A CRITIQUE OF THE MARASCA-BRUNO 5th CHAMBERS REPORT

By James Raper

[Post #1]

Here are the main eight decisions I found in the Report -

1. The standard of "beyond any reasonable doubt" was not met due to insufficient and/or contradictory evidence - pursuant to Article 530, section 2 of the Italian Code of Criminal Procedure.

2. Multiple attackers upheld. Guede was guilty with others unknown.

3. The break-in in Romanelli's room was staged.

4. Amanda Knox was present in the cottage at the time of the murder but there is insufficient evidence that she played a participatory role.

5. The DNA profile of Meredith Kercher on the knife and the DNA profile of Raffaele Sollecito on the bra clasp have "no probative or circumstantial relevance"

6. "Motive is not irrelevant" and motive was not established.

7. No selective cleaning.

8. No purpose would be served in remanding the case back to the 1st instance court of appeal (as had occurred on appeal against acquittal)

I am going to examine the 34 pages in which Marasca-Bruno present their rationale for the above. These pages also include reasons for the dismissal of various appeal submissions, which are of no interest to this critique.

Central to the acquittals is of course the claim that that the evidence was insufficient and/or contradictory and I shall look closely at how the Report sets out to demonstrate this. We shall discover that a number of these co-called contradictions are not plausibly inherent in the trial evidence or in previous reports but are in fact the result of illogical reasoning, dogmatic assertion, indeed simply plucked from the air, by the 5th Chambers itself.

My overall reaction to the Report is that it is quite unlike any other reasoning I have seen produced by a court of law.

It smacks of a desperate attempt to bring home an incomprehensible verdict.

The language and the dogmatic assertions, unsupported by any evidence, are quite startling.

The competence of the investigators, the forensic service and the judges who have adjudicated previously in the case, is called into question, frequently in a preposterous way.

I suspect that the Report was written with a view to the media being able to lift headlines from it, and many such potential headlines are to be found loaded towards the front of the Report. The busy tabloid editors dream.

Indeed the Report (when it actually has anything to say) is akin to opinion based journalism; inadequately researched and ill-considered.

There is a substantial amount of ponderous, self indulgent, and obfuscatory "scholastic" waffle in the Report. It forms a turgid barrier (like thick treacle) for the reader and, of course, the Courts' affirmation that Knox was present when the murder was committed is only to be found deep into the Report.

Remove this waffle and padding however and the illogical and self -defeating nature of the reasoning stands out.

It is odd that some of the lengthy legal citations appear to conflict with the point that the Court is trying to make.

The Report challenges, if not overturns, some settled and well understood legal concepts in criminal law and natural justice and violates aspects of the Italian Code of Criminal Procedure. This must be of some concern to the Italian judiciary in general.

If ever there was a Supreme Court judgement that needed to be referred by the Italian President to the Council of Magistrates for review, this is it.

So, let's start. We begin with Marasca-Bruno setting the stage for their play (which as it progresses, bears a marked resemblance to Hamlet).

The Report claims that the Nencini appeal was -

> "conditioned by the prospect of the factual profile unexpectedly included in the sentence of annulment (i.e annulling Hellmann); such that the stringent and analytical evaluation of the Supreme Court might unavoidably force one towards affirming the guilt of the two accused. Misguided by this basic misunderstanding, the same judge is drawn into logical inconsistencies and obvious errors of judgement that are here reported."

The Report refers to "the troubled and intrinsically contradictory path" of the history of the trial, by which, of course, they mean the acquittals at the Hellmann appeal.

> "An objectively wavering process, whose oscillations, however, are also the result of clamorous failures, or investigative "amnesia" and culpable omissions of investigative activity. Had they been carried out these would, in all probability, have led to a

picture, if not of certainty, to at least of tranquil reliability, pointing to either the guilt or innocence of today's accused. Such a scenario, intrinsically contradictory, constitutes in itself, already, a first and eloquent signal of an investigation that was never capable of reaching a conclusion that was beyond any reasonable doubt."

There are many carefully crafted layers of deception, supposition and "begging the question" in the above two quotes.

The first is that there was a factual profile (without stating what this was) emerging from the sentence of annulment. That would not be true since all that the Supreme Court 1st Chambers did was annul Hellmann's verdicts having accepted the prosecution's grounds of appeal, one of which, incidentally, was that Hellmann was riddled with examples of "begging the question", a trait which Marasca and Bruno are by no means averse to themselves. That left the judicial process with the factual profile that emerged from the Massei trial, modified, if at all, by trial evidence from Hellmann.

Marasca-Bruno also quite arbitrarily assert that Nencini was "conditioned" and "misguided" by the terms of the annulment. Whatever errors Nencini may have made in his Report (and there were a few) I can only find one (see later) that could have been potentially significant, an error in law, that is certainly censurable, but it is highly subjective and offensive to assert that these were conditioned by and a consequence of the annulment, or imply that they had an impact on the verdict. That assertion is simply begging the question and is clearly an affront to the appeal judge.

It is, of course, perfectly true that the Hellmann annulment came with a request from the 1st Chambers of the Supreme Court for the Florence appeal court to consider, (to paraphrase), "within it's broadest discretion, the possibility of determining the subjective positions of Guede's co-conspirators within a range of hypothetical situations, from premeditated intent to kill to an unwanted sex game that got out of control".

To be clear, being asked to consider someone's subjective position is not just an invitation to consider motive but more broadly an invitation to consider that person's understanding of the nature and consequences of his interaction, or non-interaction, with a situation.

As it happened Nencini demonstrated latitude and independence in considering an entirely different and just as likely, if not more so, hypothesis. The hypothesis was not an affirmation of guilt, let alone proof, but was an element in the picture, and was certainly not forced upon the court by the terms of the annulment.

Marasca-Bruno may not have cared much for Nencini's hypothesis (see later) but they can hardly, to be consistent, deplore the motivation given that they come up with (be it on little evidence) a subjective and puzzling scenario of their own for Knox (see the end of this critique) that leaves a lot of questions begging.

Equally begging the question is that the Hellmann acquittals were the consequence of an investigation that was never capable of reaching a conclusion that was beyond reasonable doubt. Marasca-Bruno also seem to accept, they certainly imply, that even

an annulled verdict is evidence of reasonable doubt. Again there is no logical connection for that given that the verdict - they accept this - was correctly annulled..

All these assertions require to be demonstrated. Are they?

Next the Report claims that the media impacted on the conduct of the investigation and the judicial proceedings. There was "an unusual media clamour" of an international nature that -

> "led to a sudden acceleration of the investigation, in the frantic search for one or more guilty people to placate international opinion, and certainly did not help lead to the truth……media attention led to "prejudicial reflexes", "procedural deviations", generating "illicit noise" in the provision of information. This is not so much from the late discovery of witnesses, as of the raiding of the trial by the impromptu propulsion of detainees with proven criminal records, who are certainly not people averse to moments of pathological lying…"

The media take note. But it is the investigators that are once again being called to account here.

Marasca-Bruno do not identify the point at which the aforesaid sudden acceleration is supposed to occur but I would hazard a guess that it was when the investigators discovered the body of a girl who had been brutally murdered. The only propulsion required would be the perfectly natural need to identify and detain the perpetrators, and not what the media was saying about the case.

Marasca-Bruno do not produce one convincing iota of evidence that the investigators were unduly influenced by the media attention rather than the evidence they were obtaining.

