JUDGEMENT OF THE SUPREME COURT OF CASSATION OF THE REPUBLIC OF ITALY

(PRESIDED OVER BY DR SEVERO CHIEFFI)

IN THE MURDER OF MEREDITH KERCHER

Translated from Italian into English

by www.perugiamurderfile.org

9 September 2013[1]

[1] Translator's note to readers: For the convenience of readers, we have opted to refer to the main players in a consistent fashion (Prosecutor General, Counsel for the Civil Parties, Knox Defence, Sollecito Defence, Hellmann Court of Appeal, First Instance Court), whereas the original Italian report varies in its terminology. While Italian readers would not be confused by these references, readers who must rely on the English version alone might find them confusing. Similarly, for the convenience of readers, we have added bracketed comments in the sections where the Supreme Court is summarizing the arguments made by the Prosecutor General, the Counsel for the Civil Parties, the Hellmann Court of Appeal, the Knox Defence, the Sollecito Defence, etc., to indicate who is making the argument. The reason for doing so is that, in Italian, the use of the conditional tense makes it clear that the Supreme Court is summarizing an argument or contention that has been made in the documents submitted, while in English the conditional tense is not used for this purpose. Instead, we use the present indicative and, to avoid confusion, brackets indicating who is making the assertion, contention, argument, etc. that the Supreme Court is summarizing and considering. Lastly, the bolded, bracketed numbers refer to the page numbers in the Italian original.

DISCLAIMER

This translation was done by a group of unpaid volunteers who are regular posters on the Perugiamurderfile.org message board devoted to discussing the murder of Meredith Kercher in Perugia, Italy, in November of 2007. The translation and editorial team was international in its make-up.

The resulting English translation is being provided for the sole purpose of promoting a better understanding of this complex case and to ensure that the facts are readily available to the English-speaking world without selective emphasis, misstatement or bias.

It has been translated on a "best effort" basis and has gone through multiple rounds of proofreading and editing, both to ensure its accuracy and to harmonize 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 judgment. All such corrections will be investigated, made as required and brought to the attention of the public.

As with any translation, some terminology in Italian has no direct equivalent in English. For example, the charge of *calunnia* has no direct equivalent in Anglo-Saxon law. 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 a free translation and has no legal authority or status.

Original version published on 9 September 2013 in memory of Meredith Kercher.

THE REPUBLIC OF ITALY

IN THE NAME OF THE ITALIAN PEOPLE

THE SUPREME COURT OF CASSATION

FIRST CRIMINAL DIVISION

Composed by Their Honours Messrs Magistrates:

Dr SEVERO CHIEFFI	President
Dr MASSIMO VECCHIO	Judge
Dr GIUSEPPE LOCATELLI	Judge
Dr PIERA MARIA SEVERINA CAPRIOGLIO	Reporting Judge
Dr GIACOMO ROCCHI	Judge

Has pronounced the following

JUDGEMENT

On the appeal proposed by:

- THE PROSECUTOR GENERAL OF THE COURT OF APPEAL OF PERUGIA
- KERCHER STEPHANIE ARLINE LARA born 21/07/1983[2]
- KERCHER ARLINE CAROL MARY born 11/11/1945
- KERCHER JOHN ASHLEY born 21/10/1976
- KERCHER LYLE born 03/07/1979
- KERCHER JOHN LESLIE born 11/12/1942

[2] Translator's note: All dates should be read as follows: day/month/year

against:

- KNOX AMANDA MARIE born 09/07/1987
- SOLLECITO RAFFAELE born 26/03/1984

and:

- KNOX AMANDA MARIE born 09/07/1987

Opposing the judgement n. 10/2010 of the Court of Assizes and Appeal of PERUGIA, dated 03/10/2011.

Having viewed the records, the statement of reasons and the appeal, having heard in a PUBLIC HEARING on March 25, 2013 the report made by Judge Dr PIERA MARIA SEVERINA CAPRIOGLIO.

Having heard the Prosecutor General Dr Luigi RIELLO, who has concluded for the rejection of the appeal of Knox, the annulment of the sentence with remand with reference to points A, B, C, D, E and, concerning point F, annulment limited to the aggravating factor as of article 61, number 2 of the Criminal Code.

[2] Having heard, for the civil parties, lawyers Francesco MARESCA and Enrico FABIANI VIERI for KERCHER Stephanie Arline Lara, KERCHER Arline Carol Mary, KERCHER John Ashley, KERCHER Lyle, KERCHER John Leslie as well as lawyer Carlo PACELLI for [Diya LUMUMBA].

Having heard the Defence Counsel for the accused, lawyers Carlo DELLA VEDOVA and Luciano GHIRGA for KNOX; lawyers Giulia BONGIORNO and Luca MAORI for SOLLECITO.

[3] THE FACTS CONSIDERED

1. With the judgment of 5 December 2009, the Court of Assize of Perugia convicted Amanda Marie KNOX and Raffaele SOLLECITO for the crime of the murder of Meredith Kercher that occurred in her home on the night of 1 and 2 November 2007, in Perugia, at via della Pergola n. 7, by strangulation and after having sexually abused her, and stabbed her numerous times, in complicity with Rudy Hermann GUEDE, convicted by a final judgment after having opted for an abbreviated trial procedure, as reached by the results of insurmountable scientific evidence that points to him. Some of the same biological traces left in the apartment of the victim, *locus commissi delicti* and the victim's body; the guilt of both defendants was also established for the crime of transporting a knife from the home of Sollecito, the theft of Kercher's two mobile phones, for the crime of simulating a burglary in the bedroom of Filomena Romanelli, located in the same apartment where the victim lived, at via della Pergola 7, a simulation staged to connect the murder to third parties, who stealthily entered the building.

Lastly, Knox was convicted of the crime of *calunnia*[3] to the detriment of Diya LUMUMBA, falsely accused of the crime of murder in the course of the investigations that were set in motion as a result of the serious act of violence. It is well known, as the event occupied the news media, that the victim was a British student participating in the Erasmus exchange program in Italy, that she lived in that house in Perugia, as a tenant, at via della Pergola 7, with three other girls, including the young American student Amanda Knox, who had

[3] Translator's note: The charge of *calunnia* (art. 368 of the Penal Code) has been commonly translated as "slander" in the English/US media. This translation is incorrect, however, as *calunnia* is a crime with no direct equivalent in the respective legal systems. The equivalent of "criminal slander" is *diffamazione*, which is an attack on someone's reputation. *Calunnia* is the crime of making false criminal accusations against someone whom the accuser knows to be innocent, or to simulate/fabricate false evidence, independently of the credibility/admissibility of the accusation or evidence. The charges of *calunnia* and *diffamazione* are subject to very different jurisprudence. *Diffamazione* is public and explicit, and is a minor offence, usually resulting in a fine and only prosecuted if the victim files a complaint, while *calunnia* can be secret or known only to the authorities. It may consist only of the simulation of clues, and is automatically prosecuted by the judiciary. The crimes of *calunnia* and *diffamazione* are located in different sections of the criminal code: while *diffamazione* is in the chapter entitled "crimes against honour" in the section of the Code protecting personal liberties, *calunnia* is discussed in the chapter entitled "crimes against the administration of justice", in a section that protects public powers.

come to Italy to attend a course at the University for Foreigners and who shortly before, since the previous 26 October, had formed a romantic relationship with Raffaele Sollecito, a student about to graduate with a degree in Computer Science from the University of Perugia.

The ravaged body of the young British student had been found the next day, 2 November 2007, at around 13:30, after Sollecito and Knox reported a burglary inside the apartment and after the two phones that had been handed over to the Postal Police were ascertained to have been used by the victim, were found in a garden in Via Sperandio, where in fact they had been thrown by the perpetrator or the perpetrators of the murder, even though it was initially intended to look like these phones had been thrown by the perpetrator of the simulated break-in. The bedroom of the murdered young woman appeared to be locked by key and it was necessary to break down the door; once open, it revealed the gruesome sight.

The Appeal Court judgement, the object of the present appeal, almost entirely reversed the First Instance judgment, acquitting the charges ascribed to the two defendants for not having committed the crime of murder and because the crime of simulation did not occur **[4]**, recognizing the guilt of Knox only for the crime of *calunnia*.

It is therefore necessary to introduce, precisely because of the absolute difference between the two decisions of merit, albeit in summary, a brief outline of the arguments followed by the First Instance Court, and then highlight the work of evidence integration accomplished in the second instance, considered absolutely necessary, and the reasons for the divergence of the two justifying arguments, before entering into the details of the multiple outlines of challenge with regard to legitimacy.

1.1. The First Instance Court had become convinced of the guilt of the two defendants, in relation to the more serious crime, on the basis of strictly circumstantial evidence, but

evaluated as conclusive in light of a logical argument that began with the false alibi and the simulated break-in in Romanelli's room (in the apartment shared with Kercher, Knox and Mezzetti), passing through the genetic investigations, the biological traces found in the house bathroom *locus commissi delicti* and traces highlighted by luminol, as well as the examination of phone records.

According to the First Instance Court, the two defendants, suddenly finding themselves free from commitments previously made, on the evening of 1 November 2007 spent the after-dinner period at via della Pergola, where they had sex, intoxicated also by the drugs used (as per their own admission), where Rudy Guede (to whom the two gave access to the house) was also present, having been interested for a while in the young British student who that night was alone pursuing her studies, who certainly rejected her admirer, triggering a mechanism of aggression fuelled by sexual impulsiveness, in which the two young lovers included themselves, attracted by the Eros-violence mixture in which Sollecito above all had manifested an interest, given the kind of reading and films he seemed not to disdain.

Therefore the crime was held [by the First Instance Court] to have arisen in a context of violence and eroticism whose objective was to subjugate the unfortunate Meredith to sexual appetites that she repeatedly rejected, in a dynamic of progressive excitement and continued violence, to which the two defendants contributed, carried away by their involvement in a new, exciting experience.

In essence, in the First Instance trial, the following elements of proof had been stressed in demonstrating the guilt of the two defendants:

• The traces of a burglary in the bedroom of Filomena Romanelli clearly had been artificially created to divert suspicion from the occupants of the house, *locus commissi delicti*, as the shards of glass broken with a stone, **[5]** most likely from the inside of the house, were found mainly on top and not underneath the items scattered in the house; nothing was missing from the room, not even the student's jewels and the computer, even

the bedside tables had not been opened; the First Instance Court believed, therefore, that it was able to conclude that the staging was the work of those who had access to the house and had tried to remove any suspicion from himself/herself and direct it toward another person. So whoever entered via della Pergola, precisely because he/she did not enter through the window, had access through the front door, which would mean that he/she had the key, or rather had access, thanks to those who possessed the key, given the absence of signs of forced entry. A key had been given to each of the four young women who were renting the property, but that evening two of them (Romanelli and Mezzetti) were obviously absent.

The conclusion on the simulation was supported by the fact Romanelli had stated that she closed the window shutters of her room, even if only by pulling them close together because they were defective, the reason for which the hypothetical burglar, unaware that the shutters were just pushed together, would have to climb the wall before breaking the glass, leaving traces both on the wall and on the vegetation below, which were not detected, even though the window was about three and a half meters from the ground.

• Rudy Guede appeared to have been in the house, *locus commissi delicti*, because, irrefutably, undisputed traces of his DNA were deposited there, in addition to his fingerprints on the vaginal swab, on the pillow case placed under the gluteal region of the corpse, on the left cuff of the sweatshirt found on the floor near the corpse, on the bra found at the foot of the girl's body, on the victim's handbag, and on toilet paper left in the bigger bathroom of the young students' house, the one used by Romanelli (because he did not flush after defecating). Not only that, but it was his shoe prints in the victim's blood that were left on the floor of the house, in a path leading away from the victim's room and toward the door exiting the house, a door that had been pulled [shut] behind him. It was certain that Guede had entered the victim's home thanks to the intervention of those who possessed the keys, since it could be justifiably ruled out that the victim had allowed him entry, given that if it had been her, the simulated break-in would have not made sense (not to mention the fact that the British young woman had begun a relationship two weeks

before with Giacomo Silenzi, who lived in the other apartment in the house at via della Pergola 7, an apartment [that was] empty at the time of the crime, and had no intention whatsoever of reciprocating Guede's expressions of interest).

• The witness Nara CAPEZZALI said that she heard a scream at about 11.00 or 11.30 PM that was so heart rending that, afterwards, she had difficulty going back **[6]** to sleep; an event that was further substantiated by Antonella MONACCHIA, who stated that she went to bed at around 10.00 PM, and after falling asleep was awakened by a very loud scream coming from below (so from via della Pergola); in addition, the witness Maria DRAMIS reported that she went to bed at around 10.30 PM and while half-asleep heard footsteps rushing along the street connecting her home to via della Pergola, such as she had never heard before.

• The witness Antonio CURATOLO (a homeless man who spent much of his time in Piazza Grimana, close to via della Pergola, and who knew the two defendants from having seen them on previous occasions) stated that he had noticed them on the evening of 1 November, in the time period between 9.30 and 11.00 PM, in the little piazza located just a few meters from the house in via della Pergola, and in particular remembered that they were next to the low wall of the basketball court; and that when he left before midnight, he recalled that they were no longer present there; in particular, the witness added that from time to time he had seen one or the other of them go to the railing which was located on Piazza Grimana and look down below (in fact, it happened that at about 10.30 PM on that evening, a tow truck had had to intervene and there was a commotion produced by car horns). The witness gave the further detail that he remembered noticing that the two were no longer present when the buses taking young people to the discos left, and that the day after the one on which he noticed the two young people in the piazza for the last time, his attention was caught by a coming-and-going in via della Pergola, and especially by the arrival of men dressed in white who looked like extra-terrestrials (identified as the investigators of the Scientific Police who rushed to the scene of the crime after midday on 2 November 2007).

• The pathology examination confirmed that the unfortunate young woman had died following a sexual assault which she resisted, as the result of a dual mechanism of asphyxiation and haemorrhage, the haemorrhage resulting from a cardiovascular lesion caused by the larger wound inflicted in the neck, whereas the asphyxia was due to the aspiration of her own blood and further acts of choking/suffocation, probably following the scream heard by others; furthermore, the hyoid bone was found to have been fractured by constrictive action on the neck. The time of death was attributed to a time range between 8.00 PM on 1 November and 4.00 AM on 2 November 2007. The knife found in Sollecito's apartment, labelled Exhibit 36, was held to be compatible with the larger wound.

• From the examination of the stab wounds and the bruises found on the victim, a picture of massive injury in terms of number, distribution, and diversity emerged, especially with regard to the injuries inflicted on the face and neck (where the wounds were 4-8 centimetres deep), a picture which contrasted with the absence of defensive wounds; **[7]** a circumstance that was at odds with the fact that the young British student was equipped with a strong physique, trained in self-defence through a course in karate which she had taken; all of which led to the conclusion that the criminal action was necessarily carried out by several people acting together against the victim, who was placed in the position of being unable to defend herself or shield herself with her hands to avoid the repeated striking of vital parts such as the neck. Also considering the type of activity undertaken by the attacker, it turned out to be very difficult to hypothesize an isolated and individual action, because it included acts aimed at disrobing the victim (who was unquestionably dressed when the attacker appeared), violating her private parts, and stabbing her with a knife; the victim was certainly seized by her wrists to prevent a reaction, so that Guede's DNA was found on the cuff of the young English woman's sweatshirt; but the diverse morphology of the wounds, their number, and their distribution led to the conclusion that there was more than one attacker. In particular, it was found that many injuries were caused by activities of grasping, others by a pointed and cutting weapon; they were extremely different in size and degree of injury, and had reached the victim sometimes

from the right and sometimes from the left. All of which led to the conclusion that more than one attacker, together, held the girl, limited her movements, and struck her from the right and from the left, depending on their position with respect to her, but above all they covered her mouth in order to prevent her from repeating the scream that was heard and reported by the two witnesses mentioned above.

• The witness QUINTAVALLE, who ran a Conad grocery store outlet located in Corso Garibaldi not far from Sollecito's apartment, said that on the morning following the night of the murder he saw a young woman enter his shop as soon as he pulled up the shutters on opening that morning at 7.45 AM, as she had already been present and waiting when the store opened, recognized as Knox; she went immediately to the cleaning product section, although he was not able to say whether or not she had purchased anything. This finding made it possible to conclude the urgency of the purchase of cleaning materials, though these were not recalled specifically one year later by the merchant and his co-workers. Amongst these, Ms CHIRIBOGA recalled, among other things, that Quintavalle had said that he recognized the accused as being the young woman who entered his shop early in the morning.

• Knox's statements about having been at Sollecito's flat from the evening of 1 November through 10.00 AM on the morning of 2 November were held to be incompatible not only with Curatolo's indications as to the presence of the couple in the piazza on the evening of 1 November but also with Quintavalle's indications as to the presence of Knox at his store at 7.45 AM. Moreover, the young woman did not mention the telephone call from his father that her boyfriend received at 9.30 AM, **[8]** a sign that she was not present in Sollecito's flat at that time, and that she had lied when she placed dinner the previous day at 10.00 PM while Sollecito, talking with his father on the phone at 8.42 PM, told him that he was washing dishes that were probably from dinner, especially considering the fact that at first the young people both had commitments, but then suddenly found themselves

with a free evening (Knox only after 8.00 PM, following Lumumba's phone call[4]).

• It was found that following his father's phone call at 8.42 PM, Sollecito had switched off his phone, turning it back on at 6.02 AM the next morning (2 November), since the message sent to him by his father the evening before only appeared at that moment, although no problems were found with the functioning of the phone or the network. It was found that Sollecito had operated his computer for the last time at 9.10 PM; the device was then reactivated, after that last interaction, at 5.32 AM on 2 November for about half an hour of listening to music. Moreover, it was found that the planned excursion to Gubbio on the day of 2 November, which had been mentioned earlier to Sollecito's father as fixed, had undergone an unexpected change.

