Lessons Learned from the Amanda Knox Case

INTRODUCTION
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Functions of the Court

The "Corte Suprema di Cassazione" is the highest court in the judicial system; among its major functions according to the main law on the Judiciary of January 30, 1941 No. 12 (Article 65), there is the duty "to ensure the correct application of the law and its uniform interpretation, together with the unity of the national objective law and the respect for the limits between the different jurisdictions".

One of the main features of its task which is essentially unifying and "nomofilattica", i.e. aiming at providing certainty in the construction of law (in addition to the decision issued as third-instance judge), is that the existing rules allow the Supreme Court to investigate the facts of a case only when they were already dealt with in the previous part of the proceedings and only if necessary for estimating the grounds allowed by the law to support a petition to the Supreme Court.

The petition to the Supreme Court can challenge the decisions issued by the ordinary judges of second instance or sole instance: the grounds of the petition can be, in the civil field, the infringement of provisions of substantive law (errores in iudicando) or of procedure (errores in procedendo) or defects (lacking, insufficient or contradictory grounds) concerning the grounds of the decision challengedo or, furthermore, questions relating to jurisdiction. Similar provisions are set forth for the criminal cases before the Supreme Court.

When the Supreme Court singles out one of the above-mentioned defects it can and must quash the decision of the lower court and also state the legal principle that the decision challenged will have to follow: this principle will be necessarily complied with by the remand court when examining again the facts of the case. On the contrary, the principles asserted by the Supreme Court are not binding on all the remaining courts dealing with other cases. The decision of the Supreme Court is considered only as an important "precedent". Actually, the lower courts usually comply with the decision of the Supreme Court.

No special permission is required to appeal the Supreme Court.

According to Article 111 of the Italian Constitution any citizen can apply to the Supreme Court for infringement of the law against any decision of whatsoever court without appealing the second-instance judge both in civil and criminal matters or against any limitation to individual freedom.

The Supreme Court is also entrusted with the charge of defining the jurisdiction (i.e., of indicating, in case of controversy, the court, either ordinary or special, Italian or foreign, which has the power to know the case) and the "competence" (i.e., of settling a conflict between two courts dealing with the merits of a case).

The Supreme Court also performs non jurisdictional functions pertaining to the legislative elections and the referendum repealing the laws.

Judge who cleared Amanda Knox of Meredith Kercher murder accuses Italy's Supreme Court of 'violating the law' for overturning his decision

- **Knox had murder conviction overturned by Claudio Pratillo Hellmann**
- **But Supreme Court ruled that he ignored evidence and ordered a fresh trial**
- **Hellmann hits out and claims judges have overstepped their powers**

Read more: http://www.dailymail.co.uk/news/article-2349550/Judge-cleared-Amanda-Knox-Meredith-Kercher-murder-accuses-Italys-Supreme-Court-violating-law-overturning-decision.html#ixzz2hKTBVl00
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By Nick Pisa

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The judge who cleared Amanda Knox of killing Meredith Kerchner has hit out at his colleagues who overturned the decision, saying they were 'violating the law'.

Claudio Pratillo Hellmann acquitted Knox, 26, and her former boyfriend Raffaele Sollecito, 29, of murdering the British student in 2011 after they had initially been found guilty and sentenced to 26 and 25 years jail respectively.

However, three months ago the Italian Supreme Court overruled that decision, saying that key evidence had been overlooked, and a fresh trial is expected to begin in the autumn.

In a furious attack Mr Hellmann, who has now retired as a judge, slammed the ruling in an interview with glossy Italian weekly Oggi.

'The Supreme Court judges in effect carried out a straight-legged tackle,' he said. They cannot do that and they should not have done that. They should have just limited themselves to the law.

'Instead they decided to interpret the evidence and that is a violation of the law. That is incorrect. What they have done is in effect hand the new trial a sentence that is ready and done - their ruling has explained to the judges in the new trial how they should convict the two accused.'

In their ruling, the Supreme Court reverted to the original 2009 trial verdict that said Meredith had been killed by more than one person in a 'sex game gone wrong', claiming the acquittal two years later contained 'deficiencies, contradictions and illogical' conclusions.

Ivory Coast drifter Rudy Guede was convicted of the murder and sexual assault of Meredith in 2009 and is now serving a 16-year sentence, reduced from 30 on appeal. He could be freed as early as 2014.

Mr Hellmann said: 'The theory of a sex game gone wrong doesn't add up - in that small room where Meredith was killed after a struggle and supposedly a sex game gone wrong, maybe even an orgy, there was no biological trace of Knox and Sollecito - it would have been impossible for them to get rid of their traces and leave that of Guede.'

He added that he was 'still convinced' he had made the right decision in freeing Knox and Sollecito - who were pictured last week warmly embracing in New York - and added: 'I am still convinced that I did my duty. I'm happy because I avoided an unjust jailing.

'Italy is a country that convicts where there is proof beyond all reasonable doubt. In this case there were only slim possibilities that they were both involved, and when you hold a trial you are not playing the lottery.'

But in a press conference in Perugia, where Meredith was murdered in 2007,

chief prosecutor Giovanni Galati insisted that the retrial would give fresh hope to the Croydon-born student's family.

He said: 'This has become an unworthy soap opera and only Rudy Guede, Amanda and Raffaele can tell us what really happened on the night of November 1, 2007. The appeal court judges lost their way - they didn't take into account anything from the first trial because they wanted to confirm their innocence.

'The Supreme Court has overruled the appeal court's decision that there had been contamination of evidence. The new trial will bring justice and, in the case of a conviction, a new sentence. It gives fresh hope to the family of the student so they can know what happened to her.'

Knox is not expected to return to Italy voluntarily for the retrial, and the U.S. is extremely unlikely to extradite her to Europe.

She recently published a memoir, entitled Waiting to Be Heard, in which she protested her innocence and described the ordeal of spending two years in an Italian prison, where she says she was sexually harassed by guards and fellow inmates.

Sollecito's father Francesco said: 'It is evident that sentences should be respected - and above all those of the Supreme Court.

'However, here we find it impossible to agree because there are serious inaccuracies in the judgement and they have no idea of the evidence.

'What judge Hellmann is saying is that the Supreme Court has in effect returned a third verdict which it should not have and which is forbidden by law.'

Last week Sollecito launched an online appeal for $500,000 to help fund his new trial, and the total now stands at $10,000.

The Galati-Costagliola Prosecution Appeal to the Supreme Court of Cassation in the matter of *The People and Republic of Italy* against *Amanda Marie Knox and Raffaele Sollecito*

Translated from the Italian into English

Version 1.0

Translation note

This translation has been produced with the unpaid assistance of volunteers who post on the PerugiaMurderFile.org (PMF) site.

It has been translated, as with the Massei Report and Hellmann Report, on a ‚best efforts` basis, and has gone through multiple rounds of proofreading and editing, both to ensure its accuracy and to harmonise the language insofar as possible. Persons fluent in both Italian and English are invited and encouraged to contact PMF if they find any material errors that influence the meaning or intention of the text. All such corrections will be investigated, made as required and brought to the attention of the public.

As with any translation in general, and legal translation in particular, some terminology in Italian has no direct equivalent in English. Explanations have been provided where relevant. Similarly, readers are encouraged to submit any questions about legal or other concepts that may arise as they peruse the report. Our goal is to make the report as clear and as accurate as possible; to this end, it will be amended whenever doing so promotes this goal.

As the report was written and published in Italian, that language prevails in the event of

a dispute over interpretation. This English-language version is provided for readers' convenience only; accordingly, it is to be treated as a free translation and has no legal authority or status.

To a certain extent, in the matter of language usage, various legal turns of phrase, Latin words and maxims, and rarely-used words (e.g, diriment) have been retained "as-is" *in situ*, so as to keep to a consistent register and to a flow of text and concepts that (English-speaking) lawyers are accustomed to and trained for, and would expect to find in such a text, rather than producing a full out-and-out "translation", in plain language, for the lay reader. Footnotes alleviate this, where possible.

Further, a small appendix of the various code articles cited in the text has been added to provide a bit more context and background to the legal discussion.

Because different locales around the world have different conventions for representing dates and times (day-month-year versus month-day-year, 24-hour clock versus 12-hour clock), locale-specific flavours of this translation (containing exactly the same words) have been produced for the convenience of the reader.

The date and time format used in this document is:

November 2, 2007, 12:47 PM.

Page numbers in the original Italian are shown thus: **[10]**.

[1]

Public Prosecutor's Office
attached to the Court of Appeal of Perugia

The Procurator-General, Dr Giovanni Galati, and
the Deputy Procurator-General, Dr Giancarlo Costagliola

Submit

Appeal to Cassation

relating to judgment No 4/2011, handed down on October 3, 2011, with reasons reserved under the 3rd paragraph of Article 544 CPC deposited in Registry on December 15, 2011 by the judges of the Criminal Division of the Court of Assizes of Perugia - Court of Appeal [the "CAA"], who partially adjusted the verdict by which the Court of Assizes of Perugia [the "CA"] on 4,-December 5, 2009 had declared Knox, Amanda Marie, and Sollecito, Raffaele, guilty of the crimes, to wit:

(A) under Articles 110, 575, 576 paragraph 1(5), in relation to Article 609*bis* and *ter* of the Criminal Code and Article 577 paragraph 1(4), in relation to Article 61(1) and 61(5) of the Criminal Code

(B) under Articles 110 Criminal Code, 4 Statutes 110/1975;

(D) under Articles 110, 624 Criminal Code;

(E) under Articles 110, 367 and 61(2) Criminal Code;

[(F)] Ms Knox in addition also, the offence under Articles 81 CPV and 368 paragraph 2 and 61(2) Criminal Code and had sentenced Ms Knox to the penalty of 26 years of imprisonment and Mr Sollecito to the penalty of 25 years of imprisonment.

[2] The judgment under appeal had decreed Amanda Marie Knox guilty of the charge under heading (F), excluded aggravation under the second paragraph of

Article 368 Criminal Code, sentencing her to the penalty of 3 years of imprisonment, has in addition acquitted both of the accused of the charges made against them under headings (A), (B), (C)[25], and (D) for not having committed the deed, and of the charge under heading (E) for the charge not being sustained.

POINTS OF THE JUDGMENT ON WHICH THE REASONS ARE GROUNDED:

1. **Order 18.12.2010 on the admission of the expert witness testimony by the Appeal Court – lack of reasoning; reasoning of the judgment on the point – contradictory nature and manifest illogicality. [Article 606(e) Criminal Procedure Code]**

2.1 Order 7.09.2011 on the rejection of new expert witness testimony – contradictory nature and manifest illogicality of the reasoning. Missing acquisition of a decisive element of proof [Article 606(e) and 606(d) Criminal Procedure Code]

2.2 Order 7.09.2011 on the rejection of the examination of the witness Aviello – violation of Articles 190, 238 paragraph 5 and 495 paragraph 2 Criminal Procedure Code, – violation of the right to proof – Article 606(c) and (d) Criminal Procedure Code, not least manifest illogicality of the judgment on the point through manifest illogicality of the reasoning [Article 606(c) and (d) Criminal Procedure Code]

3 Unreliability of the witness Quintavalle

Non-observance of the principles of law dictated by Cassation in matters of circumstantial cases and illogicality of the reasoning in the evaluation of the reliability if the witness – [Article 606(b) and (e) Criminal Procedure Code

4 Unreliability of the witness Curatolo

Illogicality and contradictory nature of the reasoning in the affirmation of the unreliability of the witness [Article 606 paragraph 1(e) Criminal Procedure Code]

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[25] NdT – Charge (C), relating to sexual assault, was subsumed into the other charges earlier in the proceedings, during the trial at first instance.

5. Time of death of Meredith Kercher. – [3] deficiency or manifest illogicality of the reasoning in contrast to the other court documents of the case. [Article 606 paragraph 1(e) Criminal Procedure Code]

6. Genetic investigations
deficiency in the reasoning – contradictory nature and illogicality of the reasoning [Article 606(e) Criminal Procedure Code]

7. Analysis of the prints and traces.
deficiency in the reasoning. contradictory nature and illogicality of the reasoning [Article 606(e) Criminal Procedure Code]

8. Presence of Amanda and Sollecito at Via della Pergola on the night of the murder – misrepresentation of the evidence and illogicality of the reasoning – [Article 606 paragraph 1(e) Criminal Procedure Code]. Violation of procedural rules and illogicality of the reasoning [Article 606 paragraph 1(b) and (e) Criminal Procedure Code]

9. Simulation of crime
deficiency in the reasoning and manifest illogicality of the same [Article 606(e) Criminal Procedure Code]

10. Exclusion of aggravation in the *calunnia*[26] offence
contradictory nature or manifest illogicality of the reasoning; defect resultant from the court documents of the case: from the declarations by Patrick Diya Lumumba, of those by the same accused Amanda Knox, and of the contents of the conversation between the latter and her mother on November 10, 2007 – Article 606(e) last part, Criminal Procedure Code.

[4]

PREMISE

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[26] NdT – The punishable offence of calunnia is committed when a person makes a statement to authorities that inculpates another person in a crime, and the person making the statement knows that that other person is innocent. The now non-legal (and archaic) word in English, *calumny*, still carries some flavour of the offence. In common law jurisdictions, it is equivalent to the offence of "making a false statement", or, in the varnacular of journalism, lying to the police.

A reading of the judgment of the Court of Appeal of Assizes of Perugia[27] makes a critique of the method used necessary: the judgment at first instance is summarised in a few lines and in the prologue, in every case what is evaluated is almost exclusively the arguments of the defence consultants and the hypotheses reconstructed preponderantly favourable to the defence (for example, the greater attribution of reliability to the first rather than the second declarations of Ms Romanelli concerning the closure of the shutters). This appears to be in line with a kind of prejudgment, besides, enunciated at the beginning: the fact that nothing was certain save for the death of Meredith Kercher, an affirmation disconcerting in itself, inasmuch as it was put forward during the relation [of the case history] and, in vain, justified during judgment (cf. p 25) with the assumption that, – with all points of the first-instance judgment forming the object of appeal –, nothing could have been held to be certain, the which goes to reinforcing the perception of prejudgment, rather than denying it.

In following this path, the CAA has fallen into errors of method and in the substantially erroneous evaluation of acquired information which have influenced the correctness of the decision in a determinative way.

The typology of the errors committed by the CAA, independent of the specific examinations which will be reserved for each reason, can, broad brush, be summarise thus:

1. – The method of reasoning, founded on the so-called "**petitio principii**", which resolves itself into the defect of reasoning in the form of lack of, or apparent, reasoning (Article 606(e) Criminal Procedure Code)
2. – The non-observance of the principles of law dictated by the Cassation Court in the matter of circumstantial cases (Article 606(b) in relation to Article 192 paragraph 2 Criminal [5] Procedure Code)
3. – The violation of the **principle dictated by Article 238 *bis* Criminal Procedure Code** in the matter of utility, and of recognised probative value for, irrevocable judgements acquired by the trial (Article 606(b) Criminal Procedure Code)

[27] Hereafter, abbreviated as CAA

4. **The non-observance of the law under Article 237 Criminal Procedure Code** in relation to the acquisition by the trial of the so-called *memoriale*[28] of Amanda Marie Knox that the CAA did not hold to any account[,] affirming facts contradictory to the contents of the aforesaid *memoriale*
5. **The defective acquisition of decisive evidence** consisting of:
    a. In the carrying out of the genetic analysis on the sample taken from the knife – Exhibit 36 – by the experts nominated by the Court in the hearing of the appeal, the which [experts] did not proceed with the analysis of this sample, violating a specific request contained in the conferment of that expert responsibility.
    b. In the defective hearing of the witness Aviello, who had already been examined at the request of the defence during the course of the appeal, and for whom the Prosecutor-General had requested a new examination, having the witness during the course of interview by the Public Prosecutor for the offence of *calunnia*, retracting the declarations made during oral testimony and proffering grave declarations regarding the homicide of Ms Kercher.
    Refer, on this point, to paragraphs 2.1 and 2.2
6. **Defect of the so-called "fulfilment of the evidence"**, realised, as will be seen in the following, multiple times by the CAA, which ignored the ascertainment of facts irremediably opposed to the proper reconstruction of the facts. In this manner, the judgment has run into the error of contradictory nature and manifest illogicality in its reasoning (Article 606(e) Criminal Procedure Code). On this point, see paragraphs no. 5, 8, and 10.

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1. Petitio principii

[6] Among the errors encountered in the reasoning of the CAA judgement, one is so common as to give indication of a true and proper error of method. The fallacy (logical error, error of reasoning) in which the CAA fell on many occasions is that of the *petitio principii*, which is also known under the name of "begging the question" or "bootstraps" argument. "**Begging the question** [or committing ***petitio principii***]

[28] NdT – an account of events, written by one who was present.

refers to assuming the truth of that which one seeks to demonstrate, in attempting to demonstrate it"[29]

"This would seem an obvious error, evident to anybody – but when it is shocking or obvious, the error depends in large part of the way in which the premises of the argument are expressed. Their verbal formulation often obscures the fact that the self-same conclusion is buried inside one of the assumed premises".

"Those who fall into this error are often not aware of having assumed what is proposed to be demonstrated. The step from the assumption [to the conclusion] can become hidden by the presence of confusing synonyms and which are not recognisable as such, or by a chain of arguments that depend on each other. Every *petitio* is a ***circular argument***, but the circle that arises – if it is large enough or has vague outlines – is not recognised".[30]

This type of fallacy was noted in the judicial sphere even in ancient times. As witness, Simona C Sagnotti, in her *Rhetoric and Logic*[31] .

The author includes, in a section devoted to fallacies, exactly the *petitio principii*, specifying that "the argument that repeats the premise in its conclusion is not correct". It is a matter of, according to Sagnotti, of a "paralogism[32] **[7]** that derives from assuming the proposition that at the start is established to be proved"[33].

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[29] M Copi, C Cohen, *Introduction to Logic*, Bologna, il Mulino 1997, p 141 [*NdT*: cf. the currently available Italian edition, Irving M Copi and Carl Cohen, *Introduzione alla logica*, 3rd edition, (il Mulino, 2010), at p192.]

[30] Same authors, *Introduction to Logic*, Italian edition, Bologna, il Mulino 1997, p 142

[31] Ordinary Professor at the University of Perugia, where she also teaches *Logic and Legal Argument* in the course for the Jurisprudence Master's Degree, as well as *Theory and Techniques of Argumentation* at the Migliorini School for the Legal Professions at the University of Perugia.

[32] NdT – Paralogism: in philosophy, 'a piece of false or fallacious reasoning, especially (as distinguished from *sophism*) one of whose falseness the reasoner is not conscious' – *Macquarie Dictionary*, 5th ed.

[33] S C Sagnotti, *Rhetoric and Logic: Aristotle, Cicero, Quintillian, Vico*, op.cit. p. 83

To clarify the concept, it is good to have a clear example of *petitio principii*, taking into account, though, that usually this type of fallacy is less apparent, and therefore requires a major hermeneutic and logical effort to be recognised. The example, which is also to be found in the already-cited volume by Copi and Cohen, is the following: "We cannot all be famous, because we cannot all be well-known"[34]. The uselessness of a similar argument is evident. Of the facts, the conclusion is nothing other than a restatement of the premise, which had been assumed to be demonstrated. This is equivalent to saying that the pretend or apparent conclusion adds nothing – literally nothing – to the premise, which remains totally undemonstrated.

At this point, in anticipation of the close scrutiny of the individual grounds in the CAA reasoning, it is useful, by way of example, to foreshadow the argumentative methodology of the appealed judgment in relation of Ms Knox's accusation against Patrick Lumumba. An accusation – it is noted – for which Ms Knox was sentenced for the crime of *calunnia* on the basis of the decision made by the same CAA.

In this case, the jurisdictional Court [=the CAA] holds that Ms Knox had accused Lumumba because it was, in some way, put to her about a little texting occurring between the same Knox and Lumumba.

Analysing the reasoning of the judgment on this point, the Court reasons in this way: it supposes that Ms Knox accused Lumumba only because she was questioned about that phone message, therefore (conclusion) Ms Knox accused Lumumba because those listening to her made it known that there was a message conversation between herself and Lumumba.

[8] So here, as can be seen, in its conclusion, the judgment does nothing other than repeat that which was in the premise and which, for all that, remained undemonstrated. Since, at the level of juristic logic, this is not a *tautology*, but a fabricated inference, to conclude the reasoning correctly, the judgment would have had to, not least, demonstrate the veracity/certainty of the premise in the reasoning.

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[34] M Copi and C Cohen, *Introduction to Logic*, Italian edition, op.cit., pp 147 and 651. (*NdT* – The example, an exercise for the student, is a quote by Jesse Jackson, cited in *The New Yorker*, 12 March 1984. See p192 of the 3rd Italian edition, 2010.)

Of this demonstration, not only is there no trace, but there is not even an attempt at proof. The hypothesis is presented like this, privy of any logical basis.

Its repetition in the conclusions produces nothing other than a "vicious circle" which leads nowhere.

Logic errors of this type are not infrequent throughout the reasoning of the CAA's judgment and will be highlighted individually.

It is starting with observations like the one just noted, that it must be pointed out that the entire footing of the CAA judgment is characterised by the fact of encountering that error that it says it finds in the reasoning of the final judgment of the Court of first instance. Basing its opinion not even on probability but on mere *possibility*. Not one of the arguments in the first instance decision has been invalidated by the reasoning of the appeal judgment; in truth, the CAA has not contested the conclusions formulated by the first instance bench with logical reasoning and relative to the procedural outcome, but it has limited itself to "not rule out" hypotheses contrary to those submitted by the prosecution and accepted by the CA, through inconclusive, circular, and so, useless reasoning. They are inadequate, above all, to refute what, instead, the first instance court correctly argued regarding the culpability of the accused.

2. Violation of the principles of law governing circumstantial [9] trials

The testing of the prosecution case and the result of this testing, which jurists define as "procedural truth", can be seen in the course of the trial: with so-called direct evidence, which are facts or circumstances demonstrating the accused's culpability or innocence, or with what is known as circumstantial evidence [*indizi*], which consist of certain definite circumstances by means of which one may reach the indefinite fact constituting the prosecution hypothesis.

Our legislature, via the disposition of Article 192 Criminal Procedure Code, has dictated the rules for the evaluation of evidence in the criminal trial. It concerns itself with circumstantial evidence in paragraph 2 of the Article, specifying that: "The existence of a fact may not be inferred from circumstantial evidence unless this evidence is of sufficient weight, precise and consistent".

The Court of Cassation, knowing the risks connected with a decision founded on elements as weak[35] as circumstantial evidence, but re-affirming the correctness of a probative evaluation primarily based "on probability and the maxims of experience", has affirmed generally that the validity of a probability decision is verified only when "one may plausibly exclude every alternative explanation which invalidates the hypothesis which appears most probable".

In a decision from 1995[36], the validation jurisprudents [=Cassation] explained the logico-inductive operation dictated by the legislature through the 2nd paragraph of Article 192 Crim. Proc. Code. The Court specified that "the free convincing of the court, which becomes extrinsic at the moment of the evaluation of the evidence, is the correct outcome, in a circumstantial trial, of a logico-inductive operation by which the maxim from **[10]** experience is positioned as the major premise, the circumstantial item [*indizio*] is the minor premise, and the conclusion consists of the proof of the fact under examination, which one arrives at if the circumstantial evidence is of sufficient weight [*gravi*], which is to say able to withstand objection and so be convincing; precise [*precisi*] and so be not susceptible to a different interpretation, at least as likely; and concordant [*concordanti*], which is to say not conflicting amongst themselves and with other definite elements.

The adjective "concordant" signifies that each piece of circumstantial evidence, even if it has to be evaluated independently, must merge together with the others in a logical and coherent reconstruction of the unknown fact.

The validation jurisprudents, in addition to the specific characteristics laid down by the rule in question, have insisted on, as well, that a circumstance or fact may assume the quality of circumstantial evidence only in the case in which it holds the characteristic of certainty.

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[35] NdT – more in the logical sense, "fleeting", "labile", "transient", even "slippery", "difficult to grasp", rather than "weak" is the technical legal sense as used in common law jurisdictions, where inferences drawn from circumstantial evidence can be quite strong indeed, or where direct evidence can be so weak as to constitute, when it is the only evidence available, no case to answer.

[36] Decision 4503 of 26/04/1995 RV 201133

This requisite is to considered implicit in the precision of the precept of Article 192 Criminal Procedure Code: with the certainty of the circumstantial evidence, in fact, comes the procedural testing of the actual existence of the piece of circumstantial evidence itself: in fact, it cannot be allowed to found the (indirect) critical proof of a supposed or intuited fact that probably happened, by illegitimately evaluating – contrary to unarguable principles of judicial civility – personal impressions or imaginings of the court.

The evaluation of circumstantial proof, according to the latest pronouncements of the Full Court of Cassation[37], does not exhaust itself in a mere summary of the circumstantial evidence and cannot therefore disregard the precautionary assessment of each single piece of circumstantial evidence, each one in its own qualitative import and sufficiently precise and grave, to be then evaluated, in a global and unified perspective, tending to throw **[11]** light on the linkages and the mergings in the same demonstrative context.

But beyond these given definitions of the method of evaluating circumstantial evidence, the Supreme Court has also suggested to the deciding judge the modality of unfolding of the proceedings in evaluating a plurality of elements of a circumstantial nature. The Court established[38] that "the rule enunciated in the initial proposition of Article 192 CPC, according to which 'the existence of a fact cannot be inferred from circumstantial evidence' – anchored, at the level of rationality, on the ontological ambiguousness of the circumstantial evidence, which does indeed allow that circumstantial evidence may be placed in relationships of causality, direct or inverse, with a multiplicity of causes or effects – meaning that the circumstantial evidence considered in isolation unsuitable to ensure the ascertainment of the facts.

It acquires the status of proof only when multiple pieces of circumstantial evidence can all be brought back again to one single cause or one single effect. In practice, therefore, the court must proceed in the first place with an examination of each piece of circumstantial evidence, identifying all the logical links possible, and therefore ascertaining the weight, which is inversely proportional to the number of such links,

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[37] Cass. Sez. U criminal judgment 33748 of 20/09/2005 Rv. 231678

[38] Sect. 6 criminal judgment 01327 of 14/05/1997 Rv. 208892

as well as their precision, which correlates to the clarity of its outline, to the clarity of its representation, to the source of knowledge, direct or indirect, from which it derives, to the reliability of the same. It must, lastly, proceed to a final synthesis, ascertaining whether the examined circumstantial evidence is concordant, that is, whether it can all be linked to one sole cause or a sole effect, such that the existence or non-existence of the fact to be proved can be inferred.

The appeal to Cassation's jurisprudence on the circumstantial case **[12]** originates from the fact the Assizes Appeal Court did not deploy a unified appreciation of the circumstantial evidence and did not examine the various circumstantial items in a global and unified way. With its judgment it has, instead, fragmented the circumstantial evidence; it has weighed each item in isolation with an erroneous logico-judicial method of proceeding, with the aim of criticising the individual qualitative status of each of them; it was not therefore aware that, if it had followed the evaluative procedure dictated by Cassation, each item of circumstantial evidence would have slotted in with the others leading to an unequivocal clarification of the adduced evidence so as to reach the logical proof of the fact: that is, the responsibility of the accused for the homicide.

The District Court [= the CAA], holding the logical procedure followed to be correct, affirms in its judgment: "I*n short, the Court of Assizes of Perugia*[39]*, to be able to reconstruct the matter placed under its examination, has considered itself able to coordinate elements of fact, – themselves considered to be of a not quite unambiguous significance–, into a unified picture during the course of which each of those elements would be able to lead to a definitive clarification, and all of them, as a whole, to an unambiguous meaning, so as to rise to proof of guilt*" (see the judgment p 137).

The appeal judges, in actual fact, deny that the probative reasoning and the decisive and cognitive proceeding of the court is to be found in the circumstantial evidence paradigm of the hypothetico-probabilistic kind, in which the maxims of experience, statistical probability and logical probability have a significant weight. The Court has to reach a decision, by means of the "inductive-inferential" method: it proceeds, by inference, from individual and certain items of data, through a series of progressive causalities, to further and fuller information, so arriving at a unification

[39] Hereafter abbreviated CA.

of them in the context of **[13]** the reconstructed hypothesis of the fact. This means that the data, informed and justified by the conclusions, are not contained in their entirety in the premises of the reasoning, as would have happened if the reasoning were of the deductive type, but are integrated with other known elements extraneous to the premises themselves[40]. A single element, therefore, concerning a segment of the facts, has a meaning that is not necessarily unambiguous. On its own it is insufficient. The reasoning already mentioned is required, characterised by a stepping through of the inferential syllogism in which the relationship that an individual element has with the others bears an extremely significant aspect; when all the various elements all point in the same direction, in particular in the sense of confirming the prosecutorial picture, it is evident that this will have an impact on the court's decision. It would be highly "improbable", both under the statistical framework as well as under the logical one, that the reality to be demonstrated, and on which the Court must promulgate its decision, will be different to the one signalled by the convergence of the various collected probative elements.

According to the legitimation jurisprudence [=Cassation], in fact, "*In evaluating evidence, the court must take into consideration each individual fact and their totality, not in a parcelled-out way and detached from the general probative context, verifying if they, reconstructed in themselves and placed together in rapport, can be organised into a logical, harmonic and consonant construction which allows, by means of the unified evaluation of the context, to attain to procedural truth, that is the limited truth, humanly ascertainable and humanly acceptable and satisfactory in the actual case.*"[41]

The Perugia Court of Appeal has opted, instead, exactly for the parcelled-out evaluation of individual probative elements, as if each **[14]** one of them must have had an absolutely unambiguous meaning and as if the reasoning to be followed were of the deductive type.

This error emerges from the text of the judgment itself, but the gravity of the error committed by the Court in it decision derives from the fact that even the individual

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[40] Cass. Sezioni Unite 10 July 2002, Franzese.

[41] Cass. Pen. Sez. V 5 September 1996 n. 8314 (hearing 25 June 1996) Cotoli E.M.; Cass. pen. Sez. 1 29 May 1997 n. 5036 (hearing 3 April 1997) Pesce and others.

element had been acquired by the cognitive-decisioning process in a totally partial manner, isolating the sole aspect that allowed the recognising of doubts and uncertainties in the element itself.

The appeal judgment has completely neglected all the other aspects congruent with the prosecution case, all the aspects that, instead, as seen in the reasons for judgment at first instance, were rigorously pointed out and considered by the CA in its decision.

In examining individual items of evidence, the appeal judgment fell into the error of deficient and manifest illogicality of the reasons inferable both in the text of the judgment as well as of the other court documents, in particular the first instance judgment, that is, of the error pursuant to letter (e) of Article 606 paragraph 1 Criminal Procedure Code, first and last parts.

During the course of examining the various points of the judgment, the errors of reasoning will be illustrated.

