, just over a month after the annulment, with Knox appearing the same day on ABC News, in a pre-recorded interview with Diane Sawyer. Being asked, for a change, some tough and direct questions for the first time on American TV was no doubt a daunting experience for her, and although reactions differed according to one's take on the case, my own take, for what it is worth, is that it was not a convincing success.

DS : "Did you kill Meredith Kercher?"

AK : [with a fleeting ghost of a smile at the corner of her mouth] "No"

DS : "Were you there that night?"

AK : [eyebrows raised] "No" [followed immediately by an involuntary nod of the head]

DS : "Do you know anything that you have not told police, that you have not said in this book, do you know anything?"

AK : "No, I don't" [She breaks her rigid eye contact with Sawyer for the first time, and looks into the distance for a moment, with a slight shake of the head. She then resumes eye contact with Sawyer]

"I wasn't there"

DS : "You're recorded as saying "How could she not [have suffered]she got her f.....throat slit"

AK : [nods] "Yup. I was angry. I was pacing...thinking about what Meredith was....[Knox corrects herself immediately]...must have been through."

DS : "Sorry about that now?"

AK : "I wish I could have been more mature about it ...yup."

On the 2nd May she was on TV again with her parents and sister, on Good Morning America, exuding a general feel good factor and without even a mention of the annulment.

She may have been heartened by certain topics, reassuring but perhaps misleading, being discussed in the media in relation to her case at the time. After all she had no intention of returning to attend the fresh appeal in Florence - and indeed was under no obligation to do so - but even if she and Sollecito were to have their convictions at the trial confirmed on appeal, there would still be a fight on to force her to return to prison in Italy. That would involve extradition proceedings. The media, with the assistance of her supporters, made much of "double jeopardy" in the event of her being "retried after an acquittal and being found guilty again".

Double jeopardy is, of course, a concept that exists in Italy too, but, as we have seen, in

Italy a criminal trial is a three step process, and a guilty verdict, or an acquittal, is not a definitive decision until all the permitted appeals have been exhausted and the Supreme Court has confirmed the final verdict. Double jeopardy therefore did not apply, but perhaps with increased media and public pressure an American judge - even the American and Italian governments - might be persuaded to think differently. For now, however, extradition proceedings were not on the cards until, and only if, she lost the appeal in Florence and then again her final appeal to the Supreme Court.

There were even elements of the media in Italy which could be relied upon to stoke anti-establishment feelings over the case and off the back of Knox's book. Here is an article from the popular Italian magazine Oggi after having been sent a review copy of Knox's book, published on the 12th May 2013 -

AMANDA KNOX : The American Girl's Sensational Story

"Chilling. No other adjective comes to mind after having read *Waiting to be Heard*, finally released in the United States. An extremely detailed and very serious charge against the police and magistrates who conducted the investigation into the murder of Meredith Kercher.

Immediately after the crime, Amanda recounts, and for entire days and nights, they had interrogated the American girl and placed her under pressure to make her confess to a non-existent truth, without officially investigating her, denying her the assistance of a lawyer, telling her lies, even prohibiting her from going to the bathroom and giving her smacks so as to make her sign a confession clearly extorted with something similar to torture.

And now the situation is very simple. There are only two choices: either Amanda is writing lies, and as a consequence the police officers and magistrates are going to have to sue for defamation; or else she is telling the truth, and so they are going to have to go, not without being sanctioned by the CSM [the magistrates governing body] and the top brass of the police. The third possibility, which is to pretend that nothing has happened, would be shameful for the credibility of our judicial system.

Amanda Knox has written her *Waiting to be Heard* memoir with the sense of revulsion and of relief of someone who has escaped by a hair's breadth from a legal disaster, but has got her sums wrong. The Supreme Court has decided that the appeal has to be redone and the hearings should be commencing in October before the Florence appeal court.

In a US Today interview, Ms Knox has not excluded the possibility of returning to Italy to face this battle too, but it would be suicidal decision; it's likely the appeal will result in a conviction, and the Seattle girl will end up in a black hole in which she has already spent 1,427 days. We have read a review copy. And we were dumbfounded. *Waiting to be Heard* is a diary which has the frenetic pace of a thriller, written in a dry prose (behind the scenes is the hand of Linda Kulman, a journalist at the Huffington Post),

even “promoted” by Michiko Kakutani, long time literary critic at the New York Times.....

Devour the first 14 chapters and ask yourself; is it possible that the police and Italian justice work with such incompetence, ferocity and disdain for the truth? You place yourself in her situation and you scare yourself: if it happened to me?

Because in reading it you discover that in the four days following the discovery of Meredith Kercher’s body, Amanda was interrogated continuously, and without the least of procedural guarantees.

She changes status from witness to suspect without being aware of it. *“No one had told me my rights, no one had told me that I could remain silent”*, she writes. When she asked if she had the right to a lawyer the Public Prosecutor, Giuliano Mignini, had responded like this: *“No, no, that will only worsen things: it would mean that you don’t want to help us.”* Thus, the Public Prosecutor, Giuliano Mignini.

For a long period of time Ms Knox, who at the time spoke and understood hardly any Italian at all, mistook him for the Mayor of Perugia, come to the police station to help her.

Then, with the passage of time and of the pages, the assessment changes: Mignini is a prosecutor *“with a bizarre past”*, investigated for abuse of office.....and with the hunger to fabricate *“strange stories to solve his cases.”*

Mignini *“is a madman who considers his career more important than my liberty or the truth about the killing of Meredith Kercher.”*

On the phone the Perugian prosecutor reacts with aplomb. *“First I will read the book and then I will consider it. Certainly, if it calls me mad, or worse, I think I will file suit.”*

However, the Oggi article was a fair reflection of the public relations push gearing up again on behalf of Amanda Knox back in her own country.

Back in the States, and back on the issue of double jeopardy and extradition again, Alan Dershowitz, renowned Harvard Professor of Law, and famous for his involvement as a defence attorney in the O.J Simpson trial, penned the following words on the subject -

“Ms Knox would likely challenge any extradition request on the ground that she was already acquitted by the lower appellate court, so any subsequent conviction would constitute double jeopardy.”

That is when the real legal complexities would kick in, because Italian and American law are quite different and both will be applicable in this trans-national case involving a

citizen of one country charged with killing a citizen of another country, in yet a third country.

America's extradition treaty with Italy prohibits the US from extraditing someone who has been "acquitted", which under American law generally means acquitted by a jury at trial. But Ms Knox was acquitted by an appeals court after having been found guilty at trial. So would her circumstances constitute double jeopardy under American law?

That is uncertain because appellate courts in the US do not re-try cases and render acquittals (they judge whether lower courts made mistakes of law, not fact). Ms Knox's own Italian lawyer has acknowledged that her appellate "acquittal" would not constitute double jeopardy under Italian law since it was not a final judgement - it was subject to further appeal, which has resulted in a reversal of the acquittal. This argument will probably carry considerable weight with US authorities, likely yielding the conclusion that her extradition would not violate the treaty. **Still, a sympathetic US State Department or judge might find that her appellate acquittal was final enough to preclude her extradition on the ground of double jeopardy."**

In addition, would Italy have to argue "probable cause" in any extradition request? Could American courts re-examine the case against her?

The answers, of course, are to be found in the 1984 Extradition Treaty between the USA and Italy.

Article I states -

The Contracting Parties agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities of the Requesting Party have charged with or found guilty of an extraditable offence." (an offence shall be an extraditable offence only if it is punishable under the laws of both Contracting Parties by deprivation of liberty for a period of more than one year..)

(There are other circumstances under the treaty when extradition will not be granted, but these do not apply to Knox. They concern political and military offences.)

Article VI states -

Extradition shall not be granted when the person sought has been convicted, acquitted or pardoned, or has served the sentence imposed, by the Requested Party for the same acts for which extradition is requested.

No double jeopardy there. The Requested Party, in the case of a request for extradition from Italy, would of course be the United States. Clearly this would be no bar to extradition as there had been no judicial process against Knox in the USA regarding the murder of Meredith Kercher.

Article X deals with what is required -

1. Requests for extradition shall be made through the diplomatic channel
2. All requests for extradition shall be accompanied by[various documents]
3. A request for extradition in relation to a person **who has not yet been convicted** shall also be accompanied by:
 - (a) a certified copy of the arrest warrant or any order having similar effect;
 - (b) a summary of the facts of the case, of the relevant evidence and of the conclusions reached, providing a reasonable basis to believe that the person sought committed the offence for which extradition is requested..... [probable cause, in other words]

© documents establishing that the person sought is the person to whom the arrest warrant or similar order relates.
4. A request for extradition which relates to a person **who has been convicted** shall, in addition to those items set forth in paragraph 2, be accompanied by:
 - (a) a copy of the judgement of conviction
 - (b) if the penalty has been pronounced, a copy of the sentence and a statement of the duration of the penalty to be served; and

© documents establishing that the person sought is the person convicted.

A request for extradition in Knox's case would, of course, have followed the process under Article X para 4 - which requires no element of probable cause.

The 1984 Extradition Treaty recognizes (as do all such treaties) the validity and fairness of the contracting parties' respective judicial systems. Such treaties would not be possible otherwise. The USA has already extradited its citizens (when it had to) to countries where, as here, an appeal acquittal has been overturned on further appeal, and the original conviction has been re-instated. This is in recognition of the fact that in some systems the State has a right of appeal as well as the accused.

And finally, there is no limit to the number of times that a request for extradition can be made.

In the event, of course, there was to be no extradition request, but it is surprising how many talking heads proffered their opinions on the subject, including a Harvard Professor of Law, without having read or understood the provisions of the treaty.

CHAPTER 28

The Florence Appeal Court

The appeal commenced on the 30th September, presided over by Judge Alessandro Nencini. Mignini had no part in the case. The prosecution was headed by Alessandro Crini.

Raffaele Sollecito was present to make a brief statement at the outset. Amanda Knox did not attend at all, but instead sent a lengthy e-mail to her lawyers for them to read out in court. A translation of this was handed by Luciano Ghirga to Nencini who, with some annoyance, read it out aloud and with some rapidity.

Knox's statement is rather too long to reproduce in its entirety. However it would also be unfair to pass it by. It has 34 numbered paragraphs, and the following is a selection from some of them -

1. I have no doubt that my lawyers have explained and demonstrated the important facts of this case that prove my innocence and discredit the unjustified accusations of the prosecution and civil parties. I seek not to supplant their work, but rather, because I am not present to take part in the current phase of the judicial process, I feel compelled to share my own perspective as a six-year-long defendant and victim of injustice.

3. I am not a murderer. I am not a rapist. I am not a thief, or a plotter or an instigator. I did not kill Meredith or take part in her murder or have any prior or special knowledge of what occurred that night. I was not there and had nothing to do with it.

4. I am not present in the courtroom because I am afraid. I am afraid that the prosecution's vehemence will leave an impression on you, that their smoke and mirrors will blind you. I am afraid of the universal problem of wrongful conviction.

5. My life being on the line and having with others already suffered too much, I've attentively followed this process and gleaned the following facts that have emerged from the development of this case that I beg you not to dismiss when making your judgement.

6. No physical evidence places me in Meredith's bedroom, the scene of the crime, because I was not there and didn't take part in the crime.

8. The prosecution has failed to explain how I could have participated in the aggression and murder.....without leaving any genetic trace of myself. That is because it is impossible.....

9. My interrogation was illegal and produced a false “confession” that demonstrated my non-knowledge of the crime.....

10. My behaviour after the discovery of the murder indicates my innocence. I did not flee Italy when I had the chance. I stayed in Italy and was at the police’s beck and call for 50 hours over 4 days, convinced that I could help them find the murderer.....

11. Upon entering the questura I had no understanding of my legal position....I was innocent and never expected to be suspected and subjugated to torture. I was interrogated as a suspect but told I was a witness. I was questioned for a prolonged period in the middle of the night, and in Italian, a language I barely knew. I was denied legal counsel. The Supreme Court deemed the interrogation and the statements obtained from it illegal. I was lied to, yelled at, threatened, slapped twice on the back of the head. I was told that I had witnessed the murder and was suffering from amnesia.....

12. The police coerced me into signing a false confession that was without sense and should never have been considered a legitimate investigative lead.....

14. Experience, case studies and the law recognize that one may be coerced into giving a false confession because of torture.

23. Like many youth in Perugia I had once crossed paths with Rudy Guede..... We didn’t have each other’s phone number, we didn’t meet in private, weren’t acquaintances. I never bought drugs from Rudy Guede or anyone else.....The prosecution claims I convinced Guede to commit rape and murder, completely ignoring the fact that we didn’t speak the same language. Once again the prosecution is relying on a disturbing and unacceptable pattern of distortion of the objective evidence.

25. There is no short list to the malicious and unfounded slanders I have suffered over the course of this legal process. In trial I have been called no less than :

“Conniving; manipulating; man-eater, narcissist; enchantress, duplicitous; adulterer; drug addict; an explosive mix of drugs, sex and alcohol; dirty; witch; murderer; slanderer; demon; depraved; imposter; promiscuous; succubus; evil; dead inside; pervert; dissolute; a wolf in sheep’s clothing; rapist; thief; reeking of sex; Judas; she-devil.”

26. I have never demonstrated anti-social, aggressive or violent behaviour. I am not addicted to sex or drugs. Upon my arrest I was tested for drugs and the results were negative. I am not a split personality.

27. This is a fantasy. This is uncorroborated by any objective evidence or testimony. The prosecution and civil parties created and pursued this character assassination because they have nothing else to show you. They have neither proof, nor logic, nor the facts on their side.....

32. The prosecutor and investigators were under tremendous pressure to solve the mystery of what happened to Meredith as soon as possible. The local and international media were breathing down the necks of these detectives. Their reputations and careers were to be made and broken. In their haste they made mistakes. Under pressure they admitted to as few mistakes as possible and committed themselves to a theory founded upon mistakes.

Nencini had to consider a number of specific defence requests for a re-examination of witnesses and for the court to instigate investigations with additional court appointed experts, for instance - a re-examination of the witness Filomena Romanelli “as to how the shutters of her bedroom window closed”, a technical assessment of the way the rock was thrown against the window of Romanelli’s room for the purpose of verifying whether it was thrown from the outside or the inside, an audiometric test to establish the real possibility of hearing the scream reported by the witness Capezalli as coming from the 7 Via della Pergola property - but he declined to make any orders in relation to these, on the grounds that there was already sufficient evidence in the case files to enable the appeal court to consider these topics appropriately.

He did, however, make two orders, the first for a re-examination of the witness Aviello, more for procedural reasons than on the merit, and for an analysis of sample 36I, the sample taken by the Independent Experts from the knife.

Dr Andrea Berti and Dr Filippo Barni, both officers of the Carabinieri in Rome, operating as biologists at the Scientific Investigative Unit at General Headquarters were assigned the task of providing technical assistance on the following issue:

“Examine case documents and, in particular, the findings of the expert report filed at the appeal level.....by the court appointed experts Prof Carla Vecchiotti and Prof. Stefano Conti, together with the observations expressed by the consultants of the parties, Dr Patrizia Stefanoni and Prof. Giuseppe Novelli, in documents they submitted.....and arrange for an analysis of the sample already processed. The experts are asked to report on the attribution of trace (I) on the exhibit marked in evidence as no. 36 and if the same has identifiable DNA attributable to the victim Meredith Kercher or the convicted Rudy Hermann Guede. In the event it is impossible to test the sample because it is too small, poorly preserved, or for any other reason, the experts shall immediately notify the court, even by fax.”

Trace I (or rather 36I), it will be recalled, was the trace from a swab taken by C&V of both sides of the blade of the knife nearest the handle.

Later, after informing the parties, none of whom objected, Berti and Barni were also authorized by the court to compare any genetic profile from trace (I) with the genetic profiles of Knox and Sollecito as well.

The section of the Nencini Motivation with regard to the genetic investigations, and in particular with regard to the analysis of the samples 36B, 36I and 165B, is probably the most significant section in it, and deserves being given some attention. We have, of course, considered the evidence and argument in relation to 36B and 165B already, but what follows are some of the observations and conclusions made by this court.

“It must therefore be stated that, both with regard to exhibit 36, and with regard to exhibit 165, no contamination by tainting is ascertained, nor can it be hypothesized. This assertion is, furthermore, confirmed [as to the possibility of laboratory contamination] in the documentation of the positive and negative controlsand acquired in the case files, which demonstrate the absence of contamination of the exhibits themselves.”

“In conclusion, it may be affirmed that no demonstration of evidence to the contrary was offered during the trial capable of casting doubt on the genuineness of the trial evidence that emerged from the laboratory analyses on the two above-mentioned exhibits, other than mere conjectures of possibility, which were solely on the State Police operators’ alleged violation of international protocols regarding the collection of samples to be subjected to analysis; or, further, other than disparagement - which at times seems objectively biased - of the work of the forensic police during this trial.”

As to the evidentiary value of the analysis of sample 36B -

“Essentially what we have here is a fact correctly admitted into evidence and having an unambiguous meaning in the sense that the identification of the trace with the genetic profile of Meredith Kercher is obvious, but which is not absolutely rigorous in terms of probative value since it was not possible to perform a second amplification which could have confirmed or refuted the result.....Yet it does not follow that the attribution of the trace to Meredith Kercher is unusable as evidence.....”

“There is no doubt, in the opinion of this court, that the result of the analysis on trace 36B would be absolutely insufficient, considered in isolation, to indicate the penal responsibility of anyone for the murder of Meredith Kercher, but this is not because it is a question of altered or contaminated DNA, or an ambiguous result. The reason is a different one, situated in the fact that the amplification could not be repeated and thus.....does not have the probative strength to constitute a unique element whose evaluation indicates the penal responsibility of any person in relation to a given crime.”

“However, in the case in hand, the result of the attribution of the DNA to the profile of the victim, arrived at by methods of analysis and interpretation which were quite correct, should constitute an element of evidence that can be evaluated in the trial, just like all the many other elements of circumstantial evidence which, evaluated as a body, can give rise to the status of a proof.”

Should there be any doubt about such an evaluation Nencini also tabulates the STR data for each appropriate marker in the profile. As I have argued elsewhere this is strong evidence as to the validity of the one-time test result.

Nencini then proceeds to test the other criticisms made by the Independent Experts with regard to sample 36B.

On the first point made by those experts, that there was no scientific corroboration that the sample was haematic in origin, he holds [and quite correctly, since the point is extraneous].....

“.....it is significant for trial purposes that on the blade.....DNA from the victim Meredith Kercher was present, independently of whether it was, or was not, from blood.”

On the assertion by those same experts that the attribution to the genetic profile of the victim was unreliable, since it was “not supported by an analytical process that is scientifically valid”, Nencini reiterates that there is a difference between what may be asserted as scientifically valid, so as to render absolute certainty within the context of that discipline, and what may be considered as reliable, after due evaluation, as a circumstantial element in the context of the whole body of evidence at a criminal trial. After all, how reliable is direct evidence, such as eye witness testimony?

What is the reason for treating evidence derived from a scientific analysis, that is certainly not experimental, any differently from any other evidence? I shall return to a discussion of this point in my analysis of the 5th Chamber’s final report on the case.

Indeed, how reliable were the Independent Experts themselves?

“On page 143 of her report [in the conclusions] Prof. Carla Vecchiotti explains how “the quantification of the extracts obtained from exhibit 36 and exhibit 165, performed using real time PCR, **did not reveal any presence of DNA**. Considering **the absence of DNA** in the extracts which we ourselves obtained, **in agreement with the consultants of the parties**, we did not proceed to the next step of amplification.”

In the body of the report, as we noted [See Chapter 23] it was said -

“Taking note **that no DNA suitable for further laboratory investigations** (amplification, electrophoresis) was present**the experts verbally informed the consultants of the parties** that they would proceed to a detailed examination of the Technical Report drawn up by the Scientific Police.”

The former (no DNA) is not the same as the latter (no DNA suitable for further laboratory investigations) and if the latter is their considered judgement then the former is a misrepresentation, and an important one given it’s more significant placement within the report.

“Thus, from a reading of the entire report, and not just the conclusions, it appears that the choice not to proceed with the analysis of the new samples, and in particular sample (I), was a choice made expressly and autonomously by the experts and only communicated verbally to the consultants of the parties, not a choice shared by all the consultants. Indeed.....Dr. Stefanoni, Prof. Novelli and Prof. Torricelli all disputed the conclusions reached by the experts as to the unsuitability of sample (I) for analysis; they also disputed having participated in and shared in any way the decision not to proceed with the analysis.”

“However, this technical and scientific assertion [ed : no DNA suitable for analysis], repeated several times by Prof. Carla Vecchiotti with great conviction, was glaringly false. This is not because this court declares it to be indisputably so, but because it was proven false during the course of this trial.”

Nencini then explains the analysis of the sample (I) as recorded by Berti and Barni.

Once they had identified and obtained the sample, in a test tube, from a fridge in Vecchiotti’s laboratory, they began operations in the presence of the other consultants to the parties. As a first step they performed measurements of the volume present in the test tube and a quantification of the DNA present. The volume was about 16-17 microlitres, which “*was an extremely small quantity*”. The quantification with Real Time PCR allowed them to estimate the concentration of the DNA as 2.14 picograms. Vecchiotti had previously estimated 5 picograms but that result had been obtained by averaging different measurements. In any event the two measurements were comparable so no criticism was implied.

“The scarcity of this quantity means that this sample belongs to a complex situation; we did not have enough sample to perform a standard analysis. This complex situation is known as Low Copy Number (LCN). Thus, considering these initial tests, we decided on a strategy that does ensure at least a certain reliability of whatever results might be produced. This strategy consists in the use of extremely efficient systems for the analysis, extremely efficient kits, and we also required something else, that of, at the very least, duplicating the analysis of the sample, which means repeating the analysis of the sample at least twice. So we proceeded with the analysisand obtained two genetic profiles from two repetitions, two genetic profiles from the sample (I). At this point the purely analytical phases were complete.....”

The next phase was the interpretation and attribution of the profile. To ensure that this process was as reliable as it could be the result was subjected to a threefold combined analysis, starting with an initial biological approach which involved comparing the numbers produced alongside the graph by the electropherogram machine with the genetic profiles of the victim, the convicted person, and the two defendants. In this phase it is also necessary to determine a numerical value for the similarities between the two replication results before comparing with the genetic profiles, and this system of comparison and interpretation is called “consensus profile”.

“Indeed, if the first amplification provides a value which is also repeated in the second, the consensus profile will only record those signals which are repeated in both analyses.....But we do not restrict ourselves to only this type of analysis, because in the literature there also exists another type of analysis, still based on the biological model, but which is actually the opposite approach in a way, since instead of taking only the values which appear in both amplifications, we now take all of the values. The “composite profile” will be the union of the two profilesdoing the analysis with two different methods allows us, again, to be extremely conservative, that is, to take every possible interpretation into account, and not ignore any.”

“ In [the case of Amanda Knox] the agreement of the alleles, for the consensus profile, was at 15 values out of 18 available, so an agreement of 83%. Comparing the profile of Amanda Knox with the composite profile we find an agreement of 100% with 18 out of 18 values corresponding. Clearly the disagreement is the compliment. If we look at the three values that don't correspond in the comparison with the consensus profile, we realize that they are the three alleles in the regions D16, D8 and D18 that dropped out in one of the two amplifications but were present in the other..... The complex sample lost three values, three alleles, in one of the two amplifications whereas in the composite sample there was 100% compatibility. So, it appears clear from this first analysis that three individuals show large differences but one individual shows great similarity.”

In addition, and finally, Berti and Barni also used a statistical approach.