• The genetic investigations that were carried out detected a genetic trace from Raffaele Sollecito on a small piece of the bra, with hooks, that had been cut off (with a clean slice made with a cutting edge) and found stained with the victim's blood, in her room, under the pillow on which her body was partially placed, whereas on the remaining part of the bra and in particular on one strap a trace belonging to Rudy Guede was found, which led to the conclusion that both men were present at the crime scene, at the precise time when the victim was violently stripped in an erogenous zone. The examination of the trace [found] on the hook revealed 17 clearly evidenced loci, at each one the alleles constituting the genetic profile of the defendant were present, as compared with the haplotype obtained from Sollecito's saliva sample.

• In Sollecito's apartment, an extremely clean kitchen knife different from the other ones supplied in the house that he occupied on Corso Garibaldi was found; on the handle of this knife, in the raised portion of the handle where the blade begins, a biological trace (trace A) attributable to Knox was found: the place where the trace was found suggested that the knife had not been used in a horizontal direction, but at a certain angle, suggesting a slipping action of a hand seizing the knife to strike rather than to cut. With regard to that

[4] Translator's note: In fact, Lumumba sent a text message to Knox's cell phone.

knife, a conversation was intercepted between Knox and her mother, after the facts, although disputed in its exact translation, in which the young woman declared herself particularly worried "about a knife **[9]** at Raffaele's." On the blade, invisible to the naked eye, another trace (trace B) was found, containing a small quantity of DNA attributable to only one person, namely the victim.

• In the house on via della Pergola, and particularly in the bathroom used by the victim and by Knox, mixed biological traces were found, attributable to both young women (the accused and the victim): on the box of cotton buds located on the sink, bloodstains and a biological trace attributable to both were found; mixed traces were later found in the sink and bidet, as a result of rubbing to wash off the blood of the victim, resulting in the loss of cells by exfoliation from whoever did the washing. Due to the presence of blood, the two biological traces from the sink and the bidet were of a faint red colour, resembling diluted blood, whereas on the mat in the same bathroom imprinted stains of blood were found, which proved to be from Meredith.

• On this same mat, one of the bloodstains was in the shape of a bare footprint, which was ruled out as being attributable to Guede, given that he turned out to have walked in the apartment in his shoes, having left various traces of his presence with shod feet. It was attributed to Sollecito thanks to the particular dimensions of his big toe and its metatarsal; it was held that he had washed in the shower stall with a great abundance of water, so as to eliminate any further trace. This trace was the only one remaining, which indicated the existence of a cleaning job, and the remaining traces of blood were nothing other than the residue of much bigger traces.

• Following the procedure of luminol enhancement, it was shown that Knox, her feet stained with the victim's blood, went into Romanelli's room and into her own, leaving footprints revealed by luminol, some of which were mixed, i.e., constituted from biological traces of both Knox and Kercher (one, L8, in the hallway, and one, L2, in Romanelli's room); others with traces attributable solely to Knox (three found in her own room: L3, L4, and L5); and one which was attributable solely to the victim (L1 found in Romanelli's

room). [The First Instance Court reasoned that] the presence of traces of Knox in Romanelli's room confirmed the simulation performed to create a staged scene of an unknown criminal who entered through the window. It was noted that these traces were found to have been formed by blood diluted with water, which was considered of high probative value for the presence of Knox at the time the house was cleaned of the victim's bloodstains. It was found that the attackers of the young English girl had placed a quilt over her body, had locked the door of her room with a key that was then tossed, and had thrown away her two phones in via Sperandio, outside the city **[10]** walls at about 0.10 AM (given the different cell tower the phones connected to), where they were found the next day and handed over to the Postal Police before it had been ascertained that a murder had taken place.

• At 12.08 PM on 2 November 2007, Knox called Meredith Kercher's English cell phone and, despite receiving no answer, since the unfortunate victim had already been dead for some hours, did not make the effort to call her friend on her other phone, the Italian one that she also used, which led to the conclusion that the accused had merely wanted to make sure that the tossed phones had not been found.

• Immediately after the above-mentioned call, Knox called Romanelli to tell her what had happened in her room (the entrance of a burglar through her window and the ransacking of only her room), while Sollecito called the Carabinieri to report this same break-in, without reporting anything [referred to Knox's call to Romanelli] about the locked door of Kercher's room or the lack of response to the call to Kercher made by her friend Knox.

• By the express admission of Knox, the two defendants had been together and used drugs on the night between 1 and 2 November, both having been released from previous commitments (Knox, as mentioned, was supposed to go to work at Lumumba's pub, but had been informed that her presence was not needed that evening, and Sollecito was supposed to have accompanied a certain Jovana Popovic to the station to pick up suitcases that he was later told had not been sent).

• The accusation made by Knox against Lumumba of having committed the rape and murder of the unfortunate Meredith Kercher turned out to be false in light of the same recorded conversations between the defendant and her mother, during which she manifested great remorse for having accused him in her handwritten letter of 6 November 2007, which she had handed over to the police.

1.2 The Hellmann Court of Appeal granted the defence motion and ordered a new genetic expert report, even though the one ordered during the investigative phase had been conducted in accordance with Article 360 of the Criminal Procedure Code and in compliance with the rights of the defence. [The] expert report [was] requested with reference to the traces found on the knife, which led to the identification of the DNA, even though the quantity of the trace was lower than what is considered to be sufficient to obtain a reliable result, and with reference to the DNA found on the bra clasp, considered the possibility of contamination of the exhibit and of the crime scene, the bra clasp having been collected and catalogued only after the second inspection by the forensic police, more than forty days after the murder. The Hellmann Court of Appeal justified its decision to allow this new assessment by the fact that "*the identification of the DNA on the two exhibits and its* **[11]** *attribution to the defendants was particularly complex because of the objective difficulty, by persons not having scientific knowledge, to formulate assessments and opinions on particularly technical matters without the assistance of a court-appointed expert*".

With respect to the traces on the knife (Exhibit 36), the new court-appointed experts noted that the cytomorpholical analyses had not revealed the presence of cellular material, other than elements attributable to starch granules; as for the genetic analyses, the attribution of trace A to Knox was correct, while the conclusion with regard to trace B was that the result ascribed to the [genetic] profile of the victim was unreliable. No scientific elements were found which could prove the haematic nature of the trace, the sample had to be considered a Low Copy Number (a trace with a low quantity of DNA) to which the most rigorous criteria recommended by the scientific community had to be applied; therefore,

[according to the aforementioned appeal court-appointed experts], the DNA profile found on trace B could not be attributed with certainty to the victim Meredith Kercher. Indeed, it could not be ruled out that the result obtained could have been caused by an occurrence of contamination. For this reason, a third trace discovered on the knife (and never enhanced) by the experts was not even analysed because the sample was not considered susceptible to correct amplification, being a Low Copy Number, meaning that the quantity cannot guarantee reliable results. As far as Exhibit 165B is concerned, i.e., the trace on the bra clasp, the aforementioned appeal court-appointed experts concluded [that there had been] an erroneous interpretation of the Electrophoretic Graph of the Autosomal STR markers and of the Y chromosome. And they did not rule out the possibility that the results obtained could have been derived from occurrences of environmental contamination or during any phase of the cataloguing or handling of the exhibit.

The Hellmann Court of Appeal therefore held that the procedure followed by the Scientific Police was incorrect because it emerged that the quantification phase of the extract was lacking; in trace B, two amplifications, while the quantity of extract present would have permitted the establishment of the presence of the same allele at least twice, were not carried out; it was stressed, acknowledging the indications of the new appointed experts, that in the event the extracted material is scarce, in a quantity lower than that suggested by the kit, it is necessary to lower the sensitivity threshold of the machine to obtain a reliable result, which leads to an increase in the occurrence of stochastic phenomena that only a comparison of the graphs of several amplified [extracts] could have highlighted. Since there was no evidence of compliance with the precautions recommended by the scientific community to protect against the risk of contamination, according to the Court it was not necessary to prove the specific source of contamination. Therefore, [the Court] agreed with the position of the **[12]** new panel of experts, according to whom the third trace they themselves had identified, being deemed insufficient to permit two amplifications, was not subjected to analysis, in order to avoid the same mistake that the Scientific Police made. The instruments mentioned by Professor Novelli, a consultant for

the civil parties, who claimed they were capable of producing results even with very low amounts of available [DNA], were considered to be too innovative and therefore not yet adequately tested.

The Hellmann Court of Appeal judges considered that, since granules of starch had been detected, that the knife in question had not been washed. According to the expert panel, the [granules of starch] could not be traced back to the residue released from the gloves used by the Scientific Police (powdered with vegetable starch), but not [even] blood residue, and therefore the presence of Amanda Knox's DNA was attributed to the fact that the young woman spent time at Sollecito's house and she likely had used the knife for domestic purposes; it was believed that the knife could have easily been grabbed in a variety of ways, such that it could not be determined that the trace was found on the finger-guard which goes from the handle to the blade. Therefore, no evidentiary value was given to this exhibit.

With respect to the bra clasp, the Hellmann Court of Appeal court held that the panel of experts did not have the possibility of extracting useful DNA to be analysed, most likely due to poor preservation of the evidence. The experts had therefore formulated their conclusions on the basis of the graphs and the procedure followed to arrive at the same. In addition, they reached the conclusion that, other than the [DNA] profile of the victim, the graph also showed a profile attributable to Sollecito, but that there was no guarantee this profile was correct since, if other peaks also present in the graph were taken into consideration, one could arrive at different conclusions. Due to the mixed nature of the trace, a different setting of the instrument would have been required to avoid the non-detection of peaks which could have been important. Moreover, not only had the exhibit been collected and analysed a month and a half after the murder and, on that occasion, found about one metre away from the place in which it had been seen during the course of the police inspection on 2 November, but also the crime scene investigators had used gloves that had already been stained by other traces. It was therefore maintained that the

bra clasp had been contaminated following previous inspections by the forensic police, who had failed to implement the necessary precautions, making it probable that the DNA, in theory attributable to Sollecito, had been transferred by other people in the room and even on the bra clasp through hand contact, or even through contact made between objects and clothing on which it had been present, since in the acquisition of this exhibit no necessary precautions to ensure the authenticity of the same had been taken. The fact that traces of Rudy Guede, indisputably guilty of the assault, had been detected and that **[13]** none belonging to the two defendants currently on trial were found could not be attributed to a cleaning activity because the area had not been washed. Moreover, this piece of circumstantial evidence was considered unreliable and therefore not usable as a basis of inference.

As to the print on the bath mat, on which was stamped the shape of a foot soaked in blood, with a high probability of being identified as belonging to Sollecito, due to the significant size of the big toe, [both] in [its] width and length, the Hellmann Court of Appeal pointed out that the argument made by the Defence, according to whom Sollecito's right foot had an obvious peculiarity, i.e., the nearly non-existent support of the distal phalanx [phalange bone] of his big toe, with the absence of continuity between the big toe and the forefoot, had been completely overlooked; whereas it should have been considered that the distal phalanx of Sollecito's first toe - [a part] which does not rest [firmly] on the ground - should not have been smeared and therefore it should not have left any visible traces on the bath mat. On this point, therefore, considering that the Prosecutor's same consultants noted that the bathmat print was of use only for negative comparisons and not for positive ones, the incontrovertible structural differences with respect to Sollecito's reference print and the size differences revealed by the Technical Consultant for the Defence did not allow the [Hellmann Court of Appeal] to agree with the [Prosecutor's consultants'] evaluation of probable identity between the two prints. The Hellmann Court of Appeal therefore arrived at the hypothesis that the foot could have been the bare foot of Rudy Guede, considering that the shoeprint left by the left foot,

wearing trainers, had been attributed with certainty to him. Therefore, said piece of circumstantial evidence was also not considered to be of value.

As for the footprints revealed by luminol, the Hellmann Court of Appeal judges held that these traces were also the result of probable contamination; that the negative response of the generic blood test was not due to the scarcity of biological material available, since the test using tetramethylbenzide is sensitive even in the presence of just five red blood cells; that a mixed trace with a mixed biological profile, belonging to [both] Meredith and Amanda, appeared in only two instances, while the one relating to only Amanda appeared in four other instances. The quantity of available DNA was not sufficient to provide a reliable result, so that even the footprints in question were not considered to have any evidentiary value.

As far as the footprints revealed by luminol are concerned, without a useful biological profile, it was noted that various other commonly used substances react to luminol, and therefore even the mere plausibility of presence of blood was considered insufficient. The presence of footprints attributed to Amanda was justified by the fact that she lived in the house and she happened to move around the floor barefoot. The same was said about the footprint of Sollecito, who spent time at his girlfriend's house. Moreover, the affirmation **[14]** that this data is valid only for negative comparisons, and not positive ones, was judged to be completely invalid because of the failure to demonstrate that [the footprints] had been made in blood.

With respect to the blood traces in the small bathroom, (the victim's blood was found on the light switch, on the toilet seat cover and on the door frame, while human blood was found in a mixed profile belonging to Kercher and Knox on the samples from the bidet, on the sink and on the container of cotton buds), the Hellmann Court of Appeal concluded that it was entirely plausible that the DNA of the two girls could have been found on the bathroom fixtures of the small bathroom: in this situation, the sample seemed to have been

gathered by repeatedly rubbing back and forth against the edge down to the drain pipe (whereas it should have been done using a dabbing motion); as it emerged from the video the sample gathering procedure followed during the crime scene investigation, it appeared to be the least suitable method for obtaining a reliable result, because all of the DNA present on the path was gathered, creating a mixture that originally did not exist. This data too was deemed to have absolutely no evidentiary relevance.

On the time of death, the Hellmann Court of Appeal maintained that the broad time frame the First Instance judges had established should be reduced, since the scream heard by the witness Mrs Capezzali was not linked to an objective fact (the same witness had said she had gone to sleep at around 9-9:30 PM and gotten up around two hours later to go to the bathroom with, however, a good deal of approximation) and the circumstances reported by the witness were extremely ambiguous. [The Hellmann Court of Appeal] also expressed its reservations with respect to the witness [Antonella] Monacchia, given that she only came forward to testify a year after the fact, not voluntarily but at the behest of the usual budding journalist, and due to the imprecision regarding the time of the scream, indicated as "around 11 PM". The Hellmann Court of Appeal based [its reasoning] on the fact that Guede, in a chat with a friend, had said he was in the Via della Pergola house at around 9-9:30 PM and on the connection registered on the victim's cell phone at 10:13 PM, which lasted nine seconds and did not necessarily require any human interaction, whereas the last interaction occurred at 9:58 PM after an attempt at 8:56 PM to call her family that received no response. The Hellmann Court of Appeal reasoned that the young woman was not able to call to her family again due to an unexpected event and thus placed the time of death before 10:13 PM, which further underscored the unreliability of Curatolo's testimony.

The *calunnia* committed against Lumumba - indisputably attributed to the defendant Knox, for whom the Hellmann Court of Appeal reaffirmed her guilt - was not considered by the Hellmann Court as belonging with the [other] pieces **[15]** of circumstantial evidence

regarding the other, more serious, crimes attributed to her. [The Hellmann Court considered that] the suggestion of Lumumba as being the perpetrator of the murder represented, for the defendant, the quickest and easiest way to put an end to the tense situation she found herself in, having been unavoidably subjected to long and pressing interrogations.

The witness Curatolo - who was heard again by the Hellmann Court of Appeal on 26 March 2011, two years after he had been heard in the court of First Instance - whose testimony about the presence of the two defendants in Piazza Grimana was significantly diminished, first due to the decline in the man's intellectual capacity as directly perceived by the Court, and second due to his less than virtuous lifestyle, rife with violations of the Penal Code, and the kind of life led by this [witness]. Moreover, the Court found that the presence of the two accused was linked to the schedule of buses leaving from Piazza Grimana to take young people to the discos, with a time interval lasting from 11 PM until 11:30 PM, whereas it was verified that on the evening of 1 November, the buses did not run on that schedule, having run on that [particular] schedule the prior evening, for the Halloween celebration. The Defence, also on the grounds that the witness had mentioned a holiday, with the appearance of masks and of "*young people who were making a racket*", hinted that the witness had confused his memory of the evening of 1 November with that of the evening of 31 October. No significance was therefore given to a statement considered significant by the First Instance court, wherein Curatolo added that the following day he noticed the arrival of the men all dressed in white, precisely in light of the confusion shown by the witness, whose memories overlapped according to the Hellmann Court of Appeal. The Court argued that the defendants should have been completely exonerated on the basis of Curatolo's deposition alone.

As to the deposition made by Mr Quintavalle, owner of the Conad store, the Hellmann Court of Appeal stated beforehand that in any case, [even] if the circumstance in the hypothesis were true, i.e., even if Knox had shown up at a store to buy detergent before

the store opened on the morning after the night of the murder, this would be a very weak piece of circumstantial evidence; it was immediately added that no value could be assigned to the witness testimony, since Quintavalle was interrogated by the police in the immediate aftermath of the events to determine if the two defendants seen in the photograph had shown up to buy detergent (since two bottles of Ace bleach had been found in the home of Sollecito and the investigators had detected a strong odour of bleach upon entering the young man's home), [and he] did not mention the young woman who had waited for the store to open but instead decided to come forward only after a year, at the urging of a budding young journalist, stating that he was convinced by the colour of the eyes and by the pale skin of the young customer that it was Knox. Therefore, the Court reasoned, he was a witness who waited one **[16]** year to be sure of the accuracy of his perception with respect to the identity of the young customer he saw in the defendant. Moreover, Quintavalle's co-workers said that, at the time of the events in question, he had expressed doubt that the young woman who appeared that morning was indeed Knox: the Court thus held that the certainty of the recognition after the fact could not be established given that, when the memory was fresher and more authentic because it was closer in time to the actual encounter, the witness showed uncertainty. This testimony was therefore considered to be not very reliable and, in any case, of very weak demonstrative power.