There is, of course, more than a nod to the defence PR myth of a Rush to Judgement about the above. However it is overlooked that there was a period of 7 months between the arrest of Knox and Sollecito and the prosecution notifying all concerned that they were ready to press charges.

Marasca-Bruno are, of course, perfectly right about Alessi and Aviello but omit to mention their names and that these were witnesses called by the defence. The media had nothing to do with that, but rather the evidence of multiple attackers.

Thus ends the setting of the stage for a play within a play. We should now be aware that there is something rotten in the State of Denmark, with which a theatrical Marasca-Bruno, the personification of Hamlet, are about to grapple. Nencini becomes Claudius who, as revealed by a supernatural apparition, had murdered Hamlet's father (Hellmann).

Next up we come to a clear and unequivocal endorsement of multiple attackers. Well done.

And then, and here I somewhat reluctantly have to agree, Marasca-Bruno identify an error in law in the Nencini Report.

Nencini referred to Guede's appearance at the Hellmann appeal when Guede was questioned as to the letter he wrote in response to the allegation concerning him made by Alessi. In this letter, read out to the court, Guede wrote "I hope that sooner or later the judges realize my complete lack of involvement in what was a horrible murder of Meredith a lovely wonderful young woman, by Raffaele Sollecito and Amanda Knox."

Guede had not specifically said as much before and when cross-examined on the matter he declined to answer, referring the court to his previous statements. Nencini's error was to treat the letter and those previous statements, in as much as they contained accusations placing Knox and Sollecito at the cottage at the time of the murder, as admissible circumstantial evidence. That, however, is expressly excluded by the rule that states that incriminatory statements made by a witness of another are inadmissible unless the witness submits to cross-examination on them.

It should, however, be remembered that Guede did not give evidence at the Massei trial (nor were his previous statements admitted) and so it cannot be said that the error was that significant in the context of the evidence as a whole.

Having set the stage and dealt with points of law Marasca-Bruno now turn to the "merit of the trial process" which, of course they have already, and without merit, managed to sully.

Particularly this involves looking at the "Motivational structure of the ruling under appeal".

> "Discrepancies, inconsistencies and errors in judgement do not escape notice."

They then proceed to set these out.

<u>Motive</u>

> "Erroneous, in the first place, is the assertion regarding the substantive irrelevance of ascertaining the motive for the murderous act. This cannot be accepted in the light of the unquestioned doctrine of this regulating court, relating to the relevance of motive as the glue that links the various elements of which proof is made, especially in circumstantial cases such as the one at hand"

Well, Nencini did not maintain that motive was irrelevant, or even substantially irrelevant, per se. What he did say was this -

> "Regarding motive, first it is necessary to quote the teaching of the Court of Legitimacy on whose opinion the precise indication of a motive for the crime of murder loses relevance when the attribution of responsibility to a defendant derives from a precise and concordant evidentiary framework (see Supreme Court, section 1 Criminal Sentence No. 11807, 12th February 2009)."

Marasca-Bruno ignore the above but quote another bit of law which, to paraphrase it, because it becomes complicated in translation, states that motive, whilst capable of constituting an element, has to be congruent with and capable of pointing all the elements of the evidence in a single direction, in a clear, precise and convergent manner, failing which any motive so postulated attains an air of ambiguity unable to fulfill it's purpose.

Marasca-Bruno continue -

> "…..which as we shall see shortly, (such purpose) cannot be maintained in the case at hand, in the face of a body of evidence which is ambiguous and intrinsically contradictory."

If my paraphrasing is correct, then this does not contradict Nencini. Indeed the quotes, taken together, are complimentary and encapsulate what just about every criminal lawyer understands to be correct about the relevance of a motive in criminal proceedings. Nencini is not erroneous. Motive is not central. It is an element which may be useful. Futile and trivial motives are difficult to pin down to a specific cause. There are, indeed, glues other than motive, which fulfill the same purpose, such as the behaviour, lies, inconsistencies and contradictions referable to the words and actions of the accused themselves.

Finally, on motive, Marasca-Bruno make another point.

Guede had a sexual motive but this cannot be extended to others. To demonstrate the point they present the following argument, but here, again, I encounter a difficulty with the translation into English, and so I paraphrase:

"If it would be manifestly illogical (ed: as it would be) to hypothesize the involvement of Romanelli and Mezetti in the murder, and in complicity with a complete stranger, then it is equally illogical not to extend the same argument to Sollecito who had never met Guede."

According to M-B, Nencini's failure to advance this argument is a judicial error.

However I can quite understand why he did not advance it. Firstly, the argument is based on Guede's sexual motive and the implied premise that gender and sexual assault are related, which does render the involvement of Romanelli and Mezetti unlikely but does not help Sollecito. Secondly, the lack of a link to Guede, in either case but particularly in Sollecito's case, has nothing to do with whether or not the hypothesized perpetrator would in fact possess such a motive. Thirdly there is a link anyway, Knox,

The argument might conceivably operate on another plane, leaving aside sexual motive. Would anyone commit murder with a stranger? Well it happens in fact, particularly if there is a party who can link the strangers together.

The reason, of course, why one cannot hypothesize the involvement of Romanelli and Mezetti in the murder is that they both had proven alibis, whereas Sollecito did not, and that would seem to be the more pertinent fact.

It is a suggestive argument but one that is flawed. In any event it is not significant and Marasca-Bruno are not averse from making significant judicial errors themselves, as we shall see.

[Post #2]

Time of Death

> "Another judicial error is the finding that the establishment of Kercher's exact time of death was irrelevant, in the belief that the approximate timing offered by the expert investigators was sufficient, for all that this may have been correct at the trial stage…….time of death is an unavoidable factual pre-requisite for the verification of the defendants' alibis."

Once again, this is to entirely misrepresent Nencini. He did not say that the TOD was irrelevant, and as for an exact TOD this would be impossible, even if the temperature of the body had been taken by the pathologist as soon as he arrived at the scene of the crime, which I am sure any intelligent and informed observer would understand. That would have narrowed the time frame very probably, but it was not a "judicial error".

We could go on and delve into the evidence, particularly the expert and other evidence which became available over time and which conditioned Nencini's observations, but Marasca-Bruno do not, instead resorting to a banal statement that does not take account of any of the foregoing.

> "Deplorable carelessness in the preliminary investigative phase……[ed: not taking body temperature, yes, but other forensic considerations had to apply as well]…....a banal arithmetic mean between a possible earliest time and a possible latest time (from around 6.50 pm on the 1st Nov to 4.50 am of the following day), thus fixing the time at about 11 -11.30pm"

At the time of the Massei trial the pathologist, Dr Lalli had concluded that death may have occurred between 8 pm on the 1st Nov and 4.00 am the next day. This was based on calculating temperature decrease in the cadaver, taking the Henssge nomogram into account, rigor mortis, hypostatic marks etc. The Henssge nomogram also allows one to calculate back a specific number of hours from the time of first measurement and this permitted an intermediate valuation of about 11 pm. It was not simply an arithmetic mean.

But in any event, the decision not to take the body temperature but rather preserve the scene for forensics for about 11 hours had no detrimental impact upon the defendants' alibis. It is accepted that Meredith was certainly alive at 9 pm on the 1st Nov and there is nothing to corroborate an alibi for the accused from 9.15 pm onwards on the 1st Nov until 5. 30 am the following day. Body temperature taken, and rigor mortis observed, earlier, would not have been able to narrow TOD down to a period of 15 minutes (9 to 9.15 pm), and hence prior to the last temporal reference point for a credible alibi, the interaction on Sollecito's computer, or anything like that.