“We tried to understand, even in the cases where the disagreement was fairly significant.....what the probability was that the disagreement was a real one as opposed to just being due to [stochastic] phenomena. This was only possible using a statistical approach, performed using software that was available to us. With regard to the present/absent model, this software also gives the probability for the absence; it gives us an answer to the question - what is the probability that this value is actually present but we are not seeing it because it was lost?: it also gives probability values to these phenomena. The software we used is called LRmix, it's a software that is very innovative even though there are already many articles in the scientific literature developed by Peter Gill who is, I think, the main expert, or one of the main experts in forensic statistics present today in the international landscape.”

Values are determined, and calculations performed, by the software, on the basis of two competing hypotheses; that an individual has contributed to a trace, and that he has not. An explanation is far too complicated for the purposes of this book, but the upshot was that the statistical approach with this software confirmed the binary biological approach, which together confirmed that Knox's DNA, despite allele drop out, but not that of the other three, was present in the sample 36I.

There are also two additional points that arise from the work of these two experts, bearing in mind that we are, at this point, in the latter stages of the year 2013, six years after Dr Stefanoni had performed her analysis on the two exhibits, and two years after

Conti and Vecchiotti (in 2011) undertook their court appointed work. The first is that Berti and Barni were able to confirm that even in 2011 there existed the equipment that had enabled them to fulfill this task, but that it had not been available to Stefanoni when she performed her analyses.

The second is that there could have been a loss of critical data due to Vecchiotti and Conti's decision not to analyse the sample (I). Berti and Barni were only able to examine what was available, and that was the DNA extract in the solution in the test tube.

"The procedure of extraction of DNA.....necessarily excludes some components that may have been present in the [original] trace, that are used for distinguishing blood, saliva and other substances."

Nencini continues -

"The expert analysis gives us another piece of evidence which is certainly relevant; the effectiveness of the statistical method in the course of the analysis, which was stated in a precise manner by Prof. Novelli already in September 2011 both in his written testimony and in his examination before the Court of Appeal in Perugia."

We can turn to Conti and Vecchiotti's conclusions as regards the bra clasp. Once again, the fact that the biological origin of trace 165B was not determined, in that it was not scientifically confirmed that the origin was exfoliated skin cells, seems extraneous.

"In point 2 of the conclusions, Prof. Vecchiotti contested the interpretation of the electrophoretic graph of the autosomal STRs, as made by Dr Patrizia Stefanoni. [In four different loci - See Chapter 22]. From this Prof. Vecchiotti deduced the conclusion that in the DNA extracted from exhibit 165B there were several minor contributors, which was not stated by Dr Stefanoni."

"Now, this Court has no reason to doubt the observations raised by Prof. Vecchiotti concerning the technical report submitted by the Scientific Police, in the sense that the interpretation given by the court appointed experts, Conti and Vecchiotti, according to which the presence of other contributors can be found on the trace extracted from the bra clasp, is reliable, but it does not seem capable of any significance in the context of this trial, in the sense of being able to invalidate the results reached by the Scientific Police as to the presence of Raffaele Sollecito's DNA on the hook of the bra worn by Meredith Kercher on the evening on which she was killed. Indeed Dr Stefanoni never actually asserted that trace 165B revealed the presence of only two contributors, but rather that "The analysis of trace B allowed the extrapolation of a genetic profile coming from the mixture of **biological substances belonging to at least two individuals of which one at least is male.**"

However Nencini notes, with some alarm, that Vecchiotti, as we noted in Chapter 23, misrepresented Stefanoni, and it is worth recalling what she said, in holding Stefanoni to be unreliable as to her interpretation of the trace.

C&V - "Thus we agree with Dr Stefanoni's assertion regarding the extrapolation of a genetic profile deriving from a mixture of biological substances belonging to at least two individuals, at least one of male sex, but we cannot accept the conclusion that "the genetic profile is compatible with the hypothesis of a mixture of biological substances (presumably flaking cells) belonging **only** to Raffaele Sollecito and Meredith Kercher."

All in all Professors Conti and Vecchiotti received something of a pasting from Nencini, as to their professionalism, impartiality and the reliability, indeed the truth, of a number of their assertions.

Finally, after having reviewed the trial evidence again, Nencini drew the following conclusions with regard to trace 165B -

"In conclusion, in analogy with what was already maintained by the 1st Instance Court, this court also considers it completely unreasonable to entertain the notion that another person, not Raffaele Sollecito but with a haplotype that coincides with his at the maximum number of 17 loci, could have left the trace that was found on exhibit 165B. Indeed, that would be tantamount to assuming that a person different from Raffaele Sollecito but belonging to the same male line as him and therefore possessing the identical Y chromosome entered the cottage at 7 Via della Pergola. Furthermore, this hypothetical person would also have had to have had all the uncontested genetic loci that were identical to those constituting the specific genetic inheritance of Raffaele Sollecito."

"It is thus possible to assert that the genetic investigations performed by the Scientific Police on the hook of the clasp of the bra worn by Meredith Kercher on the evening that she was killed yielded a piece of evidence of undisputable significance. Both by the quantity of DNA analyzed and by the fact of having performed the analysis at 17 loci with unambiguous results, not to mention the fact that the results of the analysis were confirmed by the attribution of the Y haplotype to the defendant, it is possible to say that it has been judiciously ascertained that Raffaele Sollecito's DNA was present on the exhibit; an exhibit that was therefore handled by the defendant on the night of the murder."

The appeal was, of course, about more than just the DNA evidence pertaining to the Knife and the Bra Clasp. The Appeal Court's approach is clarified at the outset in the following paragraph -

".....in the light of the Supreme Court's annulmentthis court has been entrusted with the task of conducting a new appeal based on the findings of the 1st Instance Court in accordance with the principles of law and methodology, in order to evaluate the circumstantial evidence described above and following the grounds for appeal presented by all parties to the proceedings against that ruling. As previously

highlighted, the generality of the criticisms made by the defence counsel for both defendants against the ruling of the 1st Instance Court, for that matter already appropriately highlighted by the Appeal Court in Perugia, requires that this court undertake a consistent re-assessment of **the entire body** evidence, a re-assessment that must, therefore, be conducted by procedure and following a line of argument which, starting from the evaluation of the uncontroversial factual elements offered by the court hearings, allows us to arrive at a judgement of the attribution, or otherwise, of the criminal charges against the defendants.”

Now, even though Nencini set about the task of re-assessment in a more appropriate, balanced and comprehensive manner than Hellmann ever did, nevertheless his report is not without it's own flaws, even in it's stated objective of a re-assessment of “the entire body of evidence”. His report also includes some frustratingly careless slips that a more conscientious post completion reading would surely have picked up. For instance he refers towards the end of the report to the mixed DNA of Meredith and Sollecito having been found on the blade of Sollecito's kitchen knife, which quite evidently was nonsense. The latter are not significant but they are somewhat embarrassing.

These drawbacks were duly noted by the Supreme Court 5th Chambers on the final appeal.

We can, for instance start with the luminol findings which we discussed in Chapter 16. Nencini talks a lot about the origins being a presumed haematic substance and the fact that in some instances DNA was derived from the traces. In it's context he has no doubt that the traces were in fact, in part at least, blood that was invisible to the naked eye. Duly evaluated, that could be a valid conclusion, even though contested. It is not, however, in my opinion, a valid argument if you ignore the elements posited to contest it, and that, unfortunately is exactly what Nencini did. He completely ignored the fact that the luminol traces were tested for blood with TMB and that the results were negative. That is quite a glaring omission. It cannot, therefore, be said that his conclusion is derived from balanced argument, even if one agrees with it. In any event, it was a point that, depending on one's point of view, either irked, or delighted, and probably both, the 5th Chambers, in the final appeal.

A careless mistake in relation to this particular topic is also the following -

“Exhibit Number 183. This is a sample of presumed blood, the shape of which is compatible with a shoeprint, highlighted using the luminol technique, and found on the floor of the corridor, located between the rooms [sic] of the victim, and [pointing] in the direction of the latter's room.....analysis of trace A relating to Exhibit 183gave a genetic profile compatible with the hypothesis of a mixture of biological substances, presumably containing haematic substances, belonging to Amanda Knox and Meredith Kercher”.

Actually there is nothing in the case file that suggests that the above trace was taken from a substance in the shape of a shoeprint. Nencini probably means a footprint, but

even then it would be more accurate to add that this particular finding was a presumed footprint. It was certainly not attributed by the experts to a particular individual even if there was a mixture of two known individuals' DNA in it.

The following quote, contextually compelling as it is, nevertheless has to be read in the light of the TMB tests -

“In the case under consideration, however, the context is entirely different, since we are certain that a murder occurred in the cottage at 7 Via della Pergola, and we have an area that is extensively affected by a copious loss of the victim's blood, and not just in the bedroom occupied by the latter. In a context of this sort, and in the presence of specific and localized traces (some of which are actually in the shape of a foot - or shoeprint) highlighted by luminol, asserting that these traces reveal the presence of substances other than blood, such as potatoes, fruit juices, or bleach, without, however, providing any concrete proof in point, seems from an objective point of view to be a remarkable exercise in dialectical sophistry rather than trial evidence on which any judge might base reasoning which would be beyond criticism.”

The following observation does make the context more compelling -

“In the house on Via della Pergola, blood was abundantly present in the bedroom of poor Meredith Kercher, just as it was also significantly present in the small bathroom next to the bedroom, and more or less everywhere. One must not forget the evidence that, together with the traces highlighted by luminol, there were likewise other traces that were visible to the naked eye and that were analyzed as involving human blood. Thus the presence of blood traces highlighted using the luminol technique, rather than representing a disparate trial fact, is on the contrary confirmation that, after the murder, the apartment underwent intensive and thorough cleaning.”

The latter additional point, the cleaning, is in conclusion, Nencini having earlier discussed what we have in fact already alluded to and discussed in Chapter 14. It is primarily these linkages, which can be made, which is what is meant by “context”. How is it that visible spots of blood, Meredith's, can appear on the floor in the kitchen, including a shoeprint, and yet be absent from the floor of the corridor, other than the shoeprints just outside Meredith's room? How is it that a long streak of blood can have appeared on the inner, more inaccessible, edge of the bathroom door without, at least, the probability of it's source having had been blood on the face of the door? If the blood on the face had been wiped clear then why not the blood on the corridor floor?

It would be pedantic and time consuming to follow, in detail, the re-assessment of the circumstantial evidence, carried out by Florence Court of Appeal. The Court noted most of the evidence and argument, and agreed with most of the inferences to be drawn therefrom - except where the opposite is shown - as has been referred to in the earlier Chapters in this book concerning the trial.

The following is a reasonably adequate summary of the final position, pending attribution of blame, that the court adopted -

“A reasonable and logical reading of the whole of the circumstantial picture shown by the highlighted facts is that those complicit entered the apartment using the front door, whose keys were available to them, and having remained in the apartment in absolute security for a significant period of time, and in any case long enough for Rudy Guede to use the apartment’s larger bathroom for his own physiological needs, they assaulted and stabbed Meredith Kercher, causing her death. After the young woman was assaulted and killed, a plurality of acts and behaviours were carried out with the goal of delaying the discovery of the body, of erasing the traces of the accomplices, who were in any case present in the apartment, and in order to divert the investigation, from which could be deduced that the young woman had been assaulted by an unknown person who had gained access to the apartment by breaking in through a window.”

“Therefore a simulated break-in was put into place; a cleaning activity was carried out in the areas outside of the room in which the body of Meredith Kercher lay, and both cell phones used by the young woman were taken and subsequently abandoned, with the goal of preventing the ringing of the phones, possibly activated by arriving calls, from alerting whoever might have found themselves in the apartment.”

“All of the acts and behaviours described as above, carried out *post delictum*, are clearly incompatible with the figure of Rudy Guede, and therefore must be considered as having been carried out by those who had a specific interest in diverting suspicion from themselves.”

Where the Florence Court of Appeal went much further than had Massei, at the original trial, and had departed from his motivation, was in a discussion of “Motive”, or of, shall we say (in the vocabulary of Judge Chieffi), “the subjective role” or dynamics of the participants in the commission of the crime.

Nencini clearly had some difficulty, like me, with Massei’s notion of a sudden choice of evil arising from erotic stimulation. Massei perhaps should not be criticised too heavily here as the trial court had limited information before it, and this partly arising from the fact that Guede had been tried separately, and his evidence was not before the trial court.

Hellmann’s Court of Appeal had that information by virtue of Article 238 of the Criminal Procedure Code following Guede’s definitive conviction and, of course, so now had Nencini. Hellmann had, with the one exception that he cherry picked Guede’s statements to arrive at a time frame for the murder of between 9 and 9.30 pm (see page 205), effectively snubbed any useful corroborative element for the trial evidence. Nencini was not to take that same path and did consider Guede’s full version of events. In doing so Nencini very probably made an error in law, a technical point, as to which he was later admonished, in part incorrectly I would submit, by the 5th Chambers but which did not entirely invalidate the usefulness of the exercise, in that at least one other

corroborative element, for a discussion of motive, or at least as to why there might have been a physical confrontation between Meredith and Knox, was acquired, whether properly or not.

The error for which Nencini was admonished was to give probative corroborative credence to Guede's statements in writing (See Chapter 8) that (a) he had heard a female voice, other than Meredith's, whilst sitting on the toilet, which he thought had sounded like Knox, and (b) his statement in his letter (See Chapter 22) that Meredith had been murdered by Sollecito and Knox. As to the letter, Guede had not specifically said as much before and when cross-examined by Bongiorno on the matter, and as to what had happened on the night of the murder, he declined to answer directly other than to refer the court to his previous statements. Nencini's error, in my submission, was to treat the letter and those previous statements, in as much as they contained accusations placing Sollecito (and only Sollecito, I would argue) at the cottage at the time of the murder, as admissible evidence. That, however, is expressly excluded by the rule that states that incriminatory statements made by a witness of another are inadmissible unless the witness submits to cross-examination on them, and it is inarguable that Guede had declined to take cross-examination from Bongiorno.

I said the error was a technical point. Indeed Nencini did not think that there was an error as, in his submission, Guede had submitted to cross-examination. The reader can refer back to Chapter 22. I submit that Nencini was right, but only in relation to Knox, not Sollecito. Indeed Sollecito only escapes on the technical point. No one could have raised a point as to inadmissibility had Guede not expressly declined to answer but instead had answered all subsequent questions with answers to the effect that his previous statements had already dealt with the point. Indeed, what effective cross-examination (other than by just asserting that he was mistaken, or lying) could there have been given that nothing in those statements (the forensic evidence was not disputed) could have been undermined by contradictory testimony, as Knox and Sollecito's trial positions were that they had not been at the cottage that night.

As to the other corroborative element acquired, not specifically criticised for being inadmissible by the 5th Chambers, this is to do with Guede's evidence at his own trial that Meredith had complained to him that her money had gone missing, and her attribution of probable responsibility for this to Knox. That may have been inadmissible vis a vis the charge of theft, and was certainly hearsay evidence anyway, but as Knox and Sollecito were not convicted of theft, the point is academic. In my submission that evidence would not be inadmissible as being incriminatory of Knox vis a vis the charge of murder, nor in relation to the other connected offences other than the theft, given that a probative connection to those offences is very weak, but it was corroborative of some findings of fact at trial, including Romanelli's testimony that Meredith had the cash to hand for the rent shortly due and that no money, nor the credit cards belonging to Meredith, were ever found. Nencini was very specific in saying that there could have been a number of possible dynamics (far better to use this term than "motive") and that motive was not in any event necessary to substantiate a finding of guilt.

Such a corroborative function is, after all, the purpose of Article 238. As Galati put it in his appeal submission -

The Supreme Court's rulings -

“have now settled definitively regarding the interpretation according to which finalised judgements can be acquired by the proceedings, as provided for by the indicated law, but they do not constitute full proof of the facts ascertained by them, but necessitate corroborations not differing from the declarations of the co-accused in the same proceedings or in a connected proceeding.....

Naturally this confirmation is not directly used for the purpose of proof but as corroboration of other circumstantial pieces of evidence or of evidence already acquired, not very different from what happens when declarations of collaborators with justice corroborate each other.”

In my opinion all the problems here as to the admissibility of Guede's evidence derive from the simple fact that he had a separate trial.

In any event Nencini includes Guede's evidence as to this under a general discussion as to a motive or, which is preferable in my opinion, a consideration of the possible subjective dynamics of the participants, which would have to include Meredith as well. As to this, what Nencini has to add is not that much different from what I discussed and suggested in Chapter 19.

Before closing this Chapter it should be recalled that the Court of Appeal had ordered the recall of the witness Aviello. It will be remembered that he had retracted his testimony before the Perugia Court of Appeal in statements given to the prosecutor Mignini. On his recall he retracted his retraction. Nencini published the retraction and testimony in his report, concluding -

“In substance the statements made by Luciano Lucia Aviello are completely groundless, utterly outlandish when compared with the evidence in this case; they are obviously fantasies, partially libellous, and consequently completely without merit. From this it follows that this court will not take them into any account when assessing the evidence gathered.”

The same opinion of groundlessness was also given for the testimony of Alessi.

The defendants' appeal was rejected. Sollecito remained sentenced to a term of imprisonment of 25 years. Knox was also sentenced to 25 years but her sentence for the calunnia, having already been increased by Hellmann to three years, was increased by a further 6 months - Nencini having determined that there was an obvious teleological link, making it particularly serious - making a total of 28 years and 6 months.

CHAPTER 29

The European Court of Human Rights

On the 25th November 2013, just as the Prosecution were preparing to present their closing argument to the Court of Appeal in Florence, Knox presented the media with the following announcement -

“Today my lawyers filed an appeal of my slander [sic] conviction with the European Court of Human Rights.” (ECHR)

The appeal was in fact lodged on the 22nd November.

The timing of the announcement was probably not co-incidental. Was it true? Was it an attempt to divert attention from reporting on the appeal? Or even an attempt to influence it?

In the event it was perfectly true.

There are, however, a number of things that do need to be noted about the ECHR, all of which can be discovered by an internet search. The purpose of the ECHR is to oversee and enforce, so far as it can - a judgement in relation to a complaint is often enough - the rights and freedoms defined by the European Convention on Human Rights, the signatories to the Convention having agreed to incorporate those rights and freedoms within their own national law. The Court does not, however, act as a court of appeal in relation to national courts; it does not rehear cases, it cannot squash, vary or revise their decisions. The ECHR is intended to be only a subsidiary to the national courts protecting human rights.

The ECHR is usually overwhelmed with a massive backlog of complaints, many frivolous, and of which some 95%, in due course, are rejected for failure to comply with admissibility criteria.

The complaint no doubt revolves around her allegations that she was hit, coerced, threatened, abused, and denied legal representation at the police station, but there is a 6 month deadline for complaints, to be calculated from the date that all other domestic avenues for remedy have been exhausted. That date is the date of “the final decision” in relation to the domestic proceedings seeking the remedy sought under the Convention. However that entails lodging an official complaint to the appropriate body in Italy to start with. Her own lawyers have never confirmed that such a complaint was lodged. Luciano Ghirga, in a statement to the Press on the 21st October 2008 said -

“Amanda wasn’t hit. There were pressures from the police, sure, but we never said she was hit.”

It is true, of course, that Knox did claim that some of the above abuses had occurred in her Memorial, but they were not pursued outside of the context of her trial for calunnia.

It is understood that Knox's application to the ECHR was in fact submitted in relation to her definitive conviction for calunnia which was confirmed on the 25th March 2013. On the basis that this was the final decision (she had been appealing that conviction - it was dismissed) then her application to the ECHR was out of time. Others argue that the final decision would be the Motivation of that decision which was lodged on the 18th June, in which case the application was in time. It might certainly be argued that the latter contention would be the fairer in that the applicant is entitled to know the specific reasons for the final decision, but the following provision in the ECHR's Practical Guide as to Admissibility Criteria should also be noted -

"95. The six month rule is autonomous and must be construed and applied to the facts of each individual case, so as to ensure the effective exercise of the right to individual petition. While taking account of domestic law and practice is an important aspect, it is not decisive in determining the starting point of the six month rule.

96. The six month period starts from the date on which the applicant and/or his/her representative has sufficient knowledge of the final domestic decision."

It would, I suspect, take a lawyer specialising in ECHR work to know what would be the likely outcome in advance of an actual decision on the time limit in this case.

The time limit is not the only admissibility criteria to be considered. There is also inadmissibility based on the merits, such as "manifestly ill-founded" and "no significant disadvantage". One can think here of Knox's torture claims but that the alleged cuffs had not in fact hurt, but had frightened her.

Following an ECHR judgement that there has been a violation the respondent state is obligated to take appropriate measures, as appropriate, and as follows :-

1. Make payment of compensation in just satisfaction
2. Take general measures i.e change their legislation
3. Adopt individual measures i.e restitution, re-opening of domestic proceedings for remedy.

The usual measure would be compensation.

It is difficult, however, to avoid the conclusion that in this instance the application had, as its prime objective, and since the calunnia conviction could not be overturned, the undermining of any request for Knox's extradition from the USA to Italy. In other words, it was essentially an extra-judicial PR strategy.

The Supreme Court's 5th Chambers, whilst acquitting Knox (and Sollecito) was particularly dismissive of Knox's complaint to the ECHR.

"The request of Amanda Knox's defence aimed at the postponing of the present trial to wait for the decision of the European Court of Justice (sic) has no merit, due to the definitive status of the guilty verdict for the crime of calunnia, now protected as a partial final status, against a denouncement of arbitrary and coercive treatments allegedly carried out by the investigators against the accused to the point of coercing her will and damaging her moral freedom in violation of article 188 of the penal procedure code."

"And also, a possible decision of the European Court in favour of Ms Knox, in the sense of a desired recognition of non-orthodox treatment of her by investigators, could not in any way affect the final verdict, not even in the event of a possible review of the verdict, considering the slanderous accusations that the accused produced against Lumumba consequent to the asserted coercions, and confirmed by her before the Public Minister during the subsequent session, in a context which, institutionally, is immune from anomalous psychological pressures; and also confirmed in her memorial, at a moment when the same accuser was alone with herself and her conscience in conditions of objective peacefulness, sheltered from environmental influence; and were even restated, after some time, during the validation of the arrest of Lumumba, before the investigating judge in charge."

CHAPTER 30

Reaction and Preparation for the final appeal

Raffaele Sollecito's position has always been distinct from that of Amanda Knox in that when they were both acquitted in October 2011 she was free to remove herself from Italian jurisdiction and return to her country of domicile and citizenship, whereas he was not, at least not for long. That became a crucial distinction for him once the prosecution lodged an appeal towards the end of 2011 and the acquittals were annulled in 2013.

By the beginning of 2013 Sollecito had already moved across the Italian border to live at the Swiss resort of Lake Lugarno. However, locals were unhappy about the fact that despite the acquittal he still had the case hanging over him, and at the instigation of a local politician he had his residence permit revoked on the grounds that he had omitted to declare details about his pending rehearing to the authorities.

As we noted in Chapter 26 he had also visited the USA, ostensibly to further his computer studies and seek employment there, but in March 2013 he had also visited the Knox/Mellas family in Seattle. It was subsequently to transpire that there had also been a meeting there of the lawyers from the respective families and we also now know that Sollecito had a marriage proposal for Knox, which she had declined. It seems that Sollecito may have taken that rather badly. Although this information has not been confirmed from the Knox camp, nevertheless a young single mother from Idaho, Kelsy Kay, had formed a relationship with Sollecito, and it is from her that we have received this information.

Her own relationship with him came to an abrupt end when he offered her marriage but stipulated that he required a marriage contract. His intention, as she now discovered, was to ensure that he could enter a marriage of convenience and gain a green card, that is, a right of residency in the USA as a result of marriage to a US resident.

In an interview she told Radar -

"I have received no apology from him in leading me on. I gave him every opportunity to explain himself to me but he has shown me no remorse or kindness,"

Sollecito pleaded to Kay's friend Shelley Green to help him win Kay back. "I'm just begging her to know me better and then I'll try to come back." Sollecito wrote to Green in a series of Facebook messages after he had visited Kay in her hometown of Coeur d'Alene, Idaho. But it was to no avail.