As for the murder weapon, the Hellmann Court of Appeal believed that, genetic investigation aside, there were no significant objective elements relating to the use of the aforementioned knife in the commission of the crime. The Court reasoned that the experts appointed by the Preliminary Investigations Judge would only have ascertained the non-incompatibility of the knife taken into evidence with the wounds present on the victim's body, basing this consideration on the fact that a blade which is 17.5 cm in length could nonetheless cause 8-cm-deep wounds and the fact that the blade was single-edged with a pointed tip, whereas the assessment of non-incompatibility is equivalent, on the probatory level but also on a mere evidentiary [level], to nothing. The Court then held that, if this knife had been used, the two defendants, new to crime, could not have placed it back

among the cutlery, which was part of the inventory of supplies that belonged to the home [where Sollecito lived]. Rather, they would have to have gotten rid of it, even if it was part of the inventory of supplies on hand when the flat was rented.

As for the staging of the break-in, the Hellmann Court of Appeal believed that it was hypothesized on the basis of mere conjecture, because nothing would have precluded an actual break-in, abandoned due to the tragic unfolding of events. The Court recognized the validity of the defence theory according to which access to the window without stepping on a nail found in the wall outside of the young women's home was possible and would not necessarily have left marks. [The Court] added that throwing a stone from the outside was an absolutely feasible action, that the existence of the shutters was not an obstacle to the window breaking because, among other things, it was not certain that those shutters had been closed, that the dynamic of the throwing of the stone and the force of impact did not mean that some shards would necessarily end up on the outside, instead of on the inside of the room, and that the shards were not visible only on top of the objects, but also under [them], as revealed in the deposition of Romanelli at the hearing of 7 February 2009. It was pointed out that even Inspector Battistelli, who stated that the curious thing he noticed "*was that the shards of glass were also on top of the clothing*", mentioned in his deposition that he could not rule out that there were also [shards] underneath [the clothing]. The fact that nothing was taken from the room was not considered significant by the Hellmann Court, because the initial intent was likely abandoned given the **[17]** chaotic unfolding of events. Not just this, but the Court hypothesized with conviction that [the window] had served as the actual mode of entry into the house, ascribable to Guede, accustomed to this type of crime, and also convicted for staging the crime in complicity with others, in a final ruling. On this point the Court concluded that the event [the staged break-in] did not occur.

Regarding the alibi, to say nothing of the fact that its falsity should have been assessed in order to build evidence of guilt in the context of other more significant pieces of

circumstantial evidence, the Hellmann Court of Appeal assumed that none of the elements evaluated during the First Instance trial could be assessed as proving that the version given by the two defendants was false. The very fact that the cell phones of the two were turned off during the night was to be understood as the defendants not wanting to be disturbed for reasons that could be easily guessed and the fact that Sollecito felt the need to listen to a bit of music at five o'clock in the morning was compatible with waking up during a night spent in sweet company that that led him to go back to sleep after a break during which he listened to music.

Finally, as to the behaviour after the discovery of the murder, the Hellmann Court of Appeal held that it was not logical that the call made from Knox's cell phone was made for the sole purpose of ascertaining that no one had discovered the tossed cell phone, since making it ring would have allowed it to be found, which in fact did happen; Amanda called Romanelli before the arrival of the Postal Police and then participated in an abnormal situation she and Sollecito had noticed in that same house. The fact that Sollecito told the Carabinieri that nothing had been stolen only to correct himself once he noticed the presence of the Postal Police, who were there to verify the loss of the cell phones, was held to be of no significance. Neither could the odd behaviour exhibited by the two during the course of the investigations – even their apparent and abnormal distance from the tragedy of the death - have any significance, since every human being reacts in countless and varied ways when confronted with tragic situations.

2 - The Prosecutor General of the Court of Appeal of Perugia and the civil parties appealed this decision, and the Knox Defence appealed the remaining conviction for the offence of *calunnia*.

2.1 - The Prosecutor General has strongly contested the appeal decision, arguing a multitude of errors that follow from errors of method: primarily, [the Prosecutor General criticizes] the Hellmann Court of Appeal for having frequently fallen into *petitio principii*,

that is, having taken as proven what actually still needed to be proved, a begging of the question which signifies grave defects of reasoning; then for having fallen into incorrect applications of procedural principles as dictated by Articles 192 paragraph 2, 237, 238 **[18]** Criminal Procedure Code; and finally for having made obvious misinterpretations of the evidence, ignoring the irremediable conflict between the known facts and their own reconstruction.

Entering into detail, the following grounds have been developed [by the Prosecutor General], subdivided into 16 points:

2.1.1 - Violation of procedural law, and in particular of Article 192 paragraph 2 Criminal Procedure Code. [The Prosecutor General argues as follows:] The Hellmann Court of Appeal did not assess the pieces of circumstantial evidence in a comprehensive fashion; it did not evaluate them in a global and unified dimension, but managed to fragment them by evaluating each one in isolation, in an erroneous legal-logical analysis, with the goal of criticizing their individual qualitative significance, whereas if the Hellmann Court of appeal had followed the interpretative rule of this Court of legitimacy, each piece of circumstantial evidence would have been integrated with the others, determining an unequivocal clarification of each of the established facts, so as to reach the logical proof of the responsibility of the accused. This is because the informative and justifying facts of the conclusions are not contained entirely within the premises [the established facts], but are supplemented by other fact-finding elements outside of these same premises, since a single element relating to just some of the facts is inevitably ambiguous. Whereas the judges on the merits opined as if each element always had to have an unequivocal meaning, and as if the type of reasoning to follow was deductive. Not only that, but these single items were then incorporated into the cognitive process of decision by isolating just the aspects that could raise doubts and uncertainties, while ignoring other aspects that were rigorously shown in the first instance decision to be anchor points useful for an *ex post facto* reconstruction.

2.1.2 - Violation of Article 238 Criminal Procedure Code: [The Prosecutor General argues that] Rudy Guede's definitive conviction was received in evidence, but the second instance court held it to be particularly weak as circumstantial evidence, "given that the proceedings relating to Guede were carried out in an abbreviated trial procedure", a weakness that was asserted in violation of the principles affirmed by this Court (which recognizes that even a judgment under plea bargaining can be received and evaluated pursuant to Article 238 Criminal Procedure Code), which led the second instance court to not concern itself with the contents of the definitive judgment, even when their observations on the questionability of the first instance decision patently contradicted the received decision, rendering them untenable. On this point, [the Prosecutor General] also criticizes the second instance court for a lack of reasoning.

2.1.3 - Non-observance of Article 237 Criminal Procedure Code: [The Prosecutor General notes that] the evaluation of the statement written by Ms Knox was totally ignored, even though this very Court of legitimacy had held it to be usable, as per decision 990/2008 on appeal from the decision of the Court of Review,[5] it being a document **[19]** originating from the accused, written by her for self-protection. In said handwritten statement, the young woman recounted having sought refuge in the kitchen and having covered her ears with her hands so as not to hear her friend's screams, and having seen blood on Sollecito's hand during dinner. According to the Hellmann Court of Appeal, this handwritten statement was not reliable, since it did not represent the real occurrence of events, except that it was then used to justify the *calunnia* [conviction], in a passage that, according to the Prosecutor General, underscores all the contradictions in the explanation of the judgment.

2.1.4 - Lack of reasoning concerning the order of 18 December 2010 by which the new testing by a panel of experts was arranged, and lack of logic in the reasoning on this point. The decision to renew expert testing during the appeal has a totally exceptional character which requires that the presumption of the completeness of the factual investigation at

[5] Translator's note: A "Tribunale del Riesame" is a court which re-examines cases of those who have been imprisoned and can order their release.

first instance be overcome. [According to the Prosecutor General], the Hellmann Court of Appeal based its decision on the presumption of the particular complexity of the (genetic) subject-matter, which suggested that an expert report be ordered, without identifying any gaps in the genetic findings made at first instance, or any subjects that needed to be developed further, or any aspects deserving of further analysis. But it is immediately obvious that, in fact, the Hellmann Court of Appeal appointed an expert panel in order to delegate to others the evaluation of the evidence acquired at first trial, contrary to the prohibition of delegating this evaluation to scientific knowledge; [in doing so] they confused the principle of the judge's free conviction [belief], which forms the basis of the belief of the First Instance court (which dismissed the analogous request [for an expert review] as per Article 507 Criminal Procedure Code), with a presumption on the part of that court of the power to formulate hypotheses of a purely scientific nature. All the more so given that the second instance court completely ignored the fact that the original tests were made in accordance with the provisions of Article 360 Criminal Procedure Code, without any criticisms having been lodged during the various phases of the operations, and without the suspects or their legal representation having requested a pre-trial hearing [regarding testing procedures]. [According to the Prosecutor General,] no argument was put forth by the Hellman Court of Appeal to sustain the absolute necessity of the test, even though the report by Dr Stefanoni, head of the biological section of the Scientific Police, formed part of the case file and was fully usable for the purposes of the decision. According to the *ex post facto* reasoning reported in the statement of reasons, the Court had *a priori* refused to examine the findings of the Scientific Police which, according to the Hellmann Court of Appeal, did not render it "less ignorant" due to the fact that they had been carried out in the investigation phase, thereby patently confusing evaluation of evidence with actual scientific knowledge.

2.1.5 – [The Prosecutor General asserts] inconsistency and manifest lack of logic in the reasoning, the failure to obtain a decisive piece of evidence, in reference to the order of 7 September 2011 rejecting the request for a new test. The Hellmann Court of Appeal

rejected the request **[20]** to supplement the expert report with a test on the quantity of DNA extracted from the new trace swabbed by the expert from the blade of the knife found in Sollecito's house, near the location where the trace attributable to Ms Kercher was found by the Scientific Police. The task entrusted to the experts comprised new sampling and analysis of any DNA that might be found, but this task was not carried out due to the presumption of it being a case of low copy number, i.e., a very small quantity of DNA. On this point, the Prosecutor General notes that Professor Giuseppe Novelli, a geneticist of indisputable renown, stated that even at the time of the original unrepeatable testing, it was possible to analyse traces of low copy number DNA with reliable results and that it was possible to proceed with the extraction of even minimal quantities of DNA, smaller than the 100 picograms that were available. The discovery of a new trace of human DNA (an unusual finding on the blade of a knife) and the availability of ever more sophisticated instruments should have dictated a new test. The Hellmann Court of Appeal instead rejected the request, with insufficient reasons that are in patent contradiction with the spirit that animated the [previous] decision to order new testing. [The Prosecutor General argues that] this rejection is even more unjustified given that the need arose from testing that ought to have been carried through to its conclusion, and also considering the state of technology that, according to Professor Novelli, in 2011 allowed the production of profiles even from just 10 picograms available for testing, for example on human embryos, which requires the highest level of accuracy and precision. Therefore, admitting the new evidence would have obligated the court to also admit the contrary evidence; by not having done so, the court made another clear error of law.

2.1.6 - Violation of Articles 190, 238 para 5, and 495 Criminal Procedure Code, with respect to the order rejecting the Prosecution's request for a [new] hearing of Luciano Aviello. Aviello was examined on 18 June 2011 at the request of Knox's Defence, but he subsequently retracted [his statements] before the Public Prosecutor, who then submitted a request for a new hearing that was denied, even though the original statement had been received in evidence, in which [i.e., in the retraction] the convict declared that he learned

from Sollecito in prison that it was Amanda who had committed the murder, in the course of an erotic game and also over a question of money, with the knife known as Exhibit 36. [The Prosecutor General argues that] the Hellmann Court did not explain the dispensability of the evidence, seeing that, amongst other things, the interview statement was received (and it is not clear how it could have been used); the more so in that the statement made reference to confidences on the part of Sollecito, which could not have been held to be irrelevant for the purposes of the proceedings. Accordingly, the Hellmann Court of Appeal ran afoul of the aforementioned laws, having evaluated only the retractions contained in Aviello's declarations but not the new statements concerning the confidences allegedly received from Sollecito, as well as violating Article 511bis, 511 para **[21]** 2, and 515 Criminal Procedure Code for having arranged the receipt of a statement not preceded by an examination of the party concerned.

2.1.7 – [The Prosecutor General argues] non-observance of the principles of law in the evaluation of the witness Quintavalle; lack of logic in the reasoning of the evaluation of the witness's credibility; his testimony came to be considered as weak, "in itself not suitable to even presumptively prove culpability", whereas in fact that testimony was used to substantiate the falseness of the alibi. The evaluation of the Court was then followed, [according to the Prosecutor General,] by an uncritical acceptance of the Defence objections, without even a complete reading of the testimony, given that the witness did not need a year to convince himself that the young woman who showed up at his shop at 7.45 AM on the morning of 2 November 2007 was to be identified as Ms Knox, [according to the Prosecutor General]; his doubts concerned the usefulness of his information, not the actual identity of the girl, whom in truth he specified as having seen well, having looked at her to greet her at extremely close range (one meter, 70-80 centimetres). [The Prosecutor General asserts that] Quintavalle's recognition, for the rest, was anchored in significant traits, namely her eyes, her skin colour and her face, and not the red coat the accused is said to have never owned. Moreover, Quintavalle's declarations found confirmation in the statements of the witness Chiriboga, heard in court on 26 June 2009 and never referred to

in the second instance judgment, in patent contradiction externally [with the first instance judgment] as well as internally.

2.1.8 – [The Prosecutor General argues] inconsistency and lack of logic of the reasoning on the affirmation of unreliability of the witness Curatolo, [noting that] according to the Hellmann Court of Appeal, on rehearing the witness superimposed his memories, repositioning what he saw on 31 October onto the evening of 1 November; [the Hellmann Court] overlooked [the fact] that on the evening of Oct 31, Ms Knox could not have been seen in the piazza, inasmuch as she was working at Lumumba's pub Le Chic, which was full of customers for Halloween; Knox herself denied having been in the piazza on the evening of 31 October, and it was also ruled out by the witness Spiridon Gatsios. The [Prosecutor General notes that] the Hellmann Court also ignored the fact that on that evening, Sollecito was celebrating the graduation of the boyfriend of the sister of his friend Angelo Cirillo. [The Prosecutor General also notes that] the fact that the homeless Curatolo mistook the date of Halloween, stating that it occurred on 1 or 2 November (having associated it with All Souls' Day), cannot remove relevance from the significant fact that on the day following the encounter with the two, Mr Curatolo recalled the arrival of people dressed in white who looked like Martians, which rendered his report precise in spite of other inaccuracies. The [Prosecutor General further argues that] the assertion that he was not certain of the identification of the two young people was totally without connection to the real evidence, seeing that no one had ever suggested that Mr Curatolo did not know the two accused, whom he pointed out in court. [The Prosecutor General maintains that] the express finding by the Hellmann Court of unreliability of the witness was bound to an *a priori* judgment of a person who habitually consumed **[22]** heroin (a substance that amongst other things has no repercussions on the mental faculties and on the lucidity of recall), a judgment that was never re-examined, not even when it was shown that the unfortunate Curatolo had been a key witness in a case of murder of an elderly woman that ended with the definitive conviction of the killer, in the course of

whose trial Mr Curatolo gave testimony about the order of significant events in proving the guilt of the accused.

2.1.9 – [The Prosecutor General also argues] deficiency and manifest lack of logic in the reasoning as to the time of death, unreasonably fixed by the Hellmann Court of Appeal at 10.15 PM, a time earlier than the moment in which a harrowing scream was heard by witnesses, on the basis of information offered by Guede to a friend in a message sent to him, where he admitted to being in via della Pergola around 9.00/9.30 PM. [According to the Prosecutor General], no logical explanation was given for the belief that Rudy had lied about his participation in the crime but not about the hour of his presence in via della Pergola, seeing that in order to corroborate his claim of innocence, Guede would have had to indicate that the time of his arrival at via della Pergola was earlier, where he had left traces definitely attributable to him in the bathroom of the house. The finding [by the Hellmann Court of Appeal] that the two telephone contacts recorded on the victim's phone at 9.58 PM and at 10.13 PM occurred at the moment of the attack has no foundation, [according to the Prosecutor General], since [to justify it] the Hellmann Court had to hypothesize that the first contact was a failed attempt to switch off the mobile, which was inexplicably not immediately followed by another. The second contact was supposedly the receipt of a multimedia message, but the explanation is entirely dogmatic; equally conjectural is the fixing of the time of death at 10.15 PM on the sole presumption that had she not been killed, Meredith would have called her parents that evening, even though she had already spoken with both of them on that sad day.