The Scientific Evidence

Marasca-Bruno observe that there is a debate to be had here as to -

"The legal value attributable to scientific evidence, with particular reference to the genetic investigations, acquired in violation of the rules established by international protocols."

The terms of the debate therefore define it's conclusion.

There are, they say, two theories which have to be balanced -

(1) "that which puts an increasing amount of weight on the contribution of science, even if not validated by the scientific community,"

and

(2) "that which insists on the primacy of law and postulates that, in deference to the rules of criminal procedure, only those scientific experiments validated according to commonly accepted methodological canons may be allowed to enter."

No cigars for guessing which self- formulated option they prefer. It is, of course, (2), but still they have already both begged and loaded the question with their insistence on "validation" (which in this context means repeating the scientific test to obtain the same result) according to "international protocols" .

Then, to disguise that selection, we have this -

"The court concedes that this delicate problem…..must find a solution in the general rules that inform our legal system….and not….in an abstract insistence on the primacy of science over law or vice versa……. Scientific proof cannot, in fact, aspire to an unconditional credit of self-referential trustworthiness in the trial setting, by the very fact that a criminal trial renounces all notion of legal proof."

Marasca-Bruno would not be so stupid as to insist that science has primacy over law in a trial setting. Would they? The law, having primacy, must find the means to accommodate the maxims of science, but within the general rules that inform the legal system.

They continue -

"The reference co-ordinates will have to be those attaching to the principle of cross examination and to the judge's control over the process of formation of evidence, which must respect preordained guarantees, the observance of which must strictly govern the judgement of the relevant results' reliability."

Interesting. "Cross-examination"? Perhaps they are reminded of the decisive inadmissibility of the previously discussed section of Guede's letter. Can the DNA traces on the knife and the bra clasp fall into the same category? Can "validity according to international protocols" be a preordained guarantee, in the same manner as the rights of an accused not to be incriminated by a witness who refuses cross-examination is guaranteed by Article 526 of the ICCP?

If so, then some compelling reason will have to be advanced - abiding by the rules of evidence that inform the legal system. They cannot refer to an Article on the point in the ICCP. There is none, and if there were, and if it stated that the repeatability of a

scientific test was a guarantee for the test to be reliable and/or admissible, then sample 36b from the knife would not even have made it into the trial. And this is not the fault of the ICCP. There is no other body of law in the world that I am aware of that embodies any such guarantee, even for Low Copy DNA. And the reason for that, in part, is that there is no internationally recognized protocol, and precisely because there is no agreement in the scientific community as to this as yet.

Marasca-Bruno tend to treat "reliability" and "admissibility" as interchangeable concepts, and indeed, given the manner in which they consider these concepts, in the context of the topic under discussion, there is some logic to this, for surely if a piece of evidence is pre-ordained as unreliable then it must be inadmissible as well.

There then follows a lot more pompous waffle that need not detain us, other than to comment that none of this advances, and indeed does not even consider, any compelling reason for regarding repeatability as a pre-ordained guarantee from the point of view of admissible, or reliable, evidence.

Indeed, the ICCP does specifically take into account non-repeatable tests for we can find in Article 360 that provided the conditions therein are complied with then the results of non-repeatable technical tests are admissible.

Why the insistence on repeatability despite Article 360?

Does the testimony of an eye witness to a crime have to be corroborated by a video of the incident, or other eye witness testimony, before his testimony can be considered reliable and admissible?

Why is the result of a scientific test, conducted in accordance with a method which has already been repeatedly used in the scientific community to establish the validity of the method, be treated any differently?

The eye witness, of course, does not have a video of the incident by which to check his memory, whereas a biological trace may well be sufficient to allow for repeated tests. However in such cases, if there is no repeat, the result is not automatically ruled unreliable or invalid. It is for the defence to request a repeat and if they do not, then it does not happen.

There would, of course, be a capacity for repeat, which Low Copy Number might not have, but if repeats do not occur when the capacity exists, then this is because the result is unambiguous, as the results were, for the judge a quo, in the case of Meredith's profile on the knife and Sollecito's profile on the bra clasp.

However, Marasca-Bruno move on to declare that they do not share Nencini's lack of hesitation in attributing evidentiary value to the knife and bra clasp results.

They quote the jurisprudence of the Supreme Court, in genetic investigations, about it's degree of reliability -

> "full value of proof, and not merely as an element of circumstantial evidence according to Article 192.…"

adding that

> "in cases where the genetic investigation doesn't provide absolutely certain findings, circumstantial value can be attributed to it's results (section 2,n. 8434 of 05/02/2013, etc……)……which mean that where identity is established, the findings of the genetic investigation assume significant evidence, while in the case of mere compatibility with a specific genetic profile, they only have circumstantial importance."

It is at this point that I had to pause and consider the very real possibility that Marasca-Bruno may have the combined denseness of two planks of wood nailed together.

The compatibility of trace B on the knife with the genetic profile of Meredith Kercher is such that it is full proof of the "identity" of the trace, certainly established, and that by any scientific protocol. That was acknowledged by all the trial experts and even, though with some reluctance, by Vecchiotti.

Even if not full proof of ID it certainly has significant circumstantial relevance, according to the above and pursuant to Article 190 (which is mentioned later).

With that uncomfortable thought perhaps lurking in the back of their minds, they seek to obfuscate matters -

> "As a general rule it is possible to adhere to these conclusions, on the condition, though, that the activity of collecting samples, storage and analysis of the exhibits has respected the regulations approved by the protocols of the profession."

They then, rather bizarrely, go on to aver that that the correct methods, to preserve authenticity, were stated by the Supreme Court….."even if only on the subject of information technology evidence"

Eh ?!

They refer to Article 192, section 2 -

> "The existence of a fact cannot be deduced from pieces of circumstantial evidence unless they are serious, precise and consistent."

They opine -

> "Taking into account such considerations [ed: "such considerations" need not concern us - they were just preceding waffle] one really cannot see how the results of the genetic analysis - that were performed in violation of recommendations for the protocols regarding the collection and storage - can be endowed with the characteristics of seriousness and preciseness."

John McEnroe and "You cannot be serious!" springs to mind.

They are also confusing the information obtained from the electropherogram with sample collection methods.

It is, of course, important to maintain clarity of thought by keeping the issue of the value of the evidence [ed: it's seriousness, precision and consistency] apart from the issue of contamination. As Nencini and others were able to do. Marasca-Bruno are running these issues together.

"It is absolutely certain that these methods were not complied with [cites the C-V Report] -

(a) The knife collected and then preserved in a cardboard box, of the sort used to package Xmas gadgets, agendas …….

(b) The bra clasp [collected 46 days after] ……..the photographic documentation demonstrating that at the time of collection, the clasp was passed from hand to hand…. In addition wearing dirty latex gloves."

Shall I comment? Oh, alright. What is the relevance of the cardboard box unless it was a conduit for contamination? That was not even hypothetically plausible.

Yes, as we all know the bra clasp was recovered after 46 days. But where are these collection protocols that are internationally recognized and are a pre-ordained guarantee recognized by law?