3. Violation of the principle required under Article 238 *bis* Crim Proc Code

The Court of Appeal granted the Prosecutor-General's request to acquire the procedural documentation, in the sense of, and for the effect of, Article 238 *bis* of the Criminal Procedure Code: Rudy Guede's first instance conviction judgment (appendix 1), appeal decision (see appendix 2) and that of Cassation (see appendix 3) for the murder of Meredith Kercher, from the moment that the conviction had already become definitive.

[15] In doctrine and in jurisprudence, a lively debate has arisen on the way to interpret the dictates of Article 238 *bis* of the Criminal Procedure Code: "…judgments that have become irrevocable may be acquired to the ends of proving the fact by them ascertained…".

The legitimacy jurisprudence [=Cassation's rulings] has now settled definitively regarding the interpretation according to which finalised judgments 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 proceeding or in a connected proceeding.

From this, it follows that the court cannot find the existence of the ascertained fact solely on the basis of the finalised decision, but has the obligation to identify an external confirmation of this, yet definitive, reconstruction[42].

Naturally, this confirmation is unnecessary when the finalised decision is not directly used for the purposes 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.

It is exactly for the corroborative function and not that of full proof of the finalised decision that Article 238 *bis* Criminal Procedure Code does not insist that the decision be pronounced in relation to the persons accused in those different proceedings in which it comes to be utilised.

It is not a case of legislative forgetfulness because the possibility of utilising proof formed under another proceeding against the accused, only when their defence counsel participated in its acquisition, is expressly **[16]** provided for by the rule preceding it (Article 238 Criminal Procedure Code, paragraph 2 *bis*) in the case of evidence argued during the *incidente probatorio* [preliminary hearing] or during the *dibattimento* [oral argument phase of a trial], and of evidence acquired in a finalised civil court decision with judgment passed in adjudication.

It must be further emphasised that, in these cases, the participation of defence counsel in the acquisition allows the attribution of the efficacy of full proof to the evidence in question, while, in the case covered by Article 238 *bis* Criminal Procedure Code this efficacy does not exist, requiring the proof to be objectively corroborated. The diversity in procedure, therefore, is encompassed: if the defence participates in the acquisition, the proof is full; otherwise, objective corroboration is needed.

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[42] Most recently, Cass sez. 4, 29 January 2008, n. 1234, RV 239299; sez. 1, 9 October 2007 n.46082, RV 238167.

The CAA, instead, has affirmed, on pages 26 and 27, "*in truth, this judgment, acquired pursuant to Article 238 bis Criminal Procedure Code and so utilisable under the probative framework only when one amongst its evaluative elements pursuant to Article 192, paragraph 3 Criminal Procedure Code ……. already appears in itself a particularly weak element, from the moment that the judgment, which related to Rudy Guede, had been carried out under the fast-track procedure*".

With clear jurisprudence, which has not undergone change from the time that Article 238 *bis* was added to the procedural code, the Supreme Court had already affirmed, in 1994[43], that *"by its reference to 'decisions having become irrevocable' the legislature, in the disposition by which Article 238 bis applies, has intended to render usable for the purposes of proof of the fact ascertained thereby, not only decisions handed down after oral argument, but also those given following fast-track trial, or rather, of the penalty sought for; the 'ratio' of the law, in fact, is that of not squandering known acquired elements in* **[17]** *provisions that have however acquired the authority of adjudged matters."*

In the correct interpretation of the cited Article 238 *bis*, the Supreme Court has again further, and has affirmed[44] that even a plea-bargain verdict pronounced in another criminal proceeding, owing to the legislative levelling of a verdict of guilt, can well be acquired and evaluated in the sense of Article 238 *bis* Criminal Procedure Code.

The *"weakness of the finalised decision against Rudy Guede"*, affirmed in violation of one of the teachings of the Supreme Court, is not the result of an analysis informed by the affirmations contained within it and of their non-coinciding with the data acquired in the first-instance trial or on appeal.

The preliminary of the specific weakness in the verdict against R Guede, abstractly affirmed in the premise, has in effect authorised the CAA to not concern itself with the contents of the finalised decision, which has not been absolutely considered in the reasoning of the district Court even when the observations formed on the debatable nature of the first-instance Court's decision were in such contrast with the judgment reached in this decision, to render them unsustainable: On this unsustainability, the reasoning is completely deficient and the appeal judgment has

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[43] Cass. Pen. Sez. 2 sent. n. 6755 of 19 May 1994 [Rv. 198107]

[44] Cass. Pen. Sez. 6 sent. n. 10094 of 25 February 2011 [Rv. 249642]

fallen into error pursuant to letter (e) of Article 606 paragraph 1 Criminal Procedure Code.

4. Non-observance of the law pursuant to Article 237 Criminal Procedure Code

A reading of the Perugia Court of Appeal judgment shows a blatant defect of reasoning arising from the lack **[18]** of evaluation of the *memoriale* written by Amanda: the arguments used against the spontaneous declarations [in court] are, in this case, not usable, while from this document it is possible to obtain fundamental elements that are contrary to the conclusions of the Court, and this divergence also is deficient in reasoning.

The Court of Cassation had already pronounced upon the usability of the *memoriale*[45] which, in rejecting the request made by Amanda Knox's defence relating to the order dated November 30, 2007 by the Tribunal of Perugia sitting in its capacity as the Re-examination Court [*giudice del riesame*] had contextually affirmed (page 7): "*Following from these principles, the declarations made by Amanda Marie Knox at 1:45 AM on the November 6, 2007, as a result of which the interview came to be terminated and the young woman [ragazza] was placed at the disposition of the presiding judicial Authority, there being evidence emerging against her, are utilisable only* contra alios [=against others], *while the 'spontaneous declaration' of 5:54 AM hours is not utilisable, neither against the accused nor in dealings with the other subjects accused of complicity in the same offence, inasmuch as it was made without the defensive guarantee on the part of a person who had already formally assumed the status of suspect. On the contrary, the* memoriale *written in the English language by Ms Knox and translated into Italian is fully utilisable, pursuant to Article 237 CPC, since it is a case of a document originating from the suspect, who was the spontaneous material author of it for defensive purposes. The disposition under examination allows the attribution of probative relevance to the document not only for this and for its representative content, but also by force of the particular link that ties it to the suspect (or accused), so illuminating the union of admissibility that the court is obliged to implement.*"

[45] Sez. 1 pen. N. 990/08

[19] The content of Ms Knox's written *memoriale* evidences that the young woman from the United States "had heard Amanda [*sic*] scream, of having positioned herself away in the kitchen and of having blocked her ears with her hands so as not to hear her friend's scream["] and of "*having seen blood on Sollecito's hand during dinner*".

In the appeal decision's reasoning, the position of the Court on the matter of the *memoriale* (pages 33 and 34) is absolutely contradictory. To negate the document's value it affirms: "*as regards the murder, not only can the spontaneous declarations not be used, but in reality neither can the memoriale written successively, although utilisable under a procedural aspect, merits no reliability under the substantive one, not representing the real outcomes of the case* " (page 33). Successively, on page 34, to affirm Ms Knox's responsibility for the *calunnia*, it contradictorily affirms that there are no "… *objective elements relevant to holding that Amanda Knox, with the spontaneous declarations made and the* memoriale *written, she found herself not only in a situation of notable psychological pressure and stress but even in conditions of no 'intent and volition', so having accused a person that she knew to be innocent of such a grave offence, she has to however answer to calunnia …"*

The CAA does not explain why the *memoriale* is not reliable even though it had been written by a person in possession of a full capacity of intent and volition, so as to be convicted of *calunnia* accusations, referred orally to the investigating authorities, but repeated also in various passages in the *memoriale*. It is inexplicable that the judgment does not place the contents of the *memoriale* under any examination, contradicting what was affirmed by Cassation, which concerned itself at the precautionary [i.e., bailment] stage; by so **[20]** doing, the judgment falls, as well, into the error of contradiction of reasoning (Article 606 paragraph 1 letter (e) Criminal Procedure Code) in addition to the violation of Article 237 CPC (Article 606 paragraph 1 letter (c) CPC).

Documents referrable:

Appendix 00: Judgment of the Perugia Court of Assizes, n. 7/2009 of 4-5 December 2009, deposited March 4, 2010

Appendix 01: The Perugia GUP [Committal Hearing] judgment, October 28, 2008

Appendix 02: The Perugia Court of Appeal judgment n. 7/2009 of December 22, 2009 of the conviction of Rudy Guede for the murder of Meredith Kercher.

Appendix 03: Cass. pen. Sez. 1, judgement n 1132-2010 of December 6, 2010 [Supreme Court appeal] – Rudy Guede.

1 – The order of December 18, 2010 Admission of the expert witness report into the appeal judgment
Defect of reasoning of the December 18, 2010 order; contradictions and manifest illogicality of the judgment reasoning on this point (Article 606 (e) Criminal Procedure Code)

The CAA has explained the admission of the genetic expert examination requested by the defence and rejected by the first instance Court like this: "*The observance of the rule laid down by Article 533 Criminal Procedure Code (pronouncement of sentence only if the accused is found guilty beyond all reasonable doubt of the charge brought against him) does not allow the complete concurring of the first instance Court of Assizes' decision around the preliminary hearing submissions by the defence counsel for the accused. The identification of DNA on various exhibits and their attribution to the accused becomes, in truth, particularly complex through the objective difficulty on the part of subjects not having the scientific awareness to formulate evaluations and opinions on* **[21]** *particularly technical matters without the assistance of an* ex officio *expert examination, hence the necessity to order an* ex officio *expert examination."* (page 17 of the order December 18, 2010).

That the reasoning on the point be completely missing is a circumstance that jumps out immediately, being the decision exclusively supported from the pleonastic argument relative to the particular complexity of particularly technical matters, without taking into account what emerged during oral argument at first instance, characterized by an ample debate on the results of the genetic analyses – with particular reference to the DNA found on the biological traces collected by the Scientific Police from the knife seized from Sollecito's house (Exhibit n. 36) and on the clasp of the bra (Exhibit 165b) worn by the victim at the time of the murder – by

the bio-technicians of the Scientific Police, on the one hand, and by the distinguished[46] party consultants, on the other hand.

The position of the Supreme Court is, on the matter, firm in holding that: *"The renewal of oral argument in the appeal phase has an exceptional aspect, having to overcome the presumption of the completeness of the probative investigation by the court at first instance. It may, therefore, make use of it only when the court holds it necessary for the purposes of deciding"* (Cass. Sez. 3 n.24294 of April 7, 2010) and that, exactly in consideration of the principle of the completeness of the hearing carried out at first instance: "*the decision to proceed to reopen must be specifically justified, it being required to account for the use of the discretionary power, deriving from the conscious admission of the relevance of the probative acquisitions"* and of the impossibility if deciding as to the state **[22]** from the court documents.[47]

It cannot be cast in doubt that the order that is here censured does not satisfy, even remotely, the exigency shown by the decisions referred to above: certainly not with the generic reference to the competing theses set out at first instance by the parties; certainly not with improper reference to the disposition accounted for by Article 533 Criminal Procedure Code, that must be referred to and applied by the court at the evaluative moment of the evidence and not already in the, – different and logically antecedent –, moment of deliberation of the admission of a means (which is the expert examination) of the evaluation of the evidence.

In other words, the CAA ought to have indicated what were the (possible, but non-existent) gaps in the genetic findings carried out at first instance; what were the themes that were insufficiently developed; what were the aspects of the genetic investigations that merited further enlightenment. None of this has been written down, limiting the Court to holding itself unfit to autonomously evaluate the (apparently exhaustive) conclusions reached by the professionals which were opposed to each other at first instance; by this, explicitly and inadmissibly asking the expert to choose which thesis they preferred.

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[46] *NdT* – Or, in an ironic sense, "thorough", or "first-class".

[47] Cass. Sez. 6 n.5782 of 18 December 2006, referred to in the already cited Cass. Sez. 3 n.24294 of 7 April 2010

And that this was the fallacious mental path followed by the judges, is evidenced by the reasoning of the judgment that – far from obviating the defect of reasoning in the order – renders the error more obvious: "*… Already at first instance, the accuseds' defences, through their consultants, censured the correctness of the Scientific Police's procedures in multiple aspects for their recovery*[48] *methodology and for their genetic analyses and the unreliability of the conclusions* **[23]** *formulated by them, but having unsuccessfully requested the Court, to remove doubt on the issue, to order a technical examination: hence the reiteration of the request subject to renewal of oral argument. This Court, via order of December 18, 2010, in ordering the expert examination, had already explained the exigency underlying this provisioning: the identification of the DNA on various exhibits and its attribution to the accused becomes, in truth, particularly complex for the objective difficulty, on the part of subjects not having scientific knowledge, of formulating evaluations and opinions on particularly technical matters without the assistance of an* ex officio *expert*["] (page 67 of the judgment appealed from).

The argument just mentioned superimposes, on top of the already deduced error of lack of reasoning for the admission order, that of the manifest illogicality of the reasons for judgment, falling into the grave error of holding it possible to delegate to others the evaluation of evidence already acquired at first instance, contrary to the principles which inform the unfettered deliberation of the court, referred to also by that same Supreme Court: "*On the topic of judgment, the evaluation of admitted evidence is an exclusively judicial competency, it being exercised according to the principle of unfettered deliberation and with forbidding of its delegation to outside scientific persons, who have an exclusively instrumental and integrative value in the judicial awareness.*[49]

Much more grave appears the misunderstanding in which the second instance Court [the CAA] fell, when one focuses attention on the abnormal critique aimed at the first instance judgment which rejected the request, already formulated by the defence pursuant to Article 507 Criminal Procedure Code, holding that the nomination of an expert would not have removed from the adjudicating Court the onus of identifying the most congruent interpretation **[24]** amongst those offered by

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[48] *NdT* – reading *repertazione* for the text's *refertazione* (~ "referral by a doctor to the police of a reportable matter"). A spell-check *lapsus* is expected.

[49] (for all Cass. Pen. Sez. 3 n.42984 of 4 October 2007).

the various experts (which, in substance, resolve themselves into affirming or denying the attribution of the DNA analysed by the Scientific Police to the victim and to Ms Knox – as for the traces found, respectively, on the blade and on the handle of the knife – and to Sollecito – as for the trace found on the bra-clasp).

Well then, the CAA, distorting the significance of the argument given by the court of first instance, criticises the decision in this guise: "In addition, *the Court of Assizes at first instance has decided to resolve a scientific controversy, recognised as particularly complex, via an evaluation of a scientific nature directly formulated by the same Court. On the contrary, this second instance Court of Assizes* [i.e., the CAA itself] *has not held that the personal knowledge of the judges, professional and lay, are such as to allow the resolution of an, in substance, scientific controversy, to resolve it, therefore, on fundamentally scientific criteria, without the assistance of trustworthy experts, nominated by it, and who are able to carry out the task in the full cross-examination of the parties.*" (page 68 of the appealed judgment). The second instance Court has therefore confused, through a gross misreading, the principle of unfettered deliberation [*libero convincimento*], positioned at the foundation of the decision of the first court regarding the superfluousness of an expert, with the presumed assumption on the part of this latter of the power to formulate their own hypotheses of a scientific nature.

The falseness and illogicality of the assumption is quite glaringly evident: it is false because the first instance Court specifically examined all the proposed theses, taking into account at length the reasons that led to it holding the findings of the Scientific Police reliable; it is illogical, because (to follow the logic of the second instance Court) if one admits affirming that even in the evaluation of an expert's conclusions, **[25]** – like those of the investigation taskforce's assistants and the parties' consultants, having as their object scientific arguments –, the court must avail itself of yet another expert. And so on, *ad infinitum*. By leave of the principle of the unfettered deliberation of the court.

As much as what has so far been covered would seem sufficient to confirm the absolute defect of reasoning of the order and the illogicality of the "additive" reasoning contained, on the point, in the judgment. But the reference to "full cross-examination of the parties" contained in the last sentence quoted above, tends to suggest another argument supporting the complete lack of reasoning in the order by which the expert examination had been made. And in truth, nothing was said of the fact that the findings of a scientific nature, the evaluation of whose reliability had

been remitted to the experts, with the arguable questions formulated by the CAA, had been carried out by the relevant sections of the Scientific Police in the form of non-repeatable technical findings pursuant to Article 360 Criminal Procedure Code, with the guarantees therein provided for under the rubric of cross-examination, without there having been any emphasis [on it] during the course of all the phases of the operations and without the suspects and their defenders having reserved a preliminary hearing. The second instance Court lays out no argument in the December 18, 2010 order to sustain the absolute necessity of the expert examination, notwithstanding the report by Dr Stefanoni, who is the technician responsible for the biological section of the Scientific Police, forming part of the *dibattimento* file in terms of Article 492 Criminal Procedure Code, was fully usable for the purposes of the decision[50].

Even in this case, the late inclusion of reasoning of the judgment (stimulated by the summing-up of the Procurator-General), not only does not plug **[26]** the evidential lacuna, but adds error to error and merits being quoted in full: "*Nor is the power to order an expert examination to resolve problems too complex for the given knowledge of the Judges, lay and professional, lessened only because, during the course of the investigations, the tests by the Scientific Police had been effected in unrepeatable-test mode, without there having been a probative objection raised; in the first place, because the unrepeatability does not derive from the method used but from being a truly unrepeatable test; in second place, because, in any case, the methods used do not fill the gaps of the judge of the debate, who does not become less ignorant only because the test had been effected via a particular method. But for the rest, it is exactly for this [scenario] that Article 224 Criminal Procedure Code permits the Judge to order even an* ex officio *expert examination*".

The passage constitutes an exceptional mass of illogicality, contradiction and of erroneous interpretations of procedural rules. If one cannot agree on the fact that the unrepeatable nature of an act happens whenever the testing is unrepeatable, and that the "*particular methods*" to be followed derive from the unrepeatability of the testing, and not the other way round, one does not understand what motivational efficacy could redress a similar tautology which nothing explains concerning the substantive, preventative and prejudicial mistrust in the test results,

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[50] for all Cass. Pen. Sez. 3 n.42984 of October 4, 2007.

notwithstanding the procedural rule confers an unconditional utility on it, evaluated by the first instance Court of Assizes, not without the critical evaluations put forward by the consultants for the suspects having been examined at length, and rejected with reasoning.

The second instance Court refused *a priori* to examine the Scientific Police's findings, which, in their words, does not leave them "less ignorant" **[27]** through the fact that they had been carried out in cross-examination as Article 360 Criminal Procedure Code requires and imposes.

The evaluation of evidence has been confounded with the sources of knowledge; the power of the first instance court has been confounded with that – circumscribed by the disposition pursuant to Article 603 paragraph 1 Criminal Procedure Code – of the appeal court; the reasoning obligation has been ignored also in relation to Article 224 Criminal Procedure Code, improperly cited; the principles governing unrepeatable technical findings have been ignored; any reasoning on the point has been omitted; confirming in the end, a willingness to delegate to the expert all evaluation of the genetic analysis results, which in effect, as will be seen, is what happened.

Documents referrable:

Appendix no 4: CAA order of December 18, 2010.

2.1 The Order of September 7, 2011 – Rejection of fresh expert examination

Contradiction and manifest illogicality of the reasoning. Missing acquisition of decisive piece of evidence – Article 606(e) and (d) Criminal Procedure Code

The CAA, by the order of September 7, 2011 has rejected, amongst other things, the Procurator-General's request to provide a supplement of expert testimony with the aim of carrying out genetic analysis on the quantity of human DNA extracted from

the new trace sampled by the experts on the blade of the **[28]** knife (*trace 1* according to the Vecchiotti-Conti report) in proximity to the point in which Dr Stefanoni of the Scientific Police had sampled the trace from which she had extracted the DNA attributed to Meredith Kercher.

Although the first question formulated by the CAA inherently encompassed new samplings and analyses of probable DNA found, Dr Vecchiotti had considered not proceeding with the analysis of the extracted DNA and its consequent attribution in as much, on her advice, the quantity was not sufficient to carry out a reliable analysis. It was a case, that is, of *low copy number*, a term used in the literature in the field to indicate, in fact, a small quantity of DNA.

The prosecution consultant, Prof. Giuseppe Novelli (undisputed luminary of human genetics), on the contrary, had evidenced during the course of his depositions (cf. hearing transcript of September 6, 2011, pp52 and following) how, just like at the time the unrepeatable technical tests carried out by Dr Stefanoni (2007/2008), it was possible to analyse *low copy number* DNA traces with totally reliable results and how, with the new machines introduced in the meantime and amply tested, one could have successfully proceeded with the extraction, amplification and attribution of DNA having at one's disposition even just one cell (10, 15 picograms) and, therefore, of a quantity a great deal less than that sampled by the experts (approximately 100 picograms). The CAA, inexplicably, rejected the request, holding that "*To leave aside the sustainability or otherwise of the gaps set out by the Procurator General, and shared by the civil parties, the tests effected by the experts and the evaluative elements proposed by the parties' consultants allow this Court to form its own reasoned* **[29]** *conclusion*".

It is quite true that the Supreme Court's jurisprudence holds the second instance court's reasoning to a less stringent standard when it is deciding to reject a preliminary investigation submission, but it is also true that, in the case with which we are occupied, the reasoning can be said to exist exclusively under a graphic profile and therefore purely apparent.

Given, in fact, the expert examination requested by the defence, a new element had appeared at the completion of the technical investigations susceptible of biochemical analysis, that is, further traces of DNA, not collected before.

The discovery ought to have induced the CAA, in concordance with the prior decision, to order new tests, to widen the scientific enquiry for a more complete

evaluation of the traces, in particular those found during the course of the expert examination.

The Procurator-General, in this regard, had, as already mentioned, evidenced that new biogenetic investigative techniques would have allowed the analysis of this unexpectedly occurring piece of evidence, even if of scanty quantity; this was shown to the Court with total precision and by the authority of consultant Prof Novelli, and on the basis of the declarations of this latter, the Public Prosecutor had requested a supplementary expert examination.

In the face of the discovery of new evidence and a request to test it, specifically argued under the scientific and procedural aspect, the Court adopted a provision to reject, privy of any real reasoning and in obvious contradiction to the necessity of further biological understanding explicitly affirmed in the dispositive order for the expert examination.

In the first place, because if the reasoned and full deliberation involves **[30]** the outcomes of expert tests, it cannot be based on the guidance of elements that have not been acquired by the experts' unilateral decision and not shared with the parties' consultants. It would otherwise, in fact, have been the case if the experts would have reported not having found any biological trace and the Procurator-General's request had been that of proceeding to with a fresh sampling: in this case, in fact, a reasoning that would have rejected the request for a consideration of the value of the already-obtained negative result would have been congruent. But the case before us is quite different: the fresh biological trace exists, but there was no proceeding to go to an analysis of it and to extract the respective profile from it.

In the second place, because the second instance Court [the CAA] negates the relevance of a test that it itself has disposed with the first of the formulated questions: "*the College of experts to ascertain: whether, by means of new technical testing, the attribution and the level of reliability of the probable attribution of the DNA present on exhibits 165b (bra-clasp) and 36 (knife) is possible; if it is not possible to proceed with a new technical test, to evaluate, on the basis of the record, the level of reliability of the genetic tests carried out by the Scientific Police on the above-mentioned exhibits, with reference also to probable contaminations*". With the experts recovering a new trace containing human DNA on the blade of the knife (a certainly odd presence, if one has in mind the ordinary use of the utensil, and overall significant – even of itself, and to leave aside

the attribution – and useful to compare with what was found by Forensics on the same blade), they could not exempt themselves from carrying the test to a conclusion, so being able to evaluate the unreliability or otherwise of the result only on completed procedures, just as the same question was explicitly suggesting. The refusal is even further unjustified if one considers **[31]** the state of technology at the time of the experts' response to the questions and the trenchant declarations of Prof Novelli, never contradicted by anyone, if not the same second instance Court [the CAA], which affirms in judgment, contrary to the truth and to what emerges from the hearing transcripts, that the procedures of which Prof Novelli spoke are still in an experimental phase (page 84 of the judgment). Apart from the obvious error of having held the concepts of "leading edge" and "in experimental phase" to be identical when, in reality, they refer to completely separate situations: a technical certainty is experimental when its reliability has not yet been confirmed; it is at the leading edge when the method is innovative with respect to those preceding it; what counts more, though, is that Prof Novelli defined leading edge techniques as those with which: "*we are able to analyse, to produce profiles, with respect to the standard kits, in the order of 10 picograms, so we are already beyond the famous 100 picograms which people talk about today*.

Procurator-General: So below the quantity which has been found in these traces?

NOVELLI: It's possible, see, even I, in my field of geneticist I often find myself analysing small traces of DNA even as regards diagnostic questions, diseases, diagnoses on human embryos where we would have one cell only, we're speaking of 7 or 8 picograms, you can see how we have to be precise and accurate" (page 53 of the hearing transcript of September 6, 2011 already referred to).

It is clear, therefore, from the thrust of Prof Novelli's declarations, the techniques, which he described as leading edge –and for this reason put into practice by well-equipped and qualified laboratories – which allow the analysis of quantities of DNA at levels well below those with respect to which **[32]** was recovered by the experts appointed by the Court, whose reasoning on the specific point is, therefore, clearly illogical.

As can be quite well seen, the non-acquisition of an item of evidence that the Court itself had considered necessary, disposing the re-opening of oral argument and formulating that specific question for the experts, vitiates the judgment not only

under the reasoning aspects placed into evidence so far, but also under the separate aspect of the non-acquisition of a decisive element of proof: and in truth, if the DNA sampled by the experts had been attributed to the victim, the decisive value of this result would have been obvious, it would have totally negated the experts' conclusions on the unreliability of the analyses carried out by the Scientific Police on the murder weapon. And, on the other side, it is the Court of Cassation's instruction the parties' recourse as of right to contrary evidence, even in cases where the evidence that is intended to be tested has been *ex officio* acquired by the court. The relevant jurisprudence, with a constant line, on this point has affirmed: "*On the matter of oral argument instruction, the court which – in the exercise of exceptional power pursuant to Article 507 Criminal Procedure Code – admits new evidence, but also admits contrary evidence.*"[51]

It must be held that the principle can and must be applied even in cases like the instant, in consideration of, – even though involving expert examinations –, it would have had as its object not only evaluation, but also acquisition, of data (the profile extracted from the DNA recovered by the experts from the blade of the knife) which would have constituted further evidence.

Documents referrable:

Appendix 6: CAA hearing transcript of September 6, 2011 – examination of Prof Giuseppe Novelli, technical expert for the prosecution.

[33] Appendix 8: CAA hearing transcript of September 7, 2011

2.2 Order of September 7, 2011 – rejection of the hearing of Luciano Aviello

Violation of Articles 190, 238 paragraph 5 and 495 paragraph 2 Criminal Procedure Code, as well as manifest illogicality of the judgment on the point by manifest illogicality of the reasoning – Article 606 (c) and (d) Criminal Procedure Code.

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[51] Cf. for all: Cass. n.29389 of 4 May 2007

In its order dated September 7, 2011, the Court held the new examination of Aviello to be not indispensable. It was requested by the Procurator General following to the declarations made to the Public Prosecutor in the proceedings for *calunnia* against the brother, being limited to the acquisition of the interview transcript of the witness (originally called by the Knox defence and admitted by the same Court), in consideration of the "admissibility and relevance" with the order dated May 21, 2011: the new hearing, according to the Court, would not have been, in fact, "indispensable", "even in consideration of the acquisition of the transcript of his interview on the part of the Public Prosecutor" (see p52 of the hearing transcript for September 7, 2011). This decision is then justified, as will be seen, by the Court of Appeal in this current case, in the judgment (see p42 of the appealed judgment).

This decision, as well as being totally unsupported by reasoning, is also procedurally incorrect.

The witness Aviello had been admitted and examined on the request of the same Knox defence. Aviello, in fact, – as had been represented by the CAA, in separate proceedings, n. 10985/2010/21 RGNR, whose interview **[34]** transcript had been acquired by the Court right on September 7, 2011 (cf. Annexure n. 8) –, had not only retracted his declarations made in the present case, but had added totally new circumstances, and decisively relevant for the purposes of the decision, such as the fact that around three days after he got to know Sollecito, who revealed to him that it was Ms Knox who had been materially involved in killing Meredith in the course of an erotic game, after there had been an argument arising from monetary reasons and that the killing had occurred using the knife Exhibit 36.

Aviello, in the course of his interview, is reported thus as to what Raffaele Sollecito disclosed to him: "*…he was talking and talking and talking … saying: 'I effectively know, it's true, it's Amanda but I didn't do it, I didn't do the murder, it wasn't me' and I had said and he spoke often other (words) about himself the fact of that, of that photo on the computer, I will never forget it, he says: 'That is toilet paper, he says that was Halloween, mardigras … but I know that Amanda is a knife collector – she did so herself – and effectively the knife was from the kitchen*[52] *– he was telling me – although an argument came about in that fleeting*

[52] *NdT* – rendering the locution: *il coltello era quello di casa* ("it was the house knife", or "it was the knife from home")

event – he was talking of erotic games and was talking also saying – it was a money situation… He was there, who said that he wasn't? He was there, it wasn't him, physically" (see pp49 and 50 of the statement of Luciano Aviello interview in the proceedings n. 10985/2010/21 RGNR Procura Perugia).

These confidences made to the witness by the accused Sollecito were pointing, therefore, to Ms Knox as the material author of the homicide, the same Sollecito as accessory or, in any case, present at the fact, and the knife known as Exhibit 36 as the murder weapon (see the statement previously indicated acquired by the Court via the impugned order).

The extreme relevance of the evidence in the present **[35]** proceedings against Ms Knox and Sollecito, in particular for the murder of Meredith Kercher, is, therefore, quite apparent.

The Court acquired Aviello's interview transcript, placing, amongst other things, the stress on his retraction and not on the totally new and relevant circumstances constituting Sollecito's confidences, but did not want to allow a new hearing of the witness.

It is necessary, at this point, to dwell on various passages of the decision because a rigorous examination of the logico-juridical path followed by the Court will reveal grave illogicality and contradictions; a contrast with procedural norms based on pain of non-utilisability and nullity; and a totally partial reading and, in this, misleading of the same acquired transcript.

As has been said, the witness, called by the Knox defence, had been admitted on 21 May 2011 and placed under examination on June 18, 2011 (see hearing transcript p12, and from p 103 to p123).

When the retraction and new allegations occur – relevant circumstances on the part of Aviello – it is the Procurator General who asks for re-examination of the witness.

The Court could do nothing other than grant the request: the principle of the right to proof obliged it to grant a request not forbidden by law and it was not manifestly superfluous or irrelevant (Article 190, 2nd paragraph Criminal Procedure Code). The Procurator General, in his request for admission of Aviello's testimony, made known the fresh character of the evidence requested (see the hearing transcript of September 7, 2011 at pages 34 and 36).

The Court, in the impugned order (see p52 of the hearing of September 7, 2011), had instead affirmed that the "*new hearing of the witness Aviello* **[36]** *does not appear indispensable, even in consideration of the acquisition of the transcript of the interview on the part of the Public Prosecutor*".