Therefore once again, in this passage, the Prosecutor General criticizes the lack of logical rigor in reasoning on the part of the Hellmann Court of Appeal which, [according to the Prosecutor General], yet again makes use of circular reasoning and then is totally illogical in its evaluation of the testimony of the three women in reference to a harrowing scream, around 11.30 PM, justifying the decision to not use this evidence by the simple fact of the ambiguity of the evidence concerning both its significance and its placement in time. But,

[argues the Prosecutor General], the statements of the two women who heard the screams are facts referred to by credible and reliable witnesses, recognised as such by the same judgment and therefore having probative value, the more so as Amanda also spoke of this scream in her statement. This *modus opinandi* is held [by the Prosecutor General] to be inadequate, all the more so considering that the Hellmann Court did not contest the post-mortem findings, which initially placed the approximate time of death at around 11.30 PM. Once again, the Hellmann Court fell into circular reasoning and into conclusions unconnected to the available evidence. **[23]**

2.1.10 - Lack of reasoning, inconsistency and lack of logic of the reasoning concerning the genetic test. [According to the Prosecutor General], the Hellmann Court assumed as axiomatic mere opinions of experts, devoid of scientific value, even when they did not concern the actual interpretation of a scientific phenomenon, but instead a circumstance that could only have an effect on that interpretation if properly demonstrated: this is the case, [asserts the Prosecutor General], for the phenomenon of contamination of evidence that the experts declared possible while carefully avoiding pointing to any justifying reasons, although this contamination formed the basis of their conclusion of absolute non-usability of the genetic profiles. The reasoning of the opinion, building on the experts' conclusions, was as follows: even if they wanted to adopt the Scientific Police's attribution of the DNA extracted from the two exhibits (knife and clasp), it could not be ruled out that the examined DNA came onto these exhibits, not through contact, but via contamination that may have occurred in any of the phases from collection through laboratory analysis. The non-exclusion of the occurrence of certain happenings is not equivalent to affirming their actual occurrence, forming yet another logical error whereby, [according to the Prosecutor General], even though the Court is not able to actually prove that contamination happened, it assumes this undemonstrated hypothesis as a determining element for declaring the results of the genetic analyses carried out in the course of the investigations to be unreliable, adding that the burden of proof of contamination would fall on the prosecution, which would have had to furnish the impossible positive proof

that it didn't happen, even though Professor Novelli had warned that it is not enough to say that a result derives from contamination, but one must demonstrate it and show its origin. The error in reasoning is obvious, [according to the Prosecutor General], in that the burden of proof falls on the one who asserts, not on the one who denies: if the refutation of scientific evidence entails a circumstance of fact which is the contamination of a piece of evidence, then that circumstance must be specifically proved. Nothing was said in the judgment about how the DNA found on the blade of the knife and Sollecito's DNA on the clasp of the bra worn by Meredith could have been the result of contamination, considering how far apart in time the two tests were carried out [from other tests]. In addition, the negative controls by the biological geneticist from the Scientific Police were represented as not having been done, but turned out in fact to have been done. Nor could the experts indicate any specific source of contamination, limiting themselves instead to asserting that anything is possible. For the rest, [the Prosecutor General notes that] the same experts instead agreed with the tests that led to the identification of Ms Knox's trace on the same knife that held traces of the victim; however, if the error is conducive to invalidating the results of the tests, it cannot but invalidate all of them, without distinction.

2.1.11 - Lack of reasoning, inconsistency and lack of logic concerning the analysis of the prints and other traces: including the print made in **[24]** blood by a bare foot on the bath mat, as well as those enhanced with luminol on the floor of the hallway attributed to the bare feet of the two accused. [According to the Prosecutor General], the Hellmann Court of Appeal completely misrepresented the significance of the conclusions of the expert, Engineer Rinaldi, director of the Prints Section of the Polizia di Stato, showing that it did not properly understand that the limits of the footprint analysis were the same for all of the footprints, given the absence of the minute details that characterize a person's fingertips and toes and the soles of their feet. But after having criticized the value of the expert report as circumstantial evidence, the Hellmann Court of Appeal ventured to attribute the print to the bare foot of Guede, hypothesising against all the evidence (which

indicated him as shod) that he had perhaps taken a shoe off to wash his foot that was too stained with blood, without contesting anything in the watertight argumentation of the First Instance court, which had disregarded the arguments used by Professor Vinci, technical consultant for the parties, who made use of the Robbins grid to align the prints under comparison, starting from a reference point different from that used by forensic technicians who comply with the specific instructions on the matter found in the literature. As for the prints of bare feet revealed by luminol in the hallway of the house in via della Pergola, the reasoning of the Hellmann Court of Appeal to the effect that the prints would be compatible with prints hypothetically left by the two accused on other occasions was held to be illogical [by the Prosecutor General], given that luminol principally reveals traces of blood, and also that there was no proof that there was any other material sensitive to luminol on the floor; it is disputed that it could be hypothesized that Knox and Sollecito had feet stained with blood on any prior occasion different from that of the murder. Not even the traces recovered in the small bathroom were spared from rejection, for the illogical reason that the blood traces containing Ms Knox's and Ms Kercher's DNA were the result of a mixture arising from an error in collection technique by the Scientific Police, who mixed the blood of the victim carried into the bathroom by who knows whom, with other biological material of Amanda Knox deposited prior to the crime. The [Prosecutor General maintains that] the argument did not even attempt to justify the singular coincidence of the presence of Amanda's DNA in all the mixed traces containing the victim's blood, lacking, amongst other things, the presence of DNA from others which could have explained who had carried in Ms Kercher's blood, and how.

2.1.12 - Disregarding evidence and lack of logic in the reasoning, and violation of procedural rules, concerning the presence of the accused at the scene of the crime. [The Prosecutor General argues that] Ms Knox had reported to her friends, who testified on these points, that she was the one who found the body, which was in the wardrobe, that the victim was covered by a quilt, that a foot was sticking out, that they had cut her throat and that there was **[25]** blood everywhere, circumstances of which she had not been

apprised at the time the victim's door was broken down, since the two accused were indisputably not present then, so that this exact reality as represented cannot but be considered the fruit of a direct awareness of the facts, preceding the time of the breaking down of the door, something which can only be reconciled with the presence of the accused at the time of the deed. Amanda's behaviour after the discovery of the crime is thus highly indicative, [according to the Prosecutor General,] but on this point the Hellmann Court of Appeal, with no justification, ruled out the relevance of the *post delictum* behaviour, asserting that reactions can be many and varied, whereas in fact this matter did not concern emotional reactions, but awareness of facts expressed with alarming precision. Nor could it be ignored, [argues the Prosecutor General,] that at 12.47.23 PM on 2 November 2007, Ms Knox telephoned her mother in America where it was three in the morning[6] (before Sollecito phoned his sister at 12.50 and then 112), and that this phone call occurred in the middle of the night in America, before Ms Kercher's body had been discovered; thus it must be noted, [according to the Prosecutor General,] that the young woman phoned her mother to tell her about the troubled state she was in before the discovery of the body. On this point, [concludes the Prosecutor General,] which constitutes an aspect of circumstantial evidence examined by the First Instance Court, the second instance court made no evaluation whatsoever.

2.1.13 – [The Prosecutor General argues] a lack of logic in the reasoning in relation to Sollecito's phone call to the Carabinieri on the morning of 2 November 2007, when he stated that there had been no burglary and that nothing had been stolen, whereas to the Postal Police who had turned up unaware to return the lost phones, he stated that they were waiting for the Carabinieri, having reported a burglary. [The Prosecutor General argues that] contrary to what the Hellmann Court of Appeal held, Sollecito used the word "furto" [i.e., theft/burglary] correctly, as a synonym for carrying away; Sollecito demonstrated that he had knowledge of the real situation, namely that nothing at all had

[6] Translator's note: In fact, according to phone records submitted as evidence, it was 4:47 AM in Seattle.

been carried away from the house, a circumstance that, [argues the Prosecutor General,] should have been taken to signify his presence at the scene at the time of the deed.

2.1.14 - Violations of the procedural rules and lack of logic in the reasoning concerning the declarations made by Guede on appeal: [The Prosecutor General holds that] contrary to what was presented in the trial papers, the second instance court held the prosecution accountable for the fact that he did not appear, whereas in fact he was summoned but availed himself of the right to not respond, still being charged with a related crime at that moment, a right that he no longer had at second instance since, by that time, the conviction verdict had become a definitive judgment. Therefore, [according to the Prosecutor General], when he came to be heard, Guede did not avail himself of the right to not respond on the position of third parties, but in fact did respond, so the question became that of his reliability. The finding of absolute unreliability of Guede's declarations is incorrect, [according to the Prosecutor General], given that Guede never changed his story as to the presence of others at the crime scene, always indicating **[26]** the current defendants. On the judicial level, [the finding of] Guede's unreliability based on references to Article 111 paragraph 3 of the Constitution and 526 paragraph 1bis Criminal Procedure Code should have been excluded, [argues the Prosecutor General], given that his non-response at first instance was justified by Article 210 paragraph 4 Criminal Procedure Code, as he was charged in a connected trial, whereas Article 197 paragraph 4bis Criminal Procedure Code did not obligate him to testify on appeal about facts on which a conviction had been handed down concerning him, seeing that he had denied his guilt or had not made declarations, so that in fact he was availing himself of the rights allowed him by law, and basing a finding of unreliability on that exercise of a right constitutes an error of law. [The Prosecutor General argues that] Guede made the declarations he was able to make, answering questions on the contents of the letter sent to the television station in which he indicated the two accused as being present at the crime scene and as the perpetrators of the crime; confirmation on this point came from Ms Knox's handwritten statement in which she placed herself in via della Pergola when Meredith was killed. The reasoning followed by the second instance court, according to which the fact that Guede did not

mention the two accused in the [Skype] chat that he had with his friend Benedetti, in which he admitted to finding himself in the house in question at 9.00/9.30 PM, proves that the two were not present, totally lacks a logical basis, [according to the Prosecutor General], since during this chat Guede in fact had no intention of giving a true account of events, rather seeking to pre-emptively admit his presence (which he could not deny) in the house at via della Pergola.

2.1.15 - Lack of reasoning and manifest illogicality of the finding of non-existence of the staging of a crime: [the Prosecutor General argues that] the acquittal of the two defendants of the offence of staging, according to the formula "the fact did not occur", did not follow from a negative assessment of their penal responsibility, but was instead the consequence of the paradoxical recognition of the responsibility of Guede, who was not charged in the present trial, for having committed the attempted burglary. However, Guede was convicted definitively with the decision received pursuant to Article 238bis Criminal Procedure Code for, among other things, the crime of aggravated murder, but not for staging a crime; this staging was admitted [as fact] in the judgment [of Guede], but deemed attributable to the co-offenders in the crime. [The Prosecutor General asserts that] the arguments put forward by the Hellmann Court of Appeal are not strong enough to overturn the thesis maintained at the first trial, which adheres to available facts, because they do not show how the burglar could have thought of climbing up at night without a ladder, or how the absence of traces could be explained considering that the climb would have had to occur twice, the first time to open the shutters and the second after throwing the rock, or how it could be explained that the pieces of broken glass were all found inside the house and did not obstruct the climber's entry, which left no traces of blood on the sill. [The Prosecutor General notes that] if the burglar had truly broken the window before entering, it is not obvious how the glass could also have been found on top[7] of the clothes. The Prosecutor General further asks how all this could have happened while Ms Kercher was still awake, how the burglar could have **[27]** gone to all this effort without taking

[7] Translator's note: There appears to be an error in the Italian; the correct preposition is *sopra* [=top] not *sotto*.

anything except for her phones, after having been seized by a homicidal frenzy following a violent attack with a sexual component, [stating that] the alternative hypotheses formulated by the Hellmann Court of Appeal judges would have to have been proven by inductive reasoning, whereas in fact not only were they not placed under logical scrutiny and verified against the findings of the trial, but they were [considered as] certainties, from which arose fallacious consequences regarding the initial hypothesis, via totally censurable circular reasoning.

2.1.16 - Inconsistency and manifest lack of logic in the reasoning concerning the failure to recognize an aggravating circumstance in the aims underlying the confirmed offence of *calunnia*. [The Prosecutor General argues as follows:] In upholding the offence of *calunnia* as charged against Ms Knox, the second instance court ruled out any link with the murder. It was not explained on what basis the court had inferred that the young woman had been stressed by the interviewers and that therefore she had committed the *calunnia* to "free" herself from the questions of the investigators, seeing that none of the young people who were living in that house, none of Ms Kercher's friends, and many others in the days immediately following the murder, all of whom were summoned and interrogated, had the insane idea of committing a *calunnia* to free themselves from the weight of the unpleasant situation. It must be considered, [argues the Prosecutor General], that it was Ms Knox who went – by choice – to the police station to accompany Sollecito; that what the Hellman Court of Appeal calls interrogations were none other than preliminary investigation interviews [with the Judicial Police], to which the young woman was subjected without any coercion whatsoever; the naming of Lumumba was absolutely not suggested by the police, who merely asked Ms Knox whether she had replied to the message that he had sent her, that her phone showed she had received, and to the young woman's negative response it was put to her that [her telephone showed] that a reply was in fact given. [The Prosecutor General states that] nothing came to light about Lumumba until the hapless girl said his name while knowing him to be innocent [and argues that] this knowledge of his innocence could only be born of the fact that she was aware of the

[real] perpetrators of the crime for having directly participated in it, whereas the Hellmann Court of Appeal justified its conclusion by asserting that Ms Knox knew of Lumumba's innocence because the lack of contact between Lumumba and Meredith made her able to be certain that Lumumba had nothing to do with the murder, even if she herself were actually innocent and far from the house in via della Pergola. [The Prosecutor General argues that], apart from being fallacious in itself, this reasoning does not take into account the contrary facts, namely that it was through Ms Kercher that Ms Knox and Mr Lumumba became acquainted, thus demonstrating the inconsistency.

2.2 - The civil parties, Stephanie Arline Lara Kercher (sister of the victim) through counsellor Vieri Enrico Fabiani; Arline Carol Mary Kercher (mother of the victim) through **[28]** counsellor Francesco Maresca; John Ashley Kercher and Lyle Kercher (brothers of the victim), as well as John Leslie Kercher (father of the victim), with four separate submissions, all under the signature of counsellor Maresca, submitted appeals arguing totally superimposable grounds which can be conjointly reported in less detail, considering that in large part they repeat the arguments developed more fully in the appeal of the Prosecutor General of Perugia.

2.2.1 - Lack of reasoning in the order of 18.12.2010, inconsistency and manifest lack of logic with which a new test was arranged on appeal: [According to the lawyers for the civil parties], the sole reason supplied in the decision to renew [part of the] evidence gathering phase was the scientific difficulty of the assessment, without detailing any gaps in the [previous] tests carried out.

2.2.2 - Manifest lack of logic and inconsistency in the reasoning in reference to the application of Article 360 Criminal Procedure Code, in relation to Article 192 Criminal Procedure Code. [According to the lawyers for the civil parties], the second instance court undervalued the fact that the tests carried out took place during the preliminary investigation [of which the Defence was notified and had the right to attend], that at the

time of those tests there were no objections concerning the sampling and laboratory activity, nor was a pre-trial hearing requested regarding the testing, all of which proves agreement with the [laboratory] procedures. Not only that, but the court upheld the need to reopen the testing in order to resolve the conflicting positions of the various experts, whereas on certain other matters of a scientific nature, the court, with no expert guidance, used scientific arguments from the experts for the Defence without giving any reason for this choice. The uncertainty they showed should have pushed the court to look for "expert certainty" for the examination of all the exhibits used at first instance in support of the guilty verdict, without effecting a discretional separation and graduation of facts amongst them, as if they did not all have the same evidential value. The well-organized investigations carried out by the First Instance Court contrast with the illogical and inconsistent evaluations in the second instance judgment with respect to the bathmat print, the prints recovered with luminol, the prints with no biological profile and the ones made in blood, for all of these aspects the reasons for overturning the decision of the first instance judgment were never adequately explained.

2.2.3 - Manifest lack of logic and inconsistency in the reasoning in reference to the use of the principle of reasonable doubt in sustaining the order of 18.12.2010. [According to the lawyers for the Civil Parties], the verdict of conviction beyond a reasonable doubt could have been reached even after the outcome of the expert report arranged for in the second instance trial, inasmuch as the examination of the circumstantial evidence ought to have been global and consistent, the hypothetical defect of any one of these being acceptable, provided that the remaining elements were – as they ought to have been deemed – sufficient to reach the required level of certainty, **[29]** since what is asked of isolated elements of proof being evaluated is that they display the credentials of correspondence with real events, at least with predominant probability. Proof of guilt beyond reasonable doubt can rest on items of circumstantial evidence that are not all equally certain, that is, not all established with the same level of probability.

2.2.4 - Lack of reasoning of the order of 7.9.2011 rejecting a new test requested by the prosecution, inconsistency and manifest lack of logic of the judgment on this point. [The lawyers for the civil parties argue that] the Court rejected [the request for] testing of the new trace on the knife obtained by the experts Vecchiotti and Conti on the basis of a scientific judgment (scarcity of the sample), [a decision in] in flagrant conflict with the initial task of investigation [entrusted to them], and above all detached from facts concerning [recent] improvements in the [technical] instruments used for such tests.

2.2.5 - Inconsistency in the reasoning of the orders issued on the dates 18.12.2010 and 22.1.2011, inconsistency and manifest lack of logic in the judgment on this point, [according to the lawyers for the Civil Parties], concerning the acquisition of documentation which is to be attached to the appeal case file, since any evaluation whatsoever as to its importance was omitted, in violation of Article 603 Criminal Procedure Code (for example, concerning the expert report on Sollecito's computer). In fact, since these were, for the most part, reports of defence investigations carried out after the first instance decision, they should have been deposited in the file pursuant to Article 433 Criminal Procedure Code, since the possible acquisition of [such] documents into the case files can be done only with the agreement of the parties [concerned]; thus the acquisition of these documents was made in violation of the rules governing usability of the documents.

2.3 - Finally, Amanda Knox lodged an appeal from the judgment via her legal representation, concerning the part in which her guilt for the offence of *calunnia* (charge F) with regard to Patrick Lumumba was affirmed, arguing four grounds:

2.3.1 - Violation and incorrect application of criminal law, non-observance of established rules resulting in non-usability, inconsistency and manifest lack of logic concerning the affirmation of the existence of the offence of *calunnia*, [according to Knox's Defence], due to the lack of both the psychological and the material elements of the offence. The same

court held the *calunnia* to be contained in the spontaneous declarations and handwritten statement by Ms Knox, even though these documents were deemed not representative of the real course of events. But if the non-correspondence with actual events was so obvious, the offence of *calunnia* could not have been present, because of lack of certainty and lack of ambiguity; a hypothesis, a piece of malicious gossip, or a suggestion proposed in a mistaken intent to cooperate in the investigations not being sufficient. Not only that, but the direction to follow, confusedly stated by the young suspect, remained to be verified. It was pointed out [by the Knox Defence] that the documents evaluated by the trial judges, forming the basis of the charge of *calunnia*, were obtained without the accused being **[30]** informed of her rights (right to counsel) as a suspect: [compliance with] time limits, [giving of required] warnings, and [advice of rights in the face of] questioning provided by Articles 64, 65 and 364 Criminal Procedure Code were totally lacking. Furthermore, [Knox's Defence contends], the psychological element of *calunnia* was not present, as full knowledge of Lumumba's innocence was lacking: the ambiguous declaration of 5:45 was to be interpreted in the light of the subsequent handwritten statement. Ms Knox had never shown the malicious intent that characterizes the offence; with the exclusion of aggravation, the Hellmann Court of Appeal acknowledged that there was no reason to accuse an innocent.