As for dirty gloves the only evidence of this that I have seen is a photograph of the bra clasp being held in one gloved hand whilst the glove on another hand, patently belonging to the same operative, shows spots of some substance on it, which spots are most probably, in the circumstances, blood derived from the clasp the operative is holding.

Where is the common sense of the 5th Chambers?

What exactly was wrong with the in-depth common sense analysis of Massei and Nencini?

And so we swing back to the conclusion that was their premise.

"In essence, it is nothing less than a procedure of validation or falsification typical of the scientific method, of which we have talked before. And it is significant, in this regard, that the experts Berti-Berni, officials of the R.I.S Roma, carried out two amplifications of the trace (ed: 36I) retrieved from the knife blade.

In the absence of verification by repetition of the investigative data, it is questionable what could be the relevant value to the proceedings, even if detached from the scientific theoretical debate, of the relevance of outcomes carried out on such scarce or complex samples in situations not allowing repetition."

Let us recall what actually happened with sample 36I. In 2013 this sample, which had not been analyzed by the Independent Experts, was analyzed by Berti-Berni. The sample was Low Copy Number and the quantum of DNA present was significantly less than was present with sample 36B. However they were able to carry out the test

with a repeat because since 2007 there had been further technical advances in the equipment.

The repeat confirmed the evidential value of the first test despite the low level of DNA. Low Copy Number, as an inherent problem per se, and as evidence of contamination per se, as argued in the case of 36B (Meredith), was shown not to be an issue. That was what was truly significant about the test, and it underscores that the result of the test on 36B had significant evidential value.

The knife and the bra clasp -

> "….cannot take on either probative or circumstantial relevance precisely because, according to the aforementioned laws of science, they necessitated validation and falsification."

The primacy of the rules of evidence has just been jettisoned with this dogmatic assertion, which is not even derived from the logic of the argument they have presented in support. Indeed much of the argument (or rather, the waffle) is merely this dogmatic assertion in numerous different guises and tedious extended formulations of itself.

Not only that but Guede was also convicted on the basis of DNA tests that were not repeated!

One wonders what criminal judges in Italy will make of this, and of the fact that judges from the 5th Chambers, who deal primarily in matters other than criminal law, have presumed to lay down law to them in this field.

The reality is that despite this nothing will change as to the rules of evidence and how forensic evidence is evaluated in the criminal courts. The system, understandably, will not countenance that. That will leave this case, as it pertains to Knox and Sollecito, as an exception, a bizarre anomaly in the judicial record.

Perhaps, in the future it will not present a practical problem, given that developments in technology are able to detect even smaller amounts of DNA, thus allowing for repeats.

[Post #3]

<u>Traces in the Murder Room, the Small Bathroom and the Corridor</u>

A selection of quotes from the Report -

> "Total absence of biological traces attributable with certainty to the two defendants in the murder room."
>
> "An insurmountable monolithic barrier on the path taken by the fact finding judge."
>
> Selective cleaning - "an hypothesis that is patently illogical"

"Selective cleaning not capable of escaping detection by luminol is, for sure, impossible"

It follows, of course, that if the knife and bra clasp have no probative or circumstantial value (effectively rendered inadmissible as far as the incriminating traces on them are concerned) then there are no biological traces attributable to Knox and Sollecito in Meredith's room. However it is an exaggeration to present this as an insurmountable monolithic barrier to the fact finding path.

Marasca-Bruno misrepresent and trivialise what was undoubtedly a manipulation of the crime scene (i.e the cottage) by the removal of traces of blood, and in this limited sense "selective", by insisting on using the word "selective" across the board, and in the main to refer to removal of DNA, in both a derogatory and confusing manner and to sidestep the real issue.

The removal of traces of blood, whether selective or not, is not capable of escaping detection by luminol, as they appear to explicitly acknowledge.

Therefore the comment that "selective cleaning" is an hypothesis that is patently illogical is patently deceitful and unworthy of their station as Supreme Court judges.

Having just done a bit of misrepresenting themselves Mascara-Bruno then claim to have unearthed "an obvious misrepresentation of evidence" - presumably by judges previously involved in the case. They say that the SAL had excluded (because of the TMB test) that the luminol enhanced traces were of an haematic nature.

This, of course, is a manifest misrepresentation. That the TMB testing was negative (no result) does not exclude that the traces were haematic in nature, but obviously it didn't prove that they were.

They then criticise Nencini -

"Not only that, but it is patently illogical, in this context, the reasoning of the fact finding judge, who reckons being able to overcome the defensive objection that the luminescent bluish reaction generated by luminol can be produced by substances different from blood (for instance leftovers of cleaning detergents, fruit juice and many others), by arguing that the reasoning, while theoretically correct, has however to be contextualised, meaning that if the fluorescence occurs at a place where a murder occurred, the reaction cannot but be connected with haematic traces.
The weakness of the argument is such, already at first sight, that it does not require any confutation, since to reason in that way one should also surmise that the house on via della Pergola was never the object of cleanings nor was a lived in location.

This observation hence allows us to categorically exclude that those traces were made of blood and wilfully removed in that circumstance."

Oh dear. What is this Court of Legitimacy doing? Cherry picking, misrepresenting the evidence, entering into a discussion of the merits in line with desperate defence submissions, and drawing conclusions on that basis, that's what.

I have refrained so far from bringing under discussion glaring omissions of evidence for the reason that I am responding to argument.

However it's time for the gloves to come off because the above is simply unacceptable.

Reading through this report one gets the impression that Marasca-Bruno think it is sufficient that they are only responding to the Nencini Report and that it is sufficient to pick holes here and there, as if they were marking a student's exam paper, and with the defence submissions as a model answer. That is manifestly inappropriate, even for a Court of Legitimacy.

So here are other reasons to support Nencini's contextualising.

1. If the luminol fluorescence was due to non-haematic substances such as bleach, fruit juice etc (due to the fact that the cottage was lived in) then it is remarkable indeed, since the investigators could not see what they were looking for, and therefore where to spray, and therefore sprayed everywhere in the corridor and elsewhere (but not in Meredith's room, it seems), that fluorescent patches did not appear in smears all over the place but instead were limited to and grouped in specific places, and in a specific way, that is, in the shape of footprints.

2. There were 4 obvious bare footprints located by the luminol and 3 of these were of a shape and size attributable to a woman - compatible with Knox in fact. One was in Knox's bedroom, the other two in the corridor, that is, between Knox's room and Meredith's room. The two in the corridor contained Meredith's DNA. It is not possible to obtain DNA from bleach or fruit juice etc.

3. The 4th was compatible with Sollecito and the bloody print on the bathmat in the small bathroom.

4. The luminol hits took place on the 18th December whereas the murder occurred on the 1st Nov. The hypochlorite in bleach responsible for luminol emitting light evaporates naturally after just a few days and therefore bleach as a source for the fluorescence can be excluded.

5. If the fluorescence was due to the peradoxise in fruit juice or other vegetable matter then there should at least be some rational explanation as to why Knox had such substances on the sole of her foot, and why does the peradoxise not show up elsewhere? What would be the source for these substances and how would they have got there? No explanation has ever been advanced.

6. As already mentioned the TMB tests on the luminol hits do not exclude blood. Indeed TMB applied after luminol is less likely to bring up a positive result because the chemical reaction for both applications is the same, and luminol is far more sensitive than TMB. That was made clear by, amongst others, Dr Gino who was in fact an expert witness for the defence.