By this time Sollecito was now living, or on an extended holiday, in the Carribean, in the Dominican Republic, from whence he travelled to Italy for the commencement of the Court of Appeal hearing in Florence before returning to the island. It was noted, unkindly, by observers, that the Dominican Republic did not have an extradition treaty with Italy and that for this reason it was a useful hideaway for criminal and mafia elements.

Sollecito did, however, return to Italy for the verdict at the Court of Appeal, as his father had promised the media. He was present in court earlier in the day but not for the ruling which was late in the evening. As a precautionary measure the Court of Appeal had placed a travel ban on him by confiscation of his passport. When the police acted to enforce the precautionary measure they discovered that he was staying with his Italian girlfriend in a hotel in Verzone, about 25 miles from the border with Austria and Slovenia. They took him to Udine police station where his passport was confiscated and a stamp placed on his identity papers showing that he could not leave the country.

In America, and speaking before the verdict was announced, Knox announced "I am definitely not going back willingly. They will have to catch me and pull me back kicking and screaming."

The same day as Sollecito was being processed and released at the police station, Knox was appearing on ABC News' "Good Morning America", describing how she had watched the verdict on an Italian TV station news feed and saying that the verdict had "hit her like a train." "I did not expect this to happen. I really expected so much better from the Italian justice system. They found me innocent once before."

She was emotional and clearly distressed and said that she needed help as this was not something that she could cope with by herself.

Following publication of the Court 's Motivation, Knox also appeared for a lengthy interview with Chris Cuomo on CNN. "As this case has progressed, the evidence that the prosecution has claimed exists against me has been proven less, and less and less", she said. "And all that has happened is that they have filled in these holes with speculation. What I keep seeing in this case is trying to put an artificial complexity to it. It's not a complex case," she added. "I truly believe that it is possible to win this, and to bring an end to all of the speculation and the nonsensical theories, and really bring peace to all who have suffered."

Judge Hellmann, in Italy, also chipped in with a comment to the media - "The Florence Appeal Court has written a script for a movie or a thriller book while it should have only considered facts and evidence. There is no evidence to condemn Knox and Sollecito."

It was now for the defence lawyers to once again prepare their clients' respective cases for the final appeal before the Supreme Court. Here we can note, in Sollecito's case, a subtle shift in his legal position, in that his lawyers presented a case to differentiate him

from Knox. That this differentiation was perfectly possible, and ignored, was also, they were to argue, a flaw in the Nencini Motivation.

Nencini had mentioned that there was a possible differentiation in the contribution made by the joint offenders in the crime and had considered whether, to the extent that this could in fact be ascertained, it would make any difference to the attribution of criminal responsibility in causing the event.

His overview on this was as follows -

(Nencini) - "The Court believes, that in the absence of any assistance during the trial on the part of the perpetrators of the homicide, the assessment of the criminal responsibilities of the individuals in causing the joint crime must be performed by examining the results of the investigation and the facts objectively obtained through the proceedings.....The analysis of the trial evidence leads us to point out that all three attackers contributed through actions that were coordinated and that sought the same result, with no interruption in the causal link to the event of the death of Meredith Kercher. There is no room whatsoever, given the evidence provided, for any differentiation of criminal responsibility, which would be founded on *petitio principii* [begging the question] not demonstrated in the trial."

On the 1st July 2014 Sollecito and his lawyer Bongiorno held a press conference. In the run up to the conference it had been widely trailed that he might be about to cast doubt on Knox's alibi, and indeed it was reported that such had occurred afterwards. In fact they both avoided saying anything very clear and direct.

Did Raffaele say that Amanda had left him in the early evening on the 1st Nov '07? Well, he had, of course, in his statement to the police. But no. As Bongiorno tortuously phrased it "Raffaele takes note of the fact that the Court of Appeal found that there was something of a lie over Amanda's whereabouts.....of the fact the court says she was not with him in the early evening."



It was a rather bizarre press conference in that Sollecito was not denying that Knox was not with him, nor confirming that she was.

The reason for mentioning this at all was obviously the following section of the Nencini Report.

“At 8:18 pm, Amanda Knox received a text message sent to her by Patrick Lumumba, in which he informed her that it would not be necessary for her to go to the bar to carry out her usual work. At the time of receipt, Knox’s handset connected via the sector 3 mast at Torre dell’ Acquedotto, 5 dell’ Acquilla, as shown by phone records entered in evidence. This mast cannot be reached from the vicinity of 30 Via Garibaldi. According to the findings of the judicial police entered in evidence [the postal police] this mast can be reached by anyone in Via Rocchi, piazza Cavallotti or piazza 4th Novembre, all locations between 30 Garibaldi and “Le Chic” . “

“From this set of facts established in the case, Knox’s claim, according to which she received Lumumba’s text while she was at 30 Garibaldi, appears to be false.”

“Here, then, is the first crack in the account of the young woman who, in her account, claims never to have left the house at 30 Via Garibaldi [Sollecito’s bedsit] from the moment off her entrance to it in the afternoon of the 1st November, together with Raffaele Sollecito. There is oral evidence (the testimony of Popovic) and evidence obtained through phone records that around 6 pm on the 1st November, Amanda and Raffaele were at the home of the latter. Later, at precisely 8.35 and 48 seconds pm, when Amanda Knox sent a text message to Patrick Lumumba, connecting to a mast serving 30 Via Garibaldi, both were once again at Sollecito’s home. This fact is confirmed by Popovic, who went there to cancel that evening’s appointment with Raffaele. In fact the witness reported that she had visited Raffaele’s home at around 8.40 in the evening.”

“In essence, it can be established with certainty that Amanda and Raffaele were apart, albeit for a limited period of time, on the evening of the 1st November, contrary to what is stated repeatedly in multiple statements made by Amanda Knox.”

The basis of Nencini’s assertion would appear to be what Massei had recorded. However Massei managed to contradict himself on the point as to whether the sector 3 cell on the mast at Via dell’Acquilla 5- Torre dell’Acquedotto covered Sollecito’s bedsit. Had Nencini got it wrong?. However, if the cell did, or could have, then it is surprising that Sollecito and his lawyer did not take advantage of the press briefing to dispute Nencini’s observation openly instead of leaving this point hanging in the air.

The press conference was, in a way, confirmation of what Sollecito had told the police in his statement contradicting Knox’s account of where she had been in the evening. Everyone knew what was in the statement even if the content was not evidence in the proceedings. So what was going on? It had not been mentioned at the conference that in evidence was the fact that Knox and Sollecito were certainly together at his place by the time Popovic had returned to Sollecito’s bedsit at 8.40 pm, and so in that respect the point is rather insignificant. In retrospect it would appear that Sollecito and his camp were placing as much distance as they could between their own case position and that

of Knox, without actually being accused of a betrayal.

There were a number of points enumerated in Sollecito's appeal recourse to establish a differentiation –

- Knox's memorial referring to events at Via della Pergola was in the singular
- Knox, via her memorial and her trial testimony, had placed herself at the cottage, but not Sollecito
- That Knox had gone out in the early evening on the 1st November did not mean that he had
- Knox's calumny against Lumumba was not confirmed or supported by Sollecito
- Sollecito's DNA was not on the knife
- No mixed traces of Meredith and Sollecito were found highlighted by luminol at the cottage
- Quintavalle claimed to have seen Knox on the morning of the 2nd November, not Sollecito
- Sollecito did not know Guede and had no reason for wanting to harm Meredith
- The alleged bad relations and the question of the disappearance of money concerned Knox and not him.

Sollecito's appeal recourse also contested many of the points decided as matters of fact by Nencini and also as held by the trial judge Massei. For example, the recourse unsurprisingly contended that the Independent Experts were right in their conclusions as to the reliability of the DNA on the bra clasp and the knife taken from Sollecito's kitchen. In addition the recourse quoted extracts from articles written by Peter Gill (whom we can recall was mentioned by Berti and Barni as a leading expert in the field of DNA analysis, with particular reference to the statistical interpretation model he had helped to develop and propagate) as to the likelihood of tertiary transfer contamination.

Quite how Bongiorno thought she could get away with trying to introduce evidence in this manner, before the Supreme Court, from an expert who had not given evidence in chief and hence had not submitted to cross-examination at any stage, and indeed after the evidence phase was well and truly over, rather beggars belief.

Gill, indeed, had appeared on Italian TV to discuss the case, the *Porta a Porta* programme, with Sollecito and his father pending the final appeal to the Supreme Court. Despite his reputation Gill's hypotheses as to contamination, also mentioned in his book "Misleading DNA Evidence : reasons for miscarriages of justice", had, and he should have known it, no objective corroboration in the case papers.

Nevertheless it is instructive to consider Gill's main hypothesis, introduced at this late stage in the proceedings. The hypothesis is that Sollecito grasped the door handle of Meredith's bedroom before, as he says, trying to force the door. In doing so, he could

have left his DNA on the handle and the investigators may have subsequently touched the handle, picking up his DNA and transferring it to the hooks on the bra clasp. Although there is no corroborative evidence at all for the door handle being touched by Sollecito or any forensic worker, in the case papers, or in the video of the forensic investigation, nevertheless perhaps we should consider the possibility that Sollecito had done so, as on a presumption of innocence it is not an entirely unreasonable supposition. We then have to consider the likelihood that his DNA was then transferred to the hooks.

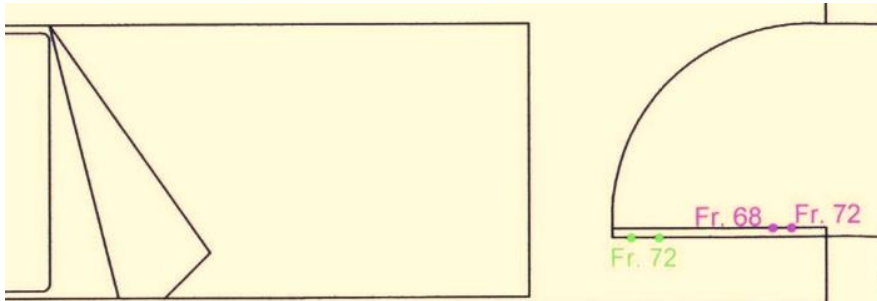
We have to remember that the door was forced open by Altieri. It was damaged in the process, the locking mechanism being broken. This was around 1 pm on the 2nd November. The bra clasp lay under a pillow beneath Meredith's body which was not moved until Dr Lalli was allowed access after midnight. After that a forensic worker had noticed it under the pillow. It was photographed in situ and catalogued. Incidentally, even in the photograph in situ, one of the hooks is shown as having been bent.

Gill's hypothesis, as to tertiary transfer, although he misleadingly refers to it as secondary transfer, only begins to work on the assumption that one of the forensic workers had touched the outside door handle and then, preferably without touching anything else, the hooks on the clasp, and without at any time changing gloves in between. This would suggest a lack of professionalism or at least a degree of carelessness on the part of the forensic workers, and certainly Stefanoni had admitted in her testimony that gloves had not been changed every time something had been touched.

Yet the investigators, we know, failed to collect the clasp, an omission that can only reasonably be explained by it having become hidden, and indeed it was subsequently found under a rug.

However, having been forced open, the door appears to have remained more or less wide open, maintaining easy access in and out of the room for the operatives without it having to be touched. That said maybe it was touched by someone. It was dusted for fingerprints. Whether the handle was dusted, I do not know. Certainly, given its shape, and being grasped by a hand, one might expect prints from all five fingers, and particularly the thumb. However a clear forensic print might be doubtful given that a door handle is in constant use. Nevertheless it would not be unreasonable to expect an operative to dust it, which could be anytime after the body was moved. Examining the cottage fingerprint map produced by the investigators I note that four fingerprints were found on the door. Two (shown in green) were in the vicinity of the handle (and maybe even on it – the chart is not precise as to the location) but these were on the inside of the door. Furthermore they were not useful for attribution. Two were on the outside but not near to the handle. The fingerprints on the chart are colour coded and unless I am colour blind, or have failing eyesight, these two were attributed to Sollecito.

I have snipped, and expanded, the relevant section of the fingerprint chart



From Dr Stefanoni's lab records it would appear that the handle on the outside of the door was not swabbed for DNA analysis, though the interior door handle and a section of the interior door locking mechanism were and in each case the DNA analysis produced only Meredith's profile. It seems that what was swabbed was her blood. The omission for the outside handle was probably due to a lack of a visible biological substance (it may have been cleaned to remove blood (See Chapter 14) but also the omission gives credence to the likelihood that the door handle was first subjected to powdering for fingerprint analysis which would have rendered further analysis difficult if not impossible. What option to take was obviously a choice the forensic investigators had to make, but either way, and in any event, it is equally obvious that Gill's hypothesis has no forensic corroboration for the hypothesized source for contamination.

The door does appear to have moved marginally (compare the photographs in Chapter 14), perhaps the better to photograph the blood on the indoor handle and of course Knox's lamp, behind the door, would have been of interest. None of these specialised operatives (photographer and fingerprint duster) are likely to have then touched the bra clasp and, if they had, nothing else in between, and of course there is only the theoretical possibility that they had touched the outside handle in the first place. Nevertheless they, or others, might have done so and then touched something else in the room, for someone else to touch. We would then have moved to a 5 step transfer of DNA for accidental contamination of the hooks on the bra clasp, many hours after Sollecito theoretically deposited his DNA on the handle.

Do we have anything here that works as a reasonable proposition compared to primary transfer, given Meredith's state of undress, an obvious sexual assault, severance of the clasp from the bra, and the condition of the hooks as they were found? After at least about 6 hours (up to the arrival of the forensic team) would not the alleged substance on the door handle have become less amenable for touch transfer and, as to tertiary transfer, would not the worker, in the 7 or so additional hours between the arrival of the forensic team from Rome and the discovery of the bra clasp underneath Meredith's body, or even later, depending on when it was handled, if it was, prior to collection, have touched, and, we have to assume, without at any time changing gloves, other items of interest in the room on which there was none of his DNA, transferring his DNA

precisely on to the hooks, but not the fabric to which the hooks were attached? Would not Sollecito's DNA on the hooks, assuming it had been transferred there through this activity, have been a clear case of Low Copy Number, which it was not?

Of course we also have to consider whether the transfer could have occurred when the clasp was collected, 46 days after it had first been noticed. The same points as above apply, but with the delay being in itself an additional problem – if not extremely unlikely - for the postulated transfer, and, of course, the exercise was all recorded on video, there being no discernable pressure on or manipulation of the hooks by the operatives that the viewer can see.

But if the hypothesis works for Sollecito, then what about others who may have touched the handle around about the same time as Sollecito? Would not the door only be forced once it was established that it was indeed locked? So Altieri, or any of the other witnesses present on that morning might have grasped the handle to test the door, and all of them, but for Knox, after Sollecito would have done so. Knox, in her book, claims to have “jiggled” with the door handle before the arrival of the postal police. However there are only two profiles on the bra clasp – Meredith's and Sollecito's.

Gill's hypothesis has little merit. It is highly speculative compared with the more obvious alternative.

Another subsidiary hypothesis of his in his book involves a misrepresentation of fact. Nevertheless it seems to have been picked up on and approved by the 5th Chambers. In his book Gill writes that the knife was placed, uncovered, in a “shoebox” by the police and despatched to Rome. The knife could thus have been contaminated by DNA already in the box. As we already know it was not a shoebox, let alone a box that had any connection with Meredith and the cottage.

Gill's book, the section of it dealing with Meredith's murder, would be better sub-titled “DNA Evidence: Misleading Reasons for a Miscarriage of Justice”.

CHAPTER 31

Circumstantial Evidence and Reasonable Doubt

We have already had a look, in Chapter 21, at what “reasonable doubt” means, Italian style. But there is also specific jurisprudence on the matter in Italian law.

Under common law, anglo-saxon style, there is often little guidance to be found, except that in the USA some States issue jury guidance instructions.

It might, therefore, be useful to have a look at all this, and also as to how “circumstantial evidence” is considered as well, in differing jurisdictions. This is a case which is primarily about circumstantial evidence after all. It is more than probable that one can find a lot more information on these topics than I have selected to highlight here, but I hope this Chapter will be useful.

Nencini mentioned the following Supreme Court jurisprudence in his Motivation.

(See Supreme Court, Section 1 Criminal, Sentence n.17921 of 3rd March 2010 : “the rule of judgement expressed in the formula “beyond all reasonable doubt” requires the pronouncement of conviction on the condition that the evidence acquired has left out only remote hypotheses, which can be formulated in the abstract and seen as possible in rerum natura (in the real world), but whose concrete realization does not have the minimum corroboration in the facts of the trial, and is therefore beyond the natural order of things and human rationality. (The court has also requested that the logical reasoning leading to the conclusion be characterized by a high degree of rational credibility, therefore to the “judicial certainty” that, excluding the interference of alternative scenarios in the past, the voluntary criminal conduct be attributable to the agent).”

(Supreme Court, Section 2 Criminal, Sentence n.7035, dated 9th November 2012 : “the laws introducing the rule of judgement “beyond every reasonable doubt” which finds its foundation in the constitutional principle of the presumption of innocence, have not introduced a different or more restrictive criterion to evaluate evidence but have codified the legal principle by which a conviction must always be based on certainty emerging from the trial, of the responsibility of the defendant.”)

A guide prepared for the police in England & Wales under the Criminal Justice Act 2003 and Police and Criminal Evidence Act 1984 refers to what is a very old case -

R v Exall [1866] - “One strand of a cord may be insufficient to sustain the weight, but three stranded together may be quite sufficient of strength. Thus it may be circumstantial evidence - there may be a combination of circumstances no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole,

taken together, may create a strong conclusion of guilty, that is, with as much certainty as human affairs can require, or admit of.”

In England & Wales it has often been thought inadvisable to be too specific about the concept of “reasonable doubt”, leaving it to the common sense of the juror. However, it is known that jurors are confused and seek clarification. Accordingly the judge will often say that the jury should not convict unless it is “sure” or unless it has “a firm conviction” that the accused is guilty. This, on the face of it may not seem to clarify very much.

The University of Cambridge Institute of Criminology has done research into the use of the alternative wording and found that it did not alter a juror’s perception in that his judgement, upon such a direction, correlated in any event with what the law understood by “reasonable doubt”.

A couple of cases from the Canadian Supreme Court -

Stewart v The Queen [1977] 2SCR 748 : “It may be, and such is often the case, that the facts proven by the Crown, examined separately, have not a very strong probative value; but ALL the facts put in evidence have to be considered, each one in relation to the whole, and it is ALL of them taken together, that may constitute a proper basis for conviction.”

R v Morin [1988] 2SCR 345 : “It is a Misdirection to instruct the jury to apply the standard of reasonable doubt to individual pieces of evidence. Facts are not to be examined separately and in isolation.”

Wikipedia, the free internet encyclopedia, has a very useful tab on circumstantial evidence.

Circumstantial evidence is evidence that requires an inference to connect it to a conclusion of fact. It allows a trier of fact to infer that a fact exists.

Wiki -

“On it’s own circumstantial evidence allows for more than one explanation. Different pieces of circumstantial evidence may be required, so that each corroborates the conclusions drawn from the others. Together, they may more strongly support one particular inference over another. An explanation involving circumstantial evidence becomes more likely once alternative explanations have been ruled out.”

“Testimony can be direct evidence or it can be circumstantial. For instance, a witness saying that she saw a defendant stab a victim is providing direct evidence. By contrast, a witness who says that she saw the defendant enter a house, that she heard screaming, and that she saw the defendant leaving carrying a bloody knife, gives circumstantial evidence. It is the necessity for inference, and not the obviousness of a conclusion, that determines whether evidence is circumstantial.”

“Forensic evidence supplied by an expert witness is usually treated as circumstantial evidence.”

“The smoking gun” is an example of proof based on circumstantial evidence.

“There is sometimes more than one logical conclusion inferable from the same set of circumstances. In cases where one conclusion infers guilt but the other innocence, then the presumption of innocence and the benefit of doubt principles would have to prevail”.

New York State Jury Instructions of General Applicability.

“The law directs no distinction between direct evidence and circumstantial evidence in terms of weight or importance.

Initially you must decide, on the basis of all the evidence, what facts, if any, have been proven. Any facts upon which an inference of guilt can be drawn must be proven beyond a reasonable doubt. After you have determined what facts, if any, have been proven beyond a reasonable doubt, then you must decide what inferences, if any, can be drawn from those facts.

Before you may draw an inference of guilt, however, that inference must be the only one that can fairly and reasonably be drawn from the facts, and that the evidence excludes, beyond a reasonable doubt every reasonable hypothesis of innocence“.

Massachusetts Jury Instructions

“There are two things to keep in mind about circumstantial evidence. The first one is that you may draw inferences and conclusions only from facts that have been proved to you. The second rule is that any inferences and conclusions which you draw must be reasonable and natural, based on your common sense and experience of life. In a chain of circumstantial evidence it is not required that every one of your inferences and conclusions be inevitable, but it is required that each of them be reasonable, and that they all be consistent with each other, and that together they establish the defendant’s guilt beyond a reasonable doubt.

If the State’s case is built solely upon circumstantial evidence, you may find the defendant guilty only if those circumstances are conclusive enough to leave you with a moral certainty, a clear and settled belief, that the defendant is guilty and that there is no other reasonable explanation of the facts as proven. The evidence must not only be consistent with the defendant’s guilt, but must also be inconsistent with the defendant’s innocence.

The defendant is not entitled to an instruction that the jury may draw an inference only if the State has proved beyond a reasonable doubt the subsidiary facts upon which it rests.

There is no requirement that every inference must be proved beyond a reasonable doubt. [This is a reference to subsidiary inferences] The defendant would be entitled to an instruction that the jury may not draw an inference unless they are persuaded of the truth of an inference beyond a reasonable doubt only in the case of an inference that directly establishes an element of the crime, and not to subsidiary inferences in the chain of reasoning“.

The jury instructions which I have quoted above are interesting. The instruction given to New York Juries runs against the grain in that, alone in the literature I have found, it says that any fact upon which an inference of guilt can be drawn must be proved beyond a reasonable doubt. That is an unnecessarily high bar for each fact in a case built upon circumstantial evidence. It also suggests that inferences of guilt are drawn from singular facts rather than the existence of numerous facts taken together. I suspect that it is a matter of poor drafting.

The instruction given to juries from Massachusetts is clearly more sensible. However even here the instruction acknowledges that there are some elements of evidence, those that directly establish an element of the crime, to which the higher bar may be more appropriate.

It is easy to see how, once these concepts are reduced to words, confusion and vagaries can arise.

What directly establishes an element of the crime, in our case? One would probably say the knife.

CHAPTER 32

The Final Appeal

The final appeal was heard by the 5th Chambers of the Italian Supreme Court in Rome on Wednesday the 25th March 2015.

The panel consisted of five judges. The Presiding Judge was Gennaro Marasca. The Reporting Judge and panel member was Antonio Paolo Bruno. The function of the Reporting Judge is to lay out the previous history and findings in the case and the grounds for the final appeal.

Somewhat ominously Bruno told his colleagues on the panel that the trials had “not many certainties beyond the girl’s death and the definitively convicted” [a reference, of course, to Rudy Guede]. This was a repetition of Judge Zanetti’s opening remark in first appeal conducted before Judge Hellmann.

Submissions on the part of the parties started with the Prosecutor General, Mario Pinelli. These were followed with submissions on behalf of Lumumba and the Kercher family. Being allowed up to two hours each these concluded an hour or so after a late lunch break.

Submissions, presented in turn by Ghirga and Dalla Vedova, then followed for Knox for the rest of the afternoon.

One of Vedova’s submissions, amplified by Bongiorno in her turn, was that the appeal should still be referred to the United Sections of the Supreme Court, which can hear issues which have a constitutional significance.