2.3.2 - Violation, non-observance and erroneous application of Articles 181, 191 Criminal Procedure Code, and 54 Criminal Code: [According to Knox's Defence], the spontaneous declarations and handwritten statement were acquired in violation of the general principles of the protection of the moral freedom of the defendant, considering that she was placed under interrogation and questioning on the 2, 3, 4, 5 and 6 November 2007, right up until the moment of her arrest. [Knox's Defence argues that] Knox was twenty years old at the time, did not know the Italian language well, and had to gauge that her declarations placed her in a situation of alteration of her [legal] capacity to intend and to will, as a consequence of the pressure she was undergoing, to the point where she asserted something untrue without being aware of it, driven only by the desire to remove herself

from that situation. Not only that, but an exemption due to the state of necessity in the face of an imminent danger that she could avoid only by giving a name to placate the insistent accusation of the investigators, should have been considered.

2.3.3 - Violation of Article 51 Criminal Code. [Knox's Defence maintains that], the complex psychological situation of Ms Knox led her to be certain that her right to justify herself supposedly extended even to the identification and implication of third parties, [later] revealed not to be involved.

2.3.4 - Violation of Articles 125 para 3, 546 para 1(e) Criminal Procedure Code, concerning the penalty that was imposed, which was significantly higher than the minimum, without specifying any reasons, but making reference only to the gravity of the matter.

3 - While the hearing was pending, Knox's Defence deposited a brief [in response to the Prosecutor General] listing additional grounds, and Sollecito's Defence also deposited a defence brief.

3.1.1 - In the additional grounds, Knox's Defence points out the inconsistency and manifest lack of logic between the reasoning and the conclusions of the Prosecutor General's appeal, arguing that the appeal incorrectly applies Articles 581, 587 and 614 Criminal Procedure Code. According to the Defence, the Prosecutor General submitting the appeal to the Court of Cassation requested this Court to annul the Assize Court of Appeal decision of 3.10.2011, with remand to another court under Article 623 Criminal Procedure Code; indeed he requested the annulment of **[31]** all rulings of the decision in question, both of acquittal and of conviction, thus formally concurring with the Defence submission for the annulment of the point convicting Ms Knox of *calunnia*. In regard to this, the Prosecutor General specifically formulated reason 10 of his appeal, whose object is "*the lack of recognition of the aggravating factor in the aims underlying the offence of calunnia*", so that this Court would have only the function of redetermining the penalty and thus of

annulling with remand, having been requested to annul the entire decision, including the charge convicting Ms Knox. This would preclude further pronouncement on the matter, as all parties agree on the formal conclusions.

3.1.2 - In the second of the additional grounds, the Defence argues violation and erroneous application of Articles 63, 64 and 374 of the Criminal Procedure Code. The appealed judgment identifies the material element of the *calunnia* in the spontaneous declarations made by Ms Knox on 6 November 2007, and in the statement subsequently signed by her, documents that were held to be admissible. The Defence objects that the document denoted as the spontaneous declarations was, in substance, a document pursuant to Article 64 Criminal Procedure Code which should have been preceded by the fundamental [and] due notice of impending investigation. In the judgement under appeal, said document is described as an "interrogation"; thus the court negates the spontaneous aspect of the declarations. But if this document is taken as an interrogation, the general rules of interrogation were not just transgressed, but violated. In addition, [they argue that] the young suspect was assisted by an interpreter who was not only translating but was forcing the suspect to remember, thereby employing a technique apt to influence her freedom of self-determination and to alter her ability to recall and evaluate the facts, with the consequence that the material element of *calunnia* was lacking. Furthermore, [they argue that] on that night, Ms Knox was in a particular altered psychological state such that she was not able to express her free will, in consequence of which she cannot be accused for the false accusation made against Mr Lumumba, even in the writing of her handwritten statement.

3.1.3 - In its brief, the Knox Defence vigorously contests the formulation of the Prosecutor General's appeal, which sharply criticized a series of logical passages in the appealed statement of reasons as "*petitio principii*", that is, as conclusions proved by their own premises. The Defence argues that the second instance judgment was constructed [according to the Prosecutor General] on an illogical analysis of the circumstantial

evidence. The Defence reaffirms the theory of the insufficient professionalism of the investigators, who [they say] continued defending their initial mistakes in spite of all the subsequent developments in the investigations and in the evidence file: Guede's arrest in Germany, the recognition that the bloody shoeprint at the crime scene was not Sollecito's, the absence of motive, the existence of an alibi, the absolute insufficiency of the genetic material for any relevant conclusion whatsoever, the neglect of international protocols for the genetic tests, and the **[32]** statements of unreliable witnesses such as Curatolo, Quintavalle, Kokomani and Monacchia, all of whom made their contributions only well after the facts.

The Defence also contests the [Prosecutor General's] assertion that the Hellmann Court of Appeal judges fragmented the circumstantial evidence, countering that the elements of the accusation did not have the structure of circumstantial evidence because of their lack of weight, so that putting them together coherently proved to be impossible because of the vast and total disharmony between the possible variants.

[According to the Defence], the claim of error concerning the non-use of the judgment against Rudy Guede falls utterly short since the Court of Cassation, in its judgement, ruled out the theory of cooperation in the commission of the offense.

As for the contested evaluation of the handwritten statement produced by Ms Knox at around 12.00 on 6 November 2007, they note that the statement was examined [by the Hellmann Court of Appeal] and that, in the end, that Court wrote that it was not deserving of credibility from a substantive point of view, since it did not represent the true course of events, as emerged gradually in light of the body of evidence.

Concerning the panel of experts in the appeal, [the Defence maintains that] the Hellmann Court of Appeal decided, with sound reasoning, that it should arrange for new testing in

the presence of decisive evidence in a particularly complex area, and requested the opinion of particularly well-regarded experts, not considering itself able to make a correct decision [alone]. Nor did the argumentation at first instance on the manner of acquisition of the evidence have any value, as it did not take into consideration the two exhibits in question which became objects of evaluation on appeal. As for the rejection of a third expert test, sound reasoning was given based on the fact that the traces could never have led to any convincing result, nor have been of help to the court in its search for the truth.
On the witness testimony (Aviello, Curatolo and Quintavalle), [the Defence contends that] the Hellmann Court of Appeal did offer adequate reasoning regarding the lack of credibility of the witnesses, the insufficiency of proof and the non-concordance of the evidence.

As for the time of death, [the Defence maintains that] the Hellmann Court of Appeal did not deny the relevance of the scream and the sounds heard by the three witnesses, but weighed the ambiguity and indeterminacy of the circumstances referred to and, therefore, their inability to establish the time of death with certainty.

On the genetic investigations, the Defence recalls that international protocols were not followed regarding the boundaries set by the "Low Copy Number", which cannot be crossed at the cost of obtaining results that are unreliable, uncertain and imprecise, and thus not at the level required to count as circumstantial evidence. The Defence objects to an assumption of the prosecution, responding that it is specious to claim that the Defence, not participating in the acquisition and preservation of the evidence, should be charged with a burden of **[33]** proof [of contamination] impossible to achieve. As an example of the flaws [in the investigation], the Defence points out that the knife was preserved in a box that originally contained an appointment book, and that the victim's bra-clasp was collected forty days after the murder.

As for the footprint on the bathmat, [the Defence notes that] the Hellmann Court of Appeal reached its conclusion after a long debate, providing reasoning for each point raised by the parties, and justifying the soundness of their opinions.

Finally, [the Defence maintains that] no value can be attributed to the fact that Ms Knox made numerous phone calls to her mother while the facts were still being gathered and information was partial and contradictory.

Concerning the criticism relating to the staged burglary, [the Defence maintains that] the Prosecutor General submitting the appeal substantially misrepresented the facts, which is precluded in this court.

Lastly, the Defence argues for the unacceptability of the appeal submitted on behalf of the Civil Party John Ashley Kercher on the grounds of lateness, it having been lodged on 17 February 2012.

3.2 - In a defence brief, Sollecito's Defence notes that the [Prosecutor General's] complaints about the appeal verdict fail to take into account that the true anomaly was that the First Instance Court made a judgment based on unreliable findings, whereas the expert genetic tests organized at second instance demolished the prosecution's theory, which was built on very fragile conjectures and technical analyses lacking substance. From this the Defence deduces the unacceptability of the appeal, as it is based on a reassessment of the facts, and thus calls for a third judicial decision on the merits, which is not allowed in our procedural system. They note that the decisions made by the court of merit [the Hellmann Court of Appeal] concerning the relevance and reliability of the sources of proof cannot be criticized.

Regarding the [Prosecutor General's] criticism of *petitio principii*, referring to the tendency of the Hellmann Court of Appeal to sidestep the question using circular reasoning, the

Defence maintains that this is unspecific, as is the criticism of violations of the principle of due process on the grounds that the Hellmann Court of Appeal neglected aspects favouring the prosecution hypothesis.

[The Defence contends that] the receipt in evidence of the judgment handed down against Rudy Guede could not have binding effect, as [the Hellmann Court of Appeal] correctly held, in the face of facts that emerged to refute the hypothesis of a collective action. The [Prosecutor General's] complaint that the handwritten letter was not evaluated pleads for an assessment that is in fact not permitted, all the more so since the second instance court offered sound reasoning on the psychological pressures to which Ms Knox was subjected and on the state of emotional shock she was experiencing – also confirmed by the interpreter Anna Donnino - which led her to name Lumumba in statements that could not be **[34]** used to represent the real course of events. Indeed, [the Defence explains], the young accused was a twenty-year-old American, recently arrived in our country to study, with little mastery of our language, who was catapulted into an unfamiliar situation, detained at the police station, placed under very considerable psychological pressure and interrogated without the presence of a lawyer.

[The Defence maintains that] the order by which the Hellmann Court of Appeal arranged new expert genetic testing was fully reasoned and not deserving of censure, given that the First Instance Court had held that the comprehensive court debate between the experts of the parties rendered the terms of the question clear to the court, whereas the Hellmann Court of Appeal instead held that the identification of the DNA on various items of evidence and its attribution to the accused was particularly complex due to its objective difficulty for people without scientific knowledge. In substance, according to the Defence, it was perfectly legitimate for the Hellmann Court of Appeal to order expert testing, even with the prospect of overturning the judgment, as it is not part of its task to evaluate technical-scientific matters entirely alone without being able to avail itself of experts.

Regarding trace B on the knife blade, [the Defence argues that] the technical tests should be held unreliable, since there were no supporting facts to prove that the trace was from blood; the sample was a *low copy number*, and thus necessitated the adoption of the precautions recommended by the international scientific community, for which reason the trace cannot be attributed to the victim Meredith Kercher; indeed it cannot even be ruled out that the result obtained from sample B on the knife blade might have been derived from contamination phenomena arising at any stage of its collection and/or analysis. On trace 165B on the victim's bra-clasp, [the Defence maintains that] there was an erroneous interpretation of the trace of the autosomal STRs, and an incorrect interpretation of the electrophoretic graph relating to the Y chromosome. [The Defence asserts that] international crime scene procedures and collection and sampling protocols were not followed, and it cannot be ruled out that the results were derived from ambient contamination phenomena, or from contamination in any phase of collection and/or analysis. Thus, according to the Defence, the undertaking to order expert testing turned out, in hindsight, to be absolutely indispensable for attesting to the unreliability of the methodologies used by the Scientific Police, in the stages of both collection and analysis.
[Moreover], the denial of expert genetic testing of the new trace sampled by the experts on the knife blade (trace I) near the location where Dr Stefanoni found a trace of Ms Kercher was justified by adequate reasoning, **[35]** based on the fact that the result obtained would not have been reliable due to lack of conformity with international protocols, given the insufficient quantity. The denial of this expert testing cannot, then, be arguably the object of a censure for cassation, nor does it constitute a denial of the right to opposing proofs, seeing that at the time when the task was entrusted to the experts, the prosecution did not put forward any specific requests or observations on the matter.

[The Defence argues that] the fact that Aviello was not heard is the result of a correct procedure, since the Public Prosecutor at second instance had maintained that the witness was a liar, such that it was natural there should be no new hearing; the more so as witnesses Chiacchiera and Napoleoni (investigators) reiterated at second instance that the

prisoner was completely unreliable. The fact that the record of Aviello's declarations was consigned to the court even without a trial hearing does not make the document unusable, since the rejection of a new hearing originated with the prosecution.

On the finding of the witness Quintavalle's unreliability, [the Defence maintains that] the Hellmann Court of Appeal judges have correctly pointed out that the witness came forward only a year after the events, in spite of the fact that when he was questioned in the immediate aftermath, he did not reveal having seen Ms Knox. In this case, [the Defence argues that] a re-evaluation of the witness is not allowed, given that his testimony was correctly examined by the Hellmann Court of Appeal, knowing the lapse of time after which he offered his contribution to investigators. The witness's statements were, for the rest, compared with those of his co-workers, who referred to the doubts expressed by Quintavalle on the exactitude of his identification. There is therefore no lack of logic in the reasoning, since the lack of logic must be manifestly perceived, whereas minimal inconsistencies must have no influence.

Likewise on Curatolo's testimony, [the Defence maintains that] the Prosecutor General and Counsel for the Civil Parties have made a new incursion into the merits, whereas the Hellmann Court gave ample reasoning for the finding of unreliability, citing the diminishing intellectual faculties of the man, his character (burdened by criminal precedents) and above all the existence of facts that conflict with his version, such as the fact that he indicated the evening on which he saw the two accused in the piazza as the evening of the Halloween (31 October), and the fact that he mentioned that there was a lot of movement and that many young people were present waiting for the buses to take them to the discotheques, a fact refuted by other testimony. [The Defence asserts that] the [Prosecutor General's] complaint should therefore not be accepted, besides lacking in relevance, as the claimed lack of logic and inconsistency does not occur.

As for matters relating to the time of death, [the Defence argues that] the Hellmann Court of Appeal recognised the difficulty of fixing the time of death based on criteria **[36]** of forensic pathology, ruling out that the probative vacuum could be filled by appealing to arguments of a conjectural nature, such as those offered by the witnesses who referred to a scream or to steps along the path adjacent to Via della Pergola, whose timing is uncertain. But on this point, it is reiterated that the verification of legitimacy is limited to examining whether the evaluation of evidence respects the set criteria, based on the customary requirements of completeness, correctness and logic in the reasoning, while it is not possible to carry out any new factual investigations, in the sense of performing a repetition of the fact-finding process by the trial judges. The Hellmann Court of Appeal endorsed Guede's statements to his friend, and in the explanation of its free conviction, it evaluated the whole conversation and deemed it useful for the purpose of fixing times, in view of the innumerable elements proclaiming Guede's presence at the scene. To the ambiguity of the significance of the scream heard by the witness Capezzali, the Hellmann Court of Appeal opposed the likeliness of a series of elements that corresponded more closely to the movements and intentions of the victim. No alternative reconstruction is permitted; only verification of whether the [appeal court's] justification is compatible with common sense and with the limits of a credible assessment.

On the genetic investigations, [the Defence contends that] the Hellmann Court of Appeal judges accepted the experts' conclusions without any obligation arising for them to furnish an autonomous demonstration of the scientific accuracy of the experts' thesis. [The Defence argues that] the thesis of the Prosecutor General submitting the appeal is therefore a generic complaint with no substance, considering that the Hellmann Court of Appeal judges fully and logically evaluated the scientific facts dealt with by the experts, reaching a final evaluation that is beyond reproach, having taking all the different positions into account.

Concerning the bare footprint found in the bathroom of the house in via della Pergola, and attributable to Sollecito according to the Scientific Police, the Defence notes that, contrary to what is claimed in the appeal, the Hellmann Court of Appeal limited itself to finding that a simple analysis of the footprint, which lacked highly individualizing characteristics, was not in itself sufficient to identify the owner of the print with absolutely coherent reasoning, and thus had to be considered as a probative element lacking full persuasive force. In this setting, the second instance court evaluated the opinion of Professor Vinci, who displayed a morphological characteristic of Sollecito's foot, namely the relevant absence of continuity in the reference print (collected by means of inking the sole of the foot and subsequently placing it on a piece of paper laid on a smooth surface), as compared with the [bathmat] print in which the big toe and the ball of the foot were joined together in a single blood trace. The appeal court **[37]** reached the conclusion that if the print were Sollecito's, the print of the big toe on the bathmat would not have had a quadrangular shape, since the comparison print left by Sollecito's right foot shows a triangular big toe. [Sollecito's Defence maintains that] the complaints presented in the appeal thus trespass into the merits, by urging an alternative reconstruction of the actual facts.

On the traces revealed by luminol, the Prosecutor General and Counsel for the Civil Parties have sought to force the direction of the course of reasoning using fragile arguments (such as the fact that it would be illogical to think that the couple would have had blood-stained feet at any time other than the murder) since, as pointed out by the Hellmann Court of Appeal, the indications on the SAL cards from the Scientific Police laboratories on this print show that a generic blood test was carried out with negative result, due to the low amount of biological material available.