All in all, given the considerable quantity of blood in Meredith's room, and the fact that it had certainly been tracked outside of her room, visually obvious in the small bathroom, Nencini's "contextualizing" is not at all illogical. It is plain common sense.

It can also be inferred that the removal of blood traces in the corridor, other than Guede's shoe prints, which were not that manifestly visible, would be necessary if

Knox's account of visiting the cottage to have a shower on the morning of the discovery of the body, was to have any chance of credibility.

Indeed relevant observations here - before I leave the topic - are that there were no visible connecting bloody footprints between Meredith's room and the bloody footprint on the bathmat in the small bathroom, and whilst there was blood on the inside handle of her door, there was none on the outside handle, although the door was closed and locked.

I will leave the last word on this to Nencini, who opined that the defence attempts to argue that the luminol hits were the consequence of a non-haematic source were "from an objective point of view a remarkable exercise in dialectical sophistry rather than trial evidence on which any judge might base reasoning that would be beyond criticism."

The selective search for other logical Inconsistencies

"Another big logical inconsistency" is the explanation for why Meredith's cell phones were removed; if to prevent them ringing, then the goal could have been achieved by switching them off or removing the battery.

OK, point taken, but if that goal could have been achieved simply by switching them off or removing the battery, then why take them with them? The answer, if the perpetrators were thinking straight, would be that in switching them off or removing the battery, the perpetrator could have left his fingerprints on them. So they would have had to take them anyway. So why bother with the manipulation? A logical inconsistency?

Marasca-Bruno return to the Prosecution's argument on motive at the Nencini appeal. We can recall that Crini had suggested that there could possibly have been an argument between Meredith and Knox over Guede's use of the large bathroom. M-B say that the reason for a quarrel could certainly not have been this, as such an incident is not referred to in Guede's evidence.

Marasca-Bruno argue that the hypothesis of the theft of the money and credit cards that Meredith would have blamed Knox for is illogical and contradictory, given that Knox (and Sollecito) were acquitted of the charge.

OK, but Nencini was not seeking to re-convict them. The hypothesis was based on trial facts and has a high degree of probability even if it did not reach the bar of "beyond a reasonable doubt". Meredith's credit cards and rent money were never recovered. He was simply looking for a plausible reason for a quarrel - on the basis of what Meredith would have thought – whether or not Knox was the responsible party. Nothing illogical or contradictory in that.

Marasca-Bruno maintain that it is arbitrary to argue, just because Knox and Sollecito were at Sollecito's flat viewing a movie, taking light drugs and having sex, that they

were later at the cottage for a reason which included a sexual motive and destabilized by drugs.

Marasca-Bruno maintain that there was another investigative omission in the failure to analyze the content of the cigarette stubs (presumably for drugs?) or to ascertain the biological nature of the trace, but just to go for a DNA test, on the basis that such tests would render the sample unusable.

OK, but I am not sure that was the basis for not conducting the further tests. Establishing whether or not Knox and Sollecito had smoked a reefer, or a cigarette whilst under the influence of drugs, at the cottage, at some time, is really not that important. The biological nature of the trace was obviously saliva whether or not it contained drugs.

> "And all this was done with the brilliant result of delivering to the trial a totally irrelevant piece of information" ……[given that the cottage was where Knox lived and where Sollecito "hung out".]

Irrelevant as it turned out, I agree. It seems a bit harsh to criticise the DNA test though. I am sure that M-B would have been ecstatic if the mixed trace had turned out to be Guede and an unknown, rather than Knox and Sollecito. And wasn't the trace postulated as a source for contamination of the bra clasp?

A few General Remarks

Get a load of this -

> "It is, surely, undeniable the interpretative effort displayed by the fact finding judge in order to remedy the unbridgeable investigative gaps and the significant shortfalls of evidence with shrewd speculations and suggestive logical arguments, even if merely assertive and apodictic."

As we are discovering, "shrewd speculations and suggestive logical arguments, even if merely assertive and apodictic" is exactly what Marasca-Bruno are up to.

What investigative gaps and significant shortfalls of evidence are they talking about? Have we come across any yet? Anyway I will come to discuss this and other matters raised by the Report when I discuss the sufficiency of the evidence at the end of this critique.

Marasca-Bruno then assert (to paraphrase) that fact finding is a task pertaining exclusively to the fact-finding judge, and not up to the Court of Legitimacy. The Supreme Court has to limit itself to whether the fact-finding judge's reasoning is compatible with common sense and within the limits of an acceptable latitude (law cited) as well as compliant with the limits of evidence.

That's right. Remember that.

> "Faced with missing, insufficient or contradictory evidence, the judge should simply accept it and issue a verdict of acquittal, according to Article 530, section 2 of the Italian Code of Criminal Procedure, even if he is really convinced of the guilt of the defendant."

Note the surprising inclusion of "missing" evidence, although M-B have merely been

speculating wistfully about that and, for obvious reasons, it is not referenced in the wording of Article 530.

Marasca-Bruno then spend far more words than is necessary on Nencini's mistake of referring to Sollecito's DNA being found on the knife blade.

There is then a bit of sense but a lot of pompous waffle about the "beyond reasonable doubt" standard.

> "It is certainly useful to remember that, taking for granted that the murder occurred in via della Pergola, the alleged presence at the house of the defendants cannot, in itself, be considered as proof of guilt"

This is the precursor for what comes a bit later.

Marasca-Bruno note that there is a difference between "passive behaviour" and "positive participation".

> "It is indisputedly impossible that traces attributable to the appellants would not have been found at the crime scene [ed: by which they mean "the murder room"] had they taken part in Kercher's murder."

This is not a remark but a dogmatic assertion which is patently unconvincing. Had Knox and Sollecito been -

(a) egging Guede on to a sexual assault
(b) exhorting him to finish her off
© whether with his own knife or one that was handed to him,

then it is improbable in the aforesaid scenarios under (a),(b) and © that they would have left traces, but in the event of any one of the aforesaid (a),(b), and © they would be participating positively in the commission of the crime, and hence as guilty as Guede.

So, the assertion is not just dogmatic but manifestly illogical.

<u>The Presence of Amanda Knox</u>

> "With this premise, with regards to Amanda Knox's position, it can now be observed that her presence in the house at the scene of the crime is considered an established fact from the trial, in accord with her own admissions…….on this point the reliability of the judge a quo is certainly to be subscribed to."

Developing this affirmation, Marasca-Bruno hold that she was there at the time of the murder but in a different room.

> "Another element regarding her (presence) is represented by traces of mixed DNA, her's and the victim's, in the small bathroom; an eloquent confirmation that she had come into contact with the latter's blood, while the biological traces belonging to her

are a result of epithelial rubbing."

"Nevertheless, even if attribution is certain, the trial element would not be unequivocal as a demonstration of posthumous contact with the blood in circumstances where she would be attempting to remove the most blatant traces of what had happened, perhaps to help someone or deflect suspicion from herself, and thus entailing her certain direct involvement in the murder…….her contact with the victim's blood would have occurred after the crime and in another part of the house."

I will comment later.

As regards the false accusation against Patrick Lumumba -

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

Yes, indeed, but despite a clear run in to the try line M-B still manage to drop the ball. Nencini had no doubt that it was not just an initiative to cover for Guede, but also an opportunity to deflect the investigators from ascertaining her active participation in the murder. Lumumba, after all, would not be able to provide the investigators with any information on that score, or indeed about any others that might have been involved. M-B fail to mention that.