“How can we tolerate in Italy that trials can go on forever?” he asked the Court. Another was that he requested an adjournment of the appeal pending a decision from the European Court of Human Rights on his client’s complaint of a violation of her basic human rights ensured by the European Convention on Human Rights.

The Court then adjourned to Friday the 27th March, when Bongiorno and Maori presented submissions for their client Sollecito. Bongiorno took the lion’s share of the time allotted to the pair, in fact so much so that the pair exceeded the time they had together. The panel then retired to consider it’s verdict, which was announced late in the evening.

The 5th Chambers had annulled the convictions against Knox and Sollecito.

I think it would be fair to say that most people were surprised by the verdict, even if acquittals were what they wanted.

After the verdict Marasca commented that the acquittals were due to contradictory and/or insufficient evidence under Article 530, section 2, of the Italian Criminal Procedure Code, and that the panel had not considered itself bound by any aspect of the judgement of the 1st Chambers annulling the first Appeal Court's verdict.

All verdicts have to be followed by a detailed reasoning, the Motivation, within 90 days of the verdict. In the event there was a considerable delay in publication of the 5th Chambers' Motivation. This was finally lodged on the 20th September 2015, nearly 6 months later.

The next two Chapters are devoted to an analysis of that Motivation.

CHAPTER 33

The Marasca - Bruno Motivation

Here are the main eight decisions emerging from the Report -

1. The standard of “beyond any reasonable doubt” was not met due to insufficient and/or contradictory evidence - pursuant to Article 530, section 2 of the Italian Code of Criminal Procedure. Not, therefore, the exoneration of a section 1 acquittal.
2. Multiple attackers upheld. Guede was guilty with others unknown.
3. The break-in in Romanelli’s room was staged.
4. Amanda Knox was present in the cottage at the time of the murder but there is insufficient evidence that she played a participatory role. As Knox was present it is not credible that Sollecito was not, though this is not established.
5. The DNA profile of Meredith Kercher on the knife and the DNA profile of Raffaele Sollecito on the bra clasp have “no probative or circumstantial relevance”
6. “Motive is not irrelevant” and motive was not established.
7. There was no post murder manipulation of the crime scene (apart from 3 above).
8. No purpose would be served in remanding the case back to the 1st instance court of appeal (as had previously occurred on appeal against acquittal)

I am going to examine the 34 pages in which Marasca-Bruno present their rationale for the above. These pages also include reasons for the dismissal of various appeal submissions, which are of no interest to this critique, although it can be observed that obviously the court had dismissed the defence applications for an adjournment pending an ECHR decision or a referral to the United Section.

Central to the acquittals is of course the claim that that the evidence was insufficient and/or contradictory and I shall look closely at how the Report sets out to demonstrate this.

Now, to remind the reader, and to be fair, I did say at the beginning of this book that I did not agree with the outcome to this case. I did not mention then, but I will say it now,

that my ire is particularly reserved for this Motivation, and that's saying something given the criticism that I and others have had of Hellmann.

We shall discover that a number of these co-called contradictions are not plausibly inherent in the trial evidence or in previous reports but are in fact the result of illogical reasoning and dogmatic assertions made by the 5th Chambers itself.

My overall reaction to the Report is that it is quite unlike any other reasoning I have seen produced by a court of law.

It smacks of a desperate attempt to bring home an incomprehensible verdict.

The language and the dogmatic assertions, unsupported by any evidence and argument, are quite startling.

The competence of the investigators, the forensic service and the judges who have adjudicated previously in the case, is all called into question, and frequently in a derogatory and highly journalistic manner.

Indeed, I suspect that the Report was written with a view to the media being able to lift headlines from it, and many such potential headlines are to be found loaded towards the front of the Report. The busy tabloid editors dream.

Some readers may have thought that the sections I quoted from the Chieffi annulment were rather overblown, and the sentences he employed were somewhat overlong, but that was nothing compared to the substantial amount of ponderous, self indulgent, and obfuscatory "scholastic" waffle in the Marasca - Bruno Report. This is apparent from a straightforward translation, but I will not confuse the reader by quoting anything so literal but, instead, use best attempts to keep the translation simple and palatable, but even then it I find it incumbent to myself paraphrase some of the more obtuse sections. This obtuse rhetoric forms a turgid barrier (like thick treacle) for the reader and, of course, the Courts' affirmation that Knox was present when the murder was committed is only to be found deep into the Report.

The Report challenges, if not overturns, some settled and well understood legal concepts in criminal law and natural justice and violates aspects of the Italian Code of Criminal Procedure. This must be of some concern to the Italian judiciary in general.

Please keep in mind as we go through the Report that the Supreme Court is a Court of Legitimacy whose parameters for interference are limited by the Italian Criminal Procedure Code, and that intrusion into issues of merit is confined to the grounds as set out in Article 606, which we mentioned in Chapter 26.

So, let's start. Incidentally, I shall use the initials M-B to refer to the authors Marasca and Bruno.

The Report claims that the Nencini appeal was -

“conditioned by the prospect of the factual profile unexpectedly included in the sentence of annulment (i.e annulling Hellmann); such that the stringent and analytical evaluation of the Supreme Court might unavoidably force one towards affirming the guilt of the two accused. Misguided by this basic misunderstanding, the same judge is drawn into logical inconsistencies and obvious errors of judgement that are here reported.”

The Report refers to -

“the troubled and intrinsically contradictory path”

- of the history of the trial, by which, of course, they mean the acquittals at the Hellmann appeal.

“An objectively wavering process, whose oscillations, however, are also the result of clamorous failures, or investigative “amnesia” and culpable omissions of investigative activity. Had they been carried out these would, in all probability, have led to a picture, if not of certainty, to at least of tranquil reliability, pointing to either the guilt or innocence of today’s accused. Such a scenario, intrinsically contradictory, constitutes in itself, already, a first and eloquent signal of an investigation that was never capable of reaching a conclusion that was beyond any reasonable doubt.”

In my submission there are many carefully crafted layers of deception, supposition and “begging the question” in the above three quotes.

The first is that there was a factual profile (without stating what this was) emerging from the sentence of annulment. That would not be true since all that the Supreme Court 1st Chambers did was annul Hellmann’s verdicts having accepted the prosecution’s grounds of appeal, one of which, incidentally, was that Hellmann was riddled with examples of “begging the question”, a trait which M-B are by no means averse to themselves. That left the judicial process with the factual profile that emerged from the Massei trial, modified, if at all, by trial evidence from Hellmann.

M-B also quite arbitrarily assert that Nencini was “conditioned” and “misguided” by the terms of the annulment. Whatever errors Nencini may have made in his Report (and there were a few) I can only find one (see towards the end of Chapter 28 re the admissibility of evidence from Guede’s separate trial) that might be considered significant, an error in law, but it is highly subjective and offensive to assert that these were conditioned by and a consequence of the annulment, or imply that they had an impact on the verdict. That assertion is simply begging the question and is clearly an affront to the appeal judge.

It is, of course, perfectly true that the Hellmann annulment came with a request from the 1st Chambers of the Supreme Court for the Florence appeal court to consider, (to

paraphrase), “within its broadest discretion, the possibility of determining the subjective positions of Guede’s co-conspirators within a range of hypothetical situations, from premeditated intent to kill to an unwanted sex game that got out of control”.

To be clear, being asked to consider someone’s subjective position is not just an invitation to consider motive but more broadly an invitation to consider that person’s understanding of the nature and consequences of his or her interaction, or non-interaction, with a situation.

As it happened Nencini demonstrated latitude and independence in considering an entirely different and just as likely, if not more so, hypothesis. The hypothesis (See towards the end of Chapter 28) was not an affirmation of guilt, let alone proof, but was an element in the picture, and was certainly not forced upon the court by the terms of the annulment.

M-B may not have cared much for Nencini’s hypothesis (see later) but they can hardly, to be consistent, deplore the motivation given that they come up with a subjective and most unlikely scenario of their own in defence of Knox (see the end of this critique) that leaves a lot of questions begging.

Equally begging the question is that the Hellmann acquittals were the consequence of an investigation that was never capable of reaching a conclusion that was beyond reasonable doubt. M-B also seem to accept, they certainly imply, that even an annulled verdict is evidence of reasonable doubt. Again there is no logical connection for that given that the verdict - they accept this - was correctly annulled.

All these assertions require to be demonstrated. Are they?

As to investigative omissions or failures I can think of a few things to which I would have liked to have had an answer, and I will discuss these later, but when we look to find to what the 5th Chamber is referring, these are less than “clamorous”, if indeed omissions or failings at all although, of course, there is the failure to collect the bra clasp within the first couple of days.

Next the Report claims that the media impacted on the conduct of the investigation and the judicial proceedings. There was “an unusual media clamour” of an international nature that -

“led to a sudden acceleration of the investigation, in the frantic search for one or more guilty people to placate international opinion, and certainly did not help lead to the truth.....media attention led to “prejudicial reflexes”, “procedural deviations”, generating “illicit noise” in the provision of information. This is not so much from the late discovery of witnesses, as of the raiding of the trial by the impromptu propulsion of detainees with proven criminal records, who are certainly not people averse to moments of pathological lying...”

The media take note. But it is the investigators that are once again being called to account here.

M-B do not identify the point at which the aforesaid sudden acceleration is supposed to occur but I would hazard a guess that it was when the investigators discovered the body of a girl who had been brutally murdered. The only propulsion required would be the perfectly natural need to identify and detain the perpetrators, and not what the media was saying about the case.

M-B do not produce one convincing iota of evidence that the investigators were unduly influenced by the media attention rather than the evidence they were obtaining.

There is, of course, more than a nod to the defence PR myth of a Rush to Judgement about the above. However it is overlooked that there was a period of 7 months between the arrest of Knox and Sollecito and the prosecution notifying all concerned that they were ready to press charges.

M-B are, of course, perfectly right about Alessi and Aviello but omit to mention that these were witnesses called by the defence. The media had nothing to do with that, but rather the evidence of multiple attackers.

The 5th Chambers does concur with previous findings as to more than one attacker.

“We refer to the multiple elements, linked to the overall reconstruction of events, which rule out that Guede could have acted alone. Firstly, testifying in this direction are the two main wounds (actually three) observed on the victim’s neck, on each side, with a diversified path and features, attributable most likely (even if the data is contested by the defence) to two different cutting weapons. And also, the lack of signs of resistance by the young woman, since no traces of the assailant were found under her nails, and there is no evidence elsewhere of any desperate attempt to oppose her assailant; the bruises on her upper limbs and those on the mandibular area and lips (likely the result of forcible hand action and constraint meant to keep the victim’s mouth shut) found during the cadaver examination, and above all, the appalling modalities of the murder.”

But this is accompanied by some disingenuous and unenlightening speculation on whether a motive can be derived from the pathology, forensic findings, and the crime scene -

“On the other hand such factual finding, when adequately valued, could not have been devoid of meaning as for researching the motive, given that the extreme violence of the criminal action could have been seen - because of it’s abnormal disproportion - not compatible with any of the explanations given in the verdict, such as mere simple grudges with Ms Knox; with sexual urges of any of the participants, or even with the theory of a sex game gone wrong, of which, by the way, no mark was found on the victim’s body, besides the violation of her sexuality by a hand action of Mr Guede, because the DNA that could be linked to him found inside the vagina of Ms Kercher, the

consent of whom, however, during a preliminary phase of sexual approach, could not be ruled out.”

“Such finding is even less compatible with the theory of the intrusion of an unknown thief inside the house, if we consider that, within the course of ordinary events, while it is possible that a thief is taken by an uncontrollable sexual urge leading him to assail a young woman when he sees her, it is rather unlikely that after a physical and sexual aggression he would also commit a gratuitous murder, especially not with the fierce brutality of this case, rather than running away quickly instead.”

Then on the matter of Guede’s statements at the Hellmann appeal, admissibility -

“...would result in an evasion of the guarantees dictated by Article 526 of the Criminal Procedure Code, according to which “the defendant’s guilt cannot be proved on the basis of declarations produced by anyone who, in free will, had always voluntarily avoided examination by the accused or his defence team.....and in this regard it appears useful to refer to the principle of “non-substitutability”, accepted by the United Division of this Supreme Court under the category “legality of the proof”, meaning that, when the code establishes an evidentiary prohibition or an express non-usability, it is forbidden to resort to other procedural instruments, typical or atypical, for the purpose of surreptitiously avoiding such obstacle.”

Having set the stage and dealt with points of law M-B now turn to the “merit of the trial process”.

Particularly this involves looking at the “Motivational structure of the ruling under appeal”.

“Discrepancies, inconsistencies and errors in judgement do not escape notice.”

They then proceed to set these out. I take them in the order in which they arise.

Motive

“Erroneous, in the first place, is the assertion regarding the substantive irrelevance of ascertaining the motive for the murderous act. This cannot be accepted in the light of the unquestioned doctrine of this regulating court, relating to the relevance of motive as the glue that links the various elements of which proof is made, especially in circumstantial cases such as the one at hand”

Well, Nencini did not maintain that motive was irrelevant, or even substantially irrelevant, per se. What he did say was this -

“Regarding motive, first it is necessary to quote the teaching of the Court of Legitimacy on whose opinion the precise indication of a motive for the crime of murder loses

relevance when the attribution of responsibility to a defendant derives from a precise and concordant evidentiary framework (see Supreme Court, section 1 Criminal Sentence No. 11807, 12th February 2009).”

M-B ignore the above but quote another bit of law which, to paraphrase it, because it becomes complicated in translation, states that motive, whilst capable of constituting an element, has to be congruent with and capable of pointing all the elements of the evidence in a single direction, in a clear, precise and convergent manner, failing which any motive so postulated attains an air of ambiguity unable to fulfil its purpose.

M-B continue -

“.....which as we shall see shortly, (such purpose) cannot be maintained in the case at hand, in the face of a body of evidence which is ambiguous and intrinsically contradictory.”

If my paraphrasing is correct, then nothing here contradicts Nencini. Indeed the quotes, taken together, are complimentary and encapsulate what just about every criminal lawyer understands to be correct about the relevance of a motive in criminal proceedings. Nencini is not erroneous. Motive does not have to be central. It is an element which may be useful. Futile and trivial motives are difficult to pin down to a specific cause, but are often the source of sudden and inexplicable rage. There are, indeed, glues other than motive, which fulfil the same purpose, such as the behaviour, lies, inconsistencies and contradictions referable to the words and actions of the accused themselves.

Finally, on motive, M-B make another point.

Guede had a sexual motive but this cannot be extended to others. To demonstrate the point they present the following argument, but here, again, I encounter a difficulty with the translation into English, and so I paraphrase:

“If it would be manifestly illogical (ed: as it would be) to hypothesize the involvement of Romanelli and Mezetti in the murder, and in complicity with a complete stranger, then it is equally illogical not to extend the same argument to Sollecito who had never met Guede.”

According to M-B, Nencini’s failure to advance this argument is a judicial error.

However I can quite understand why he did not advance it. Firstly, the argument is based on Guede’s sexual motive and the implied premise that gender and sexual assault are related, which does render the involvement of Romanelli and Mezetti unlikely but does not help Sollecito, as Massei pointed out. Secondly, the lack of a link to Guede, in either case but particularly in Sollecito’s case, has nothing to do with whether or not the hypothesized perpetrator would in fact possess such a motive. Thirdly there is a link anyway, Knox, again as Massei pointed out.

The argument might conceivably operate on another plane, leaving aside sexual motive. Would anyone commit murder with a stranger? Well it happens in fact, particularly if there is a party who can link the strangers together.

The reason, of course, why one cannot hypothesize the involvement of Romanelli and Mezetti in the murder is that they both had proven alibis, whereas Sollecito did not, and that would seem to be the more pertinent fact.

It is a suggestive argument but one that is flawed. In any event it is not significant and M-B are not averse from making significant judicial errors themselves, as we shall see.

Time of Death

“Another judicial error is the finding that the establishment of Kercher’s exact time of death was irrelevant, in the belief that the approximate timing offered by the expert investigators was sufficient, for all that this may have been correct at the trial stage.....time of death is an unavoidable factual pre-requisite for the verification of the defendants’ alibis.”

Once again, this is to entirely misrepresent Nencini. He did not say that the TOD was irrelevant, and as for an exact TOD, or even an approximate one, this would be impossible, as I will explain, even if the temperature of the body had been taken by the pathologist as soon as he arrived at the scene of the crime, which I am sure any intelligent and informed reader will understand. That could have narrowed the time frame a bit more, but it was not a “judicial error”.

We could go on and delve into the evidence, particularly the expert and other evidence which became available over time and which conditioned Nencini’s observations, but M-B do not, instead resorting to a banal statement that does not take account of any of the foregoing.

“Deplorable carelessness in the preliminary investigative phase.....[ed: not taking body temperature, yes, but other forensic considerations had to apply as well].....a banal arithmetic mean between a possible earliest time and a possible latest time (from around 6.50 pm on the 1st Nov to 4.50 am of the following day), thus fixing the time at about 11 -11.30pm”

At the time of the Massei trial the pathologist, Dr Lalli had concluded that death may have occurred between 8 pm on the 1st Nov and 4.00 am the next day. However this broad parameter could be further restricted based on calculating temperature decrease in the cadaver, using the Henssge nomogram.

The Henssge nomogram allows one to calculate back a specific number of hours from the time of first measurement and this permitted an intermediate time of about 11 pm. It was not simply an arithmetic mean. Had it been, TOD would have been midnight.

But in any event, the decision not to take the body temperature earlier but rather preserve the scene for forensics for about 10 hours had no detrimental impact upon the defendants' alibis. It is accepted that Meredith was certainly alive at 9 pm on the 1st Nov and there is nothing to corroborate an alibi for the accused from 9.10 pm onwards (if we ignore Curatolo's testimony, which is not much of an alibi) on the 1st Nov until 5.30 am (when the music app on Sollecito's computer was opened) the following day. Body temperature, taken earlier, would certainly not have been able to narrow TOD down to a period of 10 minutes (9 to 9.10 pm), and hence prior to the last temporal reference point for a credible alibi, the manual interaction at 9.10 pm on Sollecito's computer. Nor would even an hour, say between 9 and 10 pm help either, and for the same reason. I say 10 pm bearing in mind the phone log on one of Meredith's phones shows two attempted calls or interactions at about 10 pm which, the defence would have us believe, can be taken to indicate that a vicious attack on her was under way, or already over. It would be impossible to forensically determine a TOD in either time frame given that the body was not discovered for at least 15 hours after TOD had likely occurred (the 15 hours being calculated from 10pm on 01/11 /07 to 1pm on 02/11/07). Given that length of time medical science would never have had a hope of being helpful to the defence.

Samples 36B and 165B

M-B opine that there is a debate to be had here as to -

"The legal value attributable to scientific evidence, with particular reference to the genetic investigations, acquired in violation of the rules established by international protocols."

The terms of the debate therefore already define its conclusion. This is a "boots' strap" statement if ever there was one, but this is a pervasive feature of the Report.

There are, they say, two theories which have to be balanced -

(1) "that which puts an increasing amount of weight on the contribution of science, even if not validated by the scientific community,"

and

(2) "that which insists on the primacy of law and postulates that, in deference to the rules of criminal procedure, only those scientific experiments validated according to commonly accepted methodological canons may be allowed to enter."

Which of these two disingenuously formulated options do they select? It is the second although in fact they are not that very different. Both contain the germ of "validation" (which, they insist, and in the context of (2) above, means repeating a scientific test to obtain the same result) as required by "international protocols" (or "commonly accepted methodological canons").

“The court concedes that this delicate problem.....must find a solution in the general rules that inform our legal system....and not....in an abstract insistence on the primacy of science over law or vice versa..... Scientific proof cannot, in fact, aspire to an unconditional credit of self-referential trustworthiness in the trial setting, by the very fact that a criminal trial renounces all notion of legal proof. The reference coordinates will have to be those attaching to the principle of cross examination and to the judge’s control over the process of formation of evidence, which must respect preordained guarantees, the observance of which must strictly govern the judgement of the relevant results’ reliability.”

Can validity according to international protocols (and what are they?) be a preordained guarantee, in the same manner as the rights of an accused not to be incriminated by a witness who refuses cross-examination is guaranteed by Article 526 of the Criminal Procedure Code? Should the DNA traces on the knife and the bra clasp only be included as “valid evidence” if they comply with the rules pertaining to witness testimony? Well, we can note there was much cross-examination of the prosecution DNA experts at trial and on appeal, so no problem there.

Some compelling reason will have to be advanced - abiding by the rules of evidence that inform the legal system, as they say. They cannot refer to an Article on the point in the Criminal Procedure Code. There is none, and if there were, and if it stated that the repeatability of a scientific test was a guarantee for the test to be reliable and/or admissible, then sample 36b from the knife would not even have made it into the trial. And this is not the fault of the Criminal Procedure Code. There is no other body of law in the world that I am aware of that embodies any such guarantee, even for Low Copy DNA. And the reason for that, in part, is that there is no internationally recognized protocol, and precisely because there is no agreement in the scientific community as to this as yet.

M-B tend to treat “reliability” and “admissibility” as interchangeable concepts, and indeed, given the manner in which they consider these concepts, as being informed and overridden by that as to “validity”, there is some logic to this, for surely if a piece of evidence is pre-ordained as unreliable then it must be inadmissible as well.

There then follows a lot more waffle that need not detain us, other than to comment that none of this advances, and indeed does not even consider, any compelling reason for regarding repeatability as a pre-ordained guarantee from the point of view of admissible, or reliable, evidence.

For instance, there is this “laugh aloud” section on validity (perhaps from a childhood textbook on science), about the Empiric Method and Galileo, for our erudition –

“The rigorous respect for such methodological standards provides a reliability, conventionally acceptable, in the assembled results, firstly related to their repeatability – that is the possibility that those findings, and those alone, would be reproduced by an identical investigative procedure in identical conditions, according to the fundamental

laws of the empiric method and, more generally, of experimental science, that since Galileo has been based on the application of a “scientific method” (typical procedure meant to obtain knowledge of “objective” reality, reliable, verifiable and sharable; by common knowledge this consists, on one hand, in the collection of empiric data in relation to the hypothesis and theories to be confirmed; on the other hand, in the mathematical and rigorous analysis of such data, that is associating – as stated for the first time by aforementioned Galileo – “sensible experiences” with “necessary demonstrations” that is the experimentation with mathematics.”

Leaving aside whether we can describe the analyses with which we are dealing as “experimental” we can note that the Criminal Procedure Code does specifically take into account non-repeatable tests for we can find in Article 360 that provided the conditions therein are complied with (basically that defence experts are given the opportunity to be present, observe and challenge any aspect of the analysis, not just there and then but also in a specially convened court hearing to determine and rule on the procedural proprieties of the non-repeatable test) then the result of the test is admissible, if not necessarily reliable. As the defence experts present took no action at all we are entitled to infer that they saw nothing untoward in how the test was conducted.

Why the insistence on repeatability despite Article 360? To get round it, obviously.

Does the testimony of an eye witness to a crime have to be corroborated by a video of the incident, or other eye witness testimony, before his testimony can be considered reliable and admissible? The eye witness testimony might actually be inaccurate but that is a different matter.

Why should the result of a scientific test, conducted in accordance with a method which has already been repeatedly used in the global scientific community to establish the validity of the method and the reliability of the technical equipment, be treated any differently?

The eye witness, of course, does not have a video of the incident by which to check his memory, whereas a biological trace may well be sufficient to allow for repeated tests. However in such cases, if there is no repeat, the result is not automatically ruled unreliable or invalid. It is for the defence to request a repeat and if they do not, then it does not happen.

There would, of course, be a capacity for repeat, which Low Copy Number might not have, but if repeats do not occur when the capacity exists, then this is because the result is unambiguous, as the results were, for the judge a quo, in the case of Meredith’s profile on the knife and Sollecito’s profile on the bra clasp.

However, M-B move on to declare that they do not share Nencini’s lack of hesitation in attributing evidentiary value to the knife and bra clasp results.