On the blood traces in the small bathroom of the house in via della Pergola, containing DNA of Ms Knox and Ms Kercher, the Defence objects that the considerations of the Hellmann Court of Appeal judges – according to whom the collection of traces by means

of swabbing both the sink and the bidet from the edge to the drain and back on both sides of the same swab was the procedure least likely to lead to a really certain result – cannot be contested.

On the presence of the accused at the scene of the crime, the Prosecutor General and the Counsel for the Civil Parties propose evaluations of fact, based on Ms Knox's statements of 2 November, on her phone call to her mother, and on Sollecito's call to the Carabinieri. In the judgment of legitimacy [i.e., the SC judgement], the Defence points out, the verification of the correctness of the evaluation of the evidence cannot comprise any reconsideration of the weight of the circumstantial evidence, as this would entail assessments of the merit.
On the value of Guede's statements on appeal, the Defence reiterates that during the first instance trial of the two accused, the prisoner did not submit to direct examination by defending counsel, so it was correct to say that he was never questioned. The fact that it was not taken into consideration that in a letter sent to a television station, Guede alleged that the couple was present at the scene and were the perpetrators of the murder, conforms to the guidelines that govern the establishment of proof during trial, so that no probative value can be attributed to this letter, all the more so in that after fleeing, during his chat with a friend, Guede absolutely did not name the couple as perpetrators of the crime. For that matter, the [Hellmann appeal court's] finding of total unreliability on the subject of Guede was confirmed by this very court of legitimacy, in its definitive decision on his conviction dated 16.1.2010.

As for the staging of the break-in, the severe criticism advanced [by the Prosecutor General] on this point is also unjustifiable, according to the Defence, since in proclaiming Sollecito's innocence, the Hellmann Court of Appeal judges could not do otherwise than negate the **[38]** very existence of the matter. The fact that in Guede's abbreviated trial procedure this staging was held to have been carried out does not constitute a contradiction, since that conclusion was reached in light of much more limited information. Concretely, the appeal court found that two or more persuasive

reconstructions of the actual facts could be argued, thus undermining the very basis of the decision of conviction, which assumed that only Sollecito and Knox could have had an interest in staging the burglary.

On the failure to recognize aggravation in the goals underlying the offence of *calunnia*, [Sollecito's] defence, although only indirectly concerned with arguments involving Ms Knox alone, observed that more than the reporting of an error, the [Prosecutor General] is requesting a different assessment. The error should have arisen from the text of the challenged document, or from other trial documents indicated in the grounds for the appeal, whereas in fact the Prosecutor General and the Counsel for the Civil Parties rely on documents from the trial which absolutely do not contradict the challenged judgment, there being a large number of documents that can prove the condition of stress to which the accused was subjected.

Finally, as regards the recorded conversations, the defence complains that the Prosecutor General and the Counsel for the Civil Parties took specific isolated elements out of context, failing to give a complete picture of other elements that would prove in a coherent and unequivocal manner the existence of a shock as a consequence of the pressures endured by Ms Knox.

Legal Analysis

The appeals of the Prosecutor General of the Appeal Court of Perugia and those of the Civil Parties are well-founded and must be sustained, as was requested by the Prosecutor General in the hearing. In reference to the appeal of the Kercher Civil Parties, which the Defence for the accused suggested were lodged on 17 February 2012, more or less explicitly urging that they be declared unacceptable, it must be said that at the bottom of the appeal of the judgment, the date of lodging the appeal to cassation on 14.2.2012 can be read: Mr Maresca, the lawyer for the victim's family, demonstrated, in the hearing on 25.3.2013, the accuracy of the annotation of the clerk of the court, producing a copy of the documents lodged at the office of the Court of Florence, under article 582 c. 2 of the Criminal Procedure Code. The appeal presented on behalf of the Kercher Civil Parties does not expose itself to any criticism of its timeliness and therefore it must be declared acceptable. However, the appeal presented by Amanda Knox, relative to the sentence imposed on her for the crime of *calunnia* to the detriment of Diya Lumumba, known as Patrick, must be rejected. It is from this charge of the sentence that the present **[39]** explanation will be developed, which must be preceded by a brief introduction about the scope within which this Court proceeded in order to arrive at the present decision.

1 - Preliminary remarks on the limits of the authority of this Court

1.1 - The body of evidence gathered and drawn up in the two stages of judgment on the murder of the young English student is without a doubt circumstantial in nature; since no one directly saw or recorded it, there is no description of how the crime was carried out. This does not mean that so-called circumstantial evidence has less validity than direct evidence, since circumstantial evidence is qualified by its content and by its degree of significance. What is noteworthy is the logical procedure through which, [starting] from certain premises, the existence of further facts is affirmed *"to the*

standard of rules of probability with reference to a possible, likely connection of events, whose sequence and recurrence can be verified according to the rules of common experience" (section 1 civ. 13.11.1996, no 9961) [Sez. Un. Civ. 13.11.1996, n.9961]: as has been cited in a recent ruling of this Court (section 1, 20.12.2011, no 47250), article 192 c2 introduced the civil trial standard regarding those elements which cannot be recognised as having the same persuasive value as evidence.

Living law has devised strong evaluation guidelines (which are) in complete accordance on the subject of circumstantial evidence trials, which require the trial judge to carry out a twofold operation: first of all, the trial judge must proceed with the evaluation of the piece of circumstantial evidence on its own, to establish its probative value, which is usually in terms of mere possibility. Then it is necessary to carry out a global examination of all the pieces of circumstantial evidence, in order to determine whether the margins of ambiguity, inevitably connected to each one (if demonstrative uncertainties were not present one would be dealing with outright proof), may be overcome *"with a unitary vision, so as to allow for the attribution of the illicit deed to the accused, even in the absence of direct proof of guilt, on the basis of a totality of facts which, fitting together among themselves without gaps or leaps of logic, necessarily lead to such an outcome as the strict consequential result"* (section 1, 9.6.2010, no 30448, section 1, 4.2.1992, no 6682).

1.2 - The purview of legitimacy of this Court with respect to the logical procedure followed to arrive at the judgment of attribution of fact through the use of inferences or rules of experience consists of verifying whether the court judge has indicated the reasons for his conviction and whether these are plausible: the verification must be carried out in terms of ascertaining whether the judge took into **[40]** consideration all the relevant information present in the court files, thus respecting the principle of completeness; whether the conclusions reached can be said to be consistent with the material received and prove themselves to be founded on inferential criteria and

logical deductions (that are) beyond criticism from the perspective of respecting the principles of the non-contradiction and of the logical consistency of the reasoning. The object of the Supreme Court judge's scrutiny is therefore the probative reasoning, (and) accordingly, the method used to assess the evidence, digressing in the reappraisal of the circumstantial evidence not being permitted. It has in fact been underscored how article 606, c 1, letter *e* of the Criminal Procedure Code precludes the (Supreme Court) judge from reappraisal but does not at all prevent him from verifying whether the appraisal was carried out according to logical criteria *"whether, that is, the criteria of inference used by the court judge can be held to be plausible, or whether different ones can be allowed, capable of leading to different solutions [which are] equally plausible"* (section IV, 12.11.2009, no 48320). It has been noted that this task had already been entrusted to the Supreme Court judge before the intervening reform introduced in letter *e* of article 606 of the Criminal Procedure Code with law 46/2006 and that with the amendment the flaw of misinterpretation of the evidence was placed in the category of the flaw of explanation, thus not reformulating the ambit of the scrutiny entrusted to the Supreme Court judge, (and) furthermore allowing the Court of Cassation to assess the trial records, this assessment being limited to their explanatory value and not their evaluation, when their contents are such as to undermine the conclusions reached by the trial judges.

1.3 - It is therefore following these evaluative parameters, in strict observance of the path indicated by law, which does not permit digressions, that this Court conducted the examination of the numerous points of violation which the Prosecutor General and the Counsel for the Civil Parties submitted to the Supreme Court, reaching the firm conclusion that the appealed judgment is affected by an incorrect assessment of all the available evidence, which is inadequately connected, having at times drawn conclusions incompatible with established facts, in open violation of the principle of the completeness of the appraisal and of the principle of non-contradiction, showing that significant evidence, which had been set as the basis of the probative reasoning of

the first judge, was overlooked without adequate justification. Furthermore, the appealed decision manifestly [*ictu oculi*] presents a compartmentalised and fragmented evaluation of the circumstantial evidence, taken into consideration piece by piece and rejected in terms of their probative value without a fuller and more complete appraisal, to be carried out broadly. The compartmentalisation of the single pieces of evidence thus weakened their value and their depth, since a piecemeal evaluation of their relationship and of the required synthesis inevitably followed, ignoring the increase in value that the pieces of the mosaic of circumstantial evidence assume when synergistically evaluated. This lack of comprehensive examination **[41]** prevented the gaps that each piece of circumstantial evidence inevitably carries in itself from being filled, overcoming the limitation of each individual piece of circumstantial evidence, which consists of demonstrating, by itself, the presence of an unknown fact, considering the fact that *"the whole can take on the meaningful and unequivocal demonstrative significance through which logical proof of the fact can be reached... which does not constitute a less valid instrument than direct or representative evidence, when it is reached through a rigorous methodology which justifies and substantiates the profile of the so-called free conviction of the judge"* (section one [Sez. Un.] 6682/1992 cited above). The ancient maxim *"quae singola non probant, simul unita probanti"* already contains the spirit of this regulation.

2 - Knox's conviction for the crime of *calunnia*

2.1 - The term of the sentence convicting Knox for the crime of *calunnia* with respect to Diya Lumumba was the object of complaint, on the part of both the Defence for the accused and of the Prosecutor General, who contested both the exclusion of any connection with the murder and the lack of recognition of the goal of the criminal act as having been to deflect the investigation away from the real perpetrators of the crime.

The judgments of the first and second instance coincide on this single fact: that the young American woman, subjected to insistent requests for information by the investigators during the days immediately following the murder – partly because she turned out to be the only one of the young tenants who possessed the keys to the apartment where the crime occurred and who was present in Perugia on the evening of the events (apart from the victim) – unjustly accused Diya Lumumba of the crime of rape and murder of Kercher. The agreement of the two evaluations on this single point can be attributed to the solidity of the documentary evidence, given that the accusation was "officially" put on paper in the *handwritten letter* of 6 November 2007, in which Knox wrote that she "[saw] Patrick (sic) as the murderer", and in the report of her spontaneous declarations which – even though in the middle of the night – was given by the accused some hours earlier, in which she pointed to Lumumba as the murderer. This act is accepted by all as having occurred after Knox denied that she replied to the message sent to her by Lumumba, in which he told her it was not necessary to work that night at the pub he ran, so that when the contrary was proven to her, she experienced an emotional breakdown and formulated the false accusation. That the young woman was perfectly aware of his innocence emerged from a conversation with her mother intercepted on 10 November 2007, which was recorded and thus can leave no doubt about her subjective state, marked by the total lack of any intention of setting the investigators straight with respect to the false information **[42]** she had offered them, at least in the days following her act, since she said she felt great remorse. According to the First Instance Court, since the young woman had no cause for resentment that would [make her want to] gratuitously involve Lumumba by making such a serious accusation, her action must necessarily be understood as an 'easy way out' [*commodus discessus*], taken to deflect suspicion from herself and her co-accused and to halt further predictable investigations which could involve either her or Sollecito. In the opinion of the Court of Appeal, however, the name of Mr Lumumba was given as fodder to the investigators just to get her through – without sustaining further consequences - the immediate moment of unbearable psychological pressure, created by the exacerbated and forceful insistence that was applied to obtain important information for the continuation

of the investigation. Still, according to the court of second instance, if Knox had merely been present in Via della Pergola at the time of the murder, the easiest way for her to defend herself would have been to name the murderer. Thus, according to the Hellmann Court of Appeal judges, even though it should be ruled out that the level of stress was such as to limit her capacity to want and intend the false accusation, the lack of any connection between Lumumba and Kercher could rationally be reconciled with the fact that Knox was not present at the scene of the crime. While the fact that the *calunnia* was committed was affirmed as historical truth, it was not raised to the status of evidence for the prosecution, neither considered in isolation nor, and all the less so, considered as part of an overall comprehensive evaluation of the available evidence – something which, in any case, as can be easily grasped, was never done (pp. 34 and 36 of the Hellman Court of Appeal statement of reasons).

2.2 - In refutation of what was maintained in the appeal brief submitted by the Defence for the accused, it is useful to begin by stating that a continuously affirmed principle of this Court is that information about the commission of a crime can be obtained using the statements made by a person subjected to preliminary investigation, even if they are hypothetically unusable due to the lack of warning ex art. 64 CPP, and that thus the crime of *calunnia* can be correctly charged against the person who made the statements, on the basis of accusatory statements unusable for other purposes, or [on the basis] of statements contained in a disallowed interrogation report (SC section V, 39.9.2010, n. 45016; SC section IV, 12.5.2009, n. 36861). The elements of the crime of *calunnia* were accepted as existing by both courts, since this crime occurs whenever a person under investigation, in order to defend himself, does not limit himself to maintaining the incorrectness of the accusations formulated against him, but also provides specific information in the aim of implicating other parties of whose innocence he is aware, given that the right to deflect any accusation away from oneself is limited by the prohibition against accusing third parties who are known to be innocent.

[43] The objective facts are therefore absolutely irrefutable, as was deemed in both trials; whereas the argument adopted from a subjective point of view, according to which the young woman resorted to extreme behaviour by giving the name of Lumumba only in order to get out of a situation of mental discomfort into which she was driven by the excessive zeal and unjustifiable intemperance of the investigators, cannot be well-founded given that – as it was ascertained – the accusation of Lumumba was maintained after her first statements and re-affirmed in the letter, which was written in complete solitude and at a certain distance in time from the first uncontrolled reaction in response to an insistent request for a name by the police. Although very young, Knox was a mature and sufficiently cultivated girl, born and raised in a country whose laws do not allow gratuitous accusations of a person in order to extricate oneself from a difficult situation. So Knox was in a position, even after an initial although long moment of bewilderment, amnesia and confusion, to regain control of herself and understand the gravity of the conduct she was adopting; at the very least, in the days immediately following her heedless initiative she could have pointed out to the investigators that she had led them in a false direction, availing herself of the support of her Defence team, given that in the meantime she had acquired the status of a suspect. Her persistence in her criminal attitude (discovered only through her taped conversation with her mother) proves the clear divergence with behaviour that could be interpreted as an attempt at cooperation, as the Defence would have it, and does not lend itself to evaluation as a response to a state of necessity, the very existence of which depends on a condition of inevitability and thus on the non-existence of any alternatives, so that it cannot even be recognized [as existing] as [her own] erroneous hypothesis. Neither can the exercise of any right be invoked, given that the right of [self] defence does not extend under the legal system of any constitutional state to the point of allowing one to implicate an innocent person so seriously – it is worth recalling that he [Lumumba] underwent a period of incarceration uniquely and exclusively on the basis of the false accusations of the defendant. On the subject of the relations between the right of self-defence and false criminal accusations, it has been affirmed that during the course of the proceedings instituted against a defendant, he can

deny – even lie – the truth of statements that are not in his favour, but if he goes beyond the rigorous functional relationship relating his conduct to a refutation of the accusation, if he does not limit himself to denying the accusations against him but undertakes further initiatives aimed at implicating third parties of whose innocence he is aware, then he has gone beyond the simple exercise of the right of [self] defence, and must be held responsible for all the constituent elements of the crime of *calunnia* (SC section VI, 16.1.1998, n. 1333).

[44] This reality could not but weigh heavily in the consideration of sentencing, which was adequate in relation to the gravity of the crime, with reasons logically maintained on this point. The appeal filed by the Defence is thus rejected as announced: the arguments submitted in one of the defence briefs, according to which the Prosecutor General, by submitting an appeal requesting the annulment of the sentence in all its terms – both acquittal and conviction – coincides with the request by Knox's Defence concerning the annulment of that part of the sentence finding her guilty of the charge of *calunnia*, have no merit, since the Prosecutor General addressed this Court, in point 10 of his appeal (p. 98 and following), with the request for annulment of that part of the judgment of conviction for the crime of *calunnia* only on the point of aggravating circumstances, and using well-founded observations argued for the obvious lack of logic in the evaluation by the Hellmann Court of Appeal, which practically consigned such weighty reality to the status of a mere detail, [viewed] as insignificant in the reconstruction of the crime.

2.3 - The grievances of the Prosecutor General are well-founded, not only in that the fact was evaluated in isolation, but also because the justifying discourse suffers from very weak rules of inference, insufficient consideration of the evidence, and inadequacy of the logical process. Firstly, it must be said that, as noted by the Prosecutor General, the Hellmann Court of Appeal judges neglected at least a couple of pieces of information whose consideration would have made it impossible to arrive at the conclusion that was actually reached. One of these is the content of the conversation between Knox and her

mother in which she, though she started by saying she had been forced by the intrusiveness of the investigators (as was noted by Sollecito's Defence), then described the conditions of solitude in which she wrote her handwritten letter, very different from those maintained by the Court, which thus neglected information with greater objective value. In the second place, the Court's maintaining the absence of any facts associating Lumumba and Meredith is disconnected from information that came forth at trial, and in particular from what Lumumba himself stated: that he met Kercher through Knox. Thus, the passage in the statement of reasons explaining that Knox must have been certain of Lumumba's innocence even if she was far from the scene of the crime (and thus could not know the identity of the killer) based on the argument that there was no connection between Lumumba and Meredith is obviously lacking in logic: the argumentative leap, apart from being founded on a very weak rule of inference, contrasts with the information that was gathered, and is not enough to successfully counter the logic behind the reasoning of the first instance judgment on this point, which more plausibly attributed the *calunnia* to an intention to throw the investigation off track. Moreover, the justifying discourse exposes itself to severe censure, in that through a real conjectural deviation, it was maintained that it was not difficult to construct a story around the **[45]** name of Lumumba, because many details and inferences had [already] circulated in the newspapers [in the previous days]; such assertion turns out to be devoid of any foundation in fact; indeed, the name of Lumumba appeared in newspaper articles only as a consequence of [Knox's] heedless outpourings, and it appears to contradict entirely the purpose of the false accuser, which could not be limited merely to satisfying the investigators, considering the grave consequences that her conduct would produce, above all for the unfortunate Lumumba, but also for the defendant herself. Even more illogical is the passage in the opinion where it is written, to rule out the presence of the young woman in via della Pergola when the crime occurred and justify the spilling out of a name, any name, from her mouth, that "*if [Knox] had been in the house at via della Pergola at the time of the murder, the easiest way would have been to indicate the real name of the murderer…*" (v. page 33). This *modus opinandi* [way of reasoning] reveals an evaluation of the facts that is

utterly inadequate, neglecting as it does to take into account, among the plausible hypotheses, that the lie could have been aimed at deflecting investigators from the person of the defendant, who possessed the keys that gave access to the scene of the crime, and also shows a tendency to take as already proven exactly that which needs to be proved. The grievances presented by the Prosecutor General are correct insofar as he complained about the construction of hypotheses by pure, unfounded inference and about the inconsistency and broken line of evidentiary reasoning, at a critical junction in the logical path of reconstructing who was present in via della Pergola, such as the aim of the act of *calunnia*.