The district Court [the CAA] had made reference to a concept, "indispensability", extraneous to the power of the court relating to the admission of "in contrary" evidence, which must be admitted except under conditions of prohibition of the evidence itself or of "manifest" superfluousness or irrelevance, not of indispensability, this requisite being extraneous to the conditions mentioned above, the only ones that could limit the power of the court.

The CAA does not explain why the requested evidence is not indispensable: the expression "even" which refers to the acquisition of the interview transcript alludes, in fact, to a further element that would render the requested evidence exactly not indispensable, but, apart from the extraneity of this requirement to the conditions pursuant to the second paragraph of Article 190 Criminal Procedure Code, no mention is made of what this further element (implied by the expression "even") could be, that would render the evidence not indispensable. Lastly, the same acquisition of the document cannot be considered as equivalent to a witness examination and, therefore, it is not understandable why this acquisition would ever render the examination not indispensable.

If this is the "reason" for the order, then, in its decision, the CAA has held, in particular Aviello, together with others, to be unreliable witnesses, due to the lack of any objective corroboration of the declarations made (see the judgment at p 42), an element, this, in total disaccord with respect to the reasons of the order.

[37] This affirmation of unreliability, besides being contradictory with the September 7, 2011 order, is also apodictic[53] because it is completely lacking in any reasoning. If, in fact, the Court is of the opinion to infer the unreliability of the witness from the intervening retraction, admitted onto the record, it would have had the obligation to recall the witness – who had by this time become a witness in the proceedings – and examine him. The omitted examination of the witness has removed from the

[53] NdT - undisputable

proceedings [the opportunity of] the admission of declarations with which he himself recounted the confidences made to him by Raffaele Sollecito, [and, as such,] extremely useful for the purposes of evaluating the falsity of the alibis of the two accused.

The Court rejected the request and had disposed, – in open violation of the principle of orality of *dibattimento*,[54] Aviello in his turn having been already admitted to testify, – the acquisition of new declarations from the witness, in spite of the defenders of the accused being opposed to it (see the transcript of the hearing of September 7, 2011 at pp 51 and 52) and therefore lacking the consensus of the parties that could have rendered the acquisition not allowable but, at the least, shared in common.

Once the transcript of declarations made by the witness in other proceedings was acquired, the CAA would have at least had to examine him and evaluate him in person. Just as has occurred almost systematically in the appeal process, the appeal court has instead isolated and considered, – with, amongst other things, illogical, incongruous and erroneous reasoning –, only the "retractory" part of the transcript, that is, the one in which Aviello denies what he had previously declared in the proceedings, as a witness called by the Knox defence. It has instead incomprehensibly ignored the circumstances of the alleged inducement to the false declarations by Sollecito, relevant for the purposes of the falsity of the alibi and of the confidences of the accused according to which it was Ms Knox who killed Meredith with the knife Exhibit 36, amongst other things the object of study **[38]** of the genetic testing, during the course of an erotic game and also for monetary motives, while he, Sollecito, was present at the scene of the crime. It was a case of totally new circumstances which ought to have found their way into the proceedings but instead they remained outside, and not only because the witness was not examined and was not able, therefore, to clarify them, but also because already having acquired the transcript, the Court has omitted any evaluation in judgment of these circumstances.

Rejecting the submission of a new examination of Aviello on new circumstances, it emerges after the examination of the witness, without there being the conditions pursuant to Article 190, 2nd paragraph Criminal Procedure Code, the Court has

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[54] *NdT* – the oral argument phase of a trial

violated Articles 190, 238, 5th paragraph, and 495 para 2 Criminal Procedure Code, procedural norms guaranteed by the protection pursuant to Article 606(c) Criminal Procedure Code, in violation of the right to proof.

In addition, justifying the denial with the appearance of non-indispensability even in consideration of the acquisition of the transcript, the Court has fallen into three censurable errors at Cassation-level, that is to say:

- it has not in any way justified "the *appearance of non-indispensability*", an element, this, which arises at root from the conditions requested for rejecting a, – for the more so, new –, request for proof, because relative to the new and opposing declarations made by the witness with respect to the precedents: therefore absolute deficiency of the reasoning pursuant to Article 606 (e), first part of Article 606 Criminal Procedure Code;
- it has not indicated which "other" element would have justified the rejection of the Procurator-General's submission regarding the acquisition of the statement; therefore absolute deficiency of the reasoning, in relation to the omitted element and manifest **[39]** illogicality of the reasoning, in relation to the indication of the element of acquisition of the document as subsequent with respect to another document not mentioned in any way (Article 606(e), first part Criminal Procedure Code).
- still continuing with the paralogism of "*petitio principii*", the CAA justified the denial of the evidence by reference to the acquisition of the statement, itself decided in "alternative" to the normal examination of the witness, with that "inferential" circularity already pointed out multiple times in the present appeal.

The Court, in other words, has rejected a request, making it derive, as a procedural presupposition, from an "alternative" decision made prior, as if to say: we will not allow you the examination because we will "concede" you the acquisition of the statement: therefore manifest illogicality of the reasoning, in relation to the rejection of an application by the parties, tied to the "concession" of the documentary acquisition decided by the same Court (Article 606(e), first part Criminal Procedure Code).

The Court has violated Articles 511 *bis*, 511 paragraph 2 and 515, Criminal Procedure Code, disposing the allegations of the statements without the prior examination of the person who had made the declarations in a different proceeding. Paragraph 2 of Article 511 Criminal Procedure Code, referred to by Article 511 *bis* Criminal Procedure Code, disposes, in fact, that the reading and therefore the acquisition of transcripts of declarations made by the witness is disposed only after examination of the person who made them, unless examination had not taken place. But this exception is, on the face of it, inapplicable to the facts here because it was the same

Court that had rejected the request for a new hearing of the witness Aviello, putting into gear, once again, that abnormal "circular"-type logic inference already mentioned.

[40] In the ambit of evidence law, the Court has likewise violated the rule that required it to admit decisive new evidence against the defendants on the facts constituting the object of the proof to be discharged, that is to say, Article 495 Criminal Procedure Code and, therefore, on appeal, pursuant to Article 603 paragraph 2 Criminal Procedure Code, being a case of new additional evidence after the first instance verdict (Article 606(d) Criminal Procedure Code).

In any case, once the transcript of the interview was acquired, in violation of the above-mentioned rules, the CAA would have had to have evaluated it in its entirety, but not even this occurred.

The judgement was based only on the part of the statement constituting the retraction of the declarations made during the current appeal process and has ignored the parts of the statement which contained the allegations against Sollecito of having pushed the witness [Aviello] to make calumnious declarations and the non-admitted confession of Sollecito to the witness.

If, according to the Court, Aviello is reliable when he is retracting, it is not understandable why he would not be so when referring to the co-involvement of Sollecito in the retracted declarations and of the confidence made by the same Sollecito indicating Ms Knox as the material author of the murder and wielder of the seized knife (subject of the examination disposed in the appeal) and the accused himself as, in any case, present at the scene.

This confidence totally escaped the Court.

The evaluation, carried out by the Court, on this sole "retractory" aspect, and the complete obliteration of the totally new element, constituted by the above-mentioned, further aspects that are completely new, render, therefore, the order affected also by the error pursuant to Article 606(e), last part, Criminal Procedure Code, through defect and, in any case, manifest motivational illogicality respecting the acquired statement.

[41] Even in another aspect, it must be emphasised that the judgement reasons are manifestly contradictory (see p42 again), according to which it is not shown that

Aviello, Alessi, Castelluccio, De Cesare and Trinca induced themselves to make declarations favourable to the accused and held by the Court not to correspond to the truth because they were solicited by others and in particular by the current accused. This would have no relevance, according to the Court, for the purposes of falsifying the alibis, but it is a case of a quite obviously and fundamental erroneous and illogical conclusion: it is, in fact, the accused, together with his defence counsel, when he chooses, as in this case, a defensive line based on false testimony, to contribute in a definitive way to falsifying the alibi put forward. In his latest declarations, in fact, Aviello has, in fact affirmed, amongst other things:

"*the declarations which I made to the Court of Assizes and earlier were completely false, or better, were all agreed… In the Court of Appeal, on the 18th if I'm not mistaken, they were false, agreed with Sollecito's Counsel*" (see p24 of the acquired statement)

"*Giulia Bongiorno arrives…she tells me about the money and all these things*" (see p35, same document)

"*and which I would have had also by means of Sollecito's sister*" (p 36)

"*but I had all the guarantees because Ms Bongiorno was telling me that she was covered here in Perugia*" (p37)

"*I'm not going to confirm the declarations made to the Court of Appeal… Absolutely not, they're declarations… agreed with Counsel Dalla Vedova but even earlier with Raffaele .. the conduit for my money was Raffaele's sister, Giulia Bongiorno, although who to send it on to I had no one*" (see p40)

To the question of who would have invented the story of the little wall where he would have **[42]** hidden the knife, Aviello replied, "*Raffaele, his sister, the lawyers, when they were staying earlier in Perugia*" (see p 53).

And again: "*There was a staging, but not ordered by me … But indeed by Raffaele's lawyers… who had not even wanted to go to the interview in prison to avoid you ending up alone, so they had themselves called out making Amanda's lawyers step in…Maori had always agreed that I should do this, already from prison before…*" and Aviello had added that this had been referred to him by Raffaele Sollecito (see p56).

"*Counsellor Bongiorno claimed that … she had strong ties …with the Perugia Prosecutor's Office*" (see the statement at p59).

These affirmations, the gravity of which is relevant not only to the proceedings which see the ex-collaborator charged with *calunnia*, but also the proceedings currently under way, are totally obliterated by the CAA.

The CAA's order of September 7, 2011 is, therefore, affected by error pursuant to (c) and (d) of Article 606 Criminal Procedure Code in relation to the procedural rules mentioned, the inobservance of which is penalised by the rule under Article 606(c) Criminal Procedure Code. Even in this case, the error indicated by letter (e), first part of Article 606 Criminal Procedure Code appears evident, because the manifest illogicality of the reasoning emerges from the text itself of the judgment (see p42).

Documents referred to:

Appendix 8: per the transcript of the interview with Luciano Aviello dated July 22, 2011, in proceeding No. 10985/2010/21 RGNR, acquired by the Court on September 7, 2011.

Appendix 7: Transcript of CAA hearing, September 7, 2011.

3 - **UNRELIABILITY OF THE WITNESS QUINTAVALLE.**

FAILURE TO OBSERVE THE PRINCIPLES OF LAW DICTATED BY THE SUPREME COURT IN THE MATTER OF CIRCUMSTANTIAL CASE AND ILLOGICALITY OF THE MOTIVATIONS IN THE EVALUATION OF THE RELIABILITY OF THE WITNESS – ARTICLE 606(B) AND (E) OF THE CRIMINAL PROCEDURE CODE.

It has already been mentioned in the premise about the extravagance of some of the statements contained in the sentence of appeal and among these also the one used by the Court to argue that the testimony of Quintavalle would be a weak circumstantial element "by itself fails to prove culpability not even presumptively" (p. 51).

One is faced with a true and proper falsification of the first instance decision, which does not base the defendants' declarative guilty judgment on the statements of the witness Quintavalle, but speaks of bringing in an element (not the only one) that demonstrates the falsity of the alibi. From the falsity of the alibi (not even derived solely from Quintavalle's statements) there is uniquely derived a piece of circumstantial evidence of guilt.

Thus the CAA considers that the deposition of the witness Quintavalle is "not very reliable" (p. 51) and the expression once again surprises because a witness is either credible and his statements will be usable or they will not. The introduction of the additional category of *"not very reliable"* is the fruit of a subjective impression of the judger, such that it is hard to know what is to be meant by it.

The decision appealed from bases its judgment of low credibility on two circumstances: Quintavalle did not tell the officers who questioned him about that circumstance, and "he took a year to convince himself of the accuracy of his perception and of the identification of Amanda Knox." It then explains **[44]** the witness's bewilderment, claiming that the shopkeeper could have "evaluated the importance of his testimony in the days immediately following the event" (p. 52)

From thence forward the usual suppositions: the adjudicator, uncritically accepting an objection by the defence, has in addition affirmed that the identification of the accused by Quintavalle could not have been certain because he would have seen the young woman only in passing, out of the corner of the eye, not from in front.

In relation to the suppositions of the Court, it seems appropriate to recall that Quintavalle had explained the reason for which he did not mention having seen the young woman on the morning of November 2, and his explanation is confirmed by the statements of Inspector Volturno, who stated that the investigation activity, carried out in the early days after the fact, tended to establish whether there could have been purchases of bleach made by Amanda and Raffaele with the clear purpose

of checking if any cleaning activity had taken place to remove traces of the crime.

Quintavalle did not take a year to convince himself of the accuracy of his perception: his doubt was in regard to the usefulness of the date – his having seen the girl on the morning of November 2, – and in this regard a reading of the statements of Quintavalle (cf. transcript of the first instance hearing March 21, 2009) contradicts what, in contrast to the truth, was written by the CAA on this point. It should be thus noted that precisely such hesitation (is it useful or not? Am I going to say this or not?) makes it entirely plausible that Quintavalle had not on his own volition communicated to Inspector Volturno his having seen the girl, but limited himself to answering specific questions that, as mentioned, were put to him and which were focusing on the purchase of items and not on people.

[45] A further observation on which the CAA bases its assessment of unreliability (thus, of low reliability) appears completely arbitrary, because contradicted by the statements of the witness. Quintavalle would have seen the young woman out of the corner of the eye and never from the front. From the examination of the statements made by Quintavalle in the first instance trial completely different facts emerge because Quintavalle affirms what was referred to by the Court of Assizes on p. 71, when the young woman was still outside the store (cf. transcripts of the hearing March 21, 2009, p. 72) adding: "*this young woman when she came inside, I looked at her to greet her; I mean I saw her at a distance of one metre, 70-80 cm*". Since in the ruling this clarification is omitted, one must presume that Quintavalle's statements had been accepted exactly as they had been reported in the defendants' grounds of appeal, intentionally deprived of all that could contradict it, thwarting its defensive utility.

The CAA then affirms that Quintavalle spoke of a grey coat, which does not appear that Amanda had ever owned; the Court however does not base its own assertion on negative findings, because such circumstance had never been the object of apposite investigations.

Not only is it incomprehensible how the Court could have been able to affirm that Amanda as never owned such a garment but, and this is invalidating, even if it were true, it would be absolutely neutral because Quintavalle did not base his identification on the clothes which did not catch his attention all that much. Quintavalle, in fact, has based his identification above all on Knox's face, the features, and the colour of her eyes and it is to be noted that the witness had seen that young

woman before, as appears evident from his statements and those of Inspector Volturno: all of this would have **[46]** allowed, – as was duly done in the first instance trial, based on procedural information and not on suppositions, – a different evaluation of the identification made by Quintavalle and in any case giving account to what came out of the effective preliminary hearings.

Again it should be noted that the opinion of low credibility conflicts with the fact that the statements of Quintavalle have found full corroboration in those of the witness Chiriboga (hearing of June 26, 2009 p. 74) about which the CAA says nothing and does not explain its omission.

The Court devalues the reliability of Quintavalle, considering only the part of the statements suggested by the defence and hypothesizing one possibility, – for the witness to consider the importance of his identification, – which finds no justification at all.

The illogicality of the reasoning on the point can in addition also be deduced by the affirmations contained in p. 51 wherein the Court affirms that *"it would be a case of, even if hypothetically a true fact, an element of weak circumstantial evidence, inasmuch as on its own alone not conducive to proving guilt even presumptively"*. The fact that Quintavalle saw Knox on the morning of November 2,, in his shop at opening time, would be for the Court an unsuitable element, on its own, to proving culpability even presumptively. The erroneous evaluation of the items of circumstantial evidence, caused by the methodology followed, that has isolated them from the context and from the logical links binding them with the other adduced evidence, does not allow one to comprehend that the testimony of Quintavalle, considered together with the other circumstantial evidence, contradicts the alibi of the accused who have claimed to have slept at Sollecito's house until 10:00 AM on November 2, 2007; the logical procedure adopted, in violation of the interpretative rules of circumstantial evidence dictated by the Supreme Court **[47]** and mentioned in the premise, is illegitimate, misleading and illogical**.** Thus far, the contradictory nature of the reasoning was extrinsic, that is, obviously in contrast to the depositions of Quintavalle and of Chiriboga, as well as that of Inspector Volturno, but, under the last-mentioned aspect, the inconsistency is intrinsic and emerges from the same judgment, on pages 51 and 52.

The Court, which also bases the unreliability of the witness on the fact that this latter had recalled having seen Amanda in his shop on the morning of November 2, after a long time, does not explain, the reason why Quintavalle would be in a position to appreciate, in the days immediately following the event, the relevance of his identification. What would have been the elements capable of allowing Quintavalle to realize the importance of the circumstance? On this point, as it has already been noted, the judgment is completely lacking and it is a key step in the logical coherence in the assessment of the reliability of the witness (Article 606, para. 1(e) of the Criminal Procedure Code.

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Documents referrable**:**

Annexure 09: Transcript of the hearing, the Court of Assizes Perugia, March 13, 2009

Annexure 10: Transcript of the hearing, the Court of Assizes Perugia, June 26, 2009

Annexure 11: Transcript of the hearing, the Court of Assizes Perugia, March 21, 2009

4 - UNRELIABILITY OF THE WITNESS CURATOLO

ILLOGICALITY AND INCONSISTENCIES OF THE JUDGMENT [48] ON THE EVALUATION OF UNRELIABILITY OF THE WITNESS- (ARTICLE 606, PARA. 1(E) CRIMINAL PROCEDURE CODE)

In the section relating to the witness Curatolo, the judgment continues in its methodological line highlighted in point n° 2 of the premise of the current appeal; individually examining the considered items of circumstantial evidence instead of in

their totality and their drawing together in the judgment of the Court of Assizes of Perugia.

In order to define correctly the scope of relevance of the testimony, ending in the negatived verification of the alibis put forward by the defendants, the judgment focuses on the theme of alibi verification for expressing its own assessment on the soundness of the falsity of the alibi itself. It affirms on this point that *"the falseness of the alibis, although definitely usable as a piece of circumstantial evidence, is definitely not sufficient by itself to prove guilt, being able to find explanation in other ends and reasons"* (see judgment p. 43). To thwart even the circumstantial relevance of the falsity of the alibi, the CAA stretches to claim that a possible explanation, "in the case in question", could be *"for example, if they had been present in the house at Via della Pergola and yet extraneous to the commission of the crime"*. The first instance judgment, – which as has been shown, has never been used as a point of reference, either positive or negative, by the appeal court, – adhering to a clear direction by the jurisprudence of legitimacy[55] [=the Supreme Court], had held that the false alibi, as such indicative (in contrast to an unproved one) of the defendants' attempt to evade the ascertainment of the truth, should have been considered as an *indicium* against them, which although by itself incapable (in application of the **[49]** rule in the second paragraph of Article 192 of the Criminal Procedure Code) of basing a judgment of culpability on, – having been revealed to be pre-arranged and mendacious and, in as much intended for the offender to escape justice –, can be correlated with other circumstantial evidence and, in the context of the overall probative complex, may provide that higher confirmatory value unifying all the other circumstantial evidence collected in the case.

On these pre-conditions, the judgment of the primary court arrived at the conviction of the accused after having evaluated numerous items of circumstantial evidence, amongst which the testimony of Antonio Curatolo would have had to have been numbered.

The district Court [=the CAA], slavishly following the submission of the appellants, attributed a special emphasis to the testimony of Antonio Curatolo, so much so as to have ordered the re-opening of oral argument and the hearing of various witnesses

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[55] Ex pluris: Supreme Court Criminal Section 2, sentence 11840 of 11/03/2004 – 04/02/2004 rv. 228386.

to rule out that the witness [=Curatolo] could have observed both defendants together between the hours of 10:00 PM and 11:00 PM - 11:30 PM, on November 2,, in Piazza Grimana, where Curatolo used to permanently station himself during the day and, at times, also during the night.

As the judgment says (cf. page 48), "*The testimony given by Curatolo presents two mutually contradictory circumstances: having seen the two young people [Ms Knox and Sollecito] in Piazza Grimana on the evening before the crime scene inspection by the Scientific Police and to having however at the same time, located the episode in the context of the Halloween holiday, and that is on the evening of October 31, [2007]*[56]"

The Court's evaluation regarding the circumstances ascertained through the examination of the witnesses, – who cannot be the subject of this appeal, depending on reasons of merit undisputable at Supreme Court level –, appear to conclude, as the same judgment argues in p. 50, that the sighting perhaps occurred on October 31,, the Court refusing **[50]** a priori to acknowledge that the witness could have been confused about the context about the evening of the sighting and not on what happened the following morning, when the crime was discovered.

This conclusion stands in irremediable contrast with what was stated during the oral argument at the first instance trial by Patrick Diya Lumumba, Gatsios Spiridon and by the same Amanda Knox.

On the night preceding that of the murder, the night of "Halloween", Amanda could have not been seen by Curatolo because she was in the not so very nearby pub "Le Chic", full of customers, where a Bulgarian girl who was there said to Patrick that Amanda was looking for him and she wanted a glass of red wine. Patrick Lumumba sees the young woman from Seattle, recalls that she was made-up like a cat, and this happened after 10:00 PM, so much so that Lumumba reports: "I can say for sure that already by midnight and a bit and I think that she was no longer there" (cf. hearing transcript of April 3, 2009 pages 158 and 159)

Even the defendant [=Knox] disproves the CAA's hypothesis; she excludes that on the night between October 31, and November 1, she would have been in Via della

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[56] NdT – square brackets in original

Pergola, near the basketball court (cf the transcript of the hearing of June 12, 2009, p.125). So, Knox was at the "Le Chic" pub, after about 10:00 PM, she met up with her friend Gatsios Spiridon in the town centre where, after a long time, Raffaele Sollecito joined them and she went with him to the latter's home around 2:00 AM.

Spiridon, for his part, in essence confirmed the story told by Amanda with greater precision and has said, referring specifically to the night of "Halloween": *"We met I think about midnight, she came to see me, we went around the local clubs in the town centre, 2-3 places, more than anything we walked about rather than remaining in the pubs because there was so many* **[51]** *people, and then around 2:00 AM, 1:45 AM if I remember correctly, she told me that she had to meet up with this Italian guy that she met at the fountain. Me and my friends, we accompanied her to the fountain and said goodbye to her"* (cf. transcript of the hearing of June 27, 2009 at page 31).

Raffaele Sollecito, for his part, that evening was having dinner in a trattoria in San Martino in the fields, to celebrate Angelo Cirillo's (a friend of Raffaele Sollecito's) sister's boyfriend's graduation (cf. transcript of the hearing of July 4, 2007 [*sic*] pages 64 and 65).

On October 31,, therefore, the two defendants, from 9:30 PM to 11:00 PM/11:30 PM, were not and could not have been in Via della Pergola, but, as we have seen, Ms Knox in the pub Le Chic, dressed up as a cat, and then in the city centre with Gatsios Spiridon, while Sollecito was at the graduation dinner with his friends, out of town. They were not where Curatolo would have seen them the following night and, moreover, they were also far apart from each other and they would have met up by the Fontana Maggiore, in Piazza IV November only around 2:00 AM on November 1, and, from there, they would have gone to Raffaele's house.

With regard to Curatolo's testimony, it should be specified that the examination had revealed out that the witness mistakenly believes, and has always believed, that Halloween falls on November 1, of each year and not on October 31,. When asked what night Halloween is, the witness replied: "It ought to be November 1, or 2,, the day that we celebrate the dead" (cf. transcript of the hearing March 26, 2011 p. 16). In the approximate understanding of the feast of Halloween, that a fifty-five-year old homeless man (who comes from the province of Avellino) can have, not to mention many inhabitants of Perugia, students or not, this holiday is already associated with the "dead", therefore with the night between the first and November 2,.

[52]

It is therefore evident that the homeless man superimposed the two events: the night of Halloween and the sighting of the accused, for which he was nevertheless an onlooker, the bench in front of the news-stand being almost his fixed spot. The superimposition has not in any case altered the effective temporal reference, which, as we already mentioned above, and as the witness has repeatedly said even at the appeal stage, the arrival of the Police and the Carabinieri was the day after.

To highlight the witness' extraordinary accuracy there is, amongst other things, the fact that two members of the Perugia Scientific Police who on November 2, 2007 went on reconnaissance with equipment, Assistant Palmieri and Assistant Montagna, leaving the *Questura* [=police headquarters] to go to Via della Pergola where there had been a crime reported "around 1:40 PM – 1:45 PM" (cf. statements of Chief Insp. Claudio Cantagalli and Asst Chief Gioa Brocci, at the hearing of April 23, 2009, p. 86 to p. 126).

The CAA, possibly aware of the indefensibility of the sighting of both defendants on October 31, 2007, in order not to incline to the hypothesis submitted by the Procurator-General, according to whom the homeless man's imprecision of recollection in relation to the feast of Halloween could not be considered as determinant in claiming that the sighting could not have happened on the evening of the crime, in the end, declared, the witness's total unreliability. The Court states (judgment p. 51) that the deposition is not credible *"being unable to place any confidence on the verification of the episode, and above all on the identification of the two young people with the current defendants"*…

The conclusion of the district court [=the CAA] on this point appears illogical because it is outside of the deliberations that took place in the course of examination of the witness carried out in pages 43-51; in truth, the examination was confined to the presence of coaches in the square, to the presence of **[53]** young people who were going to the discotheques and the weather conditions on the evenings of October 31, and November 1,. No part of the examination has, instead, ever been about the identification of the defendants, that is, the possibility for Curatolo of identifying Ms Knox and Sollecito.

This certainty, which has not been questioned even by the appellants, emerges clearly from Curatolo's statement in the course of the hearing before the Court of

Assizes; on this occasion the witness, having seen them in the courtroom, recognizes without a shadow of doubt both defendants as the two young people whom he saw on the night of the crime in the basketball court of Piazza Grimana (cf. hearing transcript of March 28, 2009 p. 6).

The conclusion of the judgment on this point appears absolutely devoid of reasoning; but, on closer inspection, that is tied to what the appeal court judges are claiming about the witness to whom they credit *"a decline of the intellectual faculties... shown by his answers given before this Court in the course of his hearing and deriving from his lifestyle and from his habits"* (cf. judgment p. 44).

The claim of the decline in intellectual faculties, which finds no confirmation in a medical assessment carried out to that effect by the Court, derives only from an unjustified prejudice for the kind of life led by the witness, as well as the fact that Curatolo at that time was a user of stupefactants.

The disagreement on the part of the Court with Curatolo's life choices appears fully evident in reading pages 44 and 45 of the judgment. The formulation of a negative opinion due only to drug consumption appears evident only when one re-reads the transcript of the hearing of March 26, 2011. At the end of the examination of Curatolo, the Recorder [= Zanetti} posed questions to Curatolo about his choice to live as a homeless person and **[54]** in the end, asked the witness whether he used drugs, in particular on 2007.

It would be worthwhile quoting Curatolo's response: *"I used heroin"* (cf. the transcript p. 21).

For the Recorder, that could have been enough, but not for Curatolo, who concluded with decisive emphasis like this: *"I should point out that heroin is not a hallucinogen"*.

What the witness stated is true: opioids normally do not have hallucinogenic effects. Among the hallucinogens, there are natural ones such as mescaline, psilocybin, THC (Tetrahydrocannabinol), the active ingredient of the cannabinoids, and those artificial ones, such as LSD and ecstasy.

In conclusion, Curatolo is perfectly correct and extremely lucid: it is hashish, rather, that has effects of this type.

Opioids such as heroin cause, in fact, a rapid excitation, followed by a phase of sedation - relatively brief relaxation, after which the subject returns to near normal until the onset of a new phase of need of the substance.

On the relevance of the use of stupefactants on the "contradictions displayed", on the memory and about the possibility of formation of false memories, there is in the case file (available as well to the CAA), a scientific answer, altogether "beyond reproach", [where] Prof Carlo Caltagirone, consultant for the Knox defence, who, during the hearing of September 25, 2009, stated: *"Look, basically they are entirely almost insignificant... it is amply documented that it has no effect above all in people who have a certain habit..."* When asked by the President of the Court of Assizes at first instance: *"So it does not impede the memory and recollection"*. The Technical Consultant for the accused Knox replied: *"No, no,* **[55]** *no"* (see transcript of the hearing September 25, 2009 at p. 39). And the Technical Consultant was alluding to hashish! All the more reason this answer counts for drugs devoid of hallucinatory-type effects, amongst which are the opioids such as heroin.

On the other side of the coin, the CAA did not alter its negative opinion on this fact not even after having verified that Curatolo was the key-witness in the murder [case] of an elderly lady, which ended with the definitive conviction[57] of the murderer. In particular, Curatolo indicated the time, by which the accused was held responsible for the murder (cf. hearing of May 21, 2011 statements by Deputy Insp Monica Napoleoni, p. 7).

From the considerations set out, therefore, there emerges the Court's absolute illogicality and contradictory reasons of the Court on the affirmation of unreliability of the witness Curatolo. The conclusions of the judgment on the point are inconsistent with the reasoning's premises and are founded on an unproven prejudice, without any scientific support because it is not based on any specific medical examination, which would have attributed to the witness "a decline of intellectual faculties" as regards being a heroin user. We also ask for, along this line of argument, the annulment of the judgment under Article 606 para 1(e) of the Criminal Procedure Code.

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[57] NdT – definitive, *i.e.*, after all appeals have been exhausted

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Documents referrable:

Annexure 12: transcript of hearing Court of Assizes of Perugia April 3, 2009

Annexure 13: transcript of hearing Court of Assizes of Perugia June 12, 2009

Annexure 14: transcript of hearing Court of Assizes of Perugia June 27, 2009

Annexure 15: transcript of hearing Court of Assizes of Perugia July 4, 2007 [*sic*]

Annexure 16: transcript of hearing CAA of Perugia March 26, 2011

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Annexure 17: transcript of hearing Court of Assizes of Perugia April 23, 2009

Annexure 18: transcript of hearing Court of Assizes of Perugia September 25, 2009

5 – TIME OF DEATH

Defect or manifest lack of logic in the sentencing report
- (Article 606, paragraph 1(e) of the Criminal Procedure Code)

The Court of Assizes had deduced the time of Meredith's death, whose time-frame was determined by the expert autopsy as being between 9:30 PM on November 1, and the early hours of November 2, 2007, from the declarations of the accused [=Knox], who referred to Meredith's screams of pain in the *memoriale* contained in the case file, but without giving [precise] times, and from the testimony of Nara Capezzali and Antonella Monacchia, confirmed by those of the witness Maria Ilaria Dramis (see

transcript of the hearings of March 27, 2009, pp 100, 101, 102, 108, 114, 117 for Monacchia and from p 89 to p 95 for Dramis).

According to the judgment appealed from, the time of death ought to be brought forward from the time indicated by the two witnesses who heard the harrowing scream. This assertion is based solely on the *hypothesis*[58] as reported in the following.