“Important to note that the case law of this Supreme Court, cited above, has acknowledged of genetic investigations - specifically their degree of reliability - full evidential value, and not a mere evidential element, according to Article 192, chapter 2, of the Code of Criminal Procedure; adding that, in cases where the genetic investigation does not have absolutely certain outcomes, it can be attributed lesser evidential value (Section 2, n. 8434 of the 05 February 2013, Mariller, Rv. 255257; Section 1, n. 48349 of the 30 June 2004, Rv. 231182). This means that, in the situation of placing suspects in terms of firm identity, the outcomes of the genetic investigation can have conclusive relevance, while in cases of mere compatibility with a determined genetic profile, the outcomes have a mere circumstantial relevance.”

“This enunciation of principle needs a further clarification.”

I should think it does! Take the knife [Exhibit 36] for example. Sample B was a match for 15 and a half out of the 16 individualising loci in Meredith’s genetic profile. That is, without doubt, firm identity and conclusive relevance. It is full proof of the “identity”, if not the origin, of the trace, certainly established, and that by any scientific protocol. That was acknowledged by all the trial experts and even, though with some reluctance, by Vecchiotti. It is not a matter of mere compatibility but even if it is it cannot be dismissed as “mere” circumstantial relevance, and it’s circumstantial relevance should be evaluated in the context of the evidence as a whole.

Take the bra clasp [Exhibit 165]. Sample B revealed, along with Meredith’s DNA, and probably that of an unidentified “other” male, the genetic profile of Raffaele Sollecito which, even if there had been a mis-attribution of some four loci to his profile, still left sufficient loci to match his profile in accordance with standard protocols for attribution and identification. And even if there could have been some doubt about that there was his Y haplotype as well in 17 loci.

“Generally, it is possible to accept the respective conclusions, providing the sampling activity, conservation and analysis of the sample were respectful of the requirements stated in the relevant protocols. This is true also in the less firm hypothesis, in which the outcomes of the analysis do not arrive at a firm identity result, but merely a compatibility one.”

“The principle of necessary methodological correctness in the phases of collection, conservation and analysis of examined data to preserve their maximum integrity and validity has been stated by this Court in Section F, n.44851 of 6 September 2012, Franchini, although that was in the area of IT evidence, on the basis that those principles have been included in the Code of Criminal Procedure with the modification of the Second Chapter of Article 244 of the Code of Criminal Procedure and the new particular requirement of Article 254 bis of the same code, introduced into law on the 19 September 2008, n. 48.”

Eh? What is the relevance of IT (by which they mean Information Technology) evidence? I have checked the references here and the above is just obfuscating waffle.

“Justifying reasoning resides for this Court, in the same notion of evidence offered by the standard code of procedure, which in Article 192, Chapter 2 states that “the existence of a fact cannot be deduced from evidence, unless it is serious, precise and concordant”, so that a procedural element, to be elevated to firm evidence, has to present the characteristics of seriousness, precision and concordance, according to a configuration borrowed from the civil law.”

And? Surely what has just been said about the data is serious, precise and concordant?

“In the light of such considerations [ed: “such considerations” need not concern us - they were just preceding waffle] it is not clear how the data of the genetic analysis - carried out in violation of the prescriptions of the international protocols related to sampling and collection - could be considered endowed with the features of precision and seriousness.”

Again we see the “boot straps argument“, where the conclusion is hidden in the premise. It is, of course, important to maintain clarity of thought by keeping the issue of the value of the evidence, in terms of the data revealed by the analysis, apart from the issue of contamination. M-B have no compunction about running the two issues together and, in my submission, they do so in order to detract from the significant value of the data retrieved.

And so we are back with contamination hypothesized in the abstract, so roundly criticised by the 1st Chambers of the Supreme Court.

“It is absolutely certain that these methods were not complied with [cites the C-V Report] -

(a) The knife collected and then preserved in a cardboard box, of the sort used to package Xmas gadgets, agendas

(b) The bra clasp [collected 46 days after]the photographic documentation demonstrating that at the time of collection, the clasp was passed from hand to hand.... In addition wearing dirty latex gloves.”

What is the relevance of the cardboard box unless it was a conduit for contamination? That was not even hypothetically plausible.

Yes, as we all know the bra clasp was recovered after 46 days. But where are these collection protocols that are internationally recognized and are a pre-ordained guarantee recognized by law?

As for dirty gloves the only evidence of this that I have seen is a photograph of the bra clasp being held in one gloved hand whilst the glove on another hand, patently belonging to the same operative, shows spots of some substance on it, which spots are

most probably, in the circumstances, blood derived from the clasp the operative is holding.

Where is the common sense of the 5th Chambers?

This was all discussed extensively by Massei and Nencini but all that has been ignored.

And so we swing back to the conclusion that was their premise.

“In essence, it is nothing less than a procedure of validation or falsification typical of the scientific method, of which we have talked before. And it is significant, in this regard, that the experts Berti-Berni, officials of the R.I.S Roma, carried out two amplifications of the trace (ed: 36I) retrieved from the knife blade.

In the absence of verification by repetition of the investigative data, it is questionable what could be the relevant value to the proceedings, even if detached from the scientific theoretical debate, of the relevance of outcomes carried out on such scarce or complex samples in situations not allowing repetition.”

Let us recall what actually happened with sample 36I. In 2013 this sample, which had not been analyzed by the Independent Experts, was analyzed by Berti-Berni. The sample was Low Copy Number and the quantum of DNA present was significantly less than was present with sample 36B. However they were able to carry out the test with a repeat because since 2007 there had been further technical advances in the equipment.

The repeat confirmed the evidential value of the first test (which attributed DNA to Knox) despite -

(a) the low level of DNA, less than 5 picograms which was at least 20 times less than the quantity of the DNA in sample 36B, and

(b) despite allele drop out in the repeats for the consensus profile.

Low Copy Number, as inherently unreliable per se, and as evidence of contamination per se, as argued in the case of 36B (Meredith), was shown not to be so. LCN can produce reliable results and furthermore no-one contended that Knox's LCN DNA was there other than by primary transfer. That was what was truly significant about the test, and it underscores that the result of the test on 36B had significant evidential value.

The knife and the bra clasp -

“...cannot take on either probative or circumstantial relevance precisely because, according to the aforementioned laws of science [ed : to be found in that old school science textbook one had remembered he had], they necessitated validation and falsification.” [ed : as enunciated by the father of genetics, Galileo!]

The primacy of the rules of evidence –previously championed - has just been jettisoned with this dogmatic and hopelessly unscientific assertion, which is not even derived from the logic of the argument - though there is no logic, still less argument - that they have presented in support. Indeed much of the argument (or rather, the waffle) is merely this dogmatic assertion in numerous different guises and tediously extended formulations of itself – the *petitio principii* fallacy or begging the question *par excellence*. If only they themselves understood what they meant by the “laws of science”. Sounds weighty though, doesn’t it?

As to validity and falsification the issue here really is, of course, contamination in the lab, although M-B do not take the trouble to make that clear.

Let us suppose, for instance, that the sample from the knife blade, 36B, had in fact been subjected to DNA analysis for the first time in 2013. Let us divide the sample at that time into two labelled 36B(i) and 36B(ii) and let us suppose that 36B(i) had produced the (virtually complete) profile it did in 2007 but that 36B (ii) had failed to produce anything like a match with the former. It is very unlikely that separate amplifications could be the reason for this, in fact very improbable in a bio-chemical chain reaction (the polymerase chain reaction, or PCR), and even if the second amplification produced a slightly different “read” this would not entail “falsification”. In fact it is obvious that the statistical analysis software tools now in general use, and which allow for a probabilistic analysis of allele drop out occurrences, is inimical with the proposition that a different read, *per se*, necessarily amounts to falsification.

It helps, also, to know what is actually going on when DNA is amplified. Amplification requires an enzyme, in this case the polymerase enzyme. Enzymes are proteins that act as catalysts to the various chemical reactions with amino acids (the building blocks of life) which occur in biology. The living cell is a sac containing DNA and proteins. Every protein is the combination of a specific sequence of amino acids assembled according to the instructions, or blueprint, encoded in the DNA. They power various organic processes, including, in the case of the polymerase enzyme, cell (and with it DNA) reproduction. This is how biological organisms grow and develop. Polymerase enzymes are to be found in all living organisms and are crucial for the first steps of protein biosynthesis. Polymerases are used to assemble DNA and RNA molecules and usually work in pairs. They link specific sequences of nucleotides to chains using base-pairing interactions. In an amplification the DNA sample is heated to a high temperature so as to denature the DNA and break the double helix strands in order for the polymerase to perform its function and rebuild the sequences hundreds of times over, and hence the DNA strand anew. However, heat stress can effect DNA integrity and can also directly inactivate the DNA polymerase. There is obviously no evidence of this occurring in the test that was done but in a repeat one could get a different (though unlikely to be significant) “read”, that is, with an amplification of a separate but as yet untested portion of the same sample. But in no way can the lack of a repeat amplification, given an understanding of the underlying biology and chemistry, be used *per se* as a valid rebuttal of, or as a falsification argument against, the reliability of, in this case, a clear

and obvious one-time test result obtained using, as in this case, standard procedure and equipment readily accepted by the scientific community. The result (virtually a complete match with Meredith's profile) had, in effect, validated itself and the science behind it. To argue otherwise is to throw the science of DNA into the dustbin.

There is another thing worth considering in this context. In Chapter 17 we had Stefanoni's testimony that she used all of the sample 36B for the DNA analysis (actually for the amplification). She also said that awhile afterwards she repeated the electrophoresis without getting a result that would have modified her reading of the result and the attribution of that to Meredith's DNA profile.

Here is what Stefanoni said (from the Massei report) -

"She explained that in certain cases, the electrophoresis was repeated, as for example the blade of the knife, and each time it yielded the same results. To achieve this, more DNA was used. Obtaining a result a little lower in some loci, a little less lower in others, we had repeated the genetic analysis, by injecting double the quantity of DNA into the machine which performs the capillary electrophoresis,* Dr. Stefanoni continued to explain (p. 96), even if, as she added, this procedure could not be considered as a repetition [235] of the analysis, since, because of the small quantity in the sample, it was not possible to divide it in two to perform two separate tests. The only thing that could be done was to repeat the electrophoresis run, "because I do not use the entire volume of the PCR, thus the total reaction volume, in one attempt while effecting the electrophoresis; I only use a small part of it, a microliter or a microliter and a half, that is, a twentieth, give or take, and thus in practice I injected simply more DNA into the machine" (page 96). Comparing the two runs, the witness added, "I never got anything different, i.e., anything in addition, which would have made me think that perhaps the profile was not that of the victim but could have been attributed to some other person, unknown perhaps, but, still, another individual" (page 98)."

What did she mean by saying that she "injected more DNA into the machine"? There is only one feasible explanation, and the answer is as above, Science tells us that amplification (the PCR) builds exact copies (where missing or degraded) of the strands of the DNA helix, as it was in the first place, doing so many times over and therefore increasing the DNA available for analysis. She had not used all of the amplified sample for the first electrophoresis analysis but only a portion. For the second run she could have re-amplified the amplified portion not so used. Even if she had not done this (and she probably did not, as this is not in her testimony) she was still using a greater portion of the amplification (or PCR) than had been used on the first electropherogram analysis. The RFU, or height of the alleles (and hence quantity of DNA present) in the chart printed out on the second electrophoresis run is, in most cases, greater than as shown in the chart from the first analysis, lending, of course, greater credence and reliability to the first set of readings obtained. One can imagine that had she also re-amplified the greater portion, as used on the second run, with the same result on electropheric analysis, that would have created something of a stir as that would have looked very much like a repeat analysis. On the other hand, re-amplifying an already

amplified sample would run the risk of de-activating the enzyme which is probably why she did not.

Whilst, as she acknowledged, the above does not constitute a full repeat, nevertheless it does demonstrate her confidence in and knowledge of what is involved in the PCR process, though the science behind this, which formed the basis for her confidence, largely seemed to have gone amiss amongst the acquitting appeal judges, being replaced by the simplistic and, in this context, unscientific mantra of “unreliable if not repeated”.

Returning to our example, the most probable reason for any real dissimilarity in the two test results would be that there might well have been contamination of 36B(i) in the lab.

Admittedly some other sample may have been mis-labelled as 36B(ii), or the machine had mis-functioned on the second test, though either would be highly unlikely.

M-B, had they been presenting a reasoned argument, might have made use of such a hypothesis, if just to explain their repeated point about validity or falsification. They did not. They did not mention the possibility of lab contamination at all, nor criticize Massei and Nencini both of whom discussed the issue of lab contamination extensively and dismissed it as most unlikely. It should also be noted here that even Hellmann did not regard the issue as relevant enough to give it due consideration. One might reasonably infer, therefore, that M-B did not think the prospect was at all likely, and if that is the case then they must have known that the validity of any requirement for a repeat is based on a conjecture which is not credible in this case, whatever they think science or non-existent international forensic protocols might have said.

The foregoing is so precisely because of the formal procedure in compliance with Article 360 when there were DNA experts from the Kercher and Sollecito families present at the non-repeatable test of 36B, none of whom observed any breach of contamination avoidance protocol.

Furthermore negative controls were done and filed in court and there was also a lapse of 6 days, and a lapse of 12 days, between the respective analyses of the knife and the bra clasp and the last handling of Kercher’s and Sollecito’s respective DNA. Under cross-examination at the Hellmann appeal the independent expert Vecchiotti admitted that if this was so then the lapse of time was sufficient to rule out lab contamination.

We can also note that Guede was also convicted on the basis of DNA tests that were not repeated. Should those results be expunged from the record and should Guede be released as an innocent man?

Although M-B mention Article 360 they leap frog past it without giving a proper account of it’s relevance and application, let alone a rational evaluation of the data revealed by the test. It is my submission that they had to do this, otherwise the game would be up for them, and it is this facet of dogmatism, obfuscation and deception to be found not just here but throughout the Report, which particularly upsets me.

So where does this leave those practicing criminal law in Italy?

The reality is that despite this nothing will change as to the rules of evidence and how forensic evidence is evaluated in the criminal courts. The system, understandably, will not countenance that. That will leave this case, as it pertains to Knox and Sollecito, as an exception, a bizarre and embarrassing anomaly in the judicial record.

Perhaps, in the future it will not present a practical problem, given that developments in technology, such as we saw with the Berti and Barni analysis, are able to deal with ever more microscopic amounts of DNA (and below 100 picograms now = LCN), thus allowing for repeats. In so far as this has been the case I have yet to hear of cases involving LCN where there have been any mismatches amounting to falsification in the repeats.

Traces in the Murder Room, the Small Bathroom and the Corridor

“Now, in fluid succession, the points of clear logical disparity in the appealed motivation should be positioned.

An elemental process of incontrovertible value - as will be explained further - is represented by the asserted absence, in the room of the homicide, or on the victim's body, of biological traces attributable with certainty to the two defendants, whereas, in contrast, copious traces have been detected firmly referable to Guede.”

“This was an insurmountable roadblock on the road taken by the trial judge to arrive at an affirmation of guilt of the current appellants, who were already absolved of the homicide by the Hellmann Appeal Court.”

“To overcome the inconvenience of such negative element - unequivocally favourable to the current appellants - it has been sustained, in vain, that, after the theft simulation, the perpetrators of the crime carried out a “selective” cleaning of the environment, in order to remove only the traces referable to them, while still leaving only those attributable to others.”

“The assumption is manifestly illogical. To appreciate, in full, the amount of disparity it is not necessary to carry out an expert investigation ad hoc, even if requested by the defence. Such a clean-up would be impossible according to common sense rules of ordinary experience, an activity of targeted cleaning capable of avoiding luminol examinations which are in common place use by investigators.”

Mentioning that the two had been absolved of the homicide by the annulled Hellmann appeal court verdict is entirely irrelevant, and is certainly not a logical link in support of any such contention.

It follows, of course, that if the knife and bra clasp have no probative or circumstantial value (effectively rendered inadmissible as far as the incriminating traces on them are

concerned) then there are no biological traces attributable to Knox and Sollecito in Meredith's room. However it is a gross exaggeration, and frankly nonsense, to present this as an insurmountable barrier to the fact finding path.

M-B attempt to ridicule what was undoubtedly a manipulation of the crime scene (i.e. the cottage, not just the "murder room") by the removal of traces of blood (See Chapter 14). Any such manipulation, they imply, could only have had as its purpose an improbable and selective removal of incriminatory print and DNA evidence pertaining to the appellants (untrue). There was also, of course, another purpose to this manipulation which they conveniently overlook (again addressed in Chapter 14).

Are they seriously suggesting - as it would appear they are - that a perpetrator, and in particular the two accused here, ignorant in the world of forensics, would not attempt to remove blood traces, knowing that this would be futile because of luminol? Is this a serious assertion? If so, it is manifestly stupid.

Having just done a bit of misrepresenting themselves M-B then claim to have unearthed "an obvious misrepresentation of evidence". They say that the SAL had excluded (because of the TMB test) that the luminol enhanced traces were of a haematic nature.

"Not only that, but it is patently illogical, in this context, the reasoning of the fact finding judge, who reckons being able to overcome the defensive objection that the luminescent bluish reaction generated by luminol can be produced by substances different from blood (for instance leftovers of cleaning detergents, fruit juice and many others), by arguing that the reasoning, while theoretically correct, has however to be contextualised, meaning that if the fluorescence occurs at a place where a murder occurred, the reaction cannot but be connected with haematic traces.

The weakness of the argument is such, already at first sight, that it does not require any confutation, since to reason in that way one should also surmise that the house on via della Pergola was never the object of cleanings nor was a lived in location.

This observation hence allows us to categorically exclude that those traces were made of blood and wilfully removed in that circumstance."

Now, although I object to the dogmatic assertion of that last sentence, based as it is on the assertion that the TMB tests had excluded blood, nevertheless I have some sympathy with the thrust of the defence argument that the luminol identified footprint traces were not, or at least were not scientifically proven, to be haematic. This aspect was discussed in Chapter 17. Furthermore M-B were right to draw attention to the fact that Nencini had ignored the TMB results, and, to that extent, had misrepresented the evidence. These two points are the only sensible observations that I can find in the entire report.

However, what I object to here, however, is the tenor of the argument and that Nencini's neglectful omission is used as a smokescreen for their own misrepresentation of evidence.

It is not enough to deride context and assert that the cottage was a lived in environment which must, occasionally at least, have been cleaned. That is not an evaluation of the evidence. It is no more than a casual shrug and a dismissive hand wave.

The selective search for other logical Inconsistencies

"Another big logical inconsistency", according to M-B, is the explanation for why Meredith's cell phones were removed; if to prevent them ringing, then the goal could have been achieved by switching them off or removing the battery.

This is not necessarily a logical inconsistency let alone, if it is, a particularly significant one. Had the perpetrators thought to achieve that goal by switching them off or removing the batteries, then they might just as well have left them behind, but as they did not then it might be logical to assume that the thought had not occurred to them.

This is simply one among a number of possible reasons for why they were removed. If, for instance, Meredith had been threatening to call the police then taking the phones and discarding them elsewhere might be a satisfying, if childish, response.

M-B return to the Prosecution's argument on motive at the Nencini appeal. The Prosecutor General, Crini, had suggested, rather limply I would have to agree, that there could possibly have been an argument between Meredith and Knox over Guede's use of the large bathroom. M-B say that the reason for a quarrel could certainly not have been this, as such an incident is not referred to in Guede's evidence. Hmmm.

M-B argue that the hypothesis of the theft of the money and credit cards that Meredith would have blamed Knox for is illogical and contradictory, given that Knox (and Sollecito) were acquitted of the charge.

Nencini was not seeking to re-convict them on that charge. The hypothesis was based on trial facts and has (arguably) a degree of probability. Meredith's credit cards and rent money were never recovered. He was simply looking for a plausible reason for a quarrel - on the basis of what Meredith could have thought - whether or not Knox was the responsible party. Nothing illogical or contradictory in that, whether it was helpful or not.

M-B maintain that it is arbitrary to argue, just because Knox and Sollecito were at Sollecito's flat viewing a movie, taking light drugs and having sex, that they were later at the cottage for a reason which included a sexual motive and destabilized by drugs.

M-B maintain that there was another investigative omission in the failure to analyze the content of the cigarette stubs (presumably for drugs?) or to ascertain the biological nature of the swabbed trace, but just to go for a DNA test, on the basis that such tests would render the sample unusable.

OK, but I am not sure that was the basis for not conducting the further tests. Establishing whether or not Knox and Sollecito had smoked a reefer, or a cigarette whilst under the influence of drugs, at the cottage, at some time, is really not that important. The biological nature of the trace was obviously saliva whether or not it contained drugs.

“And all this was done with the brilliant result of delivering to the trial a totally irrelevant piece of information”[given that the cottage was where Knox lived and where Sollecito “hung out”.]

Irrelevant as it turned out, I agree. It seems a bit harsh to criticise the DNA test though. Would it have been irrelevant if the mixed trace had turned out to be Guede and an unknown, rather than Knox and Sollecito? And was not the trace postulated as a source for contamination of the bra clasp?

A few General Remarks

“It is, surely, undeniable the interpretative effort displayed by the fact finding judge in order to remedy the unbridgeable investigative gaps and the significant shortfalls of evidence with shrewd speculations and suggestive logical arguments, even if merely assertive and apodictic.”

“Faced with missing, insufficient or contradictory evidence, the judge should simply accept it and issue a verdict of acquittal, according to Article 530, section 2 of the Italian Code of Criminal Procedure, even if he is really convinced of the guilt of the defendant.”

As we are discovering, “shrewd speculations and suggestive logical arguments, even if merely assertive and apodictic” is exactly what M-B are up to.

Note the inclusion of “faced with missing evidence” – an oxymoron by the way. “Missing evidence” is indeed referenced in Article 530, but what evidence did they think was missing? That would be difficult to say. On the subject of missing evidence - and I think there is a case for arguing, in retrospect, that the investigation, particularly the forensic investigation, could have been more extensive - I shall also look at that in the next Chapter.

M-B then assert (correctly and to paraphrase) that fact finding is a task pertaining exclusively to the fact-finding judge, and not up to the Court of Legitimacy. The Supreme Court has to limit itself to whether the fact-finding judge’s reasoning is compatible with common sense and within the limits of an acceptable latitude (law cited) as well as

compliant with the limits of evidence.

“It is certainly useful to remember that, taking for granted that the murder occurred in via della Pergola, the alleged presence at the house of the defendants cannot, in itself, be considered as proof of guilt”

This is the precursor for what comes a bit later.

M-B note that there is a difference between “passive behaviour” and “positive participation”.

“It is indisputedly impossible that traces attributable to the appellants would not have been found at the crime scene [ed: by which they mean “the murder room”] had they taken part in Kercher’s murder.”

This is a dogmatic assertion which is patently unconvincing. It is perfectly possible to stab someone without the perpetrator leaving a trace of himself on the body of the victim or at the scene. Furthermore, even if not as directly involved as that, had Knox and Sollecito

(a) been egging Guede on to a sexual assault

(b) been exhorting or encouraging him to physically assault and/or finish her off, or even mere compliance in such behaviour

© whether with his own knife or one that was handed to him,

then it does not follow that in any conjunction of these scenarios they would have left traces, but in the event they would be participating positively in the commission of the crime, and hence as guilty as Guede.

The assertion is not just dogmatic but is manifestly stupid and illogical. Given that M&B adhere to multiple attackers (but not including Knox and Sollecito) then surely, by their own logic, it would not be possible that such others could not have left their traces. But they had not, we must conclude, since none were found.

The Presence of Amanda Knox

“With this premise, with regards to Amanda Knox’s position, it can now be observed that her presence in the house at the scene of the crime is considered an established fact from the trial, in accord with her own admissions.....**on this point the reliability of the judge a quo (ed: from the lower court, as to the fact) is certainly to be subscribed to.**”

Developing this affirmation, M-B hold that she was there at the time of the murder but in a different room.