The rationale of the opinion about the connection between the fact of *calunnia* and the more serious crime of murder, and thus the existence or non-existence of the teleological connection which was asserted [by the prosecution] and then found to exist in the first [instance trial], is obviously illogical and should be reformulated according to parameters of greater plausibility and with a better adherence to the body of information, since any critical analysis about plausibility of the connection which was found by the First Instance Court was lacking. The passage is fundamental in the reconstruction, because it sketches a picture - which is anything but irrelevant - pertaining to the presence of the young woman inside the house at the time of the murder, a presence which - although it cannot be translated into automatic proof of her participation in the crime - is such as to shed a strong light on the scenario and the main actors in the horrible crime.

On this point, the judge of the new appeal will need to proceed to a new judgment guided by a more comprehensive evaluation of the available evidence.

3 - The simulation of a break-in

3.1 - With the grounds explained on p. 93 of the appeal, the Prosecutor General raised a valid objection to the reconstruction made by the Hellmann Court of Appeal **[46]** of the

facts that were ascertained in the immediacy of the initial investigation of the crime scene, that were held to form a simulated burglary, deducing that the reconstruction was woven together from factual deductions derived from conjectures and unfounded inferences, which were devoid of any reliable basis of proof, in open contrast - among other things -to the reconstruction made in the context of Rudy Guede's murder trials, the outcome of which became definitive with the judgment handed down by this Court on 16 December 2010, during which the simulation was held to be undisputed and certainly attributable to individuals other than Guede.

According to the first instance sentencing report, Guede had no reason to simulate the break-in (and indeed he was not convicted for that crime, although it was mentioned in the report concerning him, considered as a fact which actually happened), whereas someone who was in possession of the keys and thus able to let Guede into the home of the young student (as no forced entry was observed) would have had a reason to carry out this act. The conclusion that the crime had been simulated was based on a series of facts with a high level of probative value constituting a valid inferential basis, on the strength of which the first instance statement of reasons produced a logical dissertation (pages 35-42) anchored in the facts that: (1) nothing (not even jewellery or the computer) was missing from Romanelli's room, which was the focal point; (2) there was no evidence of climbing on the outside wall of the house over the distance of 3.5 meters from the ground to the window through which the phantom burglar supposedly entered, nor was there any trace of trampling on the grass on the ground underneath the window; (3) there were no traces of the blood of the climber on the window sill, which he would have had to grip among the glass shards in order to sneak inside the room; (4) the glass shards were found on the inside but not on the outside of the window, a sign that the rock was thrown with the outside shutters closed, forming a shield that prevented pieces of glass from spraying to the outside; (5) the shards were found in abundance on top of the clothes and objects ransacked by the alleged intruder, proving that this ransacking had occurred before the window was broken; (6) the sound of the rock, hypothetically thrown from the ground,

had not startled the young English woman so as to make her call for help outside the house before being attacked (given the lapse of time between the throwing the stone and the climbing up the wall). Using the axiomatic assumption that Guede was the only person who had any reason to simulate the burglary, [the Hellmann Court of Appeal] entirely neglected the analysis of the First Instance Court, which was made in light of these starting points, on the unlikelihood of a dynamic that would substantiate entry through the window, not only because of the difficulty, but also because of the uncertainty of success due to the repeated and noisy movements that could potentially have attracted the attention of anyone passing by in the street. **[47]**

3.2 - According to the line of reasoning followed by the Hellmann Court of Appeal, the only person in whose interest it would be to stage a simulation was Guede, who, precisely because he did enter by the main door of the apartment, supposedly would have thought doing so would deflect suspicion from himself after the tragic event. This bald assertion with no factual basis should not even have been entertained as plausible; moreover, [it was] invalidated by contradictions and resulted from having omitted to consider certain conclusively established facts. The statement of reasons for which Rudy was found guilty, which was never invalidated by any new evidence on this point, asserted that the bloody shoeprints of the aforementioned indicated the path he took from the unfortunate Meredith's room to the main door of the house, without going into Romanelli's room, given that - as was written - the traces of blood of the victim mark the path taken by Guede without any deviation. Thus, the judgment appealed on this point enters into obvious collision with objective facts contained in the case file, which contradict the thesis maintained [by the Hellmann Court of Appeal] on the subject of [Guede's] reasons for simulation, which was already found wanting from a logical perspective. The reference to Rudy's character and to the fact that he was in the habit of committing the crime of housebreaking, and [the assertion that he] had prior experience involving climbing up walls even three and a half meters high and throwing four kilo rocks at night to smash windowpanes can certainly not be considered an argument that reinforces the weakness of

the criteria adopted, since this is all moving adrift along with the purest guesswork, not worthy of appearing in a justifying discourse, which must remain anchored to all of the pieces of objective evidence obtained during the trial, coordinated to form a continuous path [*excursus lineare*] with no gaps. The reasoning followed displays multiple logical gaps. For example, in holding that the burglar climbed up once to open the shutters, which were merely pulled shut [not latched], and then, still in the darkness, returned to the ground to throw the four kilo rock into the room, the facts that have probative value listed in the first instance sentencing report should not have been ignored: the lack of shards outside the house, the difficulty for the burglar of getting inside given the presence of shards on the sill, the lack of alarm in young Meredith that the noisy throwing of a four kilo rock would have produced, the presence of numerous shards on top of the clothing. These stages along the path of argumentation were altogether ignored, as the reasoning of the Hellmann Court of Appeal hinged essentially on Rudy's character, which in fact cannot constitute a solid inferential basis. But even more inconclusive and tautological is the passage in the statement of reasons in which the presence of a tiny fragment of glass found near the victim's foot was taken as evidence that the window was broken before the victim's room was entered (and thus was the work of a real burglar): **[48]** the probative value of the fact for defensive purposes was null, since it is just as compatible with the opposite hypothesis, according to which after the murder, as Rudy fled, leaving the victim's room and reaching the front door without any deviation from the straight path (as was asserted in his sentencing report), others remained in the house to rearrange the scene and simulate the burglary and, in doing so, transported a shard, perhaps when they covered the body. Thus, something which remained to be proved was treated in this passage as already proven, another obvious weakness in the argument. Furthermore, the reconstruction fails to adhere to the body of information from another angle as well: the objective fact that a significant portion of the glass shards was on top of rather than underneath the clothing (as was documented in the photographs and recorded video images), which shows that the window was broken after rather than before the ransacking of the room, was explained away by invoking an implausible argument based on the

burglar's frenzy in rummaging around the room. Another symptom of the incompleteness of the evaluation is the [Hellmann Court of Appeal's] evaluation of the fact that, almost two months later, Rudy was found with wounds on his right hand compatible with having broken the windowpane; this fact could have been material if traces of Rudy's blood had been found, left during the hypothetical entry through the window with the broken pane, a circumstance that was not confirmed. Moreover, this very fact was denied by his friends (Alex Crudo, Sofia Crudo and Philip Maly), who had not noticed any wounds on Guede's hands on the day of 2 November 2007, before he fled to Germany, as was written in Guede's sentencing report, admitted as evidence but ignored by the Hellmann Court of Appeal (v. infra).

3.3 - The manifest lack of logic in the Hellmann Court of Appeal's statement of reasons is thus altogether obvious in another passage of significant relevance for the reconstruction of the facts, whether due to an incomplete study of the case file or to the application of absolutely inadequate inferential criteria, appealing to the character of the individual who was convicted for murder with a definitive judgment (a judgment which, moreover, recognized that he was not the sole perpetrator), as well as a method of evaluation that is not in line with procedural principles.

Once again, the judgment suffers from a fragmented vision, whereas if the tesserae of the mosaic had been connected they would have provided a result from their interaction and would have led to a more complete evaluation. As noted, the simulation of the burglary should have been evaluated in light of the investigative data collected immediately after the event, such as Rudy's shoeprints (along the path of his flight) and the traces of the victim's blood detected in many spots in the bathroom used by Ms Knox and **[49]** Ms Kercher, surely carried there by third parties present in the house after the murder. Also on this point, it is indispensable that the judicial method be informed by criteria other that those actually adopted, since the topic in question supplements a probative factor that is determinant in the process of ascertaining the presence at the crime scene, at the time of

the event, of individuals other than Rudy Guede. All the more so as the first instance statement of reasons carefully evaluated the hypothesis offered by the Defence that Guede could have entered through the window in Romanelli's room, giving an analysis of the differences with regard to the other crimes committed by the accused, which were always committed under circumstances which did not require using ladders or scaling walls, a decision which on this point has not been adequately refuted.

4 - CURATOLO'S testimony

The Hellmann Court of Appeal rejected the reliability of the testimony of Antonio Curatolo which, in the reconstruction of the First Instance Court, had been taken as a basis of proof that the negative alibi offered by the two accused was false, and which constituted one of the tesserae of the mosaic which led to their being held to have been present at the scene of the crime. Incidentally, it is worth recalling that the First Instance Court held, via reasoning that was correct from both a legal and logical point of view, that the false alibi must be considered as evidence against [the accused], to be placed in relation to the other elements of proof in the context of the entire body of evidence. This method of analysing the testimony, as observed by the Prosecutor General submitting the appeal, is absolutely subject to censure in that it displays a lack of the prerequisite thorough examination of the facts and circumstances, so that the conclusion that was reached [by the Hellman Court of Appeal] – that in indicating the two accused students as having been present in piazza Grimana, he confused the evening of 31 October and the evening of 1 November – clashes with ascertained facts that seriously contradict such an absolutely certain assumption, so as to shed full light on the well-foundedness of the charge that the justifying discourse is contradictory and thus manifestly lacking in logic (it was in fact proven by other facts that on the evening of 31 October that neither Knox nor Sollecito, who were both occupied, the former at Lumumba's pub where she was preparing for the normal activity associated with the Halloween festival, the latter at a graduation party, could have been present in piazza Grimana at around 11 PM). The

assertion that the sighting of the two young people by the witness should be shifted to 31 October (page 50 of the sentencing report) because the context described was more suitable to that day than the next day, since [the latter] did precede the arrival of the Scientific Police but **[50]** [was] taken out of context, is a manifestly illogical assertion, not only because it contradicts facts which unequivocally demonstrate that the two were not in the piazza on the evening of 31 October (a fact of fundamental importance in the context of the evaluations) and thus the impossibility of squaring the circle in the sense proposed, but also because it follows an utterly weak inferential rule. Starting from the need to undo the knot of contradiction presented by the testimony (he saw the two young people the evening before the investigation of the Scientific Police and he saw them in the context of the Halloween festival), the Hellmann Court of Appeal, after having heard the witness testify a second time and after having verified that he erroneously placed Halloween on the night of 1-2 November, they heard the witness reiterate that his temporal placement of the fact was anchored to the described presence of people who were all dressed in white and that, after midday on the day after he saw the two young people, he caught sight of the men in white in via della Pergola (a fact with a very high level of certainty, more than any other) together with the police: this notwithstanding, the Court reached the conclusion that his testimony could not be accepted due to the man's deteriorating intellectual faculties and due to his lifestyle, since he was a detainee for drug dealing when he testified the second time and was a habitual heroin user.

Once again, the progression of the argument emerges as obviously illogical, in that the evaluation of the testimony should have been correlated (regardless of the conclusions, this being a discussion of evaluation methods) to the unique objective fact of absolute reliability (the presence of individuals wearing the white suits, the day after the sighting of the two in the piazza, at a time earlier than 11 PM-midnight) because that is a fact whose existence is certain, which was a unique identifying circumstance, which could not but remain imprinted on the mind more than any other; while instead, once again, character issues were considered and asserted, furthermore, without any scientific examination that

could ascertain whether the man's intellectual faculties had deteriorated. Moreover, Curatolo showed up when called upon to testify, in both the first and second instance trials and, even well after the fact, he never had any difficulty recognizing the two accused as those whom he had seen in Piazza Grimana the evening before he noticed the men dressed in white (whom he called "extra-terrestrials") and the police in via della Pergola. The fact that he had been a homeless man who spent all day in the piazza was not a reason for dismissing him as an unreliable witness out of hand, at the cost of colliding with the accepted principles on the matter of the reliability of testimony. In conclusion, **[51]** a contribution [that was] expressed with certainty and noted in the trial transcripts of the witness, and again during his second testimony ("as certain as I'm sitting here" he said of having seen the two accused the evening before the day in which he saw the men in white suits and the police), cannot be circumvented by merely referring to the character of the author of the contribution; this would have required a process of evaluation through facts with equally strong probative evidence . Moreover, the opinion must be annulled and remanded, since the explanations of the reliability of the witness Curatolo are incomplete (as they did not take into consideration the facts that contradicted the conclusion reached by the Court), vitiated by an incorrect application of the laws governing the matter. The 'precise and serious' nature of the evidence provided by the testimony was dismissed in the [Appeal] opinion without testing its concordance with other evidence, on the basis of a conjecture (that the witness superimposed the evening of 31 October onto that of 1 November) that was not even confronted with the facts contradicting its conclusions.

5 - The testimony of QUINTAVALLE

Regarding the testimony of Quintavalle as well, who was heard by the First Instance Court on 21 March 2009, the sentencing report is vitiated by manifest illogicality, as asserted by the Prosecutor General in the appeal documents filed, since the evidence was not correctly acknowledged by the Hellmann Court of Appeal, thus resulting in an obvious incompleteness, which led to a manifestly illogical decision on this point. For one thing,

the rule of inference used by the Hellmann Court of Appeal is subject to criticism if one considers only that the Court asserts (on page 51 of the decision) that the fact that Knox showed up very early in the morning to buy detergent the day after the murder, even if ascertained, had absolutely no relevance: on this point, it is useful to highlight that not only would the reality once ascertained have shattered the negative alibi (as far as the asserted continuous presence of Knox at Sollecito's house from the evening before and until the following morning at ten am), it would also have attested to a particularly pressing need for cleaning in the early hours of the morning which, while of absolutely no significance in and of itself, becomes an entirely different matter in an integrated evaluation of the single tiles of the mosaic, since [it can be] plausibly linked to an urgent need to eliminate traces on garments, considering the time when the purchase would have taken place. The reasoning of the Hellmann Court of Appeal is thus unsatisfactory, first of all because the Court did not even consider the possibility of a different conclusion, excluding from consideration the relevance of the fact. Even more serious, the information was completely misinterpreted: in fact, the Court focused on the delay in giving evidence, claiming that the witness came forward to give his statement **[52]** one year later, and that it took him all this time to convince himself of the exactitude of his perception and to identify Knox as the young woman whom he had seen that morning after the murder: consequently, the Hellmann Court questioned how Quintavalle's memory, which was not unequivocal at the time of the event , such that he was unable to provide the investigators with precise details, could become consolidated with the passing of time, considering that he himself had stated that he had seen the girl only fleetingly, out of the corner of his eye and not head on.

In reality, the notice taken of the witness's statements, as pointed out by the Prosecutor General, is absolutely biased, since the sighting out of the corner of the eye referred to the girl's exit from the shop, whereas the witness specified having seen her at a close distance (between 70-80 centimetres), adding that she remained imprinted on his mind "because of her very light blue eyes", her "extremely pale face", and "a very tired expression".

Moreover, the witness clarified in his testimony that he became convinced that the girl who appeared in the newspapers was the one he saw in the early morning of 2 November 2007, given that the colour of her eyes could not be ascertained from the photo, but that he became certain once that he saw the girl in the courtroom. The selection made from the pool of information was absolutely one-sided, which distorted the evidence to the point of making it appear uncertain, whereas the witness explained the reasons for his perplexity and the development of his conviction in terms of certainty.

As noted by the Prosecutor General in the appeal documents filed, this portion of the report assumed relevance within the framework of the reconstruction and required an explanation based on an examination of the entire testimony; instead, through a process of unacceptable selection, only some of the testimony was considered to be of value, indeed, only that portion considered to be consistent with a [specific] conclusion, one that in fact required rigorous demonstration. The result, once again, is blatantly and manifestly illogical. What is at issue is not a re-evaluation of the evidence – which is obviously prohibited by this Court, as the Defence for the accused has justly pointed out – but rather the need to point out a glaringly evident flaw that consists of an intolerable chasm between what is stated by the witness and what is acknowledged in the justifying arguments, on a point of significant importance, since it concerns the foundation of the alibi.

On this point also, the new judgment will have to be conducted in light of the preceding observations.