[Post #4]

<u>The Simulated Break In</u>

This is briefly treated by Marasca-Bruno (whom by now I am beginning to think of as Zaphod Beeblebrox from The Hitch-hikers Guide to the Galaxy) and by way of a sidetrack really.

They in fact affirm the circumstances of simulation without actually having the gumpf to explicitly say so.

They are more concerned to turn their attention to the inference that only a "qualified" person would have an interest in a simulation so as to remove suspicion from him/herself.

Marasca-Bruno are not interested in Guede.

They acknowledge that Knox and Sollecito are "qualified" persons……

"Yet this element is also substantially equivocal, especially in the light of the fact that, when the postal police arrived it was….Sollecito - whose trial position is inextricably bound to Knox's - who pointed out the anomaly to the police officers,

that nothing had been stolen from Romanelli's room."

And that's it. The smoking gun, the elephant in the china shop, is no more - because of an anomaly?

It was staged but sadly not staged to perfection, by way of something actually being stolen. A stager, knowing this, would not countenance revealing this information to the police, although it may have been an inadvertent slip due to Sollecito being an idiot. An inadvertent slip aside, he would have no reason to mention that nothing had been stolen, unless he was as aware as others were that the staging had it's flaws in other respects as well, in which case he could have thought that his comment had the appearance (Marasca and Bruno fall for it) of innocence.

And how did he know that nothing had been stolen - which only subsequently turned out to be true when Filomena checked the contents of her room- unless he was involved in the staging?

Even if one accepts the anomaly and extremely dubious reasoning above, it only applies to Sollecito. There is nothing equivocal about the logical inference applying to Knox. That is so despite the illogical connection in asserting that their trial positions are inextricably linked.

Is Knox a ventriloquist and Sollecito her dummy?

Curatolo & Quintavalle

"Nevertheless, the presence of intrinsic contradiction and poor reliability of witnesses [ed: ie the above named] do not allow unreserved credit to be attributed to (their) respective versions, to the extent of proving with reasonable certainty the failure, and therefore the falsity, of the accused's alibi, who insisted she stayed in her boyfriend's home from late afternoon on the 1st November until the following morning."

Here Marasca-Bruno effectively reprise the reasoning of Hellmann.

Curatolo was a tramp, a drug addict and pusher, and a prosecution witness stooge. The same evening he had seen Knox and Sollecito together in Piazza Grimana (1st Nov) he had seen revellers wearing Halloween masks, and the special buses to take them to discos and nightclubs, referenced by the witness, were not running that night.

Marasca -Bruno overlook the improbability that Curatolo could have seen the two together on Halloween, given that it was established as a trial fact that on that evening Sollecito was attending a friend's anniversary dinner outside Perugia, and Knox was meeting up with her friend Spiros.

Perugia is a student town. There are numerous discos and nightclubs catering to this market. The defence did produce nightclub owners testifying to their clubs not being open the day after Halloween, and shuttle bus operators testifying that they were not running special buses to them, though these witnesses did not exclude the possibility

that other nightclubs had some, or that other buses could have been hired for a private party. There were indeed still a good few discos and nightclubs open (these can be listed if required), with a normal bus service for Perugia as well. Guede, himself, was seen dancing at the Domus hours after the murder.

[Halloween is a relatively new festivity in Italy. All Saints Day (Nov 1st) and All Souls Day (Nov 2nd) are holidays in Italy.]

"This contradicts the balanced assessment - but always in a context of uncertainty and ambiguity - of the witness referring (regarding the context of when he saw the two accused together) to the day before he saw (in the afternoon) unusual movements of police and Carabinieri and, in particular, men wearing white overalls and headgear (they looked almost like aliens) enter the house on via della Pergola."

As regards Quintavalle, Marasca-Bruno are brief and equally dismissive. This is all they have to say -

"Quintavalle - apart from the lateness of his statements, initially reticent and generic - offered no contribution to certainty, not even as to the product bought by the young woman he noted on the morning after the murder, when his shop opened. The fact he recognized Knox is worthless as her image had appeared in every newspaper and television news broadcast."

There was no evidence that the young woman had bought, or had tried to buy, a product.

No, his identification testimony was not worthless on that account. If it was worthless for that reason then a lot of ID witness testimony would go by the board in today's world of rapid 24 by 7 news coverage.

Quintavalle was able to describe the clothes that the young woman was wearing, which description, blue jeans, grey jacket and scarf, was a match for the articles of clothing that the crime scene investigators had photographed scattered on the top of Knox's bed at the cottage and which had immediately became material evidence along with everything else. Since Knox was wearing different clothes, including a long white skirt, when she and Sollecito were photographed outside of the cottage by the press, it is difficult to gauge how Quintavalle might have been influenced in his description.

Raffaele Sollecito

"In Sollecito's case too the evidentiary frame work which emerges from the judgement under appeal is marked by inherent and irreducible contradiction……However, the strong suspicion remains that he was present in the house on via della Pergola on the night of the murder, albeit it has not been possible to determine when. On the other hand, if Knox's presence in the home was certain, it would hardly be credible that he was not with her."

More

Marasca-Bruno return to the question of the knife again despite the fact that they have excluded it as having any "probative value or circumstantial relevance".

This is an inconsistent element in their own reasoning, such as their reasoning is.

They remind us that no trace of blood was found on it, and assert that it was a questionable choice to go for a DNA test rather than establish the nature of the biological trace.

> "An extremely questionable option, given that the finding of blood traces, coming from Kercher, would have given the trial an element of strong evidentiary value, showing for certain that the weapon had been used to commit the murder."

One begins to wonder whether they are mentally fatigued at this point. But no, that can't be it. They have had over 130 days to write 34 pages of reasons, and that wouldn't be particularly taxing, provided that there had been reasons for the verdict in the first place, and that they had remembered them. They are waffling, padding and turning to risible argument. Particularly given that they should know exactly why Dr Stefanoni had only one sensible option available to her. They had even referred to this in the preceding paragraph.

Even if it had been blood in sample 36b then, without establishing whose blood it was, the knowledge that it was blood would be totally useless as a piece of evidence, as the blood could have come from anywhere, at anytime.

> "What is certain is that no traces of blood were found on the knife. Lack of which cannot be traced to meticulous cleaning. As noted by the defence, the knife showed traces of starch, a sign of ordinary domestic use and of cleaning that was anything but meticulous. Not only this, but starch is famous as a substance with a high absorbance rate, thus it is highly likely that, in the event of a stabbing, it would have retained blood traces."

As we come towards the end of their reasoning the dogmatic assertions start to pop up thick and fast out of nowhere.

Why can lack of blood traces not be connected to meticulous cleaning? Isn't that, by definition, what meticulous cleaning does? Was there any expert evidence to the contrary? How can Maresca and Bruno be so sure that their version of common sense is shared universally?

Yes, starch does absorb liquids. However, how do they know that the starch was there on the knife at the time of the murder? It is not improbable that having cleaned the knife it was used again for ordinary domestic use. The starch could also have got there as a consequence of the investigators handling it with latex gloves, which contain traces of starch, and this was pointed out at the Hellmann appeal.

> "Finally, the footprints found at the murder scene can in no way be traced to the appellant."

Another dogmatic assertion. They are, I should point out talking about Sollecito at this point, not Knox.