“Another element regarding her (presence) is represented by traces of mixed DNA, her’s and the victim’s, in the small bathroom; an eloquent confirmation that she had come into contact with the latter’s blood, while the biological traces belonging to her are a result of epithelial rubbing.”

“Nevertheless, even if attribution is certain, the trial element would not be unequivocal as a demonstration of posthumous contact with the blood in circumstances where she would be attempting to remove the most blatant traces of what had happened, perhaps to help someone or deflect suspicion from herself, and thus entailing her certain direct involvement in the murder..... her contact with the victim’s blood would have occurred after the crime and in another part of the house.” [ed : and their reasons for saying so are ...? This is just special pleading with a lot of questions begged.]

The Simulated Break In

This is all too briefly treated by M-B and by way of a disingenuous sidetrack.

By not criticising the appealed decision they in fact affirm the circumstances of simulation without explicitly saying so.

They are more concerned to turn their attention to the inference that only a “qualified” person would have an interest in a simulation so as to remove suspicion from him/herself.

M-B are not interested in Guede. They acknowledge that Knox and Sollecito are “qualified” persons.....

“Yet this element is also substantially equivocal, especially in the light of the fact that, when the postal police arrived it was....Sollecito - whose trial position is inextricably bound to Knox’s - who pointed out the anomaly to the police officers, that nothing had been stolen from Romanelli’s room.”

As to what is “substantially equivocal” they do not say, other than by reference to this “anomaly”.

And that’s it? The smoking gun, the bull in the appellants’ china shop, brushed aside - because of an anomaly?

It was staged but not staged to perfection, by way of something actually being stolen. The argument is that a stager, knowing this, would not countenance revealing this information to the police, although it may have been an inadvertent slip. An inadvertent slip aside, he would have no reason to mention that nothing had been stolen, unless he was as aware as others were (remember the oral comments, in situ, of Battistelli and his

colleague Marzi, and Romanelli) that the “burglary” did not look right, in which case he might have thought that his comment would lend him an air of bemusement befitting innocence.

And how did he know that nothing had been stolen - which only subsequently turned out to be true when Romanelli checked the contents of her room- unless he was involved in the staging? Even if he was just parroting what Knox might have told him, the same would apply to her. How would she have known for sure at that stage, and even earlier when the 112 call was made? If nothing had been stolen, why did Knox not put Romanelli’s mind to rest about that when they spoke to each other before the 112 call?

Even if one accepts the anomaly and extremely dubious reasoning above, it only applies to Sollecito. There is nothing equivocal about the logical inference applying to Knox, whether or not their trial positions are inextricably linked.

Curatolo & Quintavalle

“Nevertheless, the presence of intrinsic contradiction and poor reliability of witnesses [ed: ie the above named] do not allow unreserved credit to be attributed to (their) respective versions, to the extent of proving with reasonable certainty the failure, and therefore the falsity, of the accused’s alibi, who insisted she stayed in her boyfriend’s home from late afternoon on the 1st November until the following morning.”

Here Marasca-Bruno effectively reprise the reasoning of Hellmann.

“Quintavalle - apart from the lateness of his statements, initially reticent and generic - offered no contribution to certainty, not even as to the product bought by the young woman he noted on the morning after the murder, when his shop opened. The fact he recognized Knox is worthless as her image had appeared in every newspaper and television news broadcast.”

There was no evidence that the young woman had bought, or had tried to buy, a product. Neither was his identification testimony worthless because of the newspaper coverage. If it was worthless for that reason then a lot of ID witness testimony would go by the board in today’s world of rapid 24 by 7 news coverage. But in any event it was the girl in his shop whom he had seen in the newspapers, though as to whether that girl was Knox he was not entirely certain until he saw her in court.

Quintavalle was able to describe the clothes that the young woman was wearing, which description, blue jeans, grey jacket and scarf, was a match for the articles of clothing that the crime scene investigators had photographed scattered on the top of Knox’s bed at the cottage and which had immediately become material evidence along with everything else there. Since pictures of that clothing never appeared in the media and Knox was wearing different clothes, including a long white skirt, when she and Sollecito

were photographed outside of the cottage by the press, it is difficult to gauge how Quintavalle might have been influenced in his description by the media coverage.

Raffaele Sollecito

“In Sollecito’s case too the evidentiary frame work which emerges from the judgement under appeal is marked by inherent and irreducible contradiction.....However, the strong suspicion remains that he was present in the house on via della Pergola on the night of the murder, albeit it has not been possible to determine when. On the other hand, if Knox’s presence in the home was certain, it would hardly be credible that he was not with her.”

More (The knife and a lack of blood traces)

M-B return to the question of the knife again despite the fact that they have excluded it as having any “probative value or circumstantial relevance”.

This is an inconsistent element in their own reasoning, such as their reasoning is.

They remind us that no trace of blood was found on it, and assert that it was a questionable choice to go for a DNA test with sample 36B rather than establish the nature of the biological trace.

“An extremely questionable option, given that the finding of blood traces, coming from Kercher, would have given the trial an element of strong evidentiary value, showing for certain that the weapon had been used to commit the murder.”

M-B do not explain why it was, as they say, a questionable option. Even if we knew that it was blood in sample 36b then, without establishing whose blood it was, the knowledge that it was blood would be totally useless as a piece of evidence, as the blood could have been anyone’s, coming from anywhere (meat/fish?), at anytime. In fact they knew why Dr Stefanoni had perceived only one option as available to her. They had even referred to this in the preceding paragraph. One can test a sample for both blood and DNA but in this instance, she said, the sample was so small she could not do both to stand a reasonable chance of getting a DNA profile. I can see that to stand a reasonable chance of getting a good profile, if there was one, then the whole sample had to be amplified, and that involves heating the sample to a degree that could denature the peroxidase enzyme on which the TMB test relies. A subsequent TMB test could then be negative which, in the circumstances, would tell us nothing. The TMB test could, of course, have been done first. According to Stefanoni, and I am not convinced by this, that would involve a test on only part of the sample which might have removed a portion of the genetic material available for amplification, reducing the chance of getting a good profile. But why not test the whole sample first with TMB and then move on to an amplification of the whole sample? Does the first test here compromise the second? I have not been able to find an answer.

But in any event does knowing that the biological source of the sample was blood, or not, really make that much of a difference to the DNA result?

“What is certain is that no traces of blood were found on the knife. Lack of which cannot be traced to meticulous cleaning. As noted by the defence, the knife showed traces of starch, a sign of ordinary domestic use and of cleaning that was anything but meticulous. Not only this, but starch is famous as a substance with a high absorbance rate, thus it is highly likely that, in the event of a stabbing, it would have retained blood traces.”

As we come towards the end of their reasoning the dogmatic assertions start to pop up thick and fast out of nowhere.

Why can lack of blood traces not be connected to meticulous cleaning? Isn't that, by definition, what meticulous cleaning does? Has there been lab research on this topic?

Would not holding a knife blade under running water from a tap, whilst at the same time wiping the blade, not be effective in removing all trace of fresh blood? I do not know if that would defeat TMB, but I doubt that the issue has ever been put to the test in a lab, and remember that despite 7 samples being swabbed from the knife for genetic analysis (including the handle) Sollecito's profile was not found, although it was his knife and, according to Knox, he had prepared and cooked fresh fish on the evening that the murder took place. Whether meticulous or not only cleaning is likely to account for the absence of his DNA on the knife.

And yet, the fact that no blood traces were found is worthy of note. Does this decisively rebut, or at least cast some doubt on, any notion that the origin of 36B could be haematological, or that the knife could be the murder weapon? After all you would think so, wouldn't you? I submit the answer is No. Appealing as it is at first sight, such an argument lacks sufficiency for a number of reasons. First of all the sample was not tested for blood (so nothing is proved one way or the other in that respect) but the origin of the sample could also have been non haematological. But how likely is it that it was not haematological? In fact the likelihood is that it was, even if no blood traces were found elsewhere and, remember, saying that no blood traces were found is not the same as saying that there had been no blood on the knife, merely that the tests were negative, that is no blood was found when the knife was tested. Red blood cells make up 86% of all the cells in the fluid and soft tissue of our bodies and this remarkable fact does make it likely (if unproven) that 36B was blood, or maybe - indeed would have to involve - a white blood cell or some of the plasma from which DNA in blood is obtained.

I am not a forensic biologist, but it seems to me that there is another issue as well.

As for the TMB test, can we place complete reliance upon the negative result as far as the knife is concerned? This was, after all, a kitchen knife, used for normal purposes, such as cutting up vegetables and animal and fish meat. As long as there is haemoglobin then the TMB should detect it. It is a very sensitive test, as discussed before in Chapter

16. There is research that shows that TMB, and luminol and phenolphthalein, all work in equal measure on human and animal blood, and fish except for a few examples such as ice fish which have no haemoglobin. The only difference between human and animal haemoglobin is that human haemoglobin produces a more intense colour reaction with the TMB test i.e if it is human the result is going to be a brighter blue. This is, apparently, because of the greater oxygen carrying capacity of human haemoglobin. That being so, and given the function and purpose of this particular knife, then the negative TMB test can surely be regarded as somewhat remarkable. Had the knife never been used for the preparation of a meal involving fresh meat? According to Knox, it had. Even if in the unlikely event that it was not in regular use to that end it was, according to her, used to prepare fresh fish for a meal on the evening of the murder. It was analysed 6 days after it's recovery from Sollecito's apartment, but this passage of time, and even longer, is not of any relevance to the effectiveness of a TMB or of a luminol test.

The above observations rather back up what I said about the blade of the knife having been cleaned rather well. If TMB is a test with no limitations then the blade should have produced a positive result, if just for non-human blood. That the TMB test was negative does, I would submit, show it's limitations in certain situations; it can certainly be argued that it was never going to be effective in this instance both because of the nature of the substrata i.e the smooth metal of the blade, and because the blade had been subjected to cleaning and, one can posit, meticulous cleaning at that, if it was a murder weapon.

So, certainly not decisive for me, but as to whether a lack of proven blood traces convincingly demonstrates that one needs must doubt the relevance of the DNA test on sample 36B, I leave this to the reader's own judgement. There will certainly be those who will want to argue from the foregoing that 36B is contamination. I refer the reader to the end of Chapter 24 where I show that touch transfer and lab contamination as an explanation for 36B are not realistic issues. In any event it is worth noting that the lack of proven blood traces, as the clinching argument against 36B, was never advanced by any court in this case. Rather it was that the DNA test, to be reliable, had to be repeated.

As to the starch issue, yes it does absorb liquids but in reality this observation seems to me to be a bit of a red herring. Remember that the starch was discovered by C&V after microscopic examination of cotton threads taken from the swab of sample H, swabbed from one side of the blade next to the hilt. Sample H had already been tested for blood and the result was negative. However, bear in mind that the wound that bled so much (no doubt when the blade was withdrawn) was 8 cms deep, in relation to a knife with a blade 17.5 cms long. That leaves a further 9.5 cms to be covered with blood. I see no reason, from what we know of the wound and the damage it caused, to assert that it would have been. Furthermore, after the strike, with the victim probably on the ground, one would hold the knife with the blade down. Same if the blade was then held under running water from the tap.

[There were also other swabs taken by C&V (though only two from the blade – E and I) which on cytological analysis appeared to have a structure similar to starch (though not

as clear as in sample H) and which they attributed to starch. As part of the same cytological analysis C&V also determined that no cellular material was present in any of the samples, though without any specific biological test other than DNA quantification.

One can certainly query the accuracy of their conclusions here bearing in mind that we now know that sample I (on the other side of the blade from H) certainly had DNA in it (which obviously renders the claim that “no cellular material was present” inaccurate, at least as regards sample I)]

Anyway, how do we know that the starch was there on the knife at the time of the murder? It is not implausible – other than to M-B - that having cleaned the knife it was used again for ordinary domestic use, be it in that case one might then expect to find the user’s DNA on the handle. However it was in a kitchen drawer in contact with other cutlery, which could also explain the presence of the starch, but it could also have got there as a consequence of the investigators handling it with latex gloves, which contain traces of the cornstarch powder commonly used with these gloves, and this had been pointed out at the Hellmann appeal.

“Finally, the footprints found at the murder scene can in no way be traced to the appellant.”

Another dogmatic assertion. They are, I should point out, talking about Sollecito at this point, not Knox.

The bloody footprint on the bathmat and a luminol enhanced footprint in the corridor were useful for negative comparison purposes and both were attributed by the prosecution experts to Raffaele Sollecito because of points of comparison with his foot and because neither had similar points of comparison with Knox and Guede.

Their evidence was disputed by a defence expert witness.

Massei and Nencini agreed with the prosecution experts, Hellmann did not.

However, remember the bit about fact-finding being for the fact-finding judge and not the Court of Legitimacy?

Not only do M-B break the rules as to their remit, they do not even give reasons for their assertion.

“The computers of Amanda Knox and Kercher, which might have been useful to the investigation were, incredibly, burned by the careless actions of the investigators.”

Another unjustified and dogmatic assertion.

Four computers were found to have sustained damage - probably an electrical burn-out - but it is not in evidence that they were damaged by the investigators.

Indeed, I do not recall any trial evidence that they were working before they were recovered by the investigators. Certainly Sollecito's Asus was not. That had been damaged for months. Romanelli's computer was found to have been already damaged when she brought it in and it was switched on in her presence at the police station. It may be the case that Knox, somewhere in her testimony, asserted that her computer was in working order when she last used it. But then she would say that, wouldn't she?

Of all the relevant computers that had problems, the data was ultimately recovered and made available to the prosecution from all but Knox's Toshiba. That data was eventually obtained by, but then retained by, her defence.

And realistically, what potential information relevant to the investigation did M-B think could be found? Photos of Knox together with Meredith? If there were such photographs, had they been deleted from the camera? [Ed: After her acquittal Knox recovered her camera from the police and posted some of the pictures online. In any event others had already been published.]

Knox communicated with her family at home by means of an internet café because it had skype available.

E-mail communication is recoverable whether or not the user's computer is broken. That is because one's e-mail account is on the internet, not stored on the hard drive on one's computer.

M-B also opine that in respect of their alibis, what we are talking about is a failed alibi rather than a false alibi.

They both maintained, for trial purposes, that they had been together at Sollecito's flat from about 9 pm onwards on the 1st November, that both had slept and that Knox had been the first to rise at about 10.30 am the next morning. Of course, Sollecito had contradicted this in his statement to the police. He said that Knox had gone out and not returned until 1 am. However this was not admitted as trial evidence.

We can note that there is no independent corroboration of their alibi. In that sense it is a failed alibi.

However the reliability of their alibi can certainly be assessed from the trial evidence, even should one choose to treat the evidence of Curatolo and Quintavalle as unreliable. Sollecito's phone was switched on at 6.03 am and earlier heavy music had been played on his computer for half an hour at 5.30 am, on the 2nd November. That manifestly contradicts the alibi. In short the pair were lying when they said that they had slept and that neither had risen until 10.30 am. Accordingly, it is a reasonable inference that their mutual alibi is not just a failed alibi but is not to be trusted.

But more than that, M-B willingly held that Knox was at the scene of the crime when it

occurred. So her alibi, patently, has to be held to be false. Why not say so then? But that would undermine more than a few of their previous assertions.

And finally M-B declare that -

“The panorama of the declared evidence is complete.”

Except that this is not true.

They have not mentioned the following, which are certainly part of the declared evidence and which certainly have to be taken into account if we are to consider the sufficiency of the evidence -

1. The presence of Knox’s table lamp on the floor in Meredith’s room.
2. The police photograph of Knox’s throat and the statement of Laura Mezetti that what is seen in the photograph, as she had noticed at the Police Station, is a scratch.
3. Knox’s dried and congealed blood on the tap in the small bathroom next to Meredith’s room.
4. Knox’s e-mail to the world with it’s implausible aspects, and the diary entries, which expose crucial contradictions in the respective accounts of the appellants.
5. A suspicious pattern of behaviour on their part which is beyond coincidence or innocent explanation, and the phone records which show, in addition to the foregoing, that the cell phones of both the appellants had been switched off, or rendered inoperative, between 8.42 pm on the 1st November and 6.03 am on the 2nd November.
6. The luminol enhanced DNA traces, one for Meredith and the other mixed for Knox and Meredith, on the floor in Romanelli’s room, certainly requiring an explanation as these are not in the commonality of the corridor, or the kitchen/living area, and are therefore difficult to explain and attribute to false positive substances, especially when there is DNA other than that of the occupant of the room there.

As for the lamp and the blood on the washbasin faucet, both belonging to Knox, it has to be said that the 5th Chambers was not the only court to effectively ignore this evidence. It can be recalled that they got a mention in the trial judge’s Motivation but without any comment as to their potential relevance to the case. In my opinion this was a disservice to the prosecution case because, as a consequence, this evidence was overlooked by subsequent courts, largely, I think, because Italian appeal courts tend to be more concerned with what might be wrong (from a logical standpoint) with the detailed Motivation of the court the verdict of which is being appealed. In my judgement this is a problematic facet of the Italian appeal process. There was also, of course, a lot of other evidence to be considered. In the event it was an oversight that was compounded but which I have redressed, at length, in this book.

CHAPTER 34

Reflections on the Motivation and generally on the Case

So, let's do a brief recap now

1. The Report starts with general slurs on the competence and motives of the investigators and judges.
2. M-B misunderstand the relevance of motive. Nencini was not in error. It is not relevant, or of less relevance, if the evidentiary framework of guilt is by itself sufficient to establish guilt. In such circumstances, and in the absence of a definitive motive, the normal formula is to attribute futile and trivial motives that require no definition. Conversely motive does acquire importance, an element in itself, if that framework is insufficient. Whether the framework is insufficient if the DNA evidence from the knife and bra clasp is inadmissible for being unreliable, is not argued with reference to the science, but merely asserted, and not without numerous further dogmatic assertions and omissions as to the remaining numerous subsidiary elements of the circumstantial case.
3. Their section on TOD produces nothing that is relevant and their criticism of Nencini is in error.
4. Having failed to establish a convincing connection between “the primacy” of rules of evidence and a guarantee of the repeatability of DNA analysis, such that the latter is required by the former, or at least can be tolerated by it for some specific reason, they assert that the latter must prevail anyway. It requires numerous inconsistencies, a failure to follow the ground rules of evidence, a deplorable failure to understand, or even mention and consider, the nature of the science involved, and the illogicality of failing to follow their own argument, such as it is, and lacking in logic as it is, to assert that Meredith's DNA on the blade of the knife, and Sollecito's DNA in a mixed sample from the bra clasp, have no probative or circumstantial value because the former was not capable of repetition, and the latter was somehow inconclusive or compromised. Those are simply dogmatic assertions and ones, as we shall see, that have no connection with the permitted grounds for appeal and, as far as that relating to contamination of Exhibit 165B is concerned, is also in breach of Article 628 (See later).
5. As if the foregoing was not enough, and perhaps conscious of it, they do indeed bring up the matter of contamination again. Which would not be relevant if the foregoing were true. The contamination argument has long been shown to have no mileage in it. Furthermore the 1st Chambers of the Supreme Court had excluded (via Article 628) the relevance of mere hypotheses for contamination, unanchored in any probability. The

cardboard box (from the police station) is a stupid reference and that there was pre-existing dirt on a latex glove mere speculation, and lacking context and relevant linkage.

6. The section on luminol hits and removal of blood traces is overwrought with dogmatic assertions and a chronic, if not deliberate, misunderstanding of the evidence and the inferences that might validly be drawn from it.

7. On the simulated break-in, which they accept, they declare that they are then stymied in the necessary inference by the feeblest of anomalies.

Remember this (be it my own paraphrasing)? -

“that fact finding is a task pertaining exclusively to the fact-finding judge, and not up to the Court of Legitimacy. The Supreme Court has to limit itself to whether the fact-finding judge’s reasoning is compatible with common sense and within the limits of an acceptable latitude (law cited) as well as compliant with the limits of evidence.”

And remember that I asked that Section 1, paragraph (e), of Article 606 (grounds for appeal to the Supreme Court) be borne in mind. There has to be an error, some -

“(e) defect, contradictoriness or manifest illogicality of the judgement reasoning, when the error results from the text of the provisioning appealed, or from other documents in the proceedings specifically noted in the reasons of encumbrment.”

Therefore, although fact finding is the preserve of the lower courts, the Supreme Court can enter into the merits of a judgement reasoning on this ground.

The question arises as to what constitutes a fact to which para (e) would not relate.

There are probably not many, for most facts determined would require an element of reasoning. For instance, to hold that a particular witness was reliable, or otherwise, would require explanation, that is, reasoning, and so on.

To be clear, “defect“, “contradictoriness” and “illogicality” all relate to the judgement reasoning (in this case the Nencini Motivation).

For instance, a failure to take into account contradictory evidence in the judgement reasoning must obviously be included as a defect.

Another defect would, of course, be misapplication or misinterpretation of the law in the judgement reasoning, an error to which the 5th Chambers have already shown themselves prone.

I am not quite sure how “contradictoriness” in the judgement reasoning is to be construed, but I suspect that there would be contradictoriness in asserting something contrary to the weight of the evidence, or indeed, in the absence of any evidence in

support. Another case might be in making a point that is then undermined elsewhere in the reasoning.

In any event a clear restriction on the Supreme Court entering into the merits of the judgement appealed against, apart from the foregoing, would appear to be that in the case of illogicality, that it has to be manifest.

However, no particular instance of manifest illogicality is likely, on it's own, to invalidate a verdict, unless it amounts to a serious defect from which the reasoning, as a whole, on the verdict, cannot recover.

Effectively, there have to be numerous manifest illogicalities in the reasoning of the judgement appealed against, for this to happen. Under those circumstances one might actually describe the judgement as "perverse" at one end of the scale, and "unsafe" at the other. Setting aside a conviction for such reasons I would understand. Usually, at least in the UK, an unsafe conviction would result in a re-trial if the prosecution requested it.

However even the Supreme Court has to motivate it's decision making process, free from such defects. Clearly this has not been the case.

The banal peppering of the Report with references to "manifest illogicality" and "intrinsically contradictory", and so on, may impress an undiscerning reader, but the repetition and context are, frankly, "manifestly" unconvincing.

What we find, on analyzing the 5th Chambers' motivation, is that when it enters into the merit, it does not do so in a balanced way, and without logical inconsistency on it's own part, but simply by making dogmatic assertions on the merit. That is hardly extending an acceptable latitude to the fact-finding judge nor is it explaining why his reasoning is incompatible with common sense.

In particular, I do not see how one can make the assertion that the DNA on the knife has no probative or circumstantial relevance, because the test was not repeated, when this can scarcely be described as a product of the application of section 1 (e) of Article 606, or any other paragraph in the grounds for appeal. Such an assertion has no provenance in the legal framework of the Supreme Court appellate process. It was both invalid, legally, and beyond the Supreme Court's remit, a fact of which it was surely aware.

What I mean by the above is this.

The Independent Expert's Report was certainly, by the terms of Section 1(e), a document "in the proceedings specifically noted in the reasons of encumberment". However it's conclusions would only be relevant to a review to the extent that there could be an error (a "defect, contradictoriness, or manifest illogicality") in **Nencini's** judgement, arising **as a result**. An example of such an error might be if Nencini had ignored the Report (which would be an instant defect), or if it could be shown that he

had misinterpreted, or otherwise made a mistake as to, the significance or meaning of the conclusions in the Independent Experts' Report, or he had failed to explain (or had, but with "manifest illogicality") why he disagreed with them.