The intercepted Skype call (see Annexure n. 20)

The Court holds that in order to determine the time of death, the Skype call between Rudy and his friend Benedetti is usable: this conversation had been intercepted by the Police.

Rudy Guede, in the course of this tele-conversation with his friend, while **[57]** claiming that he had nothing to do with the crime, placed himself in the flat at Via della Pergola between 9:00 PM and 9:30 PM.

It is unexplainable at a logical level why Guede would have lied about his participation in the crime (claiming his innocence), but would not have lied about the precise time, placing himself at the scene of the murder precisely at the moment when the crime was committed. There is no logical explanation for such behaviour. Neither does the reasoning of the CAA have any logical basis. Why believe what Guede says during a call in which he is – most certainly – lying, claiming himself innocent? A reasoning that seeks to be logical, confronted with Guede's certain guilt, and this precisely because he is lying when talking with his friend, should lead one to the consideration that the young Ivorian is also lying about the time. Indeed, following a rigorous logic, one should hold that the guilty party who wishes to deflect suspicion from himself, in addition to claiming innocence while admitting his presence at the crime scene, would not provide the precise time of the crime, but a different time, presumably, on the other hand, prior to the actual crime. From which, one could instead deduce, more correctly on the logical level, that the crime had

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[58] NdT – emphasis in original

occurred later than the time indicated by Guede during the intercepted call. Why would he himself give a piece of information that would have incriminated him? Why then furnish the actual time of the crime, whilst at the same time denying that he was the one who committed it? Why – and this question contains its own diriment[59] – say the precise time of the crime, affirming his own presence on the scene, knowing himself guilty? If Rudy, knowing himself guilty, admits that he was at the scene where the crime had in any case been consummated, yet proclaims himself innocent, in the conversation with his friend, it is reasonable to think that he is referring neither to the exact time of the crime, nor even to a **[58]** time near to that actual one. To support his innocence and bolster his defence, the best position for Rudy would have been that of saying that he was in the house *before*[60] the crime. This is the logically correct reasoning that the CAA ought to have made. The hypothesis of the CAA is not in fact reasoning, because it lacks any kind of argumentation. Guede is hypothesized as saying the truth concerning the time, and, for the *n*-th time, the conclusion is reached in the same way. As has already been observed, it is a case of one of the not rare *petitiones principii* contained in the reasons of the CAA's judgment, combining the error of defect and illogicality in the judgment (Article 606, paragraph 1(e) of the Criminal Procedure Code).

But even this hypothesis (see p. 42 of the appealed judgment), which seems to satisfy the Court on the subject of the time of death, is then superseded by the one which the CAA will elaborate regarding the mobile phones of the victim.

The CAA has, once again, made another completely anomalous use of the Skype call, accepting it for the time of Kercher's death, but not for other circumstances which are also extremely relevant for judgment purposes, but which have been totally ignored.

In fact, in the call, Guede recounts having heard Meredith complaining about her missing money and of her intention of asking Ms Knox, with whom she had quarrelled, for an explanation (p. 10 of the call [transcript]), of having seen Meredith look in vain for the missing money in her drawer (p. 18), then of having seen

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[59] NdT – solution, resolution

[60] NdT – emphasis in original

Meredith look, still in vain, for her missing money in Amanda's room (pp. 18-19 of the call [transcript]), and of having heard a girl enter the house, who could have been one of the roommates, thus Amanda (p. 11 of the call [transcript]), while the Ivorian found himself in the bathroom, just before hearing Meredith's terrible scream which would have caused him **[59]** to exit the bathroom, about five minutes after the girl's ingress (p 12 of the call [transcript]).

The Court has, in practice, without reason thrown the responsibility onto Guede for throwing the rock and clambering in (see pp 121-122 of the appealed judgment): in the same Skype call, Guede, however, repeatedly denies having seen the broken window in Romanelli's room during the whole time in which he was in the house at Via della Pergola on that evening (pp 8, 20, 34 of the call [transcript]). Not only that: Rudy Guede also said that he was at Knox's "many times" (pp 88 of the call [transcript]).

If the Court held the Ivorian citizen to be sincere in the tele-conversation with his friend Benedetti, then why not also believe him when he denies having broken in, or when he recounts Meredith having it out with Amanda, or when he says that he had been at the latter's place "many times"?

The judgment, apart from being manifestly illogical, is manifestly contradictory with respect to the contents of the case file referred to (Article 606(e) Criminal Procedure Code).

Meredith's mobile phones

The Court hypothesizes, again in this case uncritically accepting one of the suppositions of the appellants, that the last calls made from one of the victim's mobile phones had not been made by her, while hers would have been the attempt to communicate with her parents at 8:56 PM.

The phone calls of 9:58 PM and 10:13 PM came to be interpreted by the appeal bench as evidence of the aggression that would have occurred at around that time. With **[60]**

disconcerting superficiality, it is hypothesised that the aggressor, inexpertly, wanting to turn off the phone, at 9:58 PM erroneously keyed the number of Meredith's bank because it was the first number in the list.

With equal superficiality, the judgment, without supporting the conjecture with a scientific[61] explanation, hypothesizes the ineffectiveness of the connection of the phone call of 10:13 PM (of 9 seconds' duration) inasmuch: it could have been explained by the reception of a "multimedia message" [MMS] (see p 60 of the appealed judgment). The hypothesis formulated, for the phone call of 9:58 PM, appears totally unlikely, not only because familiarity with mobile phones is widespread, but also because the judgment does not explain why the attempt to turn off the phone had not been carried to completion in a much simpler manner, such as taking the battery out or damaging it [the phone] in such a way as to render it unusable.

Equally unlikely is the hypothesis with respect to the 10:13 PM connection, made without human interaction, formulated solely to make the attack coincide with a time – 10:15 PM – different from that determined by the trial judgment.

From what was subsequently ascertained, the victim's mobile phones had been thrown away, coming out from Via della Pergola into the underlying countryside which in the darkness of the evening (or of the night?) would have been mistaken for a woody escarpment in an uninhabited area. One of the two phones (the one with the English SIM card) had been subsequently contacted and on the morning of November 2, it had rung.

The circumstance that Meredith had not tried to call her family makes several hypotheses possible, including some that were not taken into consideration by the appeal judges, but still plausible: the victim may have decided to **[61]** postpone her call until around 11:00 PM, as canvassed by the CAA, or else, having already spoken with both her parents on that day, she could have decided to wait for the next day to call them (see the declarations made respectively by Meredith's father and mother, with specific reference to this aspect, from the hearing of June 6, 2009: p 9 of the transcript for Ms Kercher's mother, Arline Carol Mary Kercher, who places her

[61] NdT – that is, rational

daughter's last phone call on the afternoon of November 1, 2007, and, for the father John Leslie Kercher, at p 22, where the latter places the last call made to him by his daughter in the early afternoon of the same first November).

Furthermore, the considerations made on this subject by the trial judgment at pp 352-353 have been totally ignored to uphold the hypothesis suggested by the Sollecito defence.

Suddenly changing its own conviction about the time of death, initially obtained from Guede's Skype call with his friend Benedetti, the Court, after having formulated these other hypotheses on the subject of the handling of one of the victim's mobile phones, fixes the time of the murder at around 10:15 PM. This displacement of the time by 45 minutes with respect to the time indicated by Rudy Guede, according to the appeal judges, finds support in the idea (a further hypothesis) that, Meredith, not having succeeded in contacting her parents, would have however tried to do so again later, had she not been killed. This supposition by the Court could be sound, but certainly it is not anchored in certain facts; therefore it proves nothing, nor gives certainty to the formulated hypothesis. That which cannot be excluded is only possible. Not even probable. Because of this, it proves nothing; the rigour of logic, in particular, of judicial logic.

In this case, also, one is confronted with a circularity of reasoning, **[62]** called out in the premise, which sustains itself through the error of defect and illogicality in the judgment (Article 606, paragraph 1(e) of the Criminal Procedure Code).

The testimony of the three women

Not being able to demonstrate that the exact time of the murder could be established based on Guede's intercept, there instead remain, "credible" (according to the same CAA) depositions from two witnesses: Capezzali and Monacchia. The time of the "harrowing scream" and the sound of steps of several people running are indicated as between 11:00 PM and 11:30 PM. Here, strange to say, the CAA finds traces of ambiguity in that half-hour of doubt between 11:00 PM and 11:30 PM. It is obvious

that, especially with senior citizens who do not often look at the clock, they are giving approximate times; a half-hour of difference, in a nocturnal recall, cannot be seen as undermining the testimonies of the witnesses Capezzali and Monacchia. The more so as there is a third witness, Ms Dramis, who provides a statement consistent with that of Capezzali and Monacchia.

The circumstance underlined by the CAA, regarding the tardiness of the witness Dramis, carries no import, at least if one does not wish to maintain that the witness Dramis would have some reason to lie. Contrariwise, nothing prevents telling the truth. Especially by the fact that her recall is not "technically" tardy, but – as the CAA itself asserts in judgment – only "expressed" tardily, because she was pushed to reveal it by a young apprentice journalist. In the reasons of the appealed judgment, it says that the Court "*does not hold that the element constituted by the scream, heard by signora Capezzali and signora* **[63]** *Monacchia, because of the ambiguity of its meaning and because of the impossibility of placing it precisely in time, can be privileged to other elements which would lead to moving the time of death forward by more than an hour*." (p 58). But what are these elements? They are the two hypotheses, contrasting with each other because they oscillate between 9:30 PM and 10:13 PM, that the CAA has formulated from Guede and Benedetti's intercepted Skype call and on the usage of Meredith's mobile phone with the English provider.

On the logical level, the causes that lead the CAA to conclude that the testimony of Capezzali, Monacchia and Dramis is irrelevant are unacceptable. The "ambiguity" is assumed as a premise, and not demonstrated. It is one of the many examples of ***petitio principii***. As if to say: that the statements of Capezzali and Monacchia are ambiguous, because of which, being ambiguous, they cannot be taken into consideration. On closer inspection, however, there is no trace, neither in the proceedings, nor in the judgment of the CAA. The same Court, for that matter, could have said the same of Ms Dramis, for the reasons given above. As for the impossibility of fixing the scream in time, there is, equally, no trace, neither in the court documents, nor in the reasons for the CAA's judgment. An uncertainty of half an hour within a span of time of, according to the medico-legal findings, about 5 or 6 hours ("between 9:00 PM and 9:30 PM of November 1, and the early hours of November 2, 2007", p 55), cannot be considered as evidence of ambiguity, particularly taking into account that – it must be repeated – difficult as it is to look at the clock during the night, when one rises from one's bed for physiological needs, intending to go back to sleep immediately afterwards. The opposite would have

seemed much stranger. Taking into account that also Ms Dramis points to a timing compatible with that of Capezzali and Monacchia, the CAA's second premise in its reasoning **[64]** also has no basis.

Hypotheses remain hypotheses, then, and, without proof, are evidence of nothing at the juridico-logical level. Conversely, the testimony of the two women who heard the harrowing scream are facts asserted by credible and reliable witnesses, recognized in the same appealed judgment. And, precisely because of the reliability of the witnesses, are proof.

Thus, the conclusions of the CAA are logically unfounded, the premises in the reasoning not reaching certainty-truth – or even probability.

The hypothesis about the mobile phones, unspecific, unanchored to objective facts and also contrasting with the declarations of Rudy Guede in his Skype call with his friend (held truthful by the CAA), has been judged valid and acceptable by the Court, and, under this aspect, the time of death has been brought forward to 10:15 PM!

Vice versa, in taking the declarations of Capezzali and above all Monacchia into consideration, the Court has observed that "the witness was not more precise about the time, she was not able to anchor it to objective data" (p 57). Was the Court not aware that its own solution – the 10:15 PM timing – was also not anchored to any certain data? The reference to the lack of anchoring of the declarations of the witnesses to objective data is not true, since both Capezzali and Monacchia have done exactly this.

In the light of the choice made by the CAA, it cannot go unmentioned that even Amanda has spoken of the scream much earlier than Ms Monacchia and Ms Capezzali, and she had done so in her own *memoriale* of November 6, 2007, when no one could have known about the scream or even about the possibility that Meredith would have been able to scream.

[65] And, again, no consideration of the thanatological data examined in the trial judgment, the object of exposition by experts and consultants, has been effected by the CAA, which did not bother itself with expounding on any evaluation of these data, the most probable time of death being indicated as 11:30 PM (midway between

6:50 PM and 4:50 AM, and thus within the range of times permitted by the thanatological data[)].

The reasoning on the time of the murder, in the entirety of its articulation, follows the pattern that was defined in the premise of this appeal submission as: "*petitio principii*", and bases itself on the error of the judgment, [namely] in its form or defect in reasoning, as well as in its manifest illogicality (Article 606, paragraph 1(e) of the Criminal Procedure Code).

Documents referrable:

Annexure 19: transcript of the hearing of the Court of Assizes of Perugia, March 27, 2009

Annexure 20: Skype conversation between Rudy Hermann Guede and his friend Benedetti

Annexure 21: transcript of the hearing of the Court of Assizes of Perugia, June 6, 2009

6 - GENETIC INVESTIGATIONS

DEFECT IN THE REASONING. CONTRADICTIONS AND ILLOGICALITY IN THE JUDGMENT (Article 606(e) of the Criminal Procedure Code)

As has been hinted, the expert report, in the absence of tests on the new traces sampled by the same experts, produced a documentary analysis of the operations carried out by the Scientific Police **[66]** in the form of unrepeatable technical tests, and of the results obtained, to which the Appeal Court, as it had explicitly fore-

warned, has passively adhered, importing completely the conclusions of the expert report, without adding any reflection which would have given account of the checks that the Court ought to have carried out on the consistency and fitness of these in the argumentative whole of the first instance Court of Assizes.

And, in effect, the [reasoning] structure of the Court of Appeal is that of assuming as axiomatic (that is, propositions assumed as true because held to be evident), mere expert opinions, even when these do not have, *ictu oculi*,[62] any scientific value inasmuch as not having as their object the interpretation of a scientific phenomenon, but a factual situation capable of affecting the interpretation itself only if demonstrated.

This is the case for the contamination of the exhibits that the experts assume as possible, but which in fairness is to be demonstrated, and which, in any case, is proposed as the basis for the substantive unusability of the genetic profiles obtained by the biologist of the Scientific Police. Indeed, the judgment/expert report holds that, even if wanting to adopt the conclusions of the Scientific Police on the attribution of the DNA extracted from the two exhibits (knife and [bra] clasp), it cannot be excluded that the examined DNA arrived on the exhibits, not before by contact, but by contamination taking place in any of the phases in which the work of the Scientific Police was undertaken, from collection during the crime scene inspection to the analyses in the laboratory. It is evident that the "non-exclusion" of the occurrence of a certain phenomenon is not equivalent to affirming its occurrence, nor even that the probability that it did occur. Infinite are the events which, in nature, cannot be excluded, but which remain within the realm of possibility; if one is not able to **[67]** affirm where, how and when they would have happened, they cannot enter into a logical-juridical reasoning aimed at nullifying elements already acquired, above all if scientific in nature.

On the contrary, the Appeal Court, while being unable to affirm a contamination event, assumes such an unproven hypothesis as a determinative element in holding that the results of the genetic tests performed during the course of the investigations are unreliable.

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[62] NdT – literally, a *coup d'oeil*, as the French might say

And it does this with the inconsistent and unshareable affirmation according to which the burden of proof relative to the defect of contamination would fall upon the prosecution, who ought to have provided the impossible positive proof of its missing occurrence. Thus from the CAA text: "*Now, Prof Novelli and then also the Public Prosecutor have claimed that it is insufficient to sustain that the result derives from contamination, it being the onus of he who claims contamination to show its origin. This argumentation, however, cannot be adopted, inasmuch as it ends up with treating – on the judicial level – the possibility of contamination as an exception of a civil-type nature. Thus, one cannot state: I have proved that the genetic profile is yours, now you prove that the DNA had not been left on the recovered item by direct contact, but by contamination. No. One cannot work this way. In the ambit of a trial -- as is noted,– it is incumbent on the Public Prosecutor who maintains the charge at law (the terminology is used in Article 125 of the implementation rules in the Criminal Procedure Code), that of proving the existence of all the elements on which it is based, and therefore, when one of these elements is completed by a scientific element, which represents the result of an analysis procedure, the onus is also that of proving that the result had been obtained by means of a procedure which guarantees the integrity of the* **[68]** *exhibit from the moment of its collection*[63] *to that of its analysis*" (p 82-83 of the appealed decision).

The logical error into which the Appeal Court has fallen is quite evident: further, in fact, is the so-named *falsificationist* approach, which involves the evaluation of an element on the basis of a dialectical opposition of arguments in favour and arguments against, completely different from the rationality of an allegation reaching for contamination, which does not constitute a theory to be confirmed or to be denied, but a factual circumstance to be demonstrated. And it is transparent that, even in criminal procedure, the general principle "*onus probandi incumbit ei qui dicit, non ei qui negat*"[64] knows no exceptions.

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

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[63] NdT – Reading *repertazione* where the text, again, has *refertazione*

[64] NdT – the burden of proof falls upon he who states, not he who denies.

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.

In the present case, nothing is said in the judgment/expert report on how the victim's DNA could have been accidentally found on the knife-blade and Sollecito's DNA on the clasp of the bra worn by Meredith Kercher when she was killed. These same experts have, in fact, had to exclude (during their cross-examination by the Public Prosecutor) that it could have happened in the laboratory, both because of the time intervening between the examination of the exhibits in question and the examination of the previous exhibit that contained the **[69]** same DNA (cf. transcript of the hearing of July 30, 2011, pp 77 and following for the knife, pp 128 and following for the bra clasp), and because of the so-called negative controls that the experts had held to be indispensable to exclude contamination. These controls had been presented by the experts, though, as if not effected by the Scientific Police biologist, only in so far as not being annexed to the report. These same [controls] had been, instead, shown in court by the Public Prosecutor as documents already annexed to the case file at first instance (cf ibid pp 130 and following). Moreover, the experts had not been able to point to any reasonable source of contamination outside of the two exhibits during preceding stages: Professor Conti, questioned by the Public Prosecutor on the point, limited himself to claiming that "*Anything is possible*" (see pp 70 and following of the transcript of the hearing of July 30, 2011).

But these matters emerging from the proceedings were totally ignored by the appealed judgment, from which a glaring defect cannot but arise: "*The decision of the court of appeal judges, which involves the total reshaping of the trial judgment, imposes the necessity of demonstrating the incompleteness or the incorrectness that is the incoherency of the relevant argumentation with rigorous and penetrating critical analyses followed by complete and convincing reasoning which, when superimposed over the entire field covered by the primary court, without leaving any gap, will give reasons for the choices made therein and for the preference given to different, or differently weighed, elements of proof. The different explanation of a fact cannot be based simply on mere possible alternatives, untethered from procedural reality, but must be based on specific factual data which render probable the conclusion of a logical "line" that can be followed without apodictic affirmations*

but with a correct form of **[70]** *reasoning. (In the circumstance of the case, regarding the effects of exposure to asbestos, the* [Supreme] *Court criticized the sentence of the territorial court* [=the appeal court] *which, without sufficiently examining the arguments of the first instance court, had disregarded the conclusions of this latter, although reached on the basis of information supplied from scientific studies by experts).*"[65]

Likewise no logical explanation has been supplied in order for adopting the conclusions of the experts even at the level of the reliability of attributing to Amanda Knox the DNA that was collected from the handle of the same knife that was held to be the murder weapon: it is illogical, in fact, to hold, on the one hand, that the tests performed by the Scientific Police are unreliable because of the methodology with which the exhibits had been collected and examined and, on the other, affirming their exactitude limited to one single trace. If the error committed is of a methodological type and if the Court, together with the experts, maintains that this error is liable to invalidate the results of the tests performed by the Scientific Police, they cannot but be totally swept away, without distinction. To save one of them means saving the criticized method and to irremediably contradict, therefore, what is being claimed for the other traces.

Equally contradictory and completely illogical is to maintain – as the judgment does, in unison with the experts – the inaccuracy of the interpretation of the genetic profiles performed by the Scientific Police (to put in doubt, in other words, that the extracted profiles effectively belong to the victim, for the knife blade, and to Sollecito, for the bra clasp), and **simultaneously** the possible contamination of the same exhibits, an argument which presupposes, instead, both the existence of the DNA and the accuracy of the attribution of the profile extracted from that DNA, landing, **[71]** however, on the exhibit by external contamination. Two clearly incompatible arguments but both married together uncritically by the Court.

7 - Analysis of the prints and other traces

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[65] Cass. Sez. 4 n 7680 of 29.11.2004

Defect in the reasoning, contradictions and lack of logic in the motivations (Article 606(e) of the Criminal Procedure Code)

After having argued, with the outcome described earlier, for the necessity of an expert report in order to clarify the decision of the court in matters outside of its cultural baggage,[66] and to resolve the contradictions in the opposing theses of the parties, the Court of Appeal of Assizes improvised itself into an expert concerning the attribution of the bare footprints: that made in blood on the bathmat in the small bathroom (held by the Scientific Police to be compatible with Sollecito's foot and incompatible with Rudy's), and those revealed by Luminol on the corridor floor (held by the Scientific Police to be compatible with Sollecito's and Knox's feet and incompatible with Rudy's). Likewise for the other traces of blood found in the little bathroom positioned round the corner with respect to the room where Meredith had been killed.

And, in truth, for these elements, – no less founded than the genetic analyses in proceedings and technical-scientific evaluations, – the Court accepted the defence theory totally uncritically without feeling any need for expertise of any sort, and without asking itself questions about the validity of the methods used by the defence consultant Prof Vinci. To this intrinsic contradiction, not corrected by any discussion of the point, is added the further glaring defect in the judgment whereby the CAA **[72]** completely distorts the significance of the conclusions by Engineer Rinaldi, director of the footprint section of the Scientific Police, as these were analytically reported in the reasonings section of the first instance judgment, from which work an evident distortion, – with respect to the effective and objective (emerging, that is, from the mere reading) logistical steps of the amending decision [of the CAA] –, grounds the reasons of the contrary opinion.

The meaning of the concept of probable identification, in fact, had been reported in the first instance judgment in agreement with what was deduced in the technical report: "*The lack of fine detail present on the papillary ridges, which are highly individualising elements, has led the specialists to conclude that the print on the small mat*

[66] NdT – in the sense of "(limited) background knowledge"

was useful for negative comparisons but not for positive ones, in this case, corresponding with what occurred for print 5/A and for numerous others Dr Rinaldi and Chief Insp Boemia have reached an opinion of probable identity, as will be explained" (p 362 of the judgment at first instance). Now, there is no one who will not see that the CAA, in criticising the first instance judgment which gave credit to the Scientific Police specialists "*despite their assertion that the print on the small mat …was to be considered as useful for negative comparisons but not for positive ones*", carries out an illogical reasoning which leads it to incongruous conclusions, showing that it has not understood that the limit of footprint analysis does not relate only to those analysed in this trial, but <u>all</u> the footprints, given the absence on the sole of the foot and on the toes of the "fine details" that, instead, characterise the fingertips. A limit which, therefore, even the party's technical consultant has had to take into account, whose thesis, though, appears in the eyes of the Appeal Court **[73]** to be immune to censure. Not only that, but the same Court uses the criteria and techniques of exclusion, whose evidential value it has just criticised, to attribute the same prints to Rudy Guede (pp 99-100 of the appealed judgment), while, as well, developing a series of completely illogical and contradictory circumstantial arguments: it is completely unexplained why Rudy would ever have lost a shoe with respect to the well-established presence of blood, indicative of the then-completed overcoming of the victim; why ever Rudy would have washed his feet in the small bathroom but would have taken it upon himself to leave his faeces in the one further along; the circumstance that Rudy would have gone towards the front door wearing only one shoe is, to say the least, a bold claim, also because it does not locate the episode in which Rudy went into the other bathroom, with every implication regarding the staining of the corridor.

But there are further obvious and intrinsic contradictions in the judgment on this point: it is sufficient to read the following passage, relating to an argument of the first instance Court reported at length: "*But this is nevertheless a mere subjective impression, without any logical, and even less, technical-scientific support…"* (p 98 of the contested sentence), *although just earlier they asserted: "A simple visual examination of the photographs of the small mat makes it obvious that…"* (p 96 of the appeal judgment), and *"The which is in striking and irremediable contrast with what leaps out to the eye..."* (p 98 of the appealed judgment). It superimposes, therefore, on the presumed subjective impression of the first instance Court (for which it had just denied any argumentative value) its own definitely subjective impression, without giving,

moreover, account of the reasons for which this should have been preferred to the former.

[74] Thus, nothing is explained and nothing is argued against the stringent thinking of the first instance Court which had led it to evaluate consultant Prof Vinci's arguments as unreliable: having, for example, employed the so-named "Robbins' grid" for aligning the prints for comparison, parting from a reference point different to the one used by the Scientific Police technicians in conformity with the specific indications in the relevant literature.

As for the other bare footprints, revealed by Luminol along the hallway of the murder house, the forcing and, therefore, the illogicality, of the Appeal Court's reasoning is evident in holding that the prints (considered by the Scientific Police as compatible with those of Amanda Knox and Raffaele Sollecito), could have been the same as those left there on earlier occasions, when it is a given of common experience that Luminol principally reveals traces of blood and, without giving the least evidence that other material, equally copious and equally sensitive to Luminol, had been poured out onto the floor, it is beyond logic to hypothesise that Ms Knox and Raffaele could have had bloodstained feet on a prior occasion and different from the murder. But here also the Court has limited itself to adhering to the undemonstrated theses of the defence.

Finally, the analysis of the results of the genetic tests on the bloody traces from the small bathroom, finally, provides, so to speak, a corollary to the reasoning inconsistency already presented; no point is put forward, at this level, on the reliability of the genetic profiles developed by the Scientific Police, which contrasts, once again, with the methodological criticism of the analysis which is discussed at length in the section dedicated to the expert report disposed in appeal.

And yet, not even these traces are rescued from the all-encompassing **[75]** botching of the work by the Scientific Police and the first instance court: this time, for the nonsensical reason that the blood traces containing DNA of Amanda Knox and Meredith Kercher would have been the result of a mixture unleashed by a collection error by the Scientific Police, who had improperly co-mingled the victim's blood, – carried into the bathroom by who knows who – and other biological material of Amanda Knox lying there prior to the murder, given that that was the bathroom (of the two present in the house) used by the two girls (see p 114 of the appealed

judgment). The argument, borrowed wholesale once again from the daring and undemonstrated conjectures of the defence, is entirely irrational and illogical, because it does not even attempt to justify the "singular" coincidence of the presence of Amanda's DNA in all the traces mixed with Meredith's blood, lacking, beyond everything, the presence of the DNA of others which might explain who and how – if not Ms Knox – the victim's blood had been carried from the murder room to various points in the little bathroom where the traces had been collected.

The CAA finishes its demolition of the first instance judgment on the scientific evidence with an argument meriting quotation in full: "*It cannot, therefore, befit the conclusions which the judgment makes on this matter on pages 405 and following. According to the Court of first instance, the two accused, stained with Meredith's blood, would have gone into the adjoining small bathroom, and there they would have washed themselves (it must be recalled that, according to the primary court, the imprint on the small bath would have left by Sollecito's right foot). But, if it had happened like that, it is not explained how come not the slightest genetic trace of Sollecito has been found in the small bathroom, despite the fact that the action of rubbing, owing to the washing up, would have entailed the loss of cells by exfoliation (as can be read,* **[76]** *in the judgement)*" (p 114 of the contested judgment).

The Appeal Court, however, does not explain why, on the basis of these same negative elements (absence of DNA in the small bathroom), it excludes the presence of Raffaele Sollecito and includes that of Rudy Guede who would have amply washed there (and afterwards swapped bathrooms to defecate…) but without himself having left any biological trace.

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8 - THE PRESENCE OF THE ACCUSED AT THE CRIME SCENE

MISREPRESENTATION OF THE EVIDENCE AND ILLOGICALITY OF THE MOTIVATION – Article 606 paragraph 1(e) (part one and two) Criminal Procedure Code. VIOLATION OF PROCEDURAL RULES AND ILLOGICAL REASONING - Article 606 paragraph 1(b) and (e) of the Criminal Procedure Code.

The judgment of the Court of Appeal of Assizes, after the "[67]review of the evidence on which the court at first instance had based the criminal responsibility of the defendants, has held that among all other elements "that have diminished in their materiality", there is also "the presence of Raffaele Sollecito and Amanda Knox in the house [in Via della Pergola][68] at the time of the murder". The assertion (p 137 of the appealed judgment) is contradicted by some unambiguous elements that the appellate court has completely ignored or has considered possible to overcome with illogical or contradictory reasoning.

1. - MISREPRESENTATION OF THE EVIDENCE:

(Article 606 paragraph 1(e)), (first and second part), Criminal Procedure Code

a) The Statements by Ms Knox on November 2, 2007

[77] The English girls, friends of the victim, had been heard at the hearing of February 13, 2009. With the exception of Amy Frost, who, on the other hand, had referred to having heard it from Robyn or Sophie, all the girls, that is Robyn Carmel Butterworth, Sophie Purton, Jade Bidwell, Nathalie Hayward and Helen Power, have stated that Amanda on the evening of November 2, 2007, while they were all waiting to be called by the police, in locations within the *Questura* [=Police Headquarters], said that *she was the one who had found Meredith's body, that it was "in" the wardrobe* (a manner of saying that she was murdered in the area comprised of the wardrobe dimensions, that is in front of it, as verified by the police), *that she was covered by a quilt, that a foot was sticking out, that they had cut her throat and that there was blood everywhere* (see transcript of hearing February 13, 2009: the examination of Ms Butterworth, on pp 19, 21, 22, 23, 24, 25, 26 and 37; of Ms Purton, at pp 104 and 105; of Ms Bidwell, p 135; of Ms Hayward, p 127 and of Ms Power, pp 162 and 163).

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[67] NdT – this quotation mark is unpaired in the original text

[68] NdT – square brackets in the original text

Instead, the same Knox, in her [court] interrogation (transcript hearing June 13, 2009 p 49), excludes having seen, she and Raffaele, into Meredith's room, when the door was kicked in because she was away from the room, she was near the front door, in the living room. Marco Zaroli, one of the young men who kicked in the door in Meredith's house, says that Amanda and Raffaele were off to one side [*lontani* = "far away"] and would not have seen anything (transcript hearing February 6, 2009 p 183). This circumstance has been confirmed by Luca Altieri (hearing February 6, 2009 p 220), and by Paola Grande, present with the other two (transcript February 6, 2009 pp 253 and 254).

Also Inspector Michele Battistelli from the Postal Police says that neither of the two would have seen anything when the door was kicked in (transcript February 6, 2009 pp 73 and 74).