The bloody footprint on the bathmat and a luminol enhanced footprint in the corridor were useful for negative comparison purposes and both were attributed by the prosecution experts to Raffaele Sollecito because of points of comparison with his foot and because neither had similar points of comparison with Knox and Guede.

Their evidence was disputed by a defence expert witness.

Massei and Nencini agreed with the prosecution experts, Hellmann did not.

However, remember the bit about fact-finding being for the fact-finding judge and not the Court of Legitimacy?

Not only do Marasca-Bruno break the rules at to their remit but they do not even give reasons for their assertion.

> "The computers of Amanda Knox and Kercher, which might have been useful to the investigation were, incredibly, burned by the careless actions of the investigators."

Another entirely unjustified and dogmatic assertion.

Four computers were found to have sustained damage - probably an electrical burn-out - but it is not in evidence that they were damaged by the investigators.

Indeed, I do not recall any trial evidence that they were working before they were recovered by the investigators. Certainly Sollecito's Asus was not. That had been damaged for months. Filomena's computer was found to have been already damaged when it was switched on in her presence at the police station. It may be the case that Knox, somewhere in her testimony, asserted that her computer was in working order when she last used it, or something like that. But then she would say that, wouldn't she?

Of all the computers that had problems, the data was ultimately recovered from all but Knox's Toshiba.

And realistically, what potential information relevant to the investigation did Marasca-Bruno think could be found? Photos of Knox together with Meredith? If there were such photographs, had they been deleted from the camera?

Knox communicated with her family at home by means of an internet café because it had skype available.

E-mail communication is recoverable whether or not the user's computer is broken.

Marasca-Bruno also opine that in respect of their alibis, what we are talking about is a failed alibi rather than a false alibi. Is this a necessary and relevant distinction?

They both maintained, for trial purposes, that they had been together at Sollecito's flat from about 9 pm onwards on the 1st November, that both had slept and that Knox had been the first to rise at about 10.30 am the next morning. Of course, Sollecito had contradicted this in his statement to the police. He said that Knox had gone out and not returned until 1 am. However this was not admissible as trial evidence.

In relation to the crucial period of time in which TOD is ascertained to have occurred there is no independent corroboration of their alibi. In that sense it is a failed alibi.

However the reliability of their alibi can certainly be assessed from the trial evidence. Sollecito's phone was switched on at 6.03 am and earlier heavy music had been played on his computer for half an hour at 5.30 am, on the 2nd November. That manifestly contradicts the alibi. In short the pair were lying when they said that they had slept and that neither had risen until 10.30 am. Accordingly, it is a reasonable inference that their alibi is not to be trusted.

There is, in addition, the evidence of Curatolo and Quintavalle.

And finally Marasca and Bruno declare that -

"The panorama of the declared evidence is complete."

Except that this is not true.

They have not mentioned the following, which are certainly part of the declared evidence and which certainly have to be taken into account if we are to consider the sufficiency of the evidence -

1. The presence of Knox's table lamp on the floor in Meredith's room.

2. The police photograph of Knox's throat and the statement of Laura Mezetti that what is seen in the photograph, as she had noticed at the Police Station, is a scratch.

3. Knox's dried and congealed blood on the tap in the small bathroom next to Meredith's room.

4. Knox's e-mail to the world with it's implausible aspects and which exposes contradictions in the respective accounts of the appellants.

5. The phone records which expose a suspicious pattern of behaviour on their part and which show that the cell phones of both the appellants had been switched off, or rendered inoperative, between 8.42 pm on the 1st November and 6.03 am on the 2nd November.

6. The luminol enhanced mixed DNA trace for Knox and Meredith in Filomena's room, certainly requiring an explanation.

[Post #5]

So, let's do a brief recap now

1. The Report starts with general slurs on the competence and motives of the investigators and judges.

2. Marasca and Bruno misunderstand the relevance of motive. Nencini was not in error. It is not relevant, or of less relevance, if the evidentiary framework of guilt is by itself sufficient to establish guilt. In such circumstances the normal formula is to attribute futile and trivial motives that require no further definition. Conversely motive does acquire importance, an element in itself, if that framework is insufficient.

3. Their section on TOD produces nothing that is relevant.

4. Having failed to establish a convincing connection between "the primacy" of rules of evidence and a guarantee of the repeatability of DNA analysis, such that the latter is required by the former, or at least can be tolerated by it for some specific reason, they assert that the latter must prevail anyway. It requires numerous inconsistencies, a failure to follow the ground rules of evidence, and the illogicality of failing to follow their own argument where there is any argument, to assert that Meredith's DNA on the blade of the knife, and Sollecito's DNA in a mixed sample from the bra clasp, have no probative or circumstantial value simply because they were not capable of repetition. That is simply a dogmatic assertion and one, as we shall see, that has no connection with the permitted grounds for appeal.

5. As if the foregoing was not enough, and perhaps conscious of it, they bring up the matter of contamination again. Which would not be relevant if the foregoing were true. The contamination argument has long been shown to have no mileage in it. The cardboard box (from the police station) is a stupid reference and that there was pre-existing dirt on a latex glove mere speculation, without context.

6. The section on luminol hits and removal of blood traces is characterized by many misrepresentations and a chronic misunderstanding of the evidence and the inferences that can be drawn from it.

7. On the simulated break-in, which they accept, they declare that they are then stymied in the necessary inference by the feeblest of anomalies.

8. Now up to this point we have encountered few, if any, mistakes, inconsistencies and contradictions, of any significance, other than those that Marasca-Bruno are making, or making up, themselves.

Remember this? -

> "that fact finding is a task pertaining exclusively to the fact-finding judge, and not up to the Court of Legitimacy. The Supreme Court has to limit itself to whether the fact-finding judge's reasoning is compatible with common sense and within the limits of an acceptable latitude (law cited) as well as compliant with the limits of evidence."

In fact appeals to the Supreme Court can only be made under the precise circumstances provided for by the Italian Code of Criminal Procedure.

These are governed by Article 606. Of the provisions in this Article, only section 1, para (e) is applicable, as follows -

> "(e) defect, contradictoriness or manifest illogicality of the judgement reasoning,

when the error results from the text of the provisioning appealed, or from other documents in the proceedings specifically noted in the reasons of encumberment."

Therefore, although fact finding is the preserve of the lower courts, the Supreme Court can enter into the merits of the judgement appealed against on this ground.

The question arises as to what constitutes a fact to which para (e) would not relate.

There are probably not many, for most facts determined would require an element of reasoning. For instance, to hold that a particular witness was reliable, or otherwise, would require explanation, that is, reasoning, and so on.

To be clear, "defect", "contradictoriness" and "illogicality" all relate to the judgement reasoning. For instance, a failure to take into account contradictory evidence in the judgement reasoning must obviously be included as a defect.

Another defect would, of course, be misapplication or misinterpretation of the law in the judgement reasoning, an error to which the 5th Chambers have already shown themselves prone.

A clear restriction on the Supreme Court entering into the merits of the judgement appealed against, apart from the foregoing, would appear to be that in the case of illogicality, that it has to be manifest.

However, no particular instance of manifest illogicality is likely, on it's own, to invalidate a verdict, unless it amounts to a serious defect from which the reasoning, as a whole, on the verdict, cannot recover.