Nencini did not ignore the Report and in his handling of the issue of "repeatability" it is impossible to find such an error (and if there was one, the 5th Chambers did not specify what it was) unless, of course, one takes the view that Nencini's disagreement with the Independent Experts is a "contradictoriness" or a "defect" in itself. But that would be absurd and clearly could not be the purpose of the Section. That he did not accept the Independent Experts' conclusions could not, by itself, be an error but the 5th Chambers, in effect treating them as sacrosanct, was saying just that. Indeed, as we shall see, the 5th Chambers seems to have gone further and viewed any conclusion or interpretation of the evidence with which it disagreed, as a "contradictoriness (See page 321).

Nencini did challenge the "repeatability" issue in so far as this was intended to render sample 35B unreliable (Article 360 would apply anyway) and in the main did so by demonstrating that the test result was unambiguous as far as the DNA profile was concerned, and that the profile, "arrived at by methods of analysis and interpretation which were quite correct, should constitute an element of evidence that can be evaluated in the trial, just like all the many other elements of circumstantial evidence which, evaluated as a body, can give rise to the status of a proof."

In that he was quite correct both as to a statement of fact and as to the law. No error (such as a "manifest illogicality") there and certainly not derived from anything in the Independent Experts' Report though it was, obviously, a riposte to it. Nencini did cogently evaluate the result, and the contamination issue, just as I (hopefully) have done in this book.

The 5th Chambers own dogmatic preference for the validity of the Independent Experts' conclusion i.e unreliable if unrepeatable (which, without reference to Nencini, it attempted to argue as to the merit, but as to which it failed abjectly, and not without manifest illogicality on it's part), was outside it's remit and had no conception in or connection with a valid ground for appeal. It is essentially ultra vires and hence could/should have been struck out by an appropriate judicial authority i.e the Council of Magistrates. The 5th Chambers could not, as it did, act as a law unto itself. The Supreme Court is bound by the law of the land and the Constitution.

Furthermore, one also has to consider the effect of Article 628 (mentioned before). The 2nd paragraph states that -

"In any event a verdict issued by a court following a Cassation [Supreme Court] order of remand may be appealed only on reasons that do not concern those that had already been decided by Cassation on the order of remand...."

At the very least this should have served as a warning to the 5th Chambers not to reprise all the methodological errors of logic and reasoning that had been evident in the Hellmann Motivation.

The Chieffi ruling annulling Hellmann was not intended as a foray into the merit but it was a criticism of the procedural defects and reasoning methodology of the Hellmann court, which errors we can see are brazenly repeated in the Marasca-Bruno Report.

The most obvious and most frequent error is the use of dogmatic assertion, the starkest example of the deployment of self-contained circular reasoning it is possible to have. Indeed, it does not warrant the description “reasoning”.

Another important error was the “atomizing” or “parceling out” of the circumstantial evidence in an attempt to exclude items prior to assessing it in an overall evaluation. This error underwrites the 5th Chambers’ approach to the case, manifestly in its use of dogmatic assertion to achieve the aim of eliminating or reducing the evidence.

Article 530, Section 2 and Some Conclusions

I now turn to the matter of the sufficiency of the evidence. There is no formula as such.

The evidence is sufficient if the bar of culpable beyond a reasonable doubt is met, insufficient if it is not.

The starting point is clearly the evidence itself, and then the inferences that are drawn logically from it.

As to the evidence and inferences, we are assisted by the fact, under the Italian system, that all verdicts, whether at trial or appeal stage, are required to be motivated in writing.

The final motivation, prior to the 5th Chambers, is, of course, the Nencini report. It seems to me that Nencini, despite a few flaws, did an excellent job in unifying the evidence in a global way, as is required of what is essentially circumstantial evidence, fully in accordance with the jurisprudence of the Supreme Court on the matter, and with all the arrows pointing in the same direction and substantially corroborating each other. It left no reasonable doubt, in my humble submission, that the Florence court’s affirmation of the trial court’s guilty verdicts was correct.

Now, we have already discussed the grounds on which an appeal can be made to the Supreme Court. The sufficiency of the evidence is not one of the stated grounds. That is a matter for the fact-finding judges of the lower courts. The 5th Chambers therefore exceeded its remit.

We also find, having gone through the M-B criticism of the Nencini Report, in some

detail, that many, if not most, of these criticisms lack substance and lack logical consistency in their own right.

The overall effect has been to produce an improper, if not fraudulent, weighting (for want of a better word) on the matter of sufficiency, which should not have even been considered anyway.

In addition the result of the Report has been to produce an interesting scenario based on the following conclusions.

- Knox was present in the cottage at the time of the murder but in a non-participatory role. Very probably (if this is not a held fact) she had scrubbed Meredith's blood off her hands in the small bathroom.
- Sollecito was very probably there as well, but it cannot be known when.
- There was certainly an assailant (and perhaps more than one) in addition to Guede.
- There was a staging of the break-in in Romanelli's room.

As to Knox having blood on her hands (literally rather than metaphorically) there are inconsistencies to be derived from this as well because, according to the Report, this would have been as a result of contact with blood outside Meredith's room. Why? How? Where is that blood? Such blood could, of course, have been there prior to it being removed. However, to affirm that would be to prejudice a number of assertions they have already made. More likely it is that Knox had been in Meredith's room, during or after the event and without, we would have to observe with some interest, leaving any trace of herself there. That would also be the logical explanation for her lamp being on the floor there.

Guede was not charged with, and hence was neither acquitted nor convicted of, the offence of staging, but in any event M-B did not attempt to attribute the staging to him. This leaves either Knox, an unknown person, or Sollecito. As to an unknown person it is manifestly difficult to see how he would be "a qualified person" for the purpose of the inference that only someone with an interest in removing suspicion from himself would do this. Knox and Sollecito qualify whether there is an anomaly or not.

As to who Guede's unknown accomplices may have been, M-B are silent. This is not surprising as there was no forensic trace of them. There were, in fairness, unidentified genetic profiles, male and female, obtained from cigarette stubs taken from the ashtray in the lounge/kitchen, but as with the mixed genetic profile of Knox and Sollecito on one of these, they cannot be dated and therefore cannot be placed within the time frame for the murder. For all we know they could belong to Romanelli and her boyfriend Marco Zaroli, both of whom were at the cottage earlier on the day of the 1st Nov, with Knox and Sollecito.

More pertinently, however, is this scenario regarding Knox. It is not one that her defence team, even in their wildest dreams, would have considered advancing on her behalf. She had, throughout the proceedings, maintained, and still maintains, that she was not there.

That is not surprising. The scenario with which they leave us is that Knox and perhaps Sollecito were at the cottage with Guede, and at least one other, and that Guede and this other saw fit to commit a horrendous murder in their presence, without encouragement nor with any active opposition from either of them it would seem, but certainly in the knowledge that such action, even if it met with cowed submission from them in the first instance, would surely meet with the utmost reprobation, and then they leave, trusting to Knox and Sollecito not spilling the beans. That really is stretching credulity well beyond the bounds of breaking point. Even more so if there was no unknown accomplice, for if there was no additional unknown assailant, the scenario we have is that Guede alone was invited into the cottage by Knox (to whom, we know, he was attracted) and then, acting as a sole assailant (contrary to the Supreme Court's findings) he then proceeded, ignoring, we have to presume, vociferous protestations from Knox for him to desist, to attack, sexually assault and then knife Knox's friend and flatmate to death whilst Knox sat (as she says) in the kitchen covering her ears as Meredith screamed. He then relied on Knox keeping her mouth shut. Not even an idiot would believe that.

Furthermore, and if that is nevertheless so, then Knox has had more than enough chances to put the record straight, particularly since her return to Seattle and her definitive acquittal. She still has the opportunity to do so.

What we have, therefore, is a fact that unsurprisingly neither the defence nor the prosecution had ever advanced in the entire history of the proceedings, and not one that any previous judge had drawn.

Now it may be something that can be justified by a fact-finding judge, on remand, and in the light of the Marasca-Bruno Report. But it is surely beyond the remit of the 5th Chambers to hold that as a fact and without even permitting prosecution and defence submissions on it. That runs counter to the principle of natural justice, a violation inherent in the final appeal and in the decision not to permit a remand to a 1st instance court of appeal.

It would have been most interesting to have seen the defence submissions.

Now, I did mention earlier that I thought that there had been some failings in the investigation, and particularly with regard to the forensic investigation, other than the delay in collection of the bra clasp - if "failings" is the right word : it might seem harsh to be critical in retrospect. In part these "failings" may be due to the Court Motivations not including the information that did exist. However, they are -

- Although this would be somewhat surprising yet nevertheless I can find no confirmation that genetic profiles, for exclusion purposes, were taken from

individuals who had been known to be in the girls' flat. For instance, Massei states that "unidentified" genetic profiles were found on cigarette stubs. Does that rule out obvious suspects for the profiles such as Romanelli and her entourage, and others? And, throwing a bone to the defence, what about Kokomani?

- I am surprised that Dr Stefanoni did not, as it appears, and given the significant quantity of DNA extract from sample 165B, divide the extract. However that seems in keeping with her belief that there was little value to having a back up and that having a clear result on a single test was the more important factor. Other than from the mixed trace of DNA in the corridor, and the luminol enhanced footprints in Knox's bedroom, did Stefanoni take swabs for DNA analysis, including from the attributed footprints?
- Luminol appears to have only been applied to the following areas - the floors in Knox's room, Romanelli's room and the corridor and kitchen/living room. Why only these areas? The reader has been spared being able to see the crime scene photographs of Meredith's bedroom, but there was not in fact much blood to be observed on the floor immediately behind her door. Logic dictates that there must have been blood there. It would have been useful to know what luminol would have discovered.
- Luminol might also have been applied to the face of the bathroom door. Given that the application is by spray and the face of the door is vertical, the luminol would have run and probably not have been able to reveal an attributable handprint or other attributable mark, but at least it should have been able to establish whether or not there was blood, which would be a useful confirmation, or otherwise, as to the inference arising from the streak of blood. A false positive would hardly be likely.
- I do think that Stefanoni's team might have usefully taken control samples from the washbasin and bidet to establish whether or not Knox's DNA was already present before the blood was deposited and, if so, in what quantity in comparison with her DNA in the blood mixture.
- A veritable host of samples were taken from Meredith's room for analysis but on checking the DNA analysis list I can find no confirmation that the rim of the glass of water was sampled for DNA analysis. Nor do I know if it was dusted for fingerprints, but being glass it may have been obvious that it was clean.
- Likewise for the broken glass in Romanelli's room.

However, even if these are – and it is speculative to suggest that they are – “investigative failures”, I do not perceive them as “clamorous” as regards the “sufficiency” of the evidence. Although the 5th Chambers hypothesized otherwise, it is only the evidence before it that is relevant. And yet, nevertheless, there are some things as to which, I

concede, a doubt is arguable. I have, for instance, already indicated that there may be some overreach in anyone finding that all the luminol hits, and particularly all the luminol enhanced footprints, must have revealed blood, though we can say the luminol enhanced shoeprints certainly revealed blood. Those shoeprints (Guede's – leading through the corridor and living room, to the front door, and an extension of what was visible at the outset) are a matter of logic and common sense (and in any event were declared to be so by TMB testing) but there is no conclusive scientific evidence to render all the footprints as being so. The issue of whether the luminol enhanced footprints are made in blood is important because, of course, that would strongly suggest that Knox, who had just such a footprint in the corridor attributed by measurement to her (her feet, in addition, being significantly smaller than those of her co-accused), had been in Meredith's room, where she could have stood in the blood on the floor though whether at the time of the murder, or afterwards, we cannot determine.

To conclude, in the absence of scientific proof, and despite the TMB testing, that a footprint is in blood, would have to be a matter of inference derived - (a) in the case of an unattributed and presumed (because of the shape) footprint trace in the corridor (see page 57 where the trace is circled on the plan) from the mixed DNA of Knox and Meredith there. What cause, other than a foot, there being other undeniable footprints there, and what substance other than blood, mixed blood that is, not sweat, in which iron is fairly negligible, would produce mixed DNA with high RFUs in the trace and leave a luminol glow? – sweat does not in itself contain DNA (and has minimal iron) but it does contain skin cells with DNA in it ; but if sweat (why would her feet be sweaty?) is what was responsible for Knox's DNA there, though unlikely in view of the high RFUs in her profile in the trace, then obviously it was her foot leaving the trace and we can dispense with the need for attribution by measurement and (b) in the case of the footprints in Knox's bedroom from DNA electropherogram analysis (the luminol might have been responding to the iron in sweat (although the luminol glow is bright – again see page 57) but high RFUs in her DNA profile would not be likely from skin cells secreted in sweat), and or (c) as to the rest, from a gut feeling, or if you like, common sense - be it that this varies between individuals - and indeed, in this respect, the hits in Romanelli's room, including a mixed DNA trace, (a) and (b) above, the luminol enhanced footprint attributed to Knox, the strong likelihood of mixed blood in the small bathroom (high RFUs), the blood on the bathmat, blood in odd places (the edge of the bathroom door), and Guede's disappearing shoe prints, are particularly illuminating even if just as a matter of context. So at least two in three of the luminol enhanced trace/prints in the corridor benefit from an inference whereas the others there do not without context. I am rather a fan of context (the holistic approach) but I will leave it up to the reader to form his/her own judgement. Perhaps a defendant presumed innocent should have the benefit of the doubt?

However, there is so much other circumstantial evidence that this does not seem to make much of a difference. But could what is left be arguable as to sufficiency if the knife and the bra clasp are to be excluded as items of evidence? The 5th Chambers seemed to think so because excluding those items is what they chose to do. In the case of the knife this was not argued as to the merit, nor for an ascertainable legal reason, nor because it may have been a critical element requiring a higher standard of proof, but principally because a protocol of validity for the acceptance of a scientific method - although in this case and in the forensic scientific community, a fully tested and

accepted scientific method - was inappropriately, arbitrarily, and cynically applied to exclude any rational evaluation of the DNA result. In the case of the clasp, because of an abstract possibility of contamination. Neither of these positions had any validity and indeed were the very antithesis of what a court of law, trying a criminal case, is for.

I have said that the Marasca-Bruno Report is a desperate attempt to bring home an incomprehensible verdict. It has been described elsewhere (by a reputable American reporter who had been present throughout the hearings) as superficial and intellectually dishonest. It is not only that, it is a charade that sullies the good name of Italian justice. Plainly it had an agenda that had nothing to do with jurisprudence.

It can also be observed that the 5th Chambers, in acquitting both defendants of staging the break-in, does not attempt to explain, or even suggest, who might have been responsible for that, and more importantly, why. That is a gaping lacuna in the case.

Finally, the acquittal was said to be, according to Maresca, after the verdict, due to Article 530, Section 2, which is why I included this (at the beginning of Chapter 33) as one of, and the most important of, the 8 main decisions in the report.

In fact M-B did not state this explicitly at the time of the verdict, nor explicitly in their Motivation (as that would be beyond their remit – the Supreme Court can only affirm a verdict, or annul it and – other than in the circumstances provided for by Article 620, to which I will come in a bit - send it back to the appeal court for re-consideration) but instead they inserted it into their Motivation with a heavy dose of sophistry, outright dishonesty and underhandedness. The Nencini Motivation was annulled because –

“The intrinsic contradictory nature of the evidence, emerging from the text of the appealed verdict, in essence undermines the connective tissue of the same, leading to its annulment.

In fact, in the presence of a scenario marked by many contradictions, the referral judge should not have come to a verdict of guilt, but - as previously observed – should have reached a verdict of not guilty, given Article 530, section 2, Italian Code of Criminal Procedure.”

The arrogance, intellectual dishonesty and the pernicious imposition of it’s own bias into the case that the above displays, and evident throughout the Report, is quite staggering. “The intrinsic contradictory nature of the evidence (ed : much of which they have ignored) emerging from the text of the appealed verdict” is a sweeping and entirely untrue statement as it relates to Nencini’s Motivation. There were a few insignificant factual mistakes in his Motivation but what contradictions are there, other than those M-B have conjured up out of thin air?

Well, I suppose there is M-B’s bizarre, and merit lacking, adherence to the Independent Experts’ conclusions, despite Nencini’s effective debunking of the same. I have already explained and demonstrated just how, and why, the 5th Chamber’s assertion, that the DNA

profile of Meredith Kercher on the knife, and the DNA profile of Raffaele Sollecito on the bra clasp, have “no probative or circumstantial relevance”, is an assertion itself completely lacking in merit and, more importantly, has no conception in or connection with a valid ground for appeal. The 5th Chamber’s judges would have known that too. One cannot find any error - that is, a manifest illogicality, defect or contradictoriness (as required for a valid ground for appeal - Section 1, paragraph (e), of Article 606 (grounds for appeal to the Supreme Court)) in Nencini’s take down of the Independent Experts’ Report and his re-affirmation of this evidence and it’s relevance. Even if there were one the 5th Chamber does not state what it is. As to the DNA on the knife blade having no probative or circumstantial relevance, such an assertion is most certainly an egregious error from which the 5th Chamber’s Motivation as a whole cannot recover. Nor could it be true of the DNA on the bra clasp even if that evidence is, hypothetically, open to an argument about contamination. It could never be the case that disagreeing with the Independent Experts and the 5th Chamber is an error in itself (which is basically how the 5th Chamber sees it), justifying an annulment. That, and a host of other errors of logic, I submit, is why they ruled out a referral. After all, if I can demonstrate that, then a referral judge would have had no problem doing so.

But let us consider what they go on to say -

“At this point only one matter remains to be resolved, regarding the type of annulment - i.e., whether it should be decided with or without a new trial - which depends, obviously, on the objective possibility of further investigation which could unravel the perplexing aspects, and offer answers of certainty...”

The grounds for an annulment without further referral are stated in Article 620. M-B choose para (l) of the Article to justify their decision to dispense with a referral.

“... A new trial would be useless, thus the verdict of annulment without a new trial, in accordance with Article 620 para (l) of the Italian Code of Criminal Procedure, thus applying a sentence of not guilty which would also have been reached by any new referral judge....”

Para (l) is as follows -

“(l) If the Court of Cassation (i.e the Supreme Court) holds it can either reach a decision if no further ascertainment of the alleged offences is needed, set a new sentence based on the decision of the merit court, or take any other necessary decision, and in any other case in which it believes referral is superfluous.”

There is quite a bit to unpack and interpret there as it relates to the 5th Chamber’s decision. I am not entirely clear what “if no further ascertainment of the alleged offences is needed” means in our case. Is further evidence needed to ascertain the alleged offences? It would appear that the 5th Chamber thinks not, or at any rate can be obtained to add to what we have. However we have the evidence there is, not just the DNA evidence, and I submit, it is pretty compelling as to guilt. Indeed no further ascertainment is needed. In amongst all the evidence Meredith’s DNA was most certainly on the knife blade and Sollecito’s on the bra clasp.

As to “a new sentence based on the decision of the merit court”, that can surely only be a reference to the appropriate form of punishment (the decision being the verdict of Nencini’s appeal court – the merit court). Setting a new sentence is not what is happening here. But perhaps their justification falls within the remit of the wording “or take any other decision, and in any other case in which it believes referral is superfluous”.

The latter is most likely their lifebelt (which boils down to – certainly for M&B, given the content of their Motivation – “we will say and do what we like, no rationale required”), and remember, this is all about whether there should be an annulment without further referral. Therefore the only justification seemingly available to them is this catch all one, which clearly can be mis-used, and has been here, deployed very dogmatically, I would submit, (there is no “thus” about a not guilty verdict) in a pathetic attempt to promote the ascendancy of the 5th Chambers over the 1st Chambers.

However an annulment without a further appeal hearing would, of course, leave us with the Massei trial verdict. So M-B have simply imposed their own preferred verdict upon the Florence appeal court as a matter of, as they would have it, logic. Really? That is gaslighting.

M-B did not annul and order a new appeal hearing because (and they knew it) their Motivation would have been torn to shreds. If there had been a further referral would, as M-B say, gaslighting again, the referral judge have, as a matter of evidence and logic also have entered a not guilty verdict? Would he heck! Or would the referral judge have felt obliged to comply with the terms of the referral were it in effect to include instructions to enter a not guilty verdict? Were such a referral to include such instructions then what would be the point of a referral? It would indeed be superfluous. But such a fix would be a little bit too obvious.

Would Article 621 complicate matters? No. This Article states that “in the case provided for by para (l) of Article 620 the Court of Cassation shall proceed to the determination of the sentence or give the necessary instructions”. However, since the word “sentence” is being used here (rather than decision or verdict) it surely has to be construed as a reference to the applicable punishment. The words “sentence” and “decision” are distinguished from each other and given, without any confusion, their usual meanings elsewhere in the Articles and so I see no reason for there to be any confusion here.

The M-B Motivation would and certainly could have been torn to shreds by a, be it brave, no nonsense referral judge, if only for the bit mentioned earlier about the DNA evidence having “no probative or circumstantial relevance”.

There is no provision in the Italian Code of Criminal Practice that I can find that could have prevented that from happening and a re-affirmation of the original guilty verdict. Attentive readers will recall Article 628 and understand that it’s provisions in no way tie the hands of the referral judge, applying, as it does, to any appeal to the Supreme Court against his verdict. And any appeal would be unlikely to find it’s way back to the

5th Chambers. Knowing, and fearing, the foregoing is the real reason why the 5th Chambers ruled out a referral.

If not a product of sheer incompetence, then a question to arise is what truly motivated the verdict and this childishly simplistic and petulant report, which is in turns aggressive, obtuse, superficial, condescending, illogical and dogmatic? It seems to me that the only “glaring investigative omission” in the case, is this. However that would take us into the murky world of politics, social and family connections, and undue influence, about which we may only ever be able to speculate.

It is a shame about the Marasca-Bruno Report. It has provided no definitive answer for the Kercher family. Nor does it exonerate Knox and Sollecito, for even if they are now innocent of murder in the eyes of the law, they must nevertheless be held to be culpable of crimes for which they were not charged, namely aiding and abetting the crime after the fact and obstructing and perverting the course of justice.

Postscript

The final appeal stage with the Supreme Court is not necessarily the end of a case. It is possible for a request to be made to the Council of Magistrates for a review of the final decision. Leave would have to be given. Nor does there have to be new evidence for the review to be justified. The review is a guard against perverse reasoning and/or decisions that breach procedure, remit and law. Such a request has already occurred, pursuant to the 5th Chambers decision, in relation to Guede’s final decision. Leave was denied and his conviction upheld.

No such request has been sought with regard to the 5th Chambers decision, which is surprising given the content, violations of the permitted grounds for appeal and remit. A request could have been made by the Kerchers but I think that they can be forgiven for being fed up with the whole business. Why there has been no request from any other interested source, particularly from law enforcement and within the judiciary, is puzzling. My own opinion on the matter is that the 5th Chambers Motivation was so bad that there was an inertia, if not resistance, from within the judiciary, as to a review. On the political side, and the judiciary is not immune from politics, there would also be the long drawn out embarrassment of extradition proceedings against Knox consequent upon a remand for further appeal and another conviction, all against the backdrop now of a fine mess created by the appeal judges in the Italian Justice System.

Rather unwisely, in my opinion, Knox was tried in absentia on a long-standing charge of criminal defamation concerning the police officers whom she had alleged had “tortured” her during her interrogation at the police station on the night of the 5th November 2007.

She was acquitted by the judge (Boninsegna) on the basis of his findings that there was reasonable doubt as to the prosecution witnesses’ version of events at the Questura and that, in any event, the case was not proven. This was somewhat surprising. In order to reach these findings he relied heavily on –

1. Amanda Knox's emotive version of events, with barely a mention of the testimony of the numerous prosecution witnesses contradicting that version. The triable crux of the case was, of course, whether or not she had been hit and abused, as she claimed. That was not to be decided as a matter of objective fact. The test to be applied to Knox was subjective. Knox thought she had been and that was not considered as being unreasonable in her circumstances (being confused, scared, exhausted etc).

2. Quotations to support his verdict from Judge Hellmann's Motivation which, one should remember, had been annulled by the Supreme Court.