The Technical Director of the Inter-regional Office of the Scientific Police, Dr Francesco Camana, heard during the course of the hearing of May 23, 2009, **[78]** in responding to one of the questions about the position of the victim, that is to say, on the spot in which the victim had been struck, facing the wardrobe, whether the spot was within the width of the wardrobe (nevertheless devoid of any mirror), that is "in the region of the wardrobe mirror", has confirmed this particular multiple times, affirming: *"one can see that the convergence area itself, therefore as a consequence also the origin in space* [i.e., in 3-D], *stands directly in front of the wardrobe door and could not have been different given also… this also a forensic officer can… Certainly, yes, right in front of the door*[69] *really"* (see transcript hearing of May 23, 2009 p 205).

Thus, Amanda has described the spot where Meredith was effectively murdered (in front of the wardrobe) and she has described the state of the body and of the room

[69] NdT – or, more properly, "wing", an *anta* – the panel or door of a wardrobe or an office counter or kiosk, or the protective shutter for a door (=*porta*) or, more commonly, window, – being so-named from the way in which it moves, beating, back-and-forth, flapping like a bird's wing.

and the injury to the throat, in speaking with Meredith's co-nationals, although, at the moment when the door to Meredith's room was kicked in, neither she nor Sollecito, for certain, were able to look inside. According to her, neither she nor Sollecito went into that room that morning before the arrival of the police because it was locked. Yet she knew everything. She knew because she was in that room at the time of the murder and when Meredith was left in the conditions in which she was discovered.

The verification of that circumstance emerging from the case files in the first instance trial has been completely ignored by the CAA appeal, which has not even tried to explain why it would not have given it importance.

Amanda's behaviour, after the discovery of the crime is highly indicative. The Court has without reason excluded the relevance of *post delictum* behaviour of the two defendants, affirming that individual reactions to extreme traumatic circumstances are uncountable (see CAA judgment p 136). It escapes the Court that in this **[79]** case the discussion is not about emotional reactions in the presence of traumatic events, which cannot always be interpreted unambiguously, but of Ms Knox's claims which demonstrate her having an awareness of the details of the murder: body partially concealed by a blanket, with a foot that was sticking out [from the blanket][70]; blood in the room; deep wound on the neck; death after a long agony and above all, the murder happened in front of the closet to the right of Meredith's bed. All these details have been subsequently verified by the findings of the judicial police.[71]

The reference to the subjectivity of emotional reactions is misleading and, following

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[70] NdT – square brackets in the original text

[71] NdT – the *polizia giudiziaria* ("judicial police") is the taskforce team seconded to and assembled by the Public Prosecutor and charged with carrying out the investigations for a particular crime; in some English-language jurisdictions, these teams, often assembled *adhoc*, are also often code-named (e.g. "Task Force Argos", "Operation Road BIA", "Strike Force Asca", and so on).

an ill-concealed *innocentista*[72] desire, constitutes an attempt to, once again, justify the accused [=Amanda]. The CAA has not noticed that the statements by Ms Knox were referring to substantially true circumstances, which she would not have been able to know if the alibi had been proven true.

It should be noted also, in this part of the judgment, the error under letter (e) (second part) of Article 606 Criminal Procedure Code: that of the extrinsic contradictoriness of the reasoning in relation to the before-mentioned witness statements before and to the same examination of Ms Knox, completely ignored and not subjected to any evaluation on the part of the district Court [=the CAA].

b) phone call of Ms Knox to her mother

Defect and contradictoriness in the reasons of the judgment on a circumstance incongruous with its own conclusions - Article 606(e) Criminal Procedure Code.

The CAA has omitted whatsoever any examination and evaluation on a circumstance relevant for the purposes of the decision, emerging from the cross-examination **[80]** of Ms Knox at the hearing of June 13, 2009, regarding the phone call Ms Knox made to her mother around noon on November 2,, at a time appreciably earlier than the discovery of the body and which, in view of the large time difference existing between Italy and the Pacific coast of the United States, corresponds in this region to three in the morning.

Here is the transcript of the oral argument hearing of June 13, 2009:

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[72] NdT – "innocent-ist": this denotes someone who supports (or, in sporting terms, "barracks for", *US:* "roots for") the innocent team; its counterpart is *colpevolista* ("guilt-ist") who follows the opposite view.

"Public Prosecutor - Dr Comodi: *The [phone] records show... that you called your mother at twelve, that is at midday.*

DEFENDANT: *Okay.*

PP - Dr Comodi: *Okay? What time was it in Seattle if in Perugia it was midday?*

DEFENDANT: *It would have been in the morning, nine hours… three in the morning.*

PP-Dr Comodi: *So three at night.*

DEFENDANT: *Yes.*

PP-Dr Comodi: *So surely your mother was sleeping.*

DEFENDANT: *Yes.*

PP -Dr Comodi: *At twelve nothing had yet happened, this is what your mother said also... During your prison conversation with your mother, even your mother is surprised by the fact that you at noon, or rather, at three to four at night, you called her, "but still," your mother says, her exact words, "nothing has happened yet".*

DEFENDANT: *But I didn't know what happened, I only said… I called my mother only to say that we were being sent out of the house and I had heard something about a foot.*

PP -Dr Comodi: *Yes, but at twelve nothing had happened yet, in the sense that the door had not yet been broken down.*

[81]

DEFENDANT: *Okay. I don't remember this call…*

PP -Dr Comodi: *If you called her before why did you call her?*

DEFENDANT: *I don't remember, but if I did so I must have called because…*

PP -Dr Comodi: *No, you did.*

DEFENDANT: *Okay, all right, but I don't remember. I don't remember this phone call.*

PRESIDENT: *Pardon me, you don't remember, however, the Public Prosecutor earlier made you aware that it is a call that your mother received at a nocturnal hour.*

PP -Dr Comodi: *In the middle of the night.*

PRESIDENT: *So it must have been, if there was, otherwise you would have the habit of calling her on other occasions at that hour, at noon in Italy, which corresponds to a time in Seattle… usually calls are not made in the middle of the night.*

DEFENDANT: *Yes, yes, sure.*

PRESIDENT: *So either there's a particular reason or it's a habit, this is what the Public Prosecutor is asking.*

DEFENDANT: *Now, because I don't remember this phone call, I remember the one I made after. Obviously I made this call. If I made this call it was because I thought that I had something to say to her, maybe I thought at that moment that there was something strange. Because at that moment, when I had gone to Raffaele's, I thought that there was something strange, but I didn't know what to think. So honestly I don't remember this phone call, so I can't tell you for sure why, but I suppose it was because I had arrived home when the door was open, so for me it was a strange thing.*

PP - Dr Comodi: *You don't remember the phone call, but the conversation with* **[82]** *your mother in prison do you remember it?*

DEFENDANT – *I've had lots, but yes.*

PP - Dr Comodi: *Well, the conversation would have been on November 10,. Do you remember when your mother says to you:" But at twelve nothing had happened yet"?*

DEFENDANT: *I don't remember this***.** (See transcript of June 13, 2009, from p.73 to p.76)

The circumstance had been put to Ms Knox by her mother in the intercepted conversation of November 2, 2007, from which this passage is quoted:

"A[73]): *It was strange. I mean, it's even difficult for me to remember exactly when… everything happened in the house… because I was shocked. I remember having called Filomena. I don't remember that I called you, I don't remember.*

M[74]): *Oh, oh, really?*

A): *No, I don't remember in fact having called you.*

M): *Well, I… you'd called me three times.*

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?"* (see the conversation at pp 35 **[83]** and 36 of the transcription).[75]

The CAA has developed the argument of Ms Knox's phone calls the morning of November 2, 2007, maintaining that the first instance Court had found contradictions in them and, thus, elements of guilt of the two defendants and, with a very brief and insignificant mention, speaks of the fact that Ms Knox called her family in the United States "because evidently, in the flood of events, there was also growing, however, a need to pass her own worries onto the family"(see appeal judgment p 132). In order to reduce the significance of the evidential item, the

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[73] Amanda Knox

[74] Mother of Ms Knox

[75] NdT – presumably, this conversation originally took place in English (and/or German?), so the re-translation back into English must necessarily lose some fidelity if that is the case.

challenged judgement refers to the phone calls of Ms Knox and that of Sollecito to the Carabinieri (via the 112 number) at 12:57 PM, as almost contemporaneous; it affirms in fact that Sollecito makes this call, "while Amanda Knox was calling her own family in America" (p 132). It does not specify the time of the defendant's [=Amanda's] call to the United States, but fits it in as if following Sollecito's call to 112, feeding the impression that Ms Knox's call was contemporaneous with, or even subsequent to, Sollecito's call.

The judgment of the first instance Court, always anchored in procedural findings, has been much more precise and has indicated the exact time of the call: 12:47.23 PM, and the duration of 88 seconds. This is the time and duration of the first call that Knox makes to the American number ~~xxxxxxxxx7~~[76], about ten minutes before Sollecito called 112 and preceding by about three minutes the call that Sollecito makes to his sister Vanessa after which follow his calls to 112 (see the CA judgment p 346). The call to his sister is at, in fact, 12:50.34 PM (see p 342 of first instance judgment).

Then Ms Knox will make other phone calls to the American number, the one **[84]** at **1:27.32 PM**, the failed attempt at 1:58.33 PM and that of 1:50.06 PM for a good 360 seconds (see first instance judgment p 347).

At 12:47 PM on November 2, 2007 nothing particularly alarming had yet occurred, but that phone call which catches her mother asleep, at 3:47 AM in the morning, nine hours behind because of the time zone difference, lasts a good 88 seconds and it was the longest of the first phone calls made by Knox that morning.

All this was completely ignored by the CAA, who thus presented the sequence of calls as if that of Knox to her mother were simultaneous or directly following that of Sollecito's to 112 and even to that by the same to his sister Vanessa, – a phone call, therefore, particularly significant of the fact that Ms Knox would have had reason to be worried much more than the circumstances of the moment would have allowed

[76] NdT – redacted in this translation for privacy reasons

her, and she would have felt, the need to give vent to this anxiety to her mother in a conversation of no short duration. This circumstance, included in the full **probative picture** described by the Court of Assizes, and emerging from the procedural outcomes at first instance, was strongly indicative of the full knowledge of Ms Knox of the reality of the situation, even before the Postal Police and Ms Romanelli and her friends were to discover Meredith's body.

And indeed, the CA has stressed the high importance of the particular call from Ms Knox to her mother whose perplexity "stands to indicate that in that phone call Amanda must have spoken of circumstances that, as yet, if she had been outside of the events, she would not have been able to know about" (thus CA judgment at p 87).

The CAA has fallen into, therefore, the legal error under Article 606(e) of the Criminal Procedure Code, through omitted reasons on a circumstance contrasting with its **[85]** own thesis, arising from the first call that Ms Knox made to her mother at a time corresponding approximately to 3:40 AM at night on the northwest coast of the United States, when nothing at all had been discovered yet; the omission is particularly grave because the circumstance is the object of a pointed examination by the CA which has also highlighted that Ms Knox's mother, in the intercepted conversation of November 10, 2007, had asked her daughter for explanations.

2. – ILLOGICALITY OF THE MOTIVATION
Art. 606 paragraph 1(e) of the Criminal Procedure Code

Phone call of Sollecito to the Carabinieri on the morning of November 2, 2007

The judgment on pages 132 to 134 focused on the words spoken by Sollecito on the November 2, 2007 phone call to the Carabinieri and, afterwards, those stated in person to the police.

To the Carabinieri: Sollecito, referring to the room of Romanelli, has stated *"no, there is no theft"* and again *"they haven't taken anything"*.

Upon the arrival of the police, then, Sollecito and Knox say that they have been waiting for the arrival of the Carabinieri because a theft had been committed inside of the house.

The Court of Assizes (page 79) had evaluated this circumstance because the hypothesis of a theft had been advanced for the first time by the same Sollecito and by Ms Knox and Sollecito had also stated that there was nothing was missing in Romanelli's room, when he could not even be able to determine this. From this circumstance, together with the other evaluations mentioned in relation to the staging of a crime, the CA had dealt with as a consequence that the defendants were the authors of the break-in, with the aim of simulating an attempted theft.

[86] The thesis of the CAA, according to which Sollecito's words to the police are not to be taken literally, not appreciating, as only men of the law might be able to do, the difference between "mere violation of domicile, attempted theft or perfected theft" (p 134), is contradicted by Sollecito's own words during the course of the phone call to the Carabinieri wherein, speaking of "theft", though to deny it, he adds, "*no they haven't taken anything*".

These two affirmations, linked to each other, "there is no theft" and "they haven't taken anything", give to understand, without any shadow of a doubt, that Sollecito was using the term theft advisedly[77] and not incorrectly, as, contrariwise, the CAA would like to maintain. When the defendant, along with Ms Knox, addresses himself to the police, stating that there had been a theft, he knows, not least, that a *theft* involves the removal of goods, that is, that *something has been carried away*.

The CAA thesis is therefore absolutely illogical because it does not take into account the conceptual identity between "*theft*" and "*to take away*", present in Sollecito's words in the two phone calls to the Carabinieri.

The interpretation of the CAA being excluded, in this way, in merit of Sollecito's terminological indeterminacy regarding the use of the term "theft", logic dictates the conclusion that Sollecito knew of the staged burglary at the crime scene and that he betrayed himself by also saying to the Carabinieri that nothing was missing in

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[77] NdT – The phrase *con cognizione di causa* (from the Latin *rerum cognoscere causas* = "knowing the cause of things") indicates that the person has full knowledge of the subject matter under discussion, knows all its aspects, and knows what they are talking about. When someone is speaking *ex professo* like that, they are not talking through their hat, in other words.

Romanelli's room. To this can be added that, as the first instance court has affirmed in agreement, only Sollecito and Ms Knox had an interest in simulating the theft.

As indubitable proof of the simulation, it must be underlined that, at the logical level, it is no difference that the breaking of the glass and other things were or were not staged. Staging of the theft or otherwise, there remains the indubitable fact that Sollecito was up-to-date on the circumstance that nothing had been **[87]** removed from Romanelli's room, before Romanelli could have checked for it. This, in itself is a very weighty piece of evidence for the presence of Sollecito on the crime scene at the time in which the facts occurred. If he had arrived there even shortly after the events, he could not have been so certain in his affirmation to the Carabinieri that nothing had been stolen from Romanelli's room.

3. VIOLATION OF PROCEDURAL RULES AND ILLOGICALITY OF THE REASONING

(Article 606 paragraph 1(b) and (c) Criminal Procedure Code)

The declarations by Rudy Guede on appeal

On page 35 of the judgment, it is claimed that Rudy has never appeared before the Court of Assizes in relation to the trial against Amanda and Raffaele. This is claimed observing "as much as it may surprise". It is a case of, as is evident, a clear error which appears symptomatic of the superficial attention with which the case file documentation has been examined.

Rudy Guede has been summonsed as witness and has appeared before the first instance Court of Assizes. On that occasion he had availed himself of the right not to

respond[78], a right which at the time was his, inasmuch he was accused of a related crime under Article 210 paragraphs 1 and 4 Criminal Procedure Code (cf transcript of April 4, 2009 hearing page 3 and following). Although in the first instance judgment this was dealt with (page 389), the appeal judges have ignored the circumstance.

The appealed judgment shows once again an inexplicable adherence to the defence architecture, quoting in the last paragraph on p 36 the defence phrasing "*for years we have been pursuing it*…" forgetting that the same defence were opposed, **[88]** in the case before the Court of Assizes, to the acquisition of the declarations made by Rudy in the course of the preliminary investigations.

It is not quite clear whether or not the appeal judges are holding the declarations made by Rudy before the Court of Appeal of Assizes to be reliable. Considerations relative to Article 111 of the Constitution and the attitude that he would have had in declaring himself not wishing to respond would tend to incline towards the "No" (judgment, p 37). The evaluation then effected on the same declarations "regardless of the formal hurdle" would tend to incline towards the "Yes".

It must in any case be observed that, in the appeal proceedings (the verdict handed down against Rudy having become definitive), the same [=Rudy] was not able to avail himself of the right to not respond and in fact Rudy has responded as seen in the extract of the hearing reported on p 38 of the judgment.

The problem, thus, is relevant to the evaluation of reliability of the declarations made by the same [=Rudy], which the Court has held, without reason, unreliable for having violated the principal of Articles 111 paragraph 3 of the Constitution and 526 paragraph 1 *bis* Criminal Procedure Code.

The opinions of absolute unreliability in express regard, though, do not take into account the fact that, on the circumstance relating to the presence of others on the scene of the crime, Rudy Guede had never changed versions, having always declared the presence of other persons, who in the course of the hearing of June 27, 2011 (see pp 14, 15, 16, 20 and 21 in CAA) he has indicated as the current defendants.

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[78] NdT – that is, in the vernacular, "exercise his right to silence"

A murderer has instead continually attempted on these occasions to attenuate or exclude their own responsibility;[79] it is above all with reference to this aspect that his reconstruction has been held unreliable by the courts which have convicted him.

[89] At the legal level, it is to be excluded that Article 111 paragraph 3 of the Constitution and Article 526 paragraph 1 *bis* of the Criminal Procedure Code (which constitutes its application to the procedural code) can be invoked, as the CAA has done, to base the unreliability of Rudy Guede on the condition of a refusal to depose as a witness both at first instance and also in appeal. The CAA, though, has not taken into account the totality of procedural rules which govern something as delicate as the testimony of an accomplice in the offence: the rule under Article 210, 4th paragraph Criminal Procedure Code that at first instance permitted him to not respond because, at that moment, Guede was the accused in a related proceeding per Article 12 paragraph 1(a) Criminal Procedure Code; the disposition of Article 197 *bis* paragraph 4 Criminal Procedure Code, according to which at appeal the accomplice in the crime "was not obliged to depose upon facts for which a verdict of conviction has been pronounced against him, if in the proceedings he had denied his own responsibility or had made no declaration".

Rudy Guede availed himself of the rights conceded to him by law; founding a declaration of absolute unreliability on the exercise of a right on the part of Guede constitutes a grave error of law, being based on a violation of the principles dictated by the Constitution which, instead, is referred to multiple times in the appealed judgment. The error of law into which the judgment fell, influencing the correctness of the reasoning, renders it manifestly illogical in terms of Article 606 paragraph 1(e) Criminal Procedure Code.

The Ivorian citizen has regularly made the declarations that he could have freely made, responding to the questions by the defenders of the accused on the contents of the letter sent to the television station, in which he was accusing Ms Knox and

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[79] NdT – The (perhaps rather clumsy) use of the indefinite article, "a", is meant to highlight that the phrase *L'homicida ha sempre tentato in queste occasione di…* meaning, "The murderer, on these occasions, has always tried to…", does not imply that, in a legal sense, Rudy, as a convicted murderer, is the *only* murderer in the context of this case: the previous sentence makes this clear. To think otherwise (by ignoring that previous sentence) is to fall into the same logical trap that the CAA has fallen into.

Sollecito of being present at the scene of the crime **[90]** and of being the authors of the homicide.

Rudy Guede's reliability ought to have been evaluated under Article 192 paragraph 3 Criminal Procedure Code "together with the other items of evidence which confirm its reliability"; therefore, the declarations made by the convict ought to have been evaluated positively, if, in the case documentation, there had been objective corroboration.

In the case which interests us, there is corroboration and it originates in Ms Knox's *memoriale*, usable, in terms of being a spontaneous document and freely written by Amanda and acquired into the proceedings in the trial at first instance; as has already been acknowledged, in this script Amanda has placed herself in the house at Via della Pergola while Meredith was being killed, conforming with what Rudy declared.

And in the Skype call with Benedetti, intercepted unbeknownst to him, there emerge circumstances that confirm Guede's court declarations. The Court takes the Skype call with his friend Benedetti into examination, valuing it "in favour of the two accused" both for what it does not say and also for what it does say, and this it does building from one, not only unexplained, datum but which would have taken little to deny: since Rudy was outside of Italy, he was "in some sense safe" and thus could well have been able to tell the whole truth (p 40 of the judgment).

Not in the least does the Court depart from the presupposition that in this call Rudy would have been telling the truth and, because in this call he would not have named the current defendants, these have got nothing to do with the homicide. The Court does not explain, though, that even in this call Rudy was tending to downplay his responsibility and, if he had named his co-participants, that would have easily allowed, by means of investigations and subsequent interviews, the bringing out of his causal contribution and of his responsibility.

[91] Of the things said in this Skype call, the Court seems at one moment to want to value the chronological datum from 9:00 PM to 9:30 PM to affirm that this would therefore have been the time of death of Meredith; successively, though, the appeal judges, following the principle of plausible hypothesis, in relation to the outgoing calls on the victim's English handset, have moved it to 10:15 PM, but they have not altered the reliability of the time indicated by Guede.

In truth, during the course of the conversation, Rudy recounts having heard Meredith complain about the missing money and of her intention to ask Knox, with whom she had argued, for an explanation (p 10 of the call); of having seen Meredith look in vain for the missing money in her drawer (see p 18); of having seen her search, again in vain, for the missing money in Amanda's room (pp 18 and 19 of the call) and of having heard a girl enter the house, – who must have been one of the flatmates, thus Amanda (p 11 of the call), – while he was in the bathroom, a little before hearing Meredith's terrible scream which would have induced him to exit the bathroom, about five minutes after the ingress of the girl (p 12 of the call).[80] And also, on the subject of the break-in in Romanelli's room, – thrown without explanation onto Guede's back (see the judgment being appealed from, at pp 121 and 122), – can remarks by the Ivorian citizen be found in the transcription of the intercept. Guede repeatedly denies having seen the broken window in Romanelli's room for the whole time in which he was in the house at Via della Pergola that evening (pp 8, 20, 34 of the call).

If the CAA had held as reliable what Rudy narrated in the Skype call relating to the time in which Meredith was killed, it supplies no reason at all, on the other hand, for why it does not believe him as well when he denies [92] having committed the break-in or when he recounts the quarrel of Meredith with Amanda.

Thus, the violation on the part of the CAA appears evident – violation of the principles dictated by Cassation on the evaluation of declarations by co-accused according to the judgment rule dictated by Article 192 paragraph 3 Criminal Procedure Code, from which arises the error under Article 606 paragraph 1(e) Criminal Procedure Code.

Rudy Guede's declarations on the presence of the accused in the house at Via della Pergola on the night of the murder and the accusations of having committed the homicide, – directed not only in the Court of Appeal, but also on other occasions, towards Ms Knox, – ought to have been evaluated by application of the principles

[80] NdT – these same facts are also enumerated on pp **[58]**-**[59]** of the original (p 50 of this translation), in the context of the Skype call

dictated by the SC[81] under the rubric of hetero-accusatory declarations on the part of accomplices in the offence according to the judgment rule dictated by Article 192 3rd paragraph Criminal Procedure Code, inasmuch as the declarations of the Ivorian citizen, as has been seen, have found full corroboration in the trial documents which have been noted and which are all annexed to the current appeal.

Documents referrable:

Annexure 26: transcript of hearing Court of Assizes of Perugia of February 13, 2009
Annexure 23: transcript of hearing Court of Assizes of Perugia of June 13, 2009
Annexure 27: transcript of hearing Court of Assizes of Perugia of February 6, 2009
Annexure 28: transcript of hearing Court of Assizes of Perugia of May 23, 2009
Annexure 25: conversation of November 10, 2007 between the accused and her mother
Annexure 29: transcript of hearing Court of Assizes of Perugia of April 4, 2009
Annexure 30: transcript of hearing CAA June 27, 2011
Annexure 26: transcript of hearing Court of Assizes of Perugia of March 27, 2009

[93]

9 - The staging of the crime

Defect in the reasoning and manifest illogicality of the same (Article 606(e) of the Criminal Procedure Code)

In relation to this accusation [staging the crime scene], the sentence absolved the accused because "the fact does not subsist".

Before proceeding to the detailed examination of the reasons of the Court, it becomes necessary to point out an anomaly which has ended up in distorting the principles

[81] NdT – the Supreme Court of Cassation

which the legislature has laid down in Article 238 *bis* of the Criminal Procedure Code.

The usability, though limited, of the definitive sentence handed down for Rudy Guede on the same facts, as we know, could have been evaluated by the Court with regard to the legal rule dictated by Article 192, paragraph 3 Criminal Procedure Code, that is together with all the other pieces of evidence acquired in the trial against Knox and Sollecito.

In the case under examination, the Court has revisited the fact of the staging, without evaluating any new element with respect to those already evaluated in the definitive decision, which convicted Rudy Guede of the murder of Meredith Kercher. All the witnesses having confirmed their declarations made during the course of the preliminary investigations, the elements at the disposal of the various judges have been the same, but the conclusions have been the opposite. The district Court [=the CAA] has re-tried the case, for this part, affirming his guilt in contrast to the definitive verdict. The acquittal of the accused for the offence charged against them of staging a crime is not consequent on the defective finding of their criminal responsibility, but has been instead the consequence of the paradoxical recognition of the responsibility of Rudy Guede, who was not an accused in the current trial, for having **[94]** committed the deed. Beyond this anomaly, which renders the decision of the territorial Court [=the CAA] on this point illegitimate, it appears however opportune to point out how again in this case the reasoning of the appeal judges has resulted in a "petitio principi[i]".

In the challenged judgment, it is asserted that "*the Court of Assizes at first instance ruled out that Rudy Guede could have had a motive in simulating the theft by means of breaking in through the window, keeping in mind that he, just days before, had been surprised inside a nursery in Milan which he had entered into illegally at night […] so that it would have been truly singular that […] to divert suspicion away from himself he would have simulated the carrying out of an illegal activity that was habitual for him.*" (p 115)

And again: "*In truth, […] it is exactly these elements, which lead the Court to hold that this is clearly about a simulation, to make people think that Rudy Guede, putting in place an evident staging, had thought to distance suspicion from himself, from the point of view that a professional thief does not simulate a theft, but commits it for real*" (p 115)

According to the CAA, in contrast to the Court of Assizes, Rudy Guede had an interest in simulating a theft.

Above all, the assumption that Rudy would have had any interest in staging is, to say the least, astonishing: and why so? If someone had seen him, and he knew about it, he would not have been able to act; if he did not know it, the artifice would however have not served its purpose; if no one had seen him, it would have been an artifice destined to make the clues point to a thief, reinforcing the possibility of working out it was him. The staging could not have been anything but the work of someone who had reason to deflect suspicion from those staying in the house, in practice only Amanda, given the cast-iron alibis of the other two flatmates (Romanelli and Mezzetti) and the boys from the floor below.

[95]

Independently of the paradoxical premise, the argumentation of the CAA must be considered a fallacy, noted in ancient times, which has the name of *corax* (from Corax[82], to whom its identification is attributed). The *corax* is also, like ***petitio principii***, a "circular argument", thus "useless" and "inconclusive". An argument that proves nothing. To give an example, this argument is of the type: "Because Tom has threatened Dick publicly a few days before his murder, it is improbable that it was he who killed him, otherwise he would not have threatened him in front of witnesses". But the argument is circular, – as we were saying, – for the simple reason that to every *corax* one can respond with another *corax*. In fact, one may object, to start with, that "thinking that publicly threatening him would have allowed a refutation of that allegation, instead it actually was him" … Through this logic, in sum, without showing how many *coraces* can be invoked, since they are infinite, no conclusion is reached proving anything. Any circular argument, in fact, is useless to prove anything.

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[82] NdT – Corax of Syracuse (5th century BC), the (first) teacher of rhetoric: "He was interested in arguments from probability." — M C Howatson (ed), *The Oxford Companion to Classical Literature*, 3rd edition, (2011) [Oxford University Press, 2011], at p 168. ISBN 9780199548545. The meaning of the name Corax is "raven", which allows scope for various puns about croaking and cawing on the podium.

On the logico-juridical level, the Court of Assizes' hypothesis is not tarnished by the response from the appeal court, since it is logically unsustainable, falling into the logical fallacy of circular reasoning referred to as *corax*.

As for the truth about the staging, the arguments proposed in the challenged judgment are not sufficient to prove the opposite thesis. And this because the conclusions reached by the CAA are founded on hypotheticals: ***if*** the shutters were open (not taking into account at all the declarations of Romanelli at the first instance trial – see transcripts of the hearings of February 7, 2009, pages 25, 26, 67, 68, 96, 103, 104, 115, 116); ***if*** a window pane is broken perhaps also no fragments remain on the windowsill; ***if*** the intruder has entered through the window he might also not have **[96]** left any traces on the wall or on a nail, which still remains straight and unbent, etc. It appears evident that one is going beyond probability (so deplored by the CAA in the conclusions to its own judgment reasons), reasoning instead on the basis of mere "*possibility*".

Independently of the erroneous structure of the reasoning, the decision leaves a whole series of points obscure, which it ought to have clarified in any case – in fact, it does not explain:

• how the author of the climbing exercise could have been able to think of climbing without a ladder at night and above all not knowing beforehand of the existence of the nail;

• how it could have come about that, in those conditions of time and place, the climber could have left no trace on the wall;

• why it must be considered plausible that the author of the climbing exercise could have really performed the two phases, having first to push aside the shutters and then proceeding to climb after having thrown the rock, beyond the uncertain result of the throw itself;

• why the pieces of glass which, owing to the rock-throw, should have fallen also on the outside, have been found all on the inside, and also why, as well, they did not impede the ingress of the climber, who left no traces of blood on the windowsill, demonstrating that no cuts to the hand had occurred.

Finally, it is altogether incongruous that if the climbing thief would have really broken the pane before entering through the window, the pieces of glass could be

found on top of and beneath the clothing, and it is even more incongruous to think that this could have taken place after the rummaging through of the clothes, one cannot see how the pieces of glass would have been able to end up, that is, climb back up, on top of the, by now, strewn clothes. The lack of logic of the thesis centred on the frenzy of the manoeuvre is **[97]** manifest, being an argument lacking any concreteness or coherence, also because the presumed thief had quite quickly mutated into something quite different, so as to render superfluous any remark on the reasonableness of the explanation.

And above all, the stubbornness of the climber, firmly decided on perpetrating the theft, how can this be explained, without there having been a precautionary investigation that there was no one at home? This is all the more pertinent in the timespan of 9:30 PM-10:15 PM as hypothesized by the Court, when it was reasonable to suppose that there might still have been some sign of Meredith's presence, having just arrived home. However, in desiring to think the opposite, whichever hour be hypothesized, it is quite incongruous that the unknown person could have made all the fracas hypothesized with the rock throwing and the smashing of the panes, without Meredith's having noticed it and having attempted to flee, or hide herself, or call someone for help; and furthermore, it is not clear why the climber, who was intending to carry out a theft, when all was said and done, had stolen nothing, had taken only the phones which he had then abandoned, and, *per contra*, if he had been taken by an unusual homicidal frenzy submitting the *povera*[83] victim to the treatment well-known to us, importing an entirely different approach and a completely different type of criminal act.

But to all these questions, which the first instance judgement posed giving a coherent response and in line with the outcomes of oral argument, the challenged judgment does not give any response; it formulates, instead, hypotheses which ought to be proved through an inductive reasoning, and instead, far from being subjected to testing by certain elements deduced from the oral argument outcomes, the hypotheses become certitudes for the adjudicator, from which, **[98]** with respect to the initial hypothesis, there spring fallacious conclusions.