Effectively, there have to be numerous manifest illogicalities in the reasoning of the judgement appealed against, for this to happen. Under those circumstances one might actually describe the judgement as "perverse" at one end of the scale, and "unsafe" at the other. Setting aside a conviction for such reasons I would understand. Usually, at least in the UK, an unsafe conviction would result in a re-trial if the prosecution requested it.

However even the Supreme Court has to motivate it's decision making process, free from such defects.

The banal peppering of the Report with references to "manifest illogicality" and "intrinsically contradictory", and so on, may impress the undiscerning reader, but the repetition and context are, frankly, "manifestly" unconvincing to the discerning reader.

What we find, on analyzing the 5th Chambers' motivation, is that when it enters into the merit, it does not do so in a balanced way, and without logical inconsistency on it's own part, but simply by making dogmatic assertions on the merit. That is hardly extending an acceptable latitude to the fact-finding judge nor is it explaining why his reasoning is incompatible with common sense.

In particular, I do not see how one can make the assertion that the DNA on the knife and the bra clasp has no probative or circumstantial relevance, because the tests were not repeated, when this can scarcely be described as a product of the application of section 1 (e) of Article 606.

Furthermore, one also has to consider the effect of Article 628. The 2nd paragraph states that -

> "In any event a verdict issued by a court following a Cassation order of remand may be appealed only on the reasons that do not concern those that had already been decided by Cassation on the order of remand…."

The Chieffi ruling annulling Hellmann was not intended as a foray into the merit but it was a criticism of the procedural defects and reasoning methodology of the Hellmann court, which errors we can see repeated in the Marasca-Bruno Report.

The most obvious and most frequent error is the use of dogmatic assertion, the starkest example of the deployment of self-contained circular reasoning it is possible to have. Indeed, it does not warrant the description "reasoning".

Abstract hypothesizing on contamination is another.

The reprise of Hellmann's reasoning as to the reliability of the witness Curatolo is another, and most objectionable, one.

Interestingly, the "validity" of the DNA testing was not an aspect raised by Costagliola and consequently not touched upon by Chieffi. The only conclusion has to be that Costagliola deemed the reliability of the results as perfectly safe.

Article 530, Section 2 and Conclusions

I now turn to the matter of the sufficiency of the evidence.

There is no formula as such.

The evidence is sufficient if the bar of culpable beyond a reasonable doubt is met, insufficient if it is not.

The starting point is clearly the evidence itself, and then the inferences that are drawn logically from it.

As to the evidence and inferences, we are assisted by the fact, under the Italian system, that all verdicts, whether at trial or appeal stage, are required to be motivated in writing.

The final motivation, prior to the 5th Chambers, is, of course, the Nencini report. It seemed to me that Nencini, despite a few flaws, did an excellent job in unifying the

evidence in a global way, as is required of what is essentially circumstantial evidence, fully in accordance with the jurisprudence of the Supreme Court on the matter, and with all the arrows pointing in the same direction and substantially corroborating each other. It left no reasonable doubt, in my humble submission, that the Florence court's affirmation of the guilty verdicts was correct.

Now, we have already discussed the grounds on which an appeal can be made to the Supreme Court. The sufficiency of the evidence is not one of the stated grounds.That is a matter for the fact-finding judges of the lower courts. The 5th Chambers therefore knowingly exceeded their remit.

We also find, having gone through the Marasca-Bruno criticism of the Nencini Report, in some detail, that many, if not most, of these criticisms lack substance and lack logical consistency in their own right.

The overall effect has been to produce an improper weighting (for want of a better word) on the matter of sufficiency, which should not have even been considered anyway.

In addition the result of the Report has been to produce an interesting scenario based on the following conclusions.

1. Knox was present in the cottage at the time of the murder but in a non-participatory role. Very probably (if this is not a held fact) she had scrubbed Meredith's blood off her hands in the small bathroom.

2. Sollecito was very probably there as well, but it cannot be known when.

3. There was certainly an assailant (and perhaps more than one) in addition to Guede.

4. There was a staging of the break-in in Filomena's room.

As to Knox having blood on her hands (literally rather than metaphorically) there are inconsistencies to be derived from this because, according to the Report, this would have been as a result of contact with blood outside Meredith's room. Why? Where is that blood? Such blood could, of course, have been there prior to it being removed. However, to affirm that would be to prejudice a number of assertions they have already made. More likely is that Knox had been in Meredith's room, during or after the event and without, we would have to observe with some interest, leaving any trace of herself there. That would also be the logical explanation for her lamp being on the floor there.

Guede was not charged with, and hence was neither acquitted nor convicted of, the offence of staging, but in any event Marasca-Bruno did not attempt to attribute the staging to him. This leaves either Knox, an unknown person, or Sollecito. As to an unknown person it is manifestly difficult to see how he would be "a qualified person" for the purpose of the inference that only someone with an interest in removing suspicion from himself would do this. Knox and Sollecito qualify whether there is an anomaly or not.

As to who Guede's unknown accomplices may have been, Marasca and Bruno are silent. This is not surprising as there was no forensic trace of them. There were, in fairness, unidentified genetic profiles, male and female, obtained from cigarette stubs taken from the ashtray in the lounge/kitchen, but as with the mixed genetic profile of Knox and Sollecito on one of these, they cannot be dated and therefore cannot be placed within the time frame for the murder. For all we know they could belong to Romanelli and her boyfriend Marco Zaroli, both of whom were at the cottage earlier on the day of the 1st Nov, with Knox and Sollecito.

More pertinently, however, is this scenario regarding Knox. It is not one that her defence team, even in their wildest dreams, would have considered advancing on her behalf. She had, throughout the proceedings, maintained that she was not there, whether or not in a non-participatory role.

That is not surprising. The scenario we have is that Knox and perhaps Sollecito were at the cottage with Guede, and at least one other, and that Guede and this other saw fit to commit a horrendous murder in their presence, without encouragement nor opposition from either of them it would seem, but certainly in the knowledge that such action would meet with the utmost reprobation, and then they leave, trusting to Knox and Sollecito not spilling the beans. That really is stretching credulity well beyond the bounds of breaking point. Even more so if there was no unknown accomplice.

Furthermore, and if that is nevertheless so, then Knox has had more than enough chances to put the record straight, particularly since her return to Seattle. She still has the opportunity to do so.

What we have, therefore, is a fact that neither the defence nor the prosecution has ever advanced in the entire history of the proceedings, and not one that any previous judge has drawn.

Now it may be something that can be justified by a fact-finding judge, on remand, and in the light of the Marasca-Bruno Report. Not. But it is surely beyond the remit of the 5th Chambers to hold that as a fact and without even permitting prosecution and defence submissions on it. That runs counter to the principle of natural justice, a violation inherent in the final appeal and in the decision not to permit a remand to a 1st instance court of appeal.

It would have been interesting to have seen the defence submissions.

I said at the beginning that the Marasca-Bruno Report was a desperate attempt to bring home an incomprehensible verdict. It is not only that, it is a charade that sullies the good name of Italian justice.

A question to arise is what truly motivated the verdict? It seems to me that the only "glaring investigative omission" in the case, is this. However that is a murky world of connections and undue influence about which we can only speculate at this stage.

Had it been incompetence and had the five Supreme Court judges held up their hands and simply admitted that they had made a mistake, I might have had some sympathy for them. Instead they have persisted with a charade which is essentially corrupt.

As for Knox and Sollecito, sadly for them, they are anything but exonerated.