3. The Supreme Court ruling that she was already a suspect before the interrogation started. I can accept that it would follow from that ruling that any questioning for the purpose of gathering admissible evidence against her would require, but which did not happen – be it she was not under arrest – a formal interview with the witness, or rather, suspect, with a lawyer present, whether or not she said she required one. Which is why the Supreme Court ruled that her “confession” that she was present, as a witness, at the time of the murder, was not admissible as evidence re any charge to do with the murder, to wit by placing her at the cottage. The questioning that occurred as to the texts on her phone was not, in itself, inappropriate or illegal, nor would be in the USA.

The Supreme Court had clearly not deemed there to be the same suspect status applying in the case of Knox's defamation of Lumumba. It ruled that her statements, and the Memorial, were admissible in relation to that charge. That is logical if only for the obvious reason that one cannot be a suspect for an offence which has not happened and which one has no reason to believe will. It also follows, for the same reason, that any requirement for the presence of a lawyer has to be redundant.

Nevertheless would she have pointed the finger at Lumumba, in the manner she did, had a lawyer been present to assist her? We can not say. Any scenario we might like to imagine would only be hypothetical. However, as to her definitive conviction for calunnia (defamation of Patrick Lumumba) Knox repeated her claims about Lumumba in her Memorial when she was not in fact being questioned. On the other hand her allegations against the police (being hit) first arose in her Memorial as well, and were repeated in her trial testimony. However, to be fair, the allegations about mistreatment could hardly have arisen in the first place with a lawyer present.

Knox, it is to be noted, has also repeated the same claims about her interrogation in her book.

In December 2016 Francesco Sollecito attended a private family memorial for Rocco (Rocky) Sollecito, the boss of the Ndrangheta Canadian Mafia based in Montreal and gunned down the preceding May, held at a church in Grumo Appula near Bari, where the Sollecitos live and where Raffaele and Rocco were born. The priest was to have held a public service but the Mayor and the priest's bishop vetoed that. One has to assume that Francesco and Rocco had more than a surname in common. [Incidentally, Rocco's outfit,

now run (from prison) by his son, Stefano, has extensive business interests in the Dominican Republic; gambling and drugs running. The Dominican Republic does not have a bilateral extradition treaty with either Canada or Italy. The reader may recall it being mentioned earlier that Raffaele spent some time in the Dominican Republic during the progress of this case.] The mafia has come a long way from its humble origins in Sicily, and there are plenty of well researched articles and books that argue convincingly that mafia syndicates, of which the Ndrangheta is one, have permeated many aspects of society, business and the body politic in Italy, and also to some extent in the USA, Canada, Russia and elsewhere as well. Law enforcement has gradually been getting the upper hand in Italy but at the cost of the lives of a number of committed anti-mafia public prosecutors and judges.

An eye-opening read I would recommend, is "Mafia Republic" by John Dickie.

Also from Wikipedia –

"Corruption in Italy is a major problem. In Transparency International's annual surveys, Italy has consistently been regarded as one of the most corrupt countries in the Eurozone. Transparency International's 2017 Corruption Perception Index ranks the country 54th place out of 180 countries."

Maybe it is the manifestation of an over-fertile mind that I should consider the hiring of Bongiorno to represent his son by Francesco Sollecito with some suspicion, bearing in mind what may be family links with the Ndrangheta which, in Italy, is based in the Calabria region, in the toe of the country and next to Sicily, and the fact that Bongiorno is a native of Sicily, educated at Palermo University, and who successfully helped to represent the disgraced former Prime Minister Andreotti through multiple appeals against his conviction for mafia links and for conspiracy to murder.

Furthermore, though this is just my opinion, it may be that it was Raffaele Sollecito that the 5th Chambers was anxious to acquit but with the corollary that Amanda Knox would have to be acquitted as well if there was not to be an almighty diplomatic row with the USA.

One can also note that, despite the acquittals being posited as exonerations by the acquitted, it is, of the two, Knox, rather than Sollecito, who is left the more exposed by the conclusions I refer to in my summary at the end of this book. That, in my opinion, and aside from the evidence, reflects, to some extent, Raffaele's father's take on the case who, at the outset, and for some time thereafter, was hostile towards Knox and critical of his son's relationship with her.

Sollecito lost a claim for compensation for wrongful imprisonment in January 2017, appeal against refusal being rejected by the Supreme Court in June, on the grounds that he told too many lies in the early stages and then did not avail himself of the opportunities afforded to get himself out of the hole he had dug for himself. The foregoing had amounted to wilful misconduct and/or gross negligence on his part.

The following section from the judgement is particularly illustrative –

“It does appear clear, in the light of the judicial truth established in the acquittal ruling concerning the indisputable presence of Knox in 7 Via della Pergola at the time of the murder, that if Sollecito had immediately said, without later changing his story, that the young woman had been far away from him during that time, and if he had told in a precise way the time at which she had arrived at his house and also her condition at that time – presumably upset or even extremely distraught, his legal situation would certainly have been different. It seems probable that he would not have even become a suspect, or even so, not seen as withholding information or lying in his statements. If he did become a suspect, the need for preventive custody would have been absent or much less important, inducing the judges to apply, at the worst, a less restrictive custody order.”

It is unsurprising, in the circumstances, that Knox has not followed suit with a claim for compensation for wrongful imprisonment.

Knox continues to live in Seattle where she is a part-time contributor to the West Seattle Herald. Her once boyfriend and now her legal husband is the son of the owner. She frequently attends Innocence Network Conferences for exonerees and she featured prominently in a one-sided documentary on her case submitted to the Netflix Toronto Film Festival.

She has also attended numerous speaking engagements for which, if newspaper reports are to be credited, she has received fairly substantial fees.

It should also be mentioned that her sentence for the calunnia conviction was cut to 3 years, deemed served, but she is still required to pay the compensation which is due to Patrick Lumumba.

On the 24th January 2019, more than 5 years after Knox had submitted her claim, the ECHR finally delivered a ruling on her claim. The ECHR found that her claim met the admissibility criteria. It awarded her damages of 10,400 euros and legal costs of 8,000 euros.

It ruled that her rights as to a lawyer and an interpreter (under article 6 of the Convention –safeguards as to a fair trial) had been violated, but it dismissed the claim (under article 3) that she had been subjected to inhumane or degrading treatment.

It was, of course, a fact that there was an interpreter present when Knox was questioned as to the exchange of texts on her mobile phone, and when she made her accusation against Lumumba, but the court was of the opinion that the interpreter had been too “familiar and motherly” in her behaviour towards Knox, thus “robbing her of her dignity” at a moment when Knox was under considerable psychological pressure.

Thus, in fact, article 6 had been complied with but it appears that the court felt that the interpreter had overstepped her remit.

As to a lawyer, the writer is of the view that it was always probable that the ECHR could get hold of the wrong end of the stick and find in her favour here, particularly as Judge Gemelli, presiding over a panel of judges sitting at the Supreme Court in 2008, had ruled that at the time of Knox signing her first statement (at 1.45 am) she should have been deemed a suspect for the purpose of the murder enquiry and thus, under Italian law, be entitled to a lawyer, whether or not she requested one. This is in fact a stricter condition than applies in other countries.

However the damages award of 10,400 euros is a fairly paltry one, certainly when compared to the very substantial and life enriching amount that Knox was claiming. It reflects the fact that the ECHR had been unable to declare that the violations had had a significant impact on the fairness of Knox's conviction for calunnia.

It also reflects the fact that the ECHR sees its *raison d'être* as keeping member states up to the mark as regards best practice.

In all, a slap on the wrists for the Italians. However for Knox, quite apart from the loss of a substantial pecuniary advantage (and she is unlikely to see any money until she pays the compensation and costs due to Lumumba, the amount of which eclipses her award), her narrative, which she continues even now to promote, as to an unfair conviction and as to how she was treated at the Questura, had again been dismissed.

Rudy Guede is the only one of the three originally charged who is definitively guilty and he is still serving his sentence. By my calculation his sentence will be served, taking into account time on remand, in December 2023.

I have no qualms about that but one can reflect on the fact that whereas the other two possessed resources on which they constantly drew throughout the long judicial process, Guede did not. Guede did not have strong family ties. Although he was sociable he was a bit of a loner. He was on his own from the start with little support from any quarter but from his legal team.

Despite this and although their defence teams not unnaturally made much of a lone wolf scenario yet neither Knox nor Sollecito have ever had much to say, interestingly, by way of personal criticism of Guede.

Knox and Sollecito did have strong and, as it turned out, influential family ties. Whereas Sollecito can be distinguished from Knox in that he had little public support in Italy, nevertheless he had a doting father and the family had money and connections.

Knox had the benefit of her gender and looks, and a pair of very determined parents and a well organised PR campaign that played, in the media and on-line, to America's

historic mood of isolationism, exceptionalism and paranoia about the world outside. This proved to be a fertile recruiting ground for supporters.

To conclude, the outcome was that Knox and Sollecito were acquitted of murder, not exonerated. In the criminal justice systems with which we in the English speaking world are familiar there are only two possible verdicts to a criminal trial : Guilty or Not Guilty. These binary (and unmotivated) verdicts are mostly all that people are interested in and it is common, if not customary, for the media and for many others to allude to Not Guilty as an exoneration. By contrast the Italian system is not that simple. The verdict (which has to be motivated) is either Guilty or if there is to be an acquittal then one or other of the paragraphs of Article 530 of the ICPC have to apply and be stated. Paragraph 1 of the Article (not having committed the crime) is what we commonly understand by an exoneration but Knox and Sollecito were said to be acquitted under paragraph 2 (insufficient evidence), so not an exoneration by their law – just deemed to be not proven.

There are other paragraphs which include, for example, acting in self defence.

Knox was present at the cottage when the murder occurred but the evidence was insufficient to dispel a possible doubt about her direct involvement in the crime, notwithstanding that it was held that there were multiple attackers of whom one, it had been held, was Guede. The same also applies to Sollecito who was also likely there at the time. The scenario has to be that they were just innocent and helpless bystanders as Meredith was attacked by multiple assailants. Nevertheless, we must conclude, Knox felt sufficiently compromised to give the police a false alibi, to concoct an improbable story to account for her, and Sollecito's, presence at the cottage for the discovery of the murder, to stage a break in, to remove blood traces, and to blame an innocent man for the murder. In addition she did nothing to assist the police in identifying Guede as a culprit nor in identifying the other assailants.

Their behaviour, deceptions, lies and obfuscations, the forensic findings, and the totality of the evidence, were elements that were either disregarded or were ultimately discounted as having any relevance or weight, but only as a consequence, as I have shown, of judges wilfully blindsiding themselves on the evidence and engaging in specious and one-sided argument that was intellectually dishonest, if not fraudulent.

The 5th Chambers also brazenly disregarded the confines of its procedural remit as set down in law.

In the overall analysis one wonders why the latitude that was so generously extended to Knox and Sollecito was not extended to Rudy Guede, whose story actually had confirmation in the forensic findings, and which in a number of ways made more sense than did that of the other two defendants.

Finally, the conclusion of the case has left us with no judicial finding as to who had inflicted the fatal stab wound. However if Knox and Sollecito are innocent of the charge, but Guede was convicted, then there are certainly those who will argue that he must have been the culpable party. Yet there is an absence of compelling forensic evidence against him in this respect. That explains why there was no judicial finding against him as regards the act. The forensic evidence as to his presence in Meredith's room at the time of the murder must be considered circumstantial as to the act, but nevertheless insufficient, and, for that matter, not actually inconsistent with his own account, especially given that Knox, and probably Sollecito, or at least others, were present in the cottage during the commission of the murder. It can not be held (and as to the act I submit that a stricter standard of proof must apply) that Guede, and Guede alone, was the culpable individual.

His DNA was not on the double DNA knife and no other weapon has been linked to the crime.

The conclusion of the case is a deeply unsatisfying mess, but it need not have been so. The fault lies in the mismanagement of, or probably a corrupt manipulation of, the Italian criminal justice system, to which, at times, it is unfortunately, and a little too easily, prone.

UPDATES (2024)

It is understood that Knox has received payment from the Italian State of the compensation ordered by the ECHR. She has not, however, paid so much as a buck to Lumumba.

Guede has been released from prison, and has published a somewhat self serving Kindle Book about the case and his conviction. No surprises there.

Meredith's parents, John and Arline, both died a few years ago.

The 5th Chambers (again) referred Knox's conviction for calunnia (having annulled it to enable this step) to a lower appeal court in Florence for it to consider the safety of the conviction in the light of the ruling by the European Court of Human Rights. Rather surprising given that the 5th Chambers itself had previously held that the definitive conviction was effectively inviolable.

On the 5th June 2024 the Florence Appeal Court re-affirmed Knox's conviction for calunnia. On the 23rd January 2025 the Supreme Court confirmed that decision. She remains a convicted felon.

Appendix A

Chronology of Judicial Hearings and Decisions

[Arrest Warrants for Amanda Knox and Raffaele Sollecito issued 06/11/07]

[Rudy Guede was arrested by German Police under an international arrest warrant on the 20/11/07 and arrived back in Italy on the 06/12/07]

08/11/07 - Arrest validation and remand hearing before Judge Matteini. Ruling issued the next day when Matteini authorised the detention in prison of Amanda Knox and Raffaele Sollecito for a year, pending completion of the Investigative File and decision to bring charges.

30/11/07 - Dismissal of appeals brought by AK and RS against the Matteini ruling. Before Judge Ricciarelli at the Perugia Appeal Court.

01/04/08 - Second dismissal of AK/RS appeals against remand in prison, this time by Judge Gemelli presiding over a panel of judges at the Supreme Court.

This appeal also dealt with the admissibility of statements made by AK whilst at the Police Station overnight on the 5th - 6th November.

Briefly, the statements made by AK at 1: 45 am and 5.45 am were inadmissible as far as charges other than the calunnia were concerned. A voluntary statement made by AK before being taken to prison on the 6th November was however admissible in all instances.

19/04/08 - A further hearing before Judge Matteini reviewing the progress of the Investigative File and in particular forensic and pathology reports.

15/05/08 - Ruling by Judge Matteini that AK and RS should continue to remain in prison. She found that there was serious evidence.

19/06/08 - Notification given by the prosecution that the Investigative File was now ready and that the prosecution was ready to proceed with formal charges.

16/09/08 - Preliminary proceedings open before Judge Micheli. Presumably formal charges were read out and Not Guilty pleas were recorded or indicated. Micheli accepts a request from the lawyers for Rudy Guede for a fast-track trial for their client.

26/09/08 - Guede's fast-track file starts.

[According to available press reports there would appear to have been at least one further session (but there may have been more) before closing arguments on the 27/10/08]

28/10/08 - Verdict of guilty and sentence in Guede's case. AK and RS ordered to stand trial.

29/08/08 - There is a press report that on this day Micheli declined a request from AK and RS for house arrest rather than remand in prison.

26/01/09 - Micheli Motivation report.

16/01/09 - AK and RS trial commences at Perugia Assizes. Presiding judge Massei. Trial concludes

04/12/09 with guilty verdicts (other than for theft of money and credit cards) and sentence.

18/11/09 - Guede's 1st Appeal starts. Judge Borsini-Belardi presiding.

22/12/09 - Guede's appeal dismissed but his sentence is reduced from 30 years to 16.

04/03/10 - Massei Motivation report.

24/11/10 - AK and RS appeal starts in Perugia with Judge Hellmann presiding.

16/12/10 - Guede's final appeal at the Supreme Court. Judge Giordano presiding. Appeal dismissed.

24/02/11 - Giordano Motivation report.

03/10/11 - AK and RS appeal concludes with acquittals other than for the conviction of calunnia in AK's case. In the latter case the sentence is extended.

15/12/11 - Hellmann Motivation report.

25/03/13 - Supreme Court 1st Section (judge Chieffi presiding) annuls the outcome of the Hellmann appeal other than with regard to AK's conviction for calunnia which conviction became definitive. A further appeal for AK and RS is ordered to take place in Florence.

18/06/13 - Chieffi Motivation report

02/07/13 - The date of a Motivation report on Guede's conviction re "stolen goods" (the Milan Kindergarten incident)

30/09/13 - The appeal in Florence starts with judge Nencini presiding.

30/01/14 - The appeal concludes with the appeals of AK and RS against the remaining non-definitive convictions being dismissed.

29/04/14 - Nencini Motivation report.

26/03/15 - Supreme Court 5th Section - judge Marasca presiding - grants AK and RS their appeals against the remaining non-definitive convictions.

20/09/15 - Marasca Motivation report.

14/01/16 - Boninsegna Motivation report re criminal defamation of police

05/06/24 - Knox's conviction for criminal slander re-affirmed by Florence appeal court



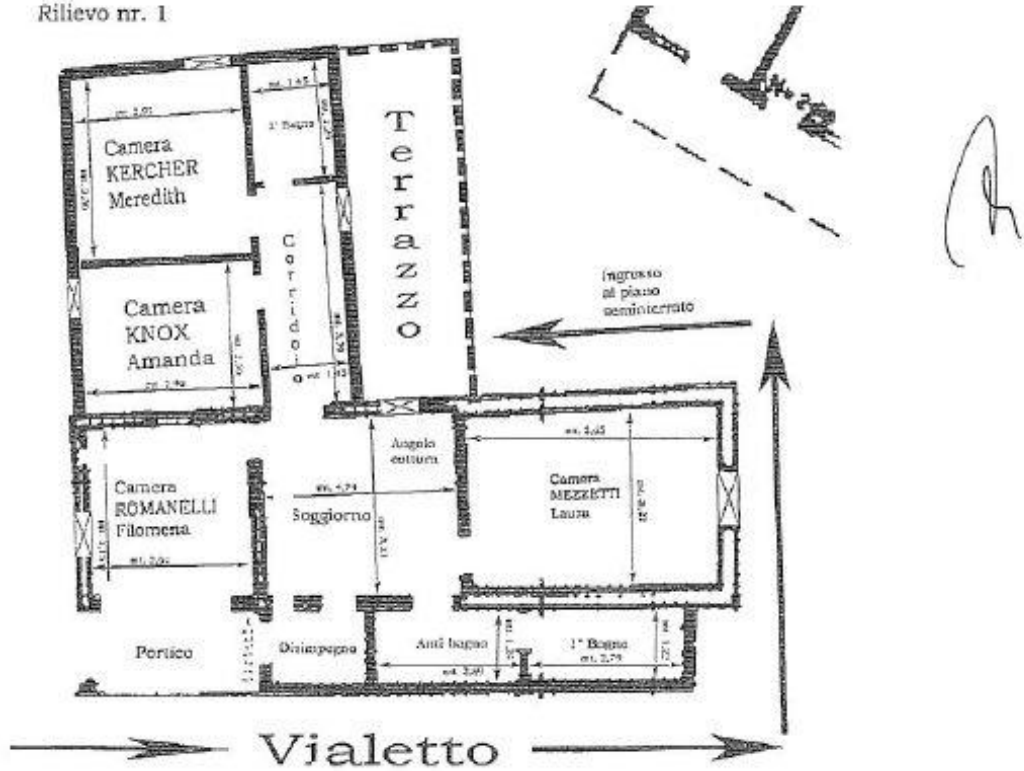
POLIZIA SCIENTIFICA DI PERUGIA

P.P. 9066/07 mod. 21
Prot. nr. 146/07 Reg. Sopr.

Perugia, 2 novembre 2007

Omicidio KERCHER Meredith Susanna Cara

Rilievo nr. 1



Appendix B

Appendix C

Telecom Italia							
ORIGINE	CHIAMATO	CHIAMANTE	GG/MM/AAAA	HH:MM:SS	DUR.	TIPO	IMEI
303492000899	3403574303	303397755083	01/11/07	00:00:39	1	7	352503010966270
303492000898	3403574303	303484873500	01/11/07	00:57:24	1	7	352503010966270
	3403574303	3492000123	01/11/07	14:25:12	58	2	352503010966270
	3403574303	3475945677	01/11/07	15:50:06	214	2	352503010966270
	3403574303	3475945677	01/11/07	16:56:46	64	2	352503010966270
	3403574303	3475945677	01/11/07	20:42:56	221	2	352503010966270
303492000890	3403574303	303475945677	02/11/07	09:02:59	1	7	352503010966270
	3403574303	3475945677	02/11/07	09:30:42	41	2	352503010966270
	42010	3403574303	02/11/07	12:35:08	135	1	352503010966270
303492001156	3403574303	Vodafone	02/11/07	12:38:17	1	7	352503010966270
	3403574303	3475945677	02/11/07	12:40:03	67	2	352503010966270
	393471323774	3403574303	02/11/07	12:50:34	39	1	352503010966270
	112	3403574303	02/11/07	12:51:40	169	1	352503010966270
	112	3403574303	02/11/07	12:54:39	57	1	352503010966270
	3403574303	3475945677	02/11/07	13:40:12	94	2	352503010966270
	3403574303	3475945677	02/11/07	13:50:13	179	2	352503010966270
	3403574303	3475945677	02/11/07	14:33:29	21	2	352503010966270
	3403574303	3475945677	02/11/07	17:01:17	164	2	352503010966270
	3403574303	3475945677	02/11/07	17:42:53	97	2	352503010966270
Arundp							
ORIGINE	CHIAMATO	CHIAMANTE	GG/MM/AAAA	HH:MM:SS	DUR.	TIPO	IMEI
	393203473230	3484673590	01/11/2007	00:41:48	20	1	356403016662130
303492000200	393403574303	3484673590	01/11/2007	00:57:20	1	6	356403016662130
	3484673590	756660789	01/11/2007	01:04:58	53	2	356403016662130
303356822001	3484673590	393387195723	01/11/2007	20:18:12	1	7	356403016662130
303492000200	393387195723	3484673590	01/11/2007	20:35:48	1	6	356403016662130
	447841131571	3484673590	02/11/2007	12:07:12	16	1	356403016662130
	3471073006	3484673590	02/11/2007	12:08:44	68	1	356403016662130
	3484673711	3484673590	02/11/2007	12:11:02	3	1	356403016662130
	447841131571	3484673590	02/11/2007	12:11:54	4	1	356403016662130
	3484673590	393471073006	02/11/2007	12:12:35	36	2	356403016662130
	3484673590	393471073006	02/11/2007	12:25:44	85	2	356403016662130
	3484673590	393471073006	02/11/2007	12:34:56	48	2	356403016662130
	12069326457	3484673590	02/11/2007	12:47:23	88	1	356403016662130
	12069326457	3484673590	02/11/2007	13:24:18	162	1	356403016662130
	12069319350	3484673590	02/11/2007	13:27:32	20	1	356403016662130
	3484673590	7554247561	02/11/2007	13:29:00	295	2	356403016662130
	12069326457	3484673590	02/11/2007	13:58:33	1	1	356403016662130
	12069319350	3484673590	02/11/2007	13:59:08	350	1	356403016662130
	3484673590	404154794034	02/11/2007	14:46:15	102	2	356403016662130
303205956111	3484673590	393891531079	02/11/2007	15:31:51	1	7	356403016662130

- Legenda:
- 1 Uscente voce;
 - 2 Entrante voce;
 - 3 Call forward;
 - 4 Uscente voce estero;
 - 5 Entrante voce estero;
 - 6 Uscente sms;
 - 7 Entrante sms;
 - 8 Uscente sms estero;
 - 9 Entrante sms estero;
 - A Uscente voce call-conference;
 - B Entrante voce call-conference;
 - C Uscente dati;
 - D Entrante dati;
 - E Uscente fax;
 - F Entrante fax;
 - G Call forward dati;
 - H Call forward fax;
 - I Uscente dati estero;
 - J Entrante dati estero;
 - L Entrante fax estero;
 - M Cellback;
 - N Gprs;
 - Q gprs estero;
 - R Uscente mms;
 - T Uscente Video;
 - U Entrante Video;
 - V Call forward Video;
 - W Wlan;
 - X Entrante mms;
 - Y Uscente Video Estero;
 - Z Entrante Video Estero