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[83] NdT – in the original sense in English of "poor", or "unfortunate", but unfortunate with the connotation of evoking sympathy and compassion, rather than the feelings of coldness and stand-off-ishness more commonly associated with the word nowadays.

The entire judgment on the point follows this scheme, which in the premise of this appeal is referred to as "*petitio principii*", and embodies the error of the judgment, in its form or its non-existent reasoning, or in that of manifest illogicality (art. 606 paragraph 1(e) of the Criminal Procedure Code).

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Documents referrable:

Annexure 22: transcript of the Court of Assizes Perugia hearing of February 7, 2009

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10. – DEFECTIVE RECOGNITION OF AGGRAVATION IN THE TELEOLOGICAL NEXUS OF THE OFFENCE OF *CALUNNIA*.

INCONSISTENCY OR MANIFEST ILLOGICALITY OF THE REASONS FOR JUDGMENT; DEFECT ARISING FROM THE TRIAL DOCUMENTS: FROM THE DECLARATIONS OF PATRICK DIYA LUMUMBA, FROM THOSE OF THE SAME ACCUSED AMANDA KNOX AND FROM THE CONTENTS OF THE CONVERSATION BETWEEN THIS LATTER AND HER MOTHER ON November 10, 2007 – Article 606(e), last part, Criminal Procedure Code.

The CAA held Knox responsible for the offence of *calunnia* under heading (F), to the detriment of Patrick Diya Lumumba, but did not recognise aggravation under Article 61(2) of the Criminal Code, charged against Ms Knox, due to having committed the *calunnia* with the aim of obtaining, for herself and for the other co-accused impunity from the murder and in particular for Guede, he being of colour just like Lumumba.

The Court of Appeal of Assizes, therefore, upheld the *calunnia* charge against Knox, but excluded from it any link with the murder.

[99] To produce a logical and rational motivation report, the CAA first of all explained why Knox named Lumumba, then, – in the attempt to overcome the evident contradictions recognisable between holding Ms Knox responsible for the

calunnia damaging Lumumba, and instead holding her extraneous to the offence in which she knew Lumumba to be extraneous to, – has explained why Knox could not have been unaware of Lumumba's innocence and, simultaneously, why she would have to be extraneous to the murder.

It is a question of the points of the [Court's] reasoning being, as will be seen, profoundly and manifestly illogical and conflicting with the procedural findings, which will be successively indicated [below].

Why the name of Lumumba?

According to the CAA, Ms Knox had calumniated Lumumba solely to put an end to the "stress" of the "interrogations".

The judgment appealed from displays not having, in fact, upheld the prosecutorial assumption according to which Ms Knox, anxious because Sollecito had negated the alibi of their being together that night, decided to say what had happened, substituting Lumumba for Rudy.

According to the appeal judges, in fact, "*The obsessive length of the interrogations which took place day and night and were conducted by several people questioning a young and foreign girl,… deprived of the advice of a lawyer, to which she would have been entitled since she was by then in fact accused of serious crimes, and assisted … by an interpreter who …instead of limiting herself to translating also tried to induce her to force herself to remember, explaining to her that maybe, because of the trauma she had undergone, her memories were confused, makes it altogether understandable that she found herself in a situation of significant psychological pressure – calling it stress* **[100]** *would appear reductive – such as to raise doubt about the actual spontaneous nature of the declarations. A spontaneity that surges forth strangely in the middle of the night, after hours and hours of interrogation: the so-called spontaneous declarations were given at 1:45 AM (in the middle of the night) of November 6, 2007 (the day following the beginning of the interrogation) and again at 5:45 AM, and the memorandum was written a few hours later.*" (page 30 of the appeal judgment).

Now then, beyond grave and totally unfounded insinuations on the non-spontaneity of Ms Knox's declarations, it is not given to understand from what the Court infers such a particular psychological stress in the young American woman, so as to induce

her to commit a grave *calunnia* purely to "free herself" from the investigators' questions.

In the course of investigations for such a brutal murder, it is a completely normal eventuality that investigators during the early days of the investigations will be making lengthy and pressing questioning of people who are able to furnish information about the facts. Long examinations had to be endured by the victim's Italian housemates, especially Ms Romanelli, their friends, the boys who were living on the floor below, in addition to Ms Kercher's co-nationals, who even returned from the United Kingdom to answer further questions after having been interviewed at length in the *Questura*, but to none of them did it ever enter their minds to accuse an innocent of the murder to free themselves from the "burden" of questioning by the investigators.

On this point it is to be observed, further, that it was Ms Knox who presented herself in the *Questura* on her own initiative to accompany Raffaele Sollecito, who was going to have to be interviewed: *"Ms Knox was waiting and doing cartwheels and the splits and was tranquil up until the mobile phone was shown to her"* (Knox cross-examination transcript June 13, 2009, pp 17 and 18 and examination of Inspector **[101]** Rita Ficarra, February 28, 2009). All the so-called "interrogations" up until the declarations at 5:45 AM of November 6, 2007, were incorporations [*assunzioni*] [into the evidence file] of summarised information in which Knox was heard as "[a person] informed of the facts" and in which no defence counsel was able to participate. It is truly disconcerting how the CAA ignored the procedural cloak that Ms Knox wore up until the officers of the investigation taskforce of the Perugia Flying Squad suspended the examination of Ms Knox as provided for by Article 63 of the Criminal Procedure Code, there having emerged against her indicia of responsibility for the murder; from that moment onwards, Ms Knox was not placed under any examination or "interrogation".

The Court has affirmed that the "interrogations" were conducted by numerous people, evidently even the one in consequence of which Ms Knox reached the peak of "stress" and calumniated Lumumba, but this circumstance, put forward by the defence in the appeal document, is absolutely unfounded.

If the District Court [= the CAA] had deepened its reading of the trial documents, it would have had the means of noting that the same accused [=Amanda], in the conversation with her mother on November 10, 2007, pp 43 and 44, had admitted:

"A[84]: *I said … that what happened was that everyone had left the room, at that moment one of the police officers had said: 'I'm the only one that can save you, I'm the only one that can save you. Just give me a name.' And I said: 'I don't know!' And then they said, I said: 'can you show me the message that I received from Patrick?![']* Because *I don't remember having replied to him, and so they showed me the message and then I had said: "Patrick …" And then I thought of Patrick, of seeing Patrick, and so I thought that I had completely lost my* **[102]** *mind, and I imagined him uhm …of seeing him and …*

M[85]: *Seeing him where?*

A: *Seeing him near the basketball court.*

M: *OK.*

A: *And then in my house, I uhmm, imagined that I went like into the kitchen, I mean uhmm … because – I could hear her screaming, but it's not true. It isn't.*

M: *So, yes, they are now saying that you were .. OK*

A: *And so it's not true. I said this only because I thought that it might have been true, because I imagined it. I didn't say it because I wanted to protect myself; and I feel horrible about this. Because I've put Patrick in this horrible situation, he is imprisoned in gaol now, and it's my fault. It's my fault that he's here. I feel horrible. I didn't want to do this. I was only frightened and I was confused, but now I'm not.*

M: *OK, OK.*

A: *I'm here, and I'm safe and sound. But I don't want to stay here, because I know that I don't merit staying here.*

M: *OK.*"

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[84] Amanda Knox

[85] Edda Mellas, mother of Ms Knox

From the words of the accused, it can be inferred that, at a certain point, everyone who had been participating in the "interrogation", as the CAA calls it, went out, leaving a "police officer" who invited Ms Knox to remember; then she asked him to show the reply message to Patrick, Ms Knox not remembering having replied, and it was then that Ms Knox accused Lumumba.

The Court, instead, reconstructs the crucial moment of the *calunnia* recalling, according to it, the declarations by the interpreter, Donnino, according **[103]** to whom Amanda had a true and proper emotional shock when "*the story of the message exchanged with Lumumba came out*". And so, if Lumumba were innocent, why this shock? Because, replies the Court, "*having at that point reached the maximum [point] of emotional tension"* (pp 31 and 32).

Once again the Court constructs an hypothesis that is a pure conjecture, privy of any which confirmation.

Ms Donnino affirms (see the declarations at the March 13, 2009 hearing, p 137) that Amanda had denied having responded to Patrick's message but, when the opposite was proved by showing her the reply, she had the emotional breakdown and began to accuse Lumumba.

The Court of Assizes dwelt upon this same circumstance and had excluded the hypothesis of a "forcing" by the Police of Ms Knox because she had accused Lumumba, and this because the latter [i.e., Lumumba] had absolutely not been under the attention of the investigators who did not, in any case, without any other reason, have any motive for pushing Ms Knox to accuse Lumumba (see the CA judgment, page 418).

The total reasoning illogicality of the Court and the distortions of the probative findings do not end here.

According to the judgment appealed from, (p 32) "*constructing a brief story around that name [Lumumba] was certainly not very difficult, if for no other reason than that many details and many inferences had appeared already the day following [the crime] in many newspapers, and were circulating all over town, considering the small size of Perugia*".

On the day after the murder, though, contrary to the affirmation by the Court, no-one knew anything and there was no possibility of making conjectures. From which certain facts did the Court draw out this conviction? The judgment is lacking any

indication that can transform the formulated hypothesis **[104]** into a certain datum on which to construct a credible supposition; the hypothesis is not demonstrated, and the deduction a fantasy, completely invented by the Court, without any objective confirmation.

The newspapers concerned themselves with Lumumba only the day after November 6, because he was arrested. They had never spoken of him before.

Here also we must note another tripping up in the judgment in the false inductive reasoning constituted in the "fallacy of circular reasoning" already pointed out in the preamble to this appeal, that resolves itself into the defect of the extrinsic inconsistency of the reasoning identifiable in terms of Article 606(e) of the Criminal Procedure Code. Why did Amanda know Lumumba to be innocent?

According to the CAA, there are no contradictions between holding Ms Knox responsible for the *calunnia* in the matter of Lumumba in relation to the Kercher murder, and, therefore, aware of his innocence, and the fact that this crime [the *calunnia*] had not been finalised with a view to obtaining, for her and the other co-accused, impunity from the offence of that murder.

The Court of Assizes [sic, *read*: The CAA] had been well aware of the intimate connection existing between the *calunnia* ascribed to Ms Knox and her involvement in the Kercher murder and had no doubts in holding the sustainability of aggravation. Recalling the prosecutorial thesis, the first instance Court [sic, read: the CAA] affirms that "…*Amanda Knox could only know that Lumumba was innocent of the crime of murder because she herself had participated in that crime, and thus knew who the real murderers were; if she had not participated in the crime or had not been present at the moment of the crime in the house at Via della Pergola, she could not have known that Lumumba was innocent.*" (cf first instance judgment [sic, *read*: appeal judgment], p34[86]).

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[86] NdT – Page 34 of the appeal judgment. The reference here to the trial court, rather than to the appeal court, appears to be a *lapsus calami*. Page 34 of the trial judgment concerns itself with Rudy in Milan and the extent to which his predilections for burglary (as canvassed by the Knox/Sollecito defence teams) dove-tail with the situation at Via della Pergola. Page 34 of the appeal judgment cites the prosecution case (paraphrased in the quoted passage) to immediately reject it, in the context of reasoning that, in accusing Lumumba, Amanda knew him to be innocent, not because she was there at the scene and she knew that he wasn't, but because the circcumstances of Lumumba's name arising

[105] It is difficult to contest the high degree of coherence and rationality of the prosecutorial thesis under discussion that the judgment appealed from is however constrained to refute (as can be seen on p35 of the judgment) to be able to justify its own decision.

How can one subject be certain about ruling out another subject from a specific criminous fact if the first is not involved in the fact themselves?[87] For the Court of Appeal, instead, the conviction of Ms Knox for *calunnia* is based on the fact that she was certain of the complete extraneity of Lumumba in the murder of Ms Kercher, yet still being herself extraneous to the latter.

The Court of Appeal justified its conclusion, affirming that Ms Knox was definitely aware of Lumumba's innocence, but not because the accused had participated in the offence and knew who the authors were, but because "*the lack of any evidence [elementi] connecting Lumumba to Meredith Kercher, could allow Amanda Knox, even if actually innocent herself and far from the house in Via della Pergola at the time of the crime, to be aware of the complete non-involvement of Lumumba*" (pp 34 and 35).

This does not tally, though, with the procedural findings: it is not in fact true that there were no elements of ties between Lumumba and Meredith. In his declarations of April 3, 2009, Patrick Diya Lumumba refers to having met Meredith exactly through Amanda (cf the transcript of the declarations by Lumumba of April 3, 2009, at pp 151 and 152).

There was, instead, an element of a tie, and it was constituted by Ms Knox herself who had introduced Lumumba to the victim.

The explanation invoked by the Court, in one of the most critical passages of the judgment, to reconcile the psychological element of the upheld **[106]** *calunnia* against

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(through the phone message) and the lack of any known links between himself and Meredith, would have allowed Amanda to infer that Lumumba was, in addition to herself, also innocent. By this reasoning, the Court of Appeal sees no contradiction in upholding the *calunnia* charge while dismissing the murder charges.

[87] Cf Cass. Pen. Sez. VI, September 14, 2007, No 34881 (hearing March 7, 2007) Profeta and further in addition Cass. Pen. Sez. II, January 21, 2008, No 2750 (hearing December 16, 2008) Aragona. [RV 237675

Lumumba with the claimed extraneity of Ms Knox to the murder, is thus contradicted by specific information acquired during the trial at first instance.

The defect mapping to the missing correspondence between the probative result at the base of the court's argumentation, and the procedural or probative act (defined in terms of "procedural inconsistency", different to and distinct from that of "logic") is no longer limited to identifications on the face of the text of the judgment[88], but can also be signalled, via the currently enabled "hetero-integration" [rule], through other acts of a procedural or probative nature, provided that they are specifically indicated.

The recent amendment of Article 606(e) of the Criminal Procedure Code, under Article 8 of Statute No 46 of 2006, has widened the ambit of the defect of reasoning with reference to the conceptual category of "inconsistency", which the Court of Appeal of Perugia is also drawn into.

Documents referred to:

Appendix 23: hearing transcript, Court of Assizes, Perugia, June 13, 2009, cross-examination A. Knox.

Appendix 24: hearing transcript, Court of Assizes, Perugia, February 28, 2009, examination of Inspector Rita Ficarra.

Appendix 25: conversation of November 10, 2007 between Ms Knox and her mother.

Appendix 9: hearing transcript, Court of Assizes, Perugia, March 13, 2009, examination of the interpreter Anna Donnino.

Appendix 12: hearing transcript, Court of Assizes, Perugia, April 3, 2009, examination of Patrick Diya Lumumba.

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[88] NdT – the word "judgment" replacing the circumlocution "reasoning of the provisions being appealed from".

Appendix 31: hearing transcript, Court of Assizes, Perugia, June 19, 2009, examination of Edda Mellas, mother of A.K.

[107]

Appendix 1: Judgement of the Court of Assizes at first instance at p 419

CONCLUSIONS

Examination of the various grounds of appeal has evidenced the grave logico-juridical errors committed by the Court of Appeal, already described in the preamble.

From the reading of the judgment in its totality, independent of the individually examined grounds, an overall anomaly of the decision of the appeal bench emerges: the District Court placed itself, in the case before us, not as an appeal court upon whom was incumbent an analysis of fact and of law of the verdict appealed from, with specific reference to the reasons for appeal and to the observations made by the Procurator-General, but as a sort of "alternative first instance" court, whose task was to make a decision on the facts, without the least examination of the decision at first instance. In carrying out this task, the judgment did not shrink from disconcerting polemical observations about the court of first instance, too "fawning"[89] – this is the recurring "theme" – on the position of the prosecution and the findings of the investigative taskforce. With this view, the anomaly of an introductory summary was unavoidable, in which the Recorder[90] began with a most grave affirmation for a "third verdict" according to which ["]the only truly certain and indisputable objective fact" was the discovery in the house on Via della Pergola in Perugia of the body of Meredith Kercher, because only on this point were the public and private parties in agreement.

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[89] NdT – *appiattito*, literally "flatttened out", as in subservient to.

[90] NdT – the *relatore* (Recorder), in this case the associate judge, Massimo Zanetti

From the analysis of the various grounds of appeal, there emerges a truly radical and above all disconcerting **[108]** gap between the effective reality of judgment at first instance and the reconstruction of the same as given by the CAA. It will suffice to cite on this matter, purely as an example, the "falseness of the alibis" that, for the CAA, is absolutely the first datum from which the CA begins, even at the level of exposition (see the appealed judgment, p 11), as if the court at first instance had begun from an undemonstrated affirmation as that of the presence of Ms Knox and Mr Sollecito in the house on Via della Pergola on the night of the murder. The CAA actually cites a passage, with quotation marks, from the [original] judgment appealed from, which becomes reported like this: "*"No element"* – a verbatim quote from the judgment – *has, however, confirmed that Amanda Knox and Raffaele Sollecito were not to be found, late in the evening of that November 1,, in the house on Via della Pergola""* (see the appeal judgment p11).

Unfortunately, the Court of Appeal, not even in this passage, has indicated the exact context of the expression and has limited itself to underlining the fact that the "falseness of the alibis" relating to the presence of the two accused in a place very nearby, but different from, that of the murder on the night of 1, and November 2, 2007, was the first consideration taken into account by the CA both in the history of the proceedings and at the beginning of its evaluative conclusions. The CAA in judgment, verbatim, affirmed thus: "*The Court [of first instance], from a narrative point of view as well, begins precisely with this first fact, presented as the initial one both in the history of the case as well as in the concluding evaluations*" (see the judgment at p11).

The phrase in question, though, is not to be found at the beginning of the judgment, as erroneously maintained by the CAA, but in the concluding considerations, precisely at p 382, after a meticulous analysis, deepened and completed with all the probative elements emerging from the investigations and the oral argument hearings. There is no trace of it, either, in the "history **[109]** of the case": see p1 and p9, contrary to the assumption by the Court of Appeal.

It is submitted, therefore, because the most Excellent Court of Cassation, in accepting the current appeal, will desire to quash the decision of the Court of Appeal of Perugia, No 4 of 2011, handed down on October 3, 2011 and deposited on December 15, 2011, in the proceeding with the ordering of a new determination under Article 623(c) of the Criminal Procedure Code.

FOR THESE REASONS

It be requested that the most Excellent Court of Cassation desire to quash the appealed decision adopting the consequent provisionings.

Perugia, February 14, 2012.

(signed)

Procurator-General

Giovanni Galati

Deputy Procurator-General

Giancarlo Costagliola

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List of attachments to the appeal to Cassation

Annexure No 00:	Judgment of the Court of Assizes of Perugia 7/2009 of 4,-December 5, 2009, deposited March 4, 2010
Annexure No 01:	Judgment of the GUP of Perugia of October 28, 2008

Annexure No 02:	Judgment of the Court of Appeal of Perugia 7/2009 of December 22, 2009, conviction of Rudy Guede, homicide of Meredith Kercher
Annexure No 03:	Cass. pen. Sez. 1, judgment n. 1132-2010 of December 6, 2010 – Rudy Guede
Annexure No 04:	CAA order of December 18, 2010
Annexure No 05:	CAA order of September 7, 2011
Annexure No 06:	CAA hearing transcript of September 6, 2011 – examination of Prof Giuseppe Novelli, technical consultant for the Public Prosecutor
Annexure No 07:	CAA hearing transcript of September 7, 2011
Annexure No 08:	interview of Luciano Aviello dated July 22, 2011 proc. n. 10985/2010/21 RGNR, acquired by the CAA on September 7, 2011
Annexure No 09:	Perugia Court of Assizes hearing transcript of March 13, 2009
Annexure No 10:	Perugia Court of Assizes hearing transcript of June 26, 2009
Annexure No 11:	Perugia Court of Assizes hearing transcript of March 21, 2009
Annexure No 12:	Perugia Court of Assizes hearing transcript of April 3, 2009
Annexure No 13:	Perugia Court of Assizes hearing transcript of June 12, 2009
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Annexure No 31:	Perugia Court of Assizes hearing transcript of June 19, 2009, examination of Edda Melas [*sic*], mother of K.
Annexure No 32:	Annotations of the police taskforce, of the November 6, 2007 *memoriale* of AK.

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That is the conclusion of the Galati-Costigliola appeal document.

What follows is additional material that may be of assistance to the reader.

Additional material not part of the appeal document

To aid in understanding the appeal document within the legislative and legal context in which it is operating, citations in the text from the various Articles of the Criminal Code and the Criminal Procedure Code are expanded in this section, together with an accompanying cross-translation giving the gist of the Article.

Note that common law terminology, assumptions and concepts will be inappropriate, and, in some cases, misleading when applied as interpretative means to the Codes. Note, also, that individual provisions link to other provisions, and therefore a full and proper understanding of the Codes will not be possible without taking their totality (and associated jurisprudence) into account. The glosses provided here are merely for reader convenience only, not to provide an authoritative statement on Italian law.

The Criminal Code in Italian is available for perusal at the AltaLex site

<http://www.altalex.com/index.php?idnot=36653>,

as is the Criminal Procedure Code, at

<http://www.altalex.com/index.php?idnot=2011>.

The Italian Constitution can be read at

<http://www.governo.it/governo/costituzione/principi.html>.

List of Code and Constitution Articles cited

Constitution

Const 111

Art. 111. La giurisdizione si attua mediante il giusto processo regolato dalla legge. Ogni processo si svolge nel contraddittorio tra le parti, in condizioni di parità, davanti a giudice terzo e imparziale. La legge ne assicura la ragionevole durata. Nel processo penale, la legge assicura che la persona accusata di un reato sia, nel più breve tempo possibile, informata riservatamente della natura e dei motivi dell'accusa elevata a suo carico; disponga del tempo e delle condizioni necessari per preparare la sua difesa; abbia la facoltà, davanti al giudice, di interrogare o di far interrogare le persone che rendono dichiarazioni a suo carico, di ottenere la convocazione e l'interrogatorio di persone a sua difesa nelle stesse condizioni dell'accusa e l'acquisizione di ogni altro mezzo di prova a suo favore; sia assistita da un interprete se non comprende o non parla la lingua impiegata nel processo. Il processo penale è regolato dal principio del contraddittorio nella formazione della prova. La colpevolezza dell'imputato non può essere provata sulla base di dichiarazioni rese da chi, per libera scelta, si è sempre volontariamente sottratto all'interrogatorio da parte dell'imputato o del suo difensore. La legge regola i casi in cui la formazione della prova non ha luogo in contraddittorio per consenso dell'imputato o per accertata impossibilità di natura oggettiva o per effetto di provata condotta illecita. Tutti i provvedimenti giurisdizionali devono	Article 111 Jurisdiction is activated through just proceeding regulated by law. Each proceeding will develop through adversarial joinder between the parties, before an independent impartial judge. The law will ensure its reasonable duration. In criminal proceedings, the law will ensure that the person accused of a crime be, in the shortest time possible, informed of the nature and reasons of the charge raised against him; has the time and conditions necessary to prepare his defence; has the faculty, before the judge, to question or have questioned the persons who make charges against him, to obtain the summoning and questioning of persons in his defence in the same conditions as the prosecution and the acquisition of any other means of proof in his favour; be helped by an interpreter if he does not understand or does not speak the language used in the proceeding. The criminal trial is governed by the adversarial rule in the establishment of proof. The culpability if the accused cannot be tested on the basis of declarations made by someone who, by free choice, has always voluntary excluded themselves from being questioned by the accused or by his defender. … All jurisdictional provisionings must be with reasons.

essere motivati. Contro le sentenze e contro i provvedimenti sulla libertà personale, pronunciati dagli organi giurisdizionali ordinari o speciali, è sempre ammesso ricorso in Cassazione per violazione di legge. Si può derogare a tale norma soltanto per le sentenze dei tribunali militari in tempo di guerra. Contro le decisioni del Consiglio di Stato e della Corte dei conti il ricorso in Cassazione è ammesso per i soli motivi inerenti alla giurisdizione.	Appeals to Cassation for violation of law are always allowed against sentences or against provisions affecting personal liberty pronounced by ordinary or special judicial organs. … …

Criminal Code

CC 61(2)

Art. 61. **Circostanze aggravanti comuni.**	Article 61 General aggravation
Aggravano il reato quando non ne sono elementi costitutivi o circostanze aggravanti speciali le circostanze seguenti:	The crime is aggravated, when there are no constituitive elements or special aggravating circumstances, by the following circumstances:
1) l'avere agito per motivi abietti o futili;	(1) for having carried it out for abject or futile reasons;
2) l'aver commesso il reato per eseguirne od occultarne un altro, ovvero per conseguire o assicurare a sé o ad altri il prodotto o il profitto o il prezzo ovvero la impunità di un altro reato;	(2) for having committed the crime to carry out or hide another crime, or to obtain or assure for themselves or for others the product or the profit or the price or else the impunity of another crime;
3) l'avere, nei delitti colposi, agito nonostante la previsione dell'evento;	(3) for having, in serious crimes, carried it out notwithstanding foreseeing the event;
4) l'avere adoperato sevizie, o l'aver agito con crudeltà verso le persone;	(4) for having used torture, or for having carried it out with cruelty against the person
5) l’avere profittato di circostanze di tempo, di luogo o di persona, anche in riferimento all’età, tali da ostacolare la pubblica o privata difesa; ([1])	(5) for having profited from the circumstances of the time, place or person, including age, such as to obstruct public or private defence
6) l'avere il colpevole commesso il reato durante il tempo, in cui si è sottratto volontariamente alla esecuzione di un mandato o di un ordine di arresto o di cattura o di carcerazione, spedito per un precedente reato;	(6) for the culprit having committed the crime during the time, in which he voluntarily removed himself from the execution of a warrant for arrest, capture or imprisonment arising from a previous crime
7) l'avere, nei delitti contro il patrimonio o che comunque offendono il patrimonio,	(7) for having, in crimes against property or which harm property, or in crimes defined by motives of lucre, occasioned against the person harmed

ovvero nei delitti determinati da motivi di lucro, cagionato alla persona offesa dal reato un danno patrimoniale di rilevante gravità;	by the crime property damage of relevant gravity;
8) l'avere aggravato o tentato di aggravare le conseguenze del delitto commesso;	(8) for having aggravated or attempted to aggravate the consequences of the crime committed;
9) l'avere commesso il fatto con abuso dei poteri, o con violazione dei doveri inerenti a una pubblica funzione o a un pubblico servizio, ovvero alla qualità di ministro di un culto;	(9) for having committed the fact with abuse of powers, or in violation of powers inherent in a public function or a public service, or in the quality of a sect leader;
10) l'avere commesso il fatto contro un pubblico ufficiale o una persona incaricata di un pubblico servizio, o rivestita della qualità di ministro del culto cattolico o di un culto ammesso nello Stato, ovvero contro un agente diplomatico o consolare di uno Stato estero, nell'atto o a causa dell'adempimento delle funzioni o del servizio;	(10) for having committed the fact against a public official or a person charged with a public service, or endowed with the quality of a Catholic sect leader or of a sect admitted by the State, or against a diplomatic agent or consul of a foreign State, in the act or in the carrying out of their functions or service;
11) l'avere commesso il fatto con abuso di autorità o di relazioni domestiche, ovvero con abuso di relazioni di ufficio, di prestazione d'opera, di coabitazione, o di ospitalità;	(11) for having committed the fact with abuse of authority or in domestic relations, or with abuse of official relations, of performance of work, or cohabitation, or of hospitality;
11-bis) l’avere il colpevole commesso il fatto mentre si trova illegalmente sul territorio nazionale; ([2]) ([3])	(11-bis) for the culprit having committed the fact while finding themselves illegally on national territory;
11-ter) l’aver commesso un delitto contro la persona ai danni di un soggetto minore all’interno o nelle adiacenze di istituti di istruzione o formazione; ([4])	(11-ter) for having committed an offence against the person upon a minor within or adjacent to institutes of instruction or training;
11-quater) l'avere il colpevole commesso un delitto non colposo durante il periodo in cui era ammesso ad una misura alternativa alla	(11-quater) for the culprit having committed a non-violent offence during the period in which they were under a measure alternative to detention in prison.

detenzione in carcere. ([5])	

CC 110

Art. 110. **Pena per coloro che concorrono nel reato.** Quando più persone concorrono nel medesimo reato, ciascuna di esse soggiace alla pena per questo stabilita, salve le disposizioni degli articoli seguenti.	Article 110 Penalty for those who participate in the crime When multiple persons participate in the same crime, each of them will be subject to the penalty established for this, save for the disposition of the following articles.

CC 367

Art. 367. **Simulazione di reato.** Chiunque, con denuncia, querela, richiesta o istanza, anche se anonima o sotto falso nome, diretta all'autorità giudiziaria o ad un'altra autorità che a quella abbia obbligo di riferirne, afferma falsamente essere avvenuto un reato, ovvero simula le tracce di un reato, in modo che si possa iniziare un procedimento penale per accertarlo, è punito con la reclusione da uno a tre anni.	Article 367 Simulation of a crime Whoever, with a report to authorities, suit, appeal or submission, even if anonymous or under false name, directed to judicial authority or to another authority who has the obligation to deal with it, falsely affirms a crime has occurred, or simulates the traces of a crime, in a way that allows criminal proceedings to commence to investigate it, is punished with imprisonment of from one to three years.

CC 368

Art. 368. **Calunnia.** Chiunque, con denunzia, querela , richiesta o istanza, anche se anonima o sotto falso nome,	Article 368 Calunnia Anyone who, – with a report to authorities,

diretta all'autorità giudiziaria o ad un'altra autorità che a quella abbia obbligo di riferirne, incolpa di un reato taluno che egli sa innocente, ovvero simula a carico di lui le tracce di un reato, è punito con la reclusione da due a sei anni. La pena è aumentata se s'incolpa taluno di un reato pel quale la legge stabilisce la pena della reclusione superiore nel massimo a dieci anni, o un'altra pena più grave. La reclusione è da quattro a dodici anni, se dal fatto deriva una condanna alla reclusione superiore a cinque anni; è da sei a venti anni, se dal fatto deriva una condanna all'ergastolo; e si applica la pena dell'ergastolo, se dal fatto deriva una condanna alla pena di morte ([1]). (1) La pena di morte per i delitti previsti dal codice penale è stata abolita dall'art. 1 del D.Lgs.Lgt. 10 agosto 1944, n. 224.	suit, appeal or submission, even if anonymous or under false name, directed to the judicial authority or to any other authority that has obligation to deal with it, – inculpates in any crime anyone they know to be innocent, or simulates traces of a crime against them, is punished with imprisonment from two to seven years. The penalty is increased if the person is inculpated in a crime for which the law establishes a penalty of imprisonment not above ten years, or another more grave offence. The imprisonment is for from four to twelve years, if from the facts a sentence of imprisonment greater than five years derives; and from six to twenty years, if from the facts a life sentence derives; and a life sentence applies, if on the facts a capital conviction applies.([1]) (1) The death penalty for offences under the Criminal Code has been abolished by Statute 1944 number 224 Article 1.

CC 386

Art. 386. **Procurata evasione.** Chiunque procura o agevola l'evasione di una persona legalmente arrestata o detenuta per un reato, è punito con la reclusione da sei mesi a cinque anni. Si applica la reclusione da tre a dieci anni se il fatto è commesso a favore di un condannato alla pena di morte o all'ergastolo. La pena è aumentata se il colpevole, per commettere il fatto, adopera alcuno dei mezzi indicati nel primo capoverso dell'articolo precedente.	Article 386 Assisted escape Whoever procures or arranges the escape of a person legally arrested or detained for a crime, is punished with imprisonment from six months to five years. …

La pena è diminuita: 1)se il colpevole è un prossimo congiunto; 2) se il colpevole, nel termine di tre mesi dall'evasione, procura la cattura della persona evasa o la presentazione di lei all'autorità. La condanna importa in ogni caso l'interdizione dai pubblici uffici.	

CC 575

Art. 575. **Omicidio.** Chiunque cagiona la morte di un uomo è punito con la reclusione non inferiore ad anni ventuno.	Article 575 Homicide Whoever occasions the death of a human is punished with imprisonment not less than twenty one years.

CC 576

Art. 576. **Circostanze aggravanti. Pena dell'ergastolo.** Si applica la pena dell'ergastolo se il fatto preveduto dall'articolo precedente è commesso: 1. col concorso di taluna delle circostanze indicate nel n. 2 dell'articolo 61; 2. contro l'ascendente o il discendente,	Article 576 Aggravating circumstances. Penalty of life sentence. A life sentence penalty applies if the fact provided for in the preceding article is committed: 1. in the course of any of the circumstances indicated in number 2 of Article 61; 2. against an ancestor or descendant, in

quando concorre taluna delle circostanze indicate nei numeri 1 e 4 dell'articolo 61 o quando è adoperato un mezzo venefico o un altro mezzo insidioso, ovvero quando vi è premeditazione; 3. dal latitante, per sottrarsi all'arresto, alla cattura o alla carcerazione ovvero per procurarsi i mezzi di sussistenza durante la latitanza; 4. dall'associato per delinquere, per sottrarsi all'arresto, alla cattura o alla carcerazione; 5. in occasione della commissione di taluno dei delitti previsti dagli articoli 609-bis, 609-quater e 609-octies. 5.1) dall'autore del delitto previsto dall'articolo 612-bis nei confronti della stessa persona offesa. 5-bis) contro un ufficiale o agente di polizia giudiziaria, ovvero un ufficiale o agente di pubblica sicurezza, nell'atto o a causa dell'adempimento delle funzioni o del servizio. È latitante, agli effetti della legge penale, chi si trova nelle condizioni indicate nel n. 6 dell'articolo 61.	the case of any of the circumstances indicated in numbers 1 and 4 of Article 61 or when a poisonous means or other insidious means is adopted, or when there is premeditation; 3. by the fugitive, to prevent his arrest, capture or imprisonment or to procure means of subsistence during the flight; 4. by the associate to commit crimes, to prevent his arrest, capture or imprisonment; 5. in the occasion of the commission of any of the offences provided for by Articles 609-bis, 609-quarter and 609-octies. 5.1 by the author of the offence provided for in Article 612-bis in dealings with the same person harmed. 5-bis against an official or agent of the judicial police, or an official or agent of public security, in the act or in the carrying out of their functions or service. A person is a fugitive, for the purposes of the criminal law, if they find themselves in the conditions indicated by number 6 of Article 61.

CC 577

Art. 577. **Altre circostanze aggravanti. Ergastolo.** Si applica la pena dell'ergastolo se il fatto	Article 577 Other aggravating circumstances. Life sentence.

preveduto dall'articolo 575 è commesso: 1) contro l'ascendente o il discendente; 2) col mezzo di sostanze venefiche, ovvero con un altro mezzo insidioso; 3) con premeditazione; 4) col concorso di taluna delle circostanze indicate nei numeri 1 e 4 dell'articolo 61. La pena è della reclusione da ventiquattro a trenta anni, se il fatto è commesso contro il coniuge, il fratello o la sorella, il padre o la madre adottivi, o il figlio adottivo, o contro un affine in linea retta.	The penalty of life sentence is applied if the fact provided for by Article 575 is committed: (1) against the ancestor or descendant; (2) by means of poisonous substances, or other insidious means; (3) with premeditation; (4) in the course of any of the circumstances indicated by numbers 1 to 4 of Article 61. The penalty is imprisonment for twenty-four to thirty years, if the fact is committed against the spouse, brother or sister, adoptive father or mother, or adoptive child, or against a relative in the direct line.

CC 609

Art. 609. **Perquisizione e ispezione personali arbitrarie.** Il pubblico ufficiale, che, abusando dei poteri inerenti alle sue funzioni, esegue una perquisizione o una ispezione personale è punito con la reclusione fino ad un anno.	Article 609 Arbitrary searches and personal inspections The public official, who, abusing the powers inherent in their functions, carries out a search or a personal inspection is punished with imprisonment for up to one year.

CC 624

Art. 624. **Furto.** Chiunque s'impossessa della cosa mobile altrui, sottraendola a chi la detiene, al fine di trarne profitto per sé o per altri, è punito con la reclusione da sei mesi a tre anni e con la multa da euro 154 a euro 516.	Article 624 Theft Whoever takes possession of the moveable things of another, removing them from the one possessing the, for the purposes of profiting by it for themselves or for others, is

Agli effetti della legge penale, si considera cosa mobile anche l'energia elettrica e ogni altra energia che abbia un valore economico. Il delitto è punibile a querela della persona offesa, salvo che ricorra una o più delle circostanze di cui agli articoli 61, numero 7), e 625.	punished with three years and six months of imprisonment and with a fine of between 154 and 516 euro. For the purposes of criminal law, moveable things are considered to also include electrical energy and any other energy that has economic value. The offence is punishable at the suit of the person harmed, save for when one or more of the circumstances under Articles 61(7) and 625 are required.

Criminal Procedure Code

CPC 12

Art. 12. **Casi di connessione.** 1. Si ha connessione di procedimenti: a) se il reato per cui si procede è stato commesso da più persone in concorso o cooperazione fra loro, o se più persone con condotte indipendenti hanno determinato l'evento; b) se una persona è imputata di più reati commessi con una sola azione od omissione ovvero con più azioni od omissioni esecutive di un medesimo disegno criminoso; c) se dei reati per cui si procede gli uni sono stati commessi per eseguire o per occultare gli altri.	Article 12 Connected cases 1. Proceedings are connected when: (a) the crime being proceeded with has been committed by two or more people in concert with or in cooperation amongst themselves, or if two or more people with conduct independently shaping the event; (b) … (c) …

CPC 63

Art. 63. **Dichiarazioni indizianti.** 1. Se davanti all'autorità giudiziaria o alla polizia giudiziaria una persona non imputata ovvero una persona non sottoposta alle indagini rende dichiarazioni dalle quali emergono indizi di reità a suo carico, l'autorità procedente ne interrompe l'esame, avvertendola che a seguito di tali dichiarazioni potranno essere svolte indagini nei suoi confronti e la invita a nominare un difensore. Le precedenti dichiarazioni non possono essere utilizzate contro la persona che le ha rese.	Article 63 Incriminating declarations 1. If in front of a judicial authority or the *polizia giudiziaria* a non-accused person or a person not placed under investigation makes declarations from which there emerge indicia of criminality against them, the authority will proceed to suspend the examination, advising the person that as a consequence of such declarations there may be investigations carried out against them and will invite the person to nominate a defender. The prior declarations may not be used against the person who has made them.

2. Se la persona doveva essere sentita sin dall'inizio in qualità di imputato o di persona sottoposta alle indagini, le sue dichiarazioni non possono essere utilizzate.	2. If the person needed to be heard from the beginning in terms of being an accused or a person placed under investigation, their declarations may not be used.

CPC 190

Art. 190. **Diritto alla prova.** 1. Le prove sono ammesse a richiesta di parte. Il giudice provvede senza ritardo con ordinanza escludendo le prove vietate dalla legge e quelle che manifestamente sono superflue o irrilevanti. 2. La legge stabilisce i casi in cui le prove sono ammesse di ufficio. 3. I provvedimenti sull'ammissione della prova possono essere revocati sentite le parti in contraddittorio.	Article 190 Right to evidence 1. Evidence will be admitted at the request of the parties. The judge will provide so without delay with orders excluding evidence forbidden by law or which is manifestly superfluous or irrelevant. 2. The law permits cases in which evidence is admitted *ex officio*. 3. Provisions on the admission of evidence may be revoked after having heard from the parties in objection.

CPC 192

Art. 192. **Valutazione della prova.** 1. Il giudice valuta la prova dando conto nella motivazione dei risultati acquisiti e dei criteri adottati. 2. L'esistenza di un fatto non può essere desunta da indizi a meno che questi siano gravi, precisi e concordanti. 3. Le dichiarazioni rese dal coimputato del medesimo reato o da persona imputata in un procedimento connesso a norma dell'articolo 12 sono valutate unitamente agli altri	Article 192 Evaluating evidence 1. The court evaluates the evidence taking into account in its reasoning the outcomes acquired and the criteria adopted. 2. The existence of a fact cannot be inferred from items of circumstantial evidence unless these are weighty, specific and coherent. 3. Declarations made by the co-accused in the same offence or by a person charged in a connected proceeding under Article 12 are

elementi di prova che ne confermano l'attendibilità. 4. La disposizione del comma 3 si applica anche alle dichiarazioni rese da persona imputata di un reato collegato a quello per cui si procede, nel caso previsto dall'articolo 371 comma 2 lettera b).	evaluated together with the other elements of proof which go to confirming its reliability. 4. The disposition of paragraph 3 applies also to the declarations made by a person charged with an offence related to that in the matter at hand, in the case provided for by Article 371 paragraph 2(b).

CPC 197

Art. 197. **Incompatibilità con l'ufficio di testimone.** 1. Non possono essere assunti come testimoni: a) i coimputati del medesimo reato o le persone imputate in un procedimento connesso a norma dell'articolo 12, comma 1, lettera a), salvo che nei loro confronti sia stata pronunciata sentenza irrevocabile di proscioglimento, di condanna o di applicazione della pena ai sensi dell'articolo 444; b) salvo quanto previsto dall'articolo 64, comma 3, lettera c), le persone imputate in un procedimento connesso a norma dell'articolo 12, comma 1, lettera c), o di un reato collegato a norma dell'articolo 371, comma 2, lettera b), prima che nei loro confronti sia stata pronunciata sentenza irrevocabile di proscioglimento, di condanna o di applicazione della pena ai sensi dell'articolo 444; c) il responsabile civile e la persona civilmente obbligata per la pena pecuniaria; d) coloro che nel medesimo procedimento svolgono o hanno svolto la funzione di giudice, pubblico ministero o loro ausiliario nonché il difensore che abbia svolto attività	Article 197 Incompatibility with the role of witness 1. The following cannot be taken on as a witness: (a) the co-accused in the same crime or the persons arraigned in a connected proceeding under Article 12(1)(a), except where irrevocable sentences have been pronounced of acquittal, of conviction or of application of the penalty in the meaning of Article 444; (b) … (c) … (d) …

di investigazione difensiva e coloro che hanno formato la documentazione delle dichiarazioni e delle informazioni assunte ai sensi dell'articolo 391-ter.	
Art. 197-bis. **Persone imputate o giudicate in un procedimento connesso o per reato collegato che assumono l'ufficio di testimone.**	Article 197-bis Persons charged or adjudged in a connected proceeding or for related crime who assume the role of witness
1. L'imputato in un procedimento connesso ai sensi dell'articolo 12 o di un reato collegato a norma dell'articolo 371, comma 2, lettera b), può essere sempre sentito come testimone quando nei suoi confronti è stata pronunciata sentenza irrevocabile di proscioglimento, di condanna o di applicazione della pena ai sensi dell'articolo 444.	1 The defendant in a connected proceeding within the meaning of Article 12 or of a linked crime under Article 371(2)(b), may be heard as witness when in his matter irrevocable sentence has been pronounced of acquittal, of conviction or of application the penalty under Article 444.
2. L'imputato in un procedimento connesso ai sensi dell'articolo 12, comma 1, lettera c), o di un reato collegato a norma dell'articolo 371, comma 2, lettera b), può essere sentito come testimone, inoltre, nel caso previsto dall'articolo 64, comma 3, lettera c).	2 …
3. Nei casi previsti dai commi 1 e 2 il testimone è assistito da un difensore. In mancanza di difensore di fiducia è designato un difensore di ufficio.	3 …
4. Nel caso previsto dal comma 1 il testimone non può essere obbligato a deporre sui fatti per i quali è stata pronunciata in giudizio sentenza di condanna nei suoi confronti, se nel procedimento egli aveva negato la propria responsabilità ovvero non aveva reso alcuna dichiarazione. Nel caso previsto dal comma 2 il testimone non può essere obbligato a deporre su fatti che concernono la propria responsabilità in ordine al reato per cui si procede o si è proceduto nei suoi confronti.	4 In the cases subject to paragraph 1, the witness shall not be obligated to depose on the facts for which there has been pronounced in judgment sentence of conviction in his matter, if in the proceeding he had denied his own responsibility or had not made any declaration. …

5. In ogni caso le dichiarazioni rese dai soggetti di cui al presente articolo non possono essere utilizzate contro la persona che le ha rese nel procedimento a suo carico, nel procedimento di revisione della sentenza di condanna ed in qualsiasi giudizio civile o amministrativo relativo al fatto oggetto dei procedimenti e delle sentenze suddette. 6. Alle dichiarazioni rese dalle persone che assumono l'ufficio di testimone ai sensi del presente articolo si applica la disposizione di cui all'articolo 192, comma 3. ([2])	5 … 6 …

CPC 210

Art. 210. **Esame di persona imputata in un procedimento connesso.** 1. Nel dibattimento, le persone imputate in un procedimento connesso a norma dell'articolo 12, comma 1, lettera a), nei confronti delle quali si procede o si è proceduto separatamente e che non possono assumere l'ufficio di testimone, sono esaminate a richiesta di parte, ovvero, nel caso indicato nell'articolo 195, anche di ufficio. 2. Esse hanno obbligo di presentarsi al giudice, il quale, ove occorra, ne ordina l'accompagnamento coattivo. Si osservano le norme sulla citazione dei testimoni. 3. Le persone indicate nel comma 1 sono assistite da un difensore che ha diritto di partecipare all'esame. In mancanza di un difensore di fiducia è designato un difensore di ufficio. 4. Prima che abbia inizio l'esame, il giudice avverte le persone indicate nel comma 1 che, salvo quanto disposto dall'articolo 66 comma	Article 210 Examination of a person accused in a connected proceeding 1… 2… 3… 4. Before proceeding with the examination, the judge will advert the person indicated in paragraph 1 that, subject to Article 66(1),

1, esse hanno facoltà di non rispondere. 5. All'esame si applicano le disposizioni previste dagli articoli 194, 195, 498, 499 e 500. 6. Le disposizioni dei commi precedenti si applicano anche alle persone imputate in un procedimento connesso ai sensi dell'articolo 12, comma 1, lettera c), o di un reato collegato a norma dell'articolo 371, comma 2, lettera b), che non hanno reso in precedenza dichiarazioni concernenti la responsabilità dell'imputato. Tuttavia a tali persone è dato l'avvertimento previsto dall'articolo 64, comma 3, lettera c), e, se esse non si avvalgono della facoltà di non rispondere, assumono l'ufficio di testimone. Al loro esame si applicano, in tal caso, oltre alle disposizioni richiamate dal comma 5, anche quelle previste dagli articoli 197-bis e 497.	they have the faculty of not responding. 5… 6…

CPC 224

Art. 224. **Provvedimenti del giudice.** 1. Il giudice dispone anche di ufficio la perizia con ordinanza motivata, contenente la nomina del perito, la sommaria enunciazione dell'oggetto delle indagini, l'indicazione del giorno, dell'ora e del luogo fissati per la comparizione del perito. 2. Il giudice dispone la citazione del perito e dà gli opportuni provvedimenti per la comparizione delle persone sottoposte all'esame del perito. Adotta tutti gli altri provvedimenti che si rendono necessari per l'esecuzione delle operazioni peritali.	Article 224 Provisions by the court 1. The court will dispose, including *ex officio*, an expert examination via an order with reasons, containing the name of the expert, a summary promulgation of the object of the investigations, an indication of the day, time and place fixed for the appearance of the expert. 2. The court disposes the summons of the expert and will give opportune provision for the appearance of the persons placed under the examination of the expert. All the other provisions that become necessary for the carrying out of the expert's operations will be

	adopted.

CPC 237

Art. 237. **Acquisizione di documenti provenienti dall'imputato.** 1. E' consentita l'acquisizione, anche di ufficio, di qualsiasi documento proveniente dall'imputato, anche se sequestrato presso altri o da altri prodotto.	Article 237 Acquisition of documents origination from the accused 1. The acquisition, including *ex officio*, is permitted of any document originating from the accused, including if seized in the possession of others or produced by others.

CPC 238

Art. 238. **Verbali di prove di altri procedimenti.** 1. E' ammessa l'acquisizione di verbali di prove di altro procedimento penale se si tratta di prove assunte nell'incidente probatorio o nel dibattimento . 2. E' ammessa l'acquisizione di verbali di prove assunte in un giudizio civile definito con sentenza che abbia acquistato autorità di cosa giudicata. 2-bis. Nei casi previsti dai commi 1 e 2 i verbali di dichiarazioni possono essere utilizzati contro l'imputato soltanto se il suo difensore ha partecipato all'assunzione della prova o se nei suoi confronti fa stato la sentenza civile. 3. E' comunque ammessa l'acquisizione della documentazione di atti che non sono ripetibili. Se la ripetizione dell'atto è divenuta impossibile per fatti o circostanze sopravvenuti, l'acquisizione è ammessa se si	Article 238 Statements of proof from other proceedings 1. The acquisition of evidentiary statements from another criminal matter is allowed if it a case of evidence acquired in the *incidente probatorio* or during oral argument. 2. The acquisition is allowed of evidentiary statements acquired in a civil matter having reached a decision that has attained the authority of a matter adjudged. 2-bis. In the cases provided for by paragraphs 1 and 2, declaratory statements may be used against the accused only if their defender has participated in the acquisition of evidence or if in their legal dealings a civil decision has been made. 3. Nevertheless, the acquisition of documentation of court files which are not repeatable is allowed. If the repetition of the file has become impossible by supervening

tratta di fatti o circostanze imprevedibili. 4. Al di fuori dei casi previsti dai commi 1, 2, 2-bis e 3, i verbali di dichiarazioni possono essere utilizzati nel dibattimento soltanto nei confronti dell'imputato che vi consenta; in mancanza di consenso, detti verbali possono essere utilizzati per le contestazioni previste dagli articoli 500 e 503. 5. Salvo quanto previsto dall'articolo 190-bis, resta fermo il diritto delle parti di ottenere a norma dell'articolo 190 l'esame delle persone le cui dichiarazioni sono state acquisite a norma dei commi 1, 2, 2-bis e 4 del presente articolo.	facts or circumstances, the acquisition is allowed if it is a case of unforeseeable facts or circumstances. 4. Beyond the cases provided for by paragraphs 1, 2, 2-bis and 3, declaratory statements may be used during oral argument only in dealings with the accused who consents to it; in the absence of consent, said statements may be used for the notifications provided for by Articles 500 and 503. 5. Except as provided for by Article 190-bis, the right remains of the parties to obtain an Article 190 examination of the persons whose declarations have been acquired under paragraphs 1, 2, 2-bis and 4 of the current Article.

CPC 238 bis

Art. 238-bis. **Sentenze irrevocabili.** Fermo quanto previsto dall'articolo 236, le sentenze divenute irrevocabili possono essere acquisite ai fini della prova di fatto in esse accertato e sono valutate a norma degli articoli 187 e 192, comma 3.	Article 238-bis Irrevocable Judgments Subject to Article 236, judgments which have become irrevocable may be acquired to the ends of proof of the fact in them ascertained and are evaluated under Articles 187 and 192 paragraph 3.

CPC 360

Art. 360. **Accertamenti tecnici non ripetibili.** 1. Quando gli accertamenti previsti dall'articolo 359 riguardano persone, cose o luoghi il cui stato è soggetto a modificazione, il pubblico ministero avvisa, senza ritardo, la persona sottoposta alle indagini, la persona offesa dal reato e i difensori del giorno, dell'ora e del luogo fissati per il conferimento	Article 360 Non-repeatable technical findings 1. When the findings provided for under Article 359 relate to persons, things or places the which have been subject to modifications, the public prosecutor will advise, without delay, the person placed under investigation, the person harmed by the crime and their

dell'incarico e della facoltà di nominare consulenti tecnici. 2. Si applicano le disposizioni dell'articolo 364 comma 2. 3. I difensori nonché i consulenti tecnici eventualmente nominati hanno diritto di assistere al conferimento dell'incarico, di partecipare agli accertamenti e di formulare osservazioni e riserve. 4. Qualora, prima del conferimento dell'incarico, la persona sottoposta alle indagini formuli riserva di promuovere incidente probatorio, il pubblico ministero dispone che non si proceda agli accertamenti salvo che questi, se differiti, non possano più essere utilmente compiuti. 5. Se il pubblico ministero, malgrado l'espressa riserva formulata dalla persona sottoposta alle indagini e pur non sussistendo le condizioni indicate nell'ultima parte del comma 4, ha ugualmente disposto di procedere agli accertamenti, i relativi risultati non possono essere utilizzati nel dibattimento.	defenders at the time, of the hour and place fixed for the carrying out of the task and of the ability to nominate technical consultants. 2.The dispositions of Article 364 paragraph 2 apply. 3. The defenders as well as if necessary the nominated technical consultants have the right to attend the carrying out of the task, of participating in the findings and of formulating observations and reservations. 4. In case, prior to the carrying out of the task, the person placed under investigation puts forward reservation to promote an *incidente probatorio*, the public prosecutor will order that the investigations not proceed save that these, if deferred, cannot be usefully carried out later. 5. If the public prosecutor, despite the express reserve submitted by the person placed under investigation and even if there be no grounds for the conditions indicated in the last part of paragraph 4, has equally disposed to proceed with the findings, the resulting outcomes may not be used in oral argument.

CPC 492

Art. 492. **Dichiarazione di apertura del dibattimento.** 1. Compiute le attività indicate negli articoli 484 e seguenti, il presidente dichiara aperto il dibattimento. 2. L'ausiliario che assiste il giudice dà lettura dell'imputazione.	Article 492 Declaration of the opening of oral argument 1. On the activities indicated in Articles 484 and following being completed, the president will declare oral argument open. 2. The associate who assists the judge will give reading to the indictment.

CPC 495

Art. 495. **Provvedimenti del giudice in ordine alla prova.**	Article 495 Provisions by the judge relating to evidence
1. Il giudice, sentite le parti, provvede con ordinanza all'ammissione delle prove a norma degli articoli 190, comma 1, e 190-bis. Quando è stata ammessa l'acquisizione di verbali di prove di altri procedimenti, il giudice provvede in ordine alla richiesta di nuova assunzione della stessa prova solo dopo l'acquisizione della documentazione relativa alla prova dell'altro procedimento .	1. The judge, having heard the parties, provides by order for the admission of evidence under Article 190 paragraph 1 and 190-bis. When the acquisition of transcripts of proof of other proceedings is allowed, the judge provides by order for the request for newly adducing the same evidence only after the acquisition of the documentation relating to the proof of the other proceeding.
2. L'imputato ha diritto all'ammissione delle prove indicate a discarico sui fatti costituenti oggetto delle prove a carico; lo stesso diritto spetta al pubblico ministero in ordine alle prove a carico dell'imputato sui fatti costituenti oggetto delle prove a discarico.	2. The accused has the right to the admission of the evidence indicated on discharge of the facts constituting the object of the proof on onus; the same right accrues to the public prosecutor in relation to the evidence against the accused on the facts constituting the object of proof to be discharged.
3. Prima che il giudice provveda sulla domanda, le parti hanno facoltà di esaminare i documenti di cui è chiesta l'ammissione.	3. Before the judge provides for on the question, the parties have the faculty of examining the documents the subject of the admission request.
4. Nel corso dell'istruzione dibattimentale, il giudice decide con ordinanza sulle eccezioni proposte dalle parti in ordine alla ammissibilità delle prove. Il giudice, sentite le parti, può revocare con ordinanza l'ammissione di prove che risultano superflue o ammettere prove già escluse.	4. In the course of oral argument instructions, the judge decides, by order, on the exceptions proposed by the parties relating to the admissibility of evidence. It judge, having heard the parties, may revoke by order the admission of evidence that is superfluous or admit evidence previously excluded.
4-bis. Nel corso dell'istruzione dibattimentale ciascuna delle parti può rinunziare, con il consenso dell'altra parte, all'assunzione delle prove ammesse a sua richiesta.	4-bis. In the course of oral argument instructions each of the parties may renounce, with the agreement of the other party, the assumption of evidence admitted at their request.

CPC 507

Art. 507. **Ammissione di nuove prove.**	Article 507 Admission of fresh evidence
1. Terminata l'acquisizione delle prove, il giudice, se risulta assolutamente necessario, può disporre anche di ufficio l'assunzione di nuovi mezzi di prove. 1-bis. Il giudice può disporre a norma del comma 1 anche l'assunzione di mezzi di prova relativi agli atti acquisiti al fascicolo per il dibattimento a norma degli articoli 431, comma 2, e 493, comma 3.	1. Once the acquisition of evidence has terminated, the judge, if it becomes absolutely necessary, may dispose, including *ex officio*, the assumption of new means of proof. 1-bis. The judge may also dispose under paragraph 1 the assumption of means of proof relative to the documents acquired into the case file for oral argument under Articles 431 paragraph2, and 493 paragraph 3.

CPC 511

Art. 511. **Letture consentite.**	Article 511 Permitted readings
1. Il giudice, anche di ufficio, dispone che sia data lettura, integrale o parziale, degli atti contenuti nel fascicolo per il dibattimento. 2. La lettura di verbali di dichiarazioni è disposta solo dopo l'esame della persona che le ha rese, a meno che l'esame non abbia luogo. 3. La lettura della relazione peritale è disposta solo dopo l'esame del perito. 4. La lettura dei verbali delle dichiarazioni orali di querela o di istanza è consentita ai soli fini dell'accertamento della esistenza della condizione di procedibilità. 5. In luogo della lettura, il giudice, anche di ufficio, può indicare specificamente gli atti utilizzabili ai fini della decisione. L'indicazione degli atti equivale alla loro lettura. Il giudice dispone tuttavia la lettura, integrale o parziale, quando si tratta di verbali di dichiarazioni e una parte ne fa richiesta. Se si tratta di altri atti, il giudice è	1. The judge, including ex officio, disposes that there be a reading, total or partial, of the documents contained in the case file for the oral argument. 2. The reading of transcripts of statements is disposed only after the examination of the person who has rendered them, unless the examination not have taken place. 3. The reading of expert reports is disposed only after examination of the expert. 4. The reading of transcripts of oral declarations of suit or of submission is permitted only to the end of ascertaining the existence of conditions of proceedability. 5. In place of reading, the judge, including ex officio, may specifically indicate the documents usable for the purposes of the decision. The indication of the documents is equivalent to their reading. The judge disposes the reading in any case, total or partial, when it is a case of statement

vincolato alla richiesta di lettura solo nel caso di un serio disaccordo sul contenuto di essi. 6. La facoltà di chiedere la lettura o l'indicazione degli atti, prevista dai commi 1 e 5, è attribuita anche agli enti e alle associazioni intervenuti a norma dell'articolo 93.	transcripts and one party makes request of them. If it is a case of other documents, the judge is constrained to the request to a reading only in the case of a serious disaccord on their contents. 6. The faculty to ask for a reading or indication of the documents, provided for by paragraphs 1 and 5, is attributed also to corporations and associations intervening under Article 93.

CPC 511 bis

Art. 511-bis. **Lettura di verbali di prove di altri procedimenti.** 1. Il giudice, anche di ufficio, dispone che sia data lettura dei verbali degli atti indicati nell'articolo 238. Si applica il comma 2 dell'articolo 511.	Article 511-bis Reading of statements of proof from other proceedings 1. The judge, including *ex officio*, that there be a reading of the statements from the documents indicated in Article 238. Article 511 paragraph 2 applies.

CPC 533

Art. 533. **Condanna dell'imputato.** 1. Il giudice pronuncia sentenza di condanna se l'imputato risulta colpevole del reato contestatogli al di là di ogni ragionevole dubbio. Con la sentenza il giudice applica la pena e le eventuali misure di sicurezza. 2. Se la condanna riguarda più reati, il giudice stabilisce la pena per ciascuno di essi e quindi determina la pena che deve essere applicata in osservanza delle norme sul concorso di reati e di pene o sulla continuazione . Nei casi previsti dalla legge il giudice dichiara il condannato delinquente o contravventore abituale o professionale o per	Article 533 Sentencing the accused 1. The judge pronounces sentence of conviction if the accused is guilty of the offence charged against him beyond all reasonable doubt. With the sentence the judge applies the penalty and possible measures of security. 2. If the conviction relates to multiple offences, the judge establishes the penalty for each of them and so determines the penalty that must be applied in observance of the law on acting in concert and on the subsumation of offences. In cases provided for by law the

tendenza. 3. Quando il giudice ritiene di dover concedere la sospensione condizionale della pena o la non menzione della condanna nel certificato del casellario giudiziale, provvede in tal senso con la sentenza di condanna. 3-bis. Quando la condanna riguarda procedimenti per i delitti di cui all'articolo 407, comma 2, lettera a), anche se connessi ad altri reati, il giudice può disporre, nel pronunciare la sentenza, la separazione dei procedimenti anche con riferimento allo stesso condannato quando taluno dei condannati si trovi in stato di custodia cautelare e, per la scadenza dei termini e la mancanza di altri titoli, sarebbe rimesso in libertà.	judge will declare the convict delinquent or habitual or professional controvenor, or controvenor by tendency. 3. When the judge holds it necessary to concede the conditional suspension of the penalty or the suppression of the conviction in the judicial records office, he will provide for this in this sense in the sentence of conviction. 3-bis. When the conviction relates to proceedings for offences to which Article 407 paragraph 2(a) apply, even if committed by other offenders, the judge may dispose, in pronouncing the sentence, the separation of the proceedings even with reference to the same convict when each of the convicts is in precautionary custody and, for the expiration of the terms and the lack of other titles, would be granted liberty.

CPC 544

Art. 544. **Redazione della sentenza.** 1. Conclusa la deliberazione, il presidente redige e sottoscrive il dispositivo. Subito dopo è redatta una concisa esposizione dei motivi di fatto e di diritto su cui la sentenza è fondata. 2. Qualora non sia possibile procedere alla redazione immediata dei motivi in camera di consiglio, vi si provvede non oltre il quindicesimo giorno da quello della pronuncia. 3. Quando la stesura della motivazione è particolarmente complessa per il numero delle parti o per il numero e la gravità delle imputazioni, il giudice, se ritiene di non poter depositare la sentenza nel termine previsto dal comma 2, può indicare nel dispositivo un termine più lungo, non eccedente comunque	Article 544 Redaction of the decision 1. Deliberations being concluded, the president compiles and countersigns the disposition. Immediately after a concise exposition of the reasons of fact and of law on which the decision is based is redacted. 2. Whenever it is not possible to proceed with the immediate redaction of the reasons in chambers, they will be provided not greater than the fifteenth day after that of the pronouncement. 3. When the writing up of the reasons is particularly complex due to the number of parties or the number and gravity of the charges, the judge, if of the opinion of not being able to deposit the judgment in terms provided for by paragraph 2, may however indicate in the disposition the ninetieth day

il novantesimo giorno da quello della pronuncia. 3-bis. Nelle ipotesi previste dall'articolo 533, comma 3-bis, il giudice provvede alla stesura della motivazione per ciascuno dei procedimenti separati, accordando precedenza alla motivazione della condanna degli imputati in stato di custodia cautelare. In tal caso il termine di cui al comma 3 è raddoppiato per la motivazione della sentenza cui non si è accordata precedenza.	after that of the pronouncement. 3-bis. In the scenario provided for by Article 533 paragraph 3-bis, the judge provides for the writing up of the reasons for each of the proceedings separately, according precedence to the judgment reasons for the conviction of the accused in a state of precautionary custody. In such case the expiration to which paragraph 3 applies is doubled for the judgment reasons which are not accorded precedence.

CPC 603

Art. 603. **Rinnovazione dell'istruzione dibattimentale.** 1. Quando una parte, nell'atto di appello o nei motivi presentati a norma dell'articolo 585 comma 4, ha chiesto la riassunzione di prove già acquisite nel dibattimento di primo grado o l'assunzione di nuove prove, il giudice se ritiene di non essere in grado di decidere allo stato degli atti, dispone la rinnovazione dell'istruzione dibattimentale. 2. Se le nuove prove sono sopravvenute o scoperte dopo il giudizio di primo grado, il giudice dispone la rinnovazione dell'istruzione dibattimentale nei limiti previsti dall'articolo 495 comma 1. 3. La rinnovazione dell'istruzione dibattimentale è disposta di ufficio se il giudice la ritiene assolutamente necessaria. 4. Il giudice dispone, altresì, la rinnovazione dell'istruzione dibattimentale quando l'imputato, contumace in primo grado, ne fa richiesta e prova di non essere potuto comparire per caso fortuito o forza maggiore o per non avere avuto conoscenza del decreto	Article 603 Renewal of oral argument 1. When one party, in the appeal document or in reasons presented under Article 585 paragraph 4, has requested the re-adducing of evidence already adduced in oral argument at first instance or the adducing of new evidence, the judge if of the opinion to be unable to decide as to the state of the acts, disposes the renewal of oral argument. 2. If new evidence turns up or is discovered after the first instance decision, the judge disposes the renewal of oral argument with the limitations provided for by Article 495 paragraph 1. 3. The renewal of oral argument is disposed ex officio if the judge considers it absolutely necessary. 4. The judge disposes, likewise, the renewal of oral argument when the accused, held contumacious at first instance, makes request of it and proves to not being able to appear through accident or *force majeure* or through not having knowledge of the decree of citation, always that in such case the event

di citazione, sempre che in tal caso il fatto non sia dovuto a sua colpa, ovvero, quando l'atto di citazione per il giudizio di primo grado è stato notificato mediante consegna al difensore nei casi previsti dagli articoli 159, 161 comma 4 e 169, non si sia sottratto volontariamente alla conoscenza degli atti del procedimento. 5. Il giudice provvede con ordinanza, nel contraddittorio delle parti. 6. Alla rinnovazione dell'istruzione dibattimentale, disposta a norma dei commi precedenti, si procede immediatamente. In caso di impossibilità, il dibattimento è sospeso per un termine non superiore a dieci giorni.	was not due to his fault, or, when the act of citation for judgment at first instance had been notified via notification to the defender in the cases provided for Articles 151, 161 paragraph 4 and 169, not having voluntarily removed himself from awareness of the documents of the proceedings. 5. The judge provides by order, in the cross-examination of the parties. 6. On renewal of oral debate, disposed under law by the preceding paragraphs, proceedings continue immediately. In cases of impossibility, the argument is suspended for a period not greater than 10 days.

CPC 606

Art. 606. **Casi di ricorso.** 1. Il ricorso per cassazione può essere proposto per i seguenti motivi: a) esercizio da parte del giudice di una potestà riservata dalla legge a organi legislativi o amministrativi ovvero non consentita ai pubblici poteri; b) inosservanza o erronea applicazione della legge penale o di altre norme giuridiche, di cui si deve tener conto nell'applicazione della legge penale; c) inosservanza delle norme processuali stabilite a pena di nullità, di inutilizzabilità, di inammissibilità o di decadenza; d) mancata assunzione di una prova decisiva, quando la parte ne ha fatto richiesta anche nel corso dell'istruzione dibattimentale	Article 606 Cases of appeal 1. Appeal to Cassation may be made for the following reasons: (a) exercise on the part of the judge of a power reserved by law to legislative or administrative organs or not allowed to public powers; (b) inobservance or erroneous application of the criminal law or other judicial rules which must be taken into account in the application of the criminal law; (c) inobservance of the procedural rules established on pain of nullity, of unusability, of inadmissibility or of decadence; (d) defective assumption of a decisive piece of evidence when a party has made request of it even in the course of oral argument limited

limitatamente ai casi previsti dall'articolo 495, comma 2; e) mancanza, contraddittorietà o manifesta illogicità della motivazione, quando il vizio risulta dal testo del provvedimento impugnato ovvero da altri atti del processo specificamente indicati nei motivi di gravame. 2. Il ricorso, oltre che nei casi e con gli effetti determinati da particolari disposizioni, può essere proposto contro le sentenze pronunciate in grado di appello o inappellabili. 3. Il ricorso è inammissibile se è proposto per motivi diversi da quelli consentiti dalla legge o manifestamente infondati ovvero, fuori dei casi previsti dagli articoli 569 e 609 comma 2, per violazioni di legge non dedotte con i motivi di appello.	to the cases provided for Article 495 paragraph 2; (e) defect, contradictoriness or manifest illogicality of the judgment 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 encumberment. 2. An appeal, in addition to the cases and with the determinative effects of specific dispositions, may be made against judgments pronounced at appeal level or unappealable. 3. An appeal is inadmissible if made for reasons different from those allowed by law or manifestly unfounded or, outside of cases provided for by Articles 569 and 609 paragraph 2, for violation of law not supported by the reasons of appeal.

A commentary on the Criminal Procedure Code[91] describes Article 606(e) as dealing with grounds of appeal that are "*sicuremente più delicato e controverso*" ("certainly more sensitive and contentious", p 1328) in that the Supreme Court's determinations will impinge upon the specific line of reasoning followed by the lower court. The phrase *mancanza della motivazione* (defect of reasoning) must be taken to refer to not so much as a total absence of any explanation of the reasons underlying the decision, as the *totale discrasia* (complete disaccord) between the reasoning put forward by the court and the concrete outcome of the decision adopted, and be obvious from a simple comparison of the lacunae characterising the development of the logic in the contested text of the judgment. The phrase *manifesta illogicità* (manifest illogicality)

[91] Luigi Tramontano (ed), *Codice di procedure penale spiegato: con esempi pratici, dottrina, giurisorudenza, schemi, tabelle e appendice normativa*, 9th edition, (2011) [TribunaStudium, 2011] (The Criminal Procedure Code Explained: with practical examples, doctrine, jurisprudence, flow charts, tables and legislative appendices)

refers to the lower court's conclusions, in relation to the reconstruction of objective facts, not allowing plausible consequences to flow from the adopted premises but, instead, appearing contradictory, unjustified or rooted in opinionated matters of experience rather than in common sense. The illogicality must be significant and self-evident, jumping out *ictu oculi*; minor inconsistencies are not the subject of this ground, nor are defence submissions which have not been expressly dealt with but are logically incompatible with the fully and adequately explained reasons of the court. And the phrase *contraddittorietà della motivazione* (contradictoriness of the reasoning) refers to there being no synchrony between the reasoning and dispositive parts of the pronouncement and other parts of the document itself. (p1329)

Article 606(e) activates when the necessary passages and indispensible argumentation that make the entire judgment logically comprehensible are missing. (p1330)

The Court of Cassation's function is limited to examining the coherence of the lower court's web of reasoning, without going into whether the resulting conclusions line up with the adduced and accepted evidence, or how plausible those conclusions are. Cassation's role is to determine whether the judges have examined all the elements at their disposal, and whether in interpreting the evidence they have precisely applied the rules of logic, maxims of common experience, and legal criteria for evaluating evidence, in such a way as to allow a rational justification of the conclusions reached in preference to other conclusions. For the purposes of Article 606(e), because it inevitably invades the domain reserved for the lower court's appreciation and assessment, it must be shown that the judgment is manifestly lacking in reasoning and/or logic and not merely that it instead provides a different reconstruction of events, perhaps on some alternative logic. (p1333)

CPC 623

Art. 623. **Annullamento con rinvio.**	Article 623 Annulment with retrial
1. Fuori dei casi previsti dagli articoli 620 e 622:	1. Outside of cases provided for by Articles 620 and 622:

a) se è annullata un'ordinanza, la corte di cassazione dispone che gli atti siano trasmessi al giudice che l'ha pronunciata, il quale provvede uniformandosi alla sentenza di annullamento; b) se è annullata una sentenza di condanna nei casi previsti dall'articolo 604 comma 1, la corte di cassazione dispone che gli atti siano trasmessi al giudice di primo grado; c) se è annullata la sentenza di una corte di assise di appello o di una corte di appello ovvero di una corte di assise o di un tribunale in composizione collegiale, il giudizio è rinviato rispettivamente a un'altra sezione della stessa corte o dello stesso tribunale o, in mancanza, alla corte o al tribunale più vicini; d) se è annullata la sentenza di un tribunale monocratico o di un giudice per le indagini preliminari, la corte di cassazione dispone che gli atti siano trasmessi al medesimo tribunale; tuttavia, il giudice deve essere diverso da quello che ha pronunciato la sentenza annullata.	(a) if an order is annulled, the Court of Cassation disposes that the documents be given to the judge who has pronounced it, the which judge will provide in compliance with the sentence of annulment; (b) if a conviction is annulled in the cases provided for by Article 604 paragraph 1, the Court of Cassation will dispose that the documents be given to the first instance judge; (c) if a Court of Appeal of Assizes verdict is annulled or a court of appeal or else an Assizes Court or a tribunal collegially constituted, the judgment is remanded respectively to another section of the same court or the same tribunal or, in deficit, to the court or tribunal nearest. (d) if a single-judge tribunal verdict is annulled or of a judge overseeing preliminary investigations [=GIP], the Court of Cassation disposes that the documents be transmitted to the same tribunal; in all cases, the judge must be different to the one who has pronounced the annulled verdict.

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CC = Criminal Code

CPC = Criminal Procedure Code

Const = Constitution

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JAMES R. ZAZZALI

James R. Zazzali joins Gibbons as Of Counsel upon completing his term as Chief Justice of the Supreme Court of New Jersey. He served on the Supreme Court for over seven years, and wrote more than 100 opinions, before being named Chief Justice in 2006. Prior to his service on the bench, Mr. Zazzali had served as New Jersey Attorney General; general counsel for the New Jersey Sports and Exposition Authority; Chairman of the New Jersey State Commission of Investigation; Chief of the Appeals Division of the Office of the Essex County Prosecutor; as well as other positions in addition to his private law practice.

Mr. Zazzali is also a former Adjunct Professor at Seton Hall Law School, where he taught mediation and arbitration. He also served as the court-approved receiver for Bloomfield College, from 1974-1976; and as the special master investigating, reporting on and assisting in the reform of the Monmouth, Essex, Bergen and Newark jails; and as a member of the United States delegations to various United Nations Conferences in Geneva and Paris.

Education

Georgetown University Law Center (J.D., 1963)

Georgetown University (B.S., 1958)

Professional Admissions

New Jersey

New York

District of Columbia

Professional Activities

Chair, Congressional Superfund Study Group, 1981 - 1982

Chair, Judicial Labor Relations Task Force, 1985 - 1988

Chair, Committee of Minority Participation in the Courts, 1985 - 1992

Member and Vice-Chair, Disciplinary Review Board, 1984 - 1999

Member and Vice-Chair, Advisory Committee on Judicial Conduct, 1999 - 2000; 2009 - present

Adjunct Professor, Seton Hall Law School, 1984 - 2000 (Alternative Dispute Resolution & Arbitration)

Publications

"Using Rule 2:12A to Certify Questions of Law," *New Jersey Law Journal*, February 9, 2009

"Providing Meaningful Judicial Review of Municipal Redevelopment Designations: Redevelopment in New Jersey Before and After *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*," *40 Rutgers L.J. 451*, 2009 (James R. Zazzali, Co-author)

James R. Zazzali
Of Counsel
Business & Commercial Litigation

Practice Areas

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Contact Information

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"The Whys and Hows of Permanent Disbarment: New Jersey's *Wilson* Rule," *21 Geo. J. Legal Ethics 311*, 2008

"International Human Rights: An Overview: Annual Vanderbilt Address to the New Jersey Alumni of Harvard Law School," *36 Seton Hall L. Rev. 661*, 2007

"Disciplining Attorneys: The New Jersey Experience," *1 Geo. J. Legal Ethics 659*, 1988

"Hazardous Wastes: New Rights and Remedies?," *13 Seton Hall L.Rev. 452*, 1983 (James R. Zazzali, Co-author)

Quotes/Interviews

Interviewed in NJN television's panel discussion, *Citizens Wanted* - "Looking for Lincoln," conducted by Mike Aron concerning Lincoln and the education of our youth concerning civics, March 29, 2009

Interviewed in NJN's Due Process, March 14, 2008

Interviewed in "Life After Serving on the State's Highest Bench," *NJBIZ*, November 5, 2007

Speaking Engagements

Speaker, New Jersey State Bar Association, "Justice at Stake," Atlantic City, NJ. May 17, 2013

Moderator, Gibbons Diversity Initiative, "Success Symposium," Newark, NJ. April 22, 2010

Moderator, New Jersey Corporate Counsel Association's Alternative Dispute Resolution Committee, "Practical Strategies for Proactively Managing the Arbitration Process," Roseland, NJ. October 30, 2008

Honors/Awards*

Recipient, The Roger N. Baldwin Award from The American Civil Liberties Union (ACLU) of New Jersey, 2013

Listed in *The Best Lawyers in America*, Commercial Litigation

Recipient, New Jersey State Bar Foundation's Medal of Honor Award, 2010

Recipient, The John Carroll Award from Georgetown University, 2004

Recipient, The Dean Paul Award from Georgetown University Law Center, 2000

News

Gibbons Of Counsel James Zazzali Named To Newly Launched NJ Chapter of National Academy of Distinguished Neutrals

ACLU of NJ Honors Former Justice James Zazzali With Roger N. Baldwin Award

Judicial Clerkship(s)

Law clerk to the Honorable Lawrence A. Whipple, 1964-1965

Legal Employment Background

Chief Justice, New Jersey Supreme Court, 2006 - 2007

Associate Justice, New Jersey Supreme Court, 2000 - 2006

Attorney General, New Jersey, 1981 - 1982

Commissioner, State Commission of Investigation (SCI), 1984 - 1989; Chair,

1989 - 1993

Assistant Essex County Prosecutor, 1965 - 1968; Trial Prosecutor, 1965 - 1966; Chief of Appeals, 1967 - 1968

General Counsel, New Jersey Sports & Exposition Authority, 1974 - 1982

Receiver, Bloomfield College, 1972-1974

Master, Appointed by United States District Court, 1982-1992, to conduct investigations and recommend reforms of jails in Essex County, Monmouth County, Bergen County and Newark

Investigative Counsel and Monitor, Stevens Institute of Technology, 2009 - 2011

Trustee appointed by Casino Control Commission, Borgata Casino, 2010 - 2011

Practice of Law, 1962 - 2000; 2000 - present

*No aspect of this communication has been approved by the Supreme Court of New Jersey. Further information about methodologies for rating or selecting attorneys is available on our website's Award Methodology page.

BIOGRAPHY

Honorable Edward J. DeFazio

Honorable Edward J. DeFazio was appointed to the Bench in 2012 and currently sits in the Family Part in Hudson County. Judge DeFazio's legal career began as an Assistant Hudson County Prosecutor in 1978 until his appointment as the Chief Judge of the Jersey City Municipal Court in 1989. He returned to the Hudson County Prosecutor's Office in 1991 as the First Assistant where he was in charge of the day-to-day operations of the legal staff. From 2001 to 2002, Prosecutor DeFazio served as a Superior Court Judge for the State of New Jersey. He left the bench on July 29, 2002 to assume the position of Hudson County Prosecutor and served in that capacity for ten years. Judge DeFazio graduated from Fordham University and received his Juris Doctorate degree from Seton Hall Law School. He is admitted to practice law in New Jersey, New York and before the United States Supreme Court.

Timothy M. Donohue, Esq.
Arleo Donohue & Biancamano, LLC

Timothy Donohue is a successful and seasoned trial attorney. He has been consistently recognized by his peers and adversaries for inclusion on the list of *New Jersey Super Lawyers* and *Best Lawyers in America.* Tim specializes in defending persons accused of white collar crimes.

With over 25 years of experience in criminal law, Mr. Donohue has handled a wide variety of white collar criminal cases. While most clients are referred to Tim because of his extensive trial and appellate skills, he is most proud of his ability to resolve criminal cases before a costly public trial. He prides himself on his ability to provide effective solutions to clients threatened with criminal prosecution. Mr. Donohue has observed: The filing of charges can be devastating to a client's reputation and business. The key in a white collar case is getting into the case before the government has locked into its position regarding my client. Frequently, with creative lawyering, I can convince the government that my client should not be charged at all. In a political corruption case, Tim was able to convince the government not to prosecute his client by presenting another witness's interpretation of a crucial conversation. In two recent cases, Mr. Donohue successfully defended two executives in the insurance industry and was able to avoid prosecution completely by developing evidence demonstrating their innocence, including a polygraph report. Because of his excellent reputation among his adversaries, Tim has often been able to negotiate excellent resolutions for his clients long before charges have been brought. Many of these triumphs are never publicly heralded, and are known only by his clients.

Mr. Donohue has tried criminal jury trials in both federal and state court. Over the last decade, he has tried cases involving charges of bank fraud, money laundering, wire and mail fraud, RICO, and tax fraud. Tim has also successfully handled a wide variety of matters at the grand jury stage, involving charges of environmental crime, healthcare fraud and other business related crimes. In addition to his extensive trial practice, Tim has handled complex appeals for his clients in the New Jersey Supreme Court, the Appellate Division of the Superior Court of New Jersey, the United States Court of Appeals for the Third Circuit and the United States Supreme Court.

Tim has been routinely recognized in the publication *Best Lawyers in America*, and by other periodicals and authorities for inclusion in criminal matters. For many years, he has been named by his peers to be included in *New Jersey Super Lawyers*. His selection has been featured in *New Jersey Monthly Magazine*, *New York Magazine* and other publications. Tim has achieved the highest rating for his legal abilities and ethics, earning an AV rating by Martindale-Hubbell, a well-known attorney rating resource. In fact, most of Tim's criminal defense clients are referred to him by other lawyers who know of his outstanding reputation in the community and his expertise in that area.

Mr. Donohue has represented a wide variety of private and public figures over the years. In the private sector, he has represented licensed professionals, including doctors, lawyers, judges, accountants and investment advisors as well as professional athletes and owners. Tim has consulted for corporations and business owners (large and small) and has represented individuals from all walks of life. Over the years, Tim has been retained by a number of prominent,

publicly elected officials and by appointed officials at all levels of state, county and local government (including many members of law enforcement). He currently serves as counsel to various governmental bodies at the state and local levels. Mr. Donohue also provides consulting and strategic advice to businesses and individuals on compliance issues and methods of avoiding costly litigation. He has participated in countless public and private internal investigations in order to evaluate potential exposure for criminal and civil liability.

Tim Donohue received his J.D. degree *magna cum laude* from Seton Hall University Law School in 1984. He attended law school in the evenings while working full-time. During this time, he was recognized for his writing ability and scholarship, and was chosen to serve as an Associate Editor of the prestigious Seton Hall Law Review. After graduating from law school, Tim served as a law clerk for the Honorable Dickinson R. Debevoise, a United States District Judge in federal district court in Newark, New Jersey.

Prior to law school, Mr. Donohue attended Seton Hall University and graduated *cum laude* in 1980 with a Bachelor of Science Degree in Secondary Education and English. In fact, he still has his New Jersey teacher's license. Tim previously taught legal writing as an adjunct Professor at Seton Hall Law. Mr. Donohue has lectured throughout the state on criminal and civil trial techniques, grand jury practice and representing white collar criminal defendants. He has also served as an expert commentator for Court TV, the Associated Press and other media outlets.

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- John P. McDonald

- Michael J. Rogers

John P. McDonald

John P. McDonald

John McDonald has been a member of the firm since 1980. He represents individuals in civil and criminal litigation and is often retained to represent corporate employees whose companies are under investigation. Many of his clients are professionals. He maintains an extensive and active trial practice in both State and Federal Courts. Mr. McDonald has argued many appeals before the Appellate Division of the Superior Court, the New Jersey Supreme Court, the United States Court of Appeals for the Third Circuit and the Supreme Court of the United States. Mr. McDonald has been recognized in The Best Lawyers in America. He is also a member of the Million Dollar Advocates Forum.

Mr. McDonald served as a Law Clerk to the Honorable Joseph F. Walsh, J.S.C. (1979); as Special Police Prosecutor for the City of Orange (1986-1994); and as the Watchung Board of Adjustment Attorney (1998-Present)

Education

- Seton Hall University (B.A. 1976) Sigma Phi Epsilon Fraternity
- Seton Hall Law School (J.D. 1979) Managing Editor, Seton Hall Legislative Journal

Admissions

- State of New Jersey 1979
- United States District Court for the District of New Jersey 1979
- United States District Court for the Southern District of New York 1983
- United States District Court for the Eastern District of New York 1983
- United States Court of Appeals for the Third Circuit 1981
- Supreme Court of the United States 1985

Professional Activities

- New Jersey State Bar Association (Judicial and Prosecutorial Appointments Committee) former member
- Somerset County Bar Association (President)

- Association of Criminal Defense Lawyers of New Jersey (President)
- Seton Hall Law School Inn of Court (Former Master)
- Somerset Sussex Legal Services (Volunteer Attorney)
- Supreme Court District XIII Ethics Committee (Former Committee Investigator and Hearing Panel Chairman)

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Michael J. Rogers


Michael J. Rogers

Michael J. Rogers is a founding member of the law firm. He has extensive trial experience involving many types of litigation, including criminal, civil, personal injury, family, juvenile, administrative, and municipal.

Mr. Rogers has defended hundreds of criminal cases in virtually every county in the state superior court, in the federal courts, and in numerous municipal courts, ranging from routine traffic and indictable matters to death penalty cases. He served as a municipal prosecutor from 1987 through 2000.

Mr. Rogers has considerable experience in the representation of municipalities, particularly in complex and highly sensitive employee matters. He has served as special counsel to Franklin, Hillsborough, Bridgewater, Long Hill, Warren, South Bound Brook, Somerville and Raritan.

Mr. Rogers is also versed in education law, representing the Holland Township Board of Education from 1981 to 1999, and the Somerville Board of Education since 1990.

Education

- Xavier University, Cincinnati, OH (AB English 1974)
- Seton Hall University School of Law, Newark, NJ (JD 1979)
- Editor-in-Chief, Seton Hall Legislative Journal (1978-1979)
- Publication-New Jersey's Open Public Meetings Act: Overview and Analysis, 4 Seton Hall Legis. J. 135 (1980)

Admissions

- State of New Jersey 1979
- United States District Court for the District of New Jersey 1979
- United States Court of Appeals for the Third Circuit 1981
- Supreme Court of the United States 1996

Professional Activities

- Law Secretary to the Hon. B. Thomas Leahy, J.S.C., Somerset County 1978-1979
- New Jersey State Bar Association and Somerset County Bar Association
- Association of Criminal Defense Lawyers of New Jersey
- Somerset County Criminal Speedy Trial Committee (Representative of the Private Bar) 1989 - Present

Trustee for the Somerset County Bar Association - (Various)

- Chairman of the Somerset County Bar Association Criminal Practice and Municlipal Court Committees-(Various)
- Municipal Prosecutor, Borough of Somerville, Somerset County 1987-1994
- Municipal Prosecutor, Borough of Manville, Somerset County 1996-2000

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Walter F. Timpone - Partner

WALTER F. TIMPONE received a Bachelor's degree from St. Francis College in New York in 1972, a Master's degree in Special Education from New York University in 1974, and his Juris Doctorate from Seton Hall University School of Law in 1979. He is the former law clerk to the late Honorable Vincent P. Biunno, United States District Court, District of New Jersey. He was previously associated with the firm of Townley & Updike in New York City before joining the United States Attorney's Office in Newark where he served for eleven years. His major accomplishments at the United States Attorney's Office were as the Chief of Special Prosecutions, where he led the prosecutions and convictions of nearly twenty-five public officials for corruption and fraud against the public. Mr. Timpone has served as the first Federal Election Monitor in Passaic County where he was charged with ensuring the voting rights of the County's Hispanic citizens and the County's compliance with Federal and State consent orders. He has also served, at the appointment of N.J. Attorney General John Farmer, on the panel charged by Governor Whitman with investigating problems surrounding the Department of Motor Vehicles Inspection Program. He acted as ombudsman to the United States Department of Defense overseeing a Defense Department contractor who entered a guilty plea concerning failed parts prepared for inclusion in Patriot missiles. He presently serves as a Commissioner on the New Jersey Election Law Enforcement Commission ("ELEC") where he employs his experience in campaign finance regulations and laws.

Mr. Timpone represents health care industry organizations, companies, institutions, and individuals and has negotiated successfully Deferred Prosecution Agreements for public and private health care organizations. He acted as an Associate General Executive Board Attorney for the LIUNA Union where he investigates, charges, and takes to hearing union members for violations of the union's constitution and ethics procedures. He presently represents a variety of LIUNA Trusts and Committees. As a result of these experiences, his practice is now concentrated in the areas of white collar criminal work, corporate internal investigations, health care compliance and defense, labor law for labor unions and complex civil litigation.

Mr. Timpone has extensive trial experience, and is admitted to practice in New Jersey and New York as well as the United States Supreme Court, Federal District Courts of New Jersey and the Northern, Southern, and Eastern Districts of New York. He has been listed as a Super Lawyer in New Jersey since its inception in 2005, and was listed in the Top 100 New Jersey Lawyers for 2009 and 2010. In addition, Mr. Timpone is recognized in 2013 Chambers USA as a leading lawyer in the area of Litigation: White-Collar Crime & Government Investigations. When it comes to federal investigations and white-collar criminal defense work, sources consider Mr. Timpone a 'serious heavyweight' particularly in the healthcare market. Peers have 'great faith in his ability to deal with large and potentially fraught cases'.

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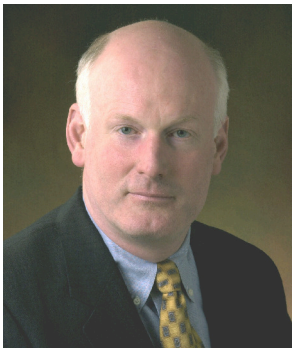

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Partner

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Cherry Hill and New York offices

Areas of Practice: Government Investigations & White Collar Crime, Internal Investigations, Corporate Compliance, Commercial Litigation, Government Regulation

Professional Experience: Paul H. Zoubek is vice-chair of the Litigation Department at Montgomery McCracken and is also the chair of the firm's Government Investigations and White Collar Crime practice. He concentrates his practice on corporate internal investigations, corporate compliance, representation of organizations and individuals in government investigations, commercial litigation, and counseling clients regarding state regulatory matters and corporate security issues.

Prior to joining Montgomery McCracken, Mr. Zoubek was the first assistant attorney general for the New Jersey Department of Law and Public Safety, which includes the Divisions of Alcohol Beverage Control, Civil Rights, Consumer Affairs, Criminal Justice, Elections, Gaming Enforcement, Highway Traffic Safety, Law, Racing, and State Police. During his tenure with the Attorney General's Office, Mr. Zoubek served as chair of the Governor's Health Care Fraud Task Force, was counsel to the New Jersey Domestic Preparedness Task Force, headed the New Jersey State Police Review Team which called for significant reforms in policy, practices and training, supervised the implementation of racial profiling reforms, served as director of the New Jersey Division of Criminal Justice, served as acting attorney general.

Prior to joining the Attorney General's Office, Mr. Zoubek served for 10 years in the United States Attorney's Office for the District of New Jersey as deputy chief of the Criminal Division and as an assistant U. S. attorney. During his tenure in the U. S. Attorney's Office, he successfully prosecuted health care fraud, public corruption, and labor racketeering cases.

Mr. Zoubek has handled a wide variety of internal investigations for public and private companies and government agencies, and has provided advice regarding corporate compliance and training. He has also represented public officials, individuals and corporations in federal and state investigations. Mr. Zoubek has extensive experience representing individuals and corporations in healthcare fraud investigations of hospitals and pharmaceutical companies.

Mr. Zoubek has also represented individuals in SEC investigations and has represented an SEC receiver in a massive Ponzi scheme. Mr. Zoubek also worked as part of a

Montgomery McCracken team that was special counsel to the American Home Products Trust which investigated issues concerning claims submitted to the trust administering the settlement of the Fen-Phen diet drug litigation.

Mr. Zoubek has extensive experience representing corporations before state regulatory agencies on a variety of issues including alcohol beverage control, consumer protection, insurance, and taxation.

Mr. Zoubek has also represented individuals before the New Jersey Ethics Commission.

Professional and Community Activities: Mr. Zoubek is a member of the American, New Jersey, and Camden County Bar Associations, and the Society of Corporate Compliance and Ethics. Mr. Zoubek is also Vice President of the Association of the Federal Bar of New Jersey.

Admitted to Practice: Mr. Zoubek is admitted to practice in New Jersey, New York, and Pennsylvania.

Education: Mr. Zoubek graduated with a J.D. from New York University School of Law in 1982 and received his B.A. degree, cum laude, from the Woodrow Wilson School of Public and International Affairs at Princeton University in 1978.