6 - The failure to [properly] evaluate KNOX'S handwritten letter

The observation of the Prosecutor General is correct with regard to the failure [of the Hellmann Court of Appeal] to [properly] evaluate the letter written in English by Knox, which was translated and contained in the appeal files and which was already considered fully admissible by this Court **[53]** in decision no. 990/2008, it being a document coming from the accused, who wrote the letter voluntarily and in a moment of solitude (i.e., after the alleged pressure on the part of the investigators had ended) with the intention of defending herself, [and] pursuant to article 237 of the Criminal Procedure Code. In this letter, the young woman, without even wanting to clarify to herself and others the sequence of actions carried out the evening of the crime ("perhaps I checked the emails, perhaps I read and studied, perhaps I made love with Sollecito…"), admitted only to having smoked marijuana, to having had a shower with Sollecito, and to having dined very late; and then, placed herself in a dimension more dreamlike than real, writing of having seen herself crouching in the kitchen, with her hands over her ears, because in her head she had heard Meredith scream, even though these things seemed like a dream and she was not sure that what had appeared to her had really happened. She also added a very perplexing detail, that of having seen blood on Sollecito's hands; but she says she had the impression it was blood from the fish (most likely cooked for dinner). Her presence "crouched in the kitchen" when she heard the victim's scream and the presence of blood on Sollecito's hand (linked to the aforementioned fish) are facts disclosed in a perplexing sequence, unless we interpret them as an attempt at clarification and as an admission of her presence in the house, which she reaffirmed when she specified that she saw Patrick (Lumumba, indisputably falsely accused) near the front door. She concluded her letter by saying that she "didn't remember with certainty" whether she was at her house that night.

It is indeed true that these reflections are of dubious substantial meaning, but it is also true that they cannot be dismissed – as they were – based on the presupposition of psychological pressure to which the author was subjected and of some mental

manipulation that was exerted, first because the letter was written in complete solitude after the so-called excesses of the interrogation and second because that same document was used by the Second Instance Court itself as the probative basis for the crime of *calunnia*, on the assumption of the full possession of her mental faculties, such that Knox was found guilty on the basis of this very letter (as well as on the basis of what she told her mother, once again in the full possession of her mental faculties, free from pressing interference, in the course of a conversation with her).

On this point there is, therefore, an obvious contradiction in the evaluation of the same evidence, which calls into question the structural coherence of the decision: on this basis, the judge of remand will have to formulate a new judgment with more coherent argumentation, the issue once again being a significant passage of the justifying argument pertaining to the presence or lack thereof of the young woman at her residence at the time of the murder. **[54]**

7 - The failure to evaluate the content of the final judgment against Rudy Guede

The observation of the Prosecutor General on the violation of article 238 of the Criminal Procedure Code is correct: the Hellmann Court of Appeal, even though it admitted as evidence the definitive judgment pronounced by this Court against Rudy Guede, after having correctly stated in advance that the judgment was not binding, completely ignored its content, also neutralizing its undeniable value as circumstantial evidence, on the presupposition that it stood out as a particularly weak element, since the judgment [against Guede] was made based on the documentation at the state of the proceedings, without the benefit of the information acquired after the renewed investigative proceedings put in place in the appeal. In reality, the Court was not authorised at all, for this reason alone, to ignore the content of the definitive judgment which – even if relevant only to the position of Guede, and pronounced as the outcome of an abbreviated trial procedure – it reached the conclusion that the accused was guilty of "murder in

complicity" of the young student. The conclusion reached by the Hellmann Court of Appeal judges, according to whom "even if we decide to hold firm to the hypothesis of a necessary complicity of persons, the judgment does not assume determinant probative value in recognising in the present accused the accomplices of Rudy just because of this", is the result of reasoning based on an insufficient argument, since the information about the presence of other persons had to be necessarily correlated with information about the [persons who had] access to the house where the crime was committed.

Moreover, the judgment admitted into evidence ruled out that Guede had simulated the break-in, which was found as a fact and attributable to other persons. On page 20 of the judgment (no 7195/2011) admitted into evidence, the Supreme Court of Cassation pointed out that "it must be noted, as the trial judges correctly held, that after the homicidal act, an activity aiming to simulate a break-in took place, which the trial judges and the defence of the appellant [Guede] themselves agree to have occurred at the hands of others and not of the accused…".

The circumstance according to which Guede, at the time of his arrest (which took place two months[8] (sic) after the fact), presented wounds on his hands was not considered significant by the abbreviated trial judges in light of information provided by three of Rudy's friends, whom he contacted the day after the murder, and who testified that there were no wounds on Rudy's hands. Such passages of argument, properly justified, were completely ignored by the Hellmann Court of Appeal, which linked the simulation to Guede based on his expertise in theft, falling into an obvious off-course interpretation, which deviated from what had been ascertained and judicially affirmed in another judgment, without giving adequate reasons for the incompatibility with the reconstruction developed in the judgment and once again denoting **[55]** an incompleteness of information, which inevitably leads to errors in the judgment due to flawed reasoning. The judgment under discussion, even though handed down as the outcome of a judgment

[8] Translator's note: The original Italian says two months when in fact it was two weeks.

based on the state of the proceedings, falls within the category of the judgments contemplated by article 238 *bis* of the Criminal Procedure Code, as the same as the judgments of the application of punishment, the article of law in question carrying out the noble intent mentioned by the prosecution of not dispersing the elements of knowledge collected through legal proceedings which have, however, assumed the authority of something ruled definitive.

Therefore the contested verdict lays itself open to the lamented flaw of error of law and the defect of adequate explanation, on the crucial passage of the reconstruction of events which concerns the presence of accomplices, in the residence at the disposal of only Knox and the victim on that unfortunate evening; a [logical] outline which must certainly not be automatically interpreted as proof, but which constitutes a significant piece in the reconstructive itinerary, to be assessed together with other pieces of evidence. On this point, as well, the judge of remand will have to undertake a close examination that is more consistent with what the law dictates, as well as an evaluation of the fact within a broader picture of the interconnections of the circumstances in evidence.

8 - The evaluation of the declarations made by Rudy Guede in the appeal

The complaint put forward [on this point] is also well founded, as far as the error of law, manifestly [*ictu oculi*] verifiable, which is in the section of the judgment in which Guede is burdened with (and most likely the prosecution) not having ever been examined either in the first instance or in the second instance. As correctly noted by the petitioning public party, Rudy Guede was, at the time of the first instance judgment against the two lovers, a defendant in a related trial as provided by article 12 § 1. letter a, and therefore article 210 § 4. of the Criminal Procedure Code allowed him to remain silent. Article 197-bis § 4. of the Criminal Procedure Code furthermore granted him the right to refuse to testify on matters for which he had been convicted, having denied his responsibility and not having made any declaration. Therefore no alleged forcing of [criminal] procedure took place to indulge

the co-accused [Guede] to the detriment of Knox and Sollecito, but a strict observance of the parameters of the rules of reference; nor can the lack of reliability of the same person be advanced on the sheer assumption that he refused to testify, having simply availed himself of the rights granted to him by law. In fact, Guede was summoned by the Prosecutor General during the appeal, not to be heard with regard to the facts of that night but to clarify whether or not he had confided in his prison companions as to the non-involvement of the two accused in the matter at hand, in contrast to what **[56]** Mario Alessi and other detainees – summoned by the Knox Defence – had claimed. He was then asked, again by the Prosecutor at that hearing, whether he had ever written a letter in which he explicitly accused the two defendants of being present at the scene of the crime and of having been complicit in the murder and he gave an affirmative reply, justifying his initiative [that of writing the letter] precisely as a reaction to rumours regarding statements he was alleged to have made to Alessi, [which] in fact had never been shared.

It was then that the Knox Defence – and not the Prosecutor General – asked him for confirmation of what was written in the letter, in which he [Guede] wrote: "A horrible murder of a splendid marvellous girl, such as Meredith was, [committed] by Raffaele Sollecito and Amanda Knox". Guede [also] agreed to reply and said that what he had written was "very true". In light of this fact – certainly insufficient in itself from the evidentiary point of view, since Guede was confirming a revelation made outside the trial – an evaluation in terms of unreliability could have been expressed – an evaluation which this Court cannot discuss since it would fall outside the boundaries of this Court's legitimacy-checking purview – however, it is certain that such an evaluation had to be separated from the [issue of] the procedural options chosen by Guede or fall into an obvious error in law, as whenever a judgment of absolute unreliability is founded upon the exercise of a right decided on by the person concerned.

It must be added that the Hellmann Court of Appeal, on the other hand, discussed at length in a passage about Guede's reliability – in rebuttal of what the second instance

judges who condemned Guede claimed, as they had pointed out his trait of being an absolute liar, just as pointed out by the Sollecito Defence – in the revelations he sent via chat to his friend Giacomo Benedetti, which the police listened to on 19.11.2007, revelations in the course of which he never happened to indicate as perpetrators of the crime the two current accused. According to the Hellmann Court of Appeal, since Rudy told his friend he had been present in the house where the murder occurred around 9.00 to 9.30 PM, though maintaining that he was not involved in the commission of the crime, he could have well – if it ever was true – indicated the two present defendants, for the purpose of playing his final self-defence card. According to the Hellmann Court of Appeal, Rudy's behaviour in itself reveals the absence of the two at via della Pergola at the time of the crime. The analysis on this point clearly shows a further obvious lack of logic and therefore cannot but fall under the censure of this body of legitimacy, not because we are dealing with evaluative parameters which could be replaced with others no less valid and fitting (a situation which would preclude any incursion whatsoever by this Court, [as per] Section one 31/05/2000, no 12), but because the evaluative parameters [used] are lacking in logic. The flimsiness of the argument appears in all its significance, considering that the Hellmann Court of Appeal, in order to demonstrate the absence of the two lovers from the house in via della Pergola, puts value on a message Guede sent to his friend **[57]** Benedetti before being arrested and therefore at a time when he had every interest in protecting himself by side-tracking the investigation, when he was clearly distancing himself from the murder by putting himself in via della Pergola at a time that is incompatible with other available evidence (see below). The intercepted message cannot be deemed reliable, if only for the fact that Guede was distancing himself from the murder in which he was certainly a major player because of the numerous traces he had left at the scene of the crime and thereby demonstrating his general unreliability – without possibility of denial – precisely by that definitive conviction, even if pronounced after an abbreviated trial procedure, that the appeal court judges unexpectedly overlooked, on the point of the total unreliability of Guede even in his conversations with friends; nor could it [his credibility] be restored by reference to the fact that Benedetti was the only friend

Guede could count on (an inferential criterion proposed by the Sollecito Defence), for which reason one had to hold that he was the only one to receive his sincere confidences, since even such a criterion is manifestly inconsistent. So much so that it is true that if one had only to follow this criterion, the Hellmann Court of Appeal – for the sake of completeness – should not have overlooked the fact that surfaced in the first instance conviction of Guede (confirmed in the following phases of judgment) in which Giacomo Benedetti himself, the most faithful friend of Guede, his former school friend, recounted that he asked him, in the course of the Skype conversation, whether it had been Amanda or Lumumba who killed and that Guede told him word for word, as far as the girl was concerned "she had nothing to do with it", adding as far as the Congolese (Lumumba) was concerned "he had absolutely nothing to do with it"; Guede had said to his friend that the person responsible was an Italian man, and to the question whether it had been Sollecito, had replied in vague terms, with a sentence of the type "well, I don't know, I think so", repeating it several times (page 41 of the judgment Preliminary Court [GUP] of Perugia 28.10.2008). The Sollecito Defence itself quoted a passage from the sentencing report which convicted Guede in the first instance trial, in which it was concluded without doubt that it was impossible to believe him. The judgment of total unreliability expressed in the trial which directly involved him cannot be reversed by rehabilitating fragments of contributed information – incidentally disproven by established evidence – in order to radically revise the reconstruction of events, for example on the time of death (see below). Thus once again the assessment by the Hellmann Court of Appeal was based on a platform of absolutely incomplete data; it came to conclusions devoid of adequate logical support and above all contrasting with other available evidence; such incompleteness and illogicality will have to be overcome in the remanded judgment, in reference to this crucial junction of the reconstruction [of events] which concerns the presence, or not, of the two young accused in the house in via della Pergola when Guede indisputably arrived there.

[58]

9 - Rejection of the request for a hearing of Luciano AVIELLO

Far from being inadmissible, as proposed by the Sollecito Defence, the complaint is grounded in violation of procedural law against the judge's order, contested together with the judgment, by which the prosecutor 's application for a new hearing of Aviello Luciano was rejected.

The Hellmann Court of Appeal, in acceptance of the requests of the Knox Defence, after having called the detained persons to whom Guede is supposed to have confided to give evidence, "in the deep conviction that it was not possible *a priori*, before having heard them, to exclude their reliability solely on the basis of their character and their being detained for serious crimes" added, in the fullness of their legitimate conviction, that the hearing of these persons led to concluding about their general unreliability, whether for the lack of objective confirmation, or whether for the lack of evidence about the friendly relations between Guede and those who divulged the information, such as to justify [his] confidences on the point. This evaluation is certainly not susceptible to any examination regarding legitimacy. But what appears unacceptable from the perspective of rigorous respect for procedural rules is that, once the Prosecutor General asked to hear Aviello again in relation to new facts that emerged after the hearing, inserted in the record of the interrogation by the prosecutor on 22/07/2011 and admitted into evidence ([concerning] not only the retraction of what he had said, but the explanation of the means by which he had been contacted and induced to [give] false information), the Hellmann Court did not order a new hearing of Aviello. [The Hellmann Court of Appeal based this decision on the assumption that, verbatim, "the new hearing of the witness Aviello does not appear indispensable, even considering the fact that the record of his questioning by the prosecutor was admitted into evidence". The evident failure in the interpretive rigour of the rules of law that govern the introduction and treatment of records of new revelations cannot be passed over in silence. As correctly noted by the Prosecutor General in his appeal, the judges of the lower court [*a quibus*] anchored their decision to the criterion of

"appearance of non-indispensability", without adding anything else, whereas this element [non-indispensability] is not among those indicated for rejecting the request for new evidence, relative to an inconsistent declaration given by the same person at the hearing of the preceding 18 June, thus falling into an obvious defect of explanation. It was completely omitted that the new revelations, as well as contradicting those [previously] made, presented an element of absolute novelty, about the fact that they were revelatory of the route by which Aviello had been induced to [make] false revelations, the Court [so] falling into a further lack of reasoning. Lastly, the Court explained the denial of the evidence, on the pretext that meanwhile the transcript had been admitted into evidence, in alternative to the normal examination of the witness, thus falling **[59]** into an evident violation of articles 511bis, 511§ 2. and 515 of the Criminal Procedure Code, ordering the filing of the records not preceded by the examination [in court as a witness] of the person who had made the declarations in different proceedings. Whereas, in the provision of articles 511 and 511bis of the Criminal Procedure Code, the reading and thus the acquisition of the [previous] records of declarations made by the witness is ordered only after the examination [as a witness] of the person who has made them, unless the examination does not take place. This latter reservation is not applicable in this case since it was the Court who rejected the request for re-examination.

It is good to clarify that the judgment of unreliability expressed about Aviello is not what is under discussion – [judgment] with which, it is repeated, this Court cannot interfere – but it is the rationale followed to justify not granting a new hearing (at the outcome of which an assessment of unreliability could even come out more strongly); the route was not respectful of procedural rules, not complete on the significance of the new declarations, not justifiable with the terms "appearance of non-indispensability" [when refusing] to admit into evidence new information which had emerged, [information] which could have [well] led to an assessment of absolute inadequacy of the source, but only after a proper insertion of his declarations into the trial papers, since it cannot be denied that a reporting about a plot intended to arrange convenient declarations in favour

of the defendants was significant in the economy of the evaluation (obviously once its existence was ascertained). Especially since the request to hear the detainees had come [in the first place] from the Knox Defence (to whom they had probably turned expressing their willingness to be examined) and therefore the court was required to allow the Prosecutor General the right to search for counter-evidence as to their spontaneity and their reliability, in the fullness of his powers (therefore not only [the right] to have the record of the interrogation of Aviello accepted, moreover without the consent of the parties, but to see the party concerned [Aviello] summoned to give his declarations during the trial). This Court cannot agree with the assertion that the indisputable violations of criminal procedure (the Sollecito Defence admitting to them as well) are attributable to the Prosecutor, who (according to this reasoning) would have caused the nullity, thus forfeiting his right to submit any complaints on this point. It is obvious that a similar [logical] passage evokes confusion in light of way the paper document was used, [since the use of such document] was absolutely barred to the court, independently from any error of the parties, without the previous examination of the witness; an examination which, as said, was not ordered on the ground of a remark of non-indispensability "also in consideration of the [fact that] the record of his interrogation by the prosecutor had been admitted into evidence", which shows that the procedural error is completely attributable to the Court.

Even on this point the appealed judgment presents serious insufficiencies, both in terms of management of procedural laws and completeness of the explanation, to which the judge of remand will have to give remedy. **[60]** Since it was not possible to conclude a priori – and regardless of the fact – that Aviello's contribution would have been anyway insufficient to withstand the 'resistance test' because not having the potential – in theory – to give the acquired elements a quid of greater weight against the defendants.

10 - The fixing of new parameters on the time of death produced in the second instance trial

The severe criticism made by the Prosecutor General in his appeal, in terms of manifest illogicality of the reasoning regarding the time of death of the unfortunate Meredith is also worthy of attention. According to the Hellmann Court of Appeal, the reconstruction of the First Instance Court could not be tied to the evidence of Capezzali and Monacchia – who had referred to a harrowing scream, to the noise of running footsteps on the iron stairs which led to the car park below, and to the scuffling noise on the pathway leading to the house in via della Pergola on the night of 1.11.2007 – insofar as these contributions were affected by the imprecision of the time when the scream, the noise of footsteps on the stairs and the scuffling noise were heard, and because it being a matter of an area adjoining the car park frequented by "young people and drug addicts", it was not so unusual to hear people making a row. Nor was the evidence of the witness Dramis held to be of value, who had referred to having heard running footsteps about 11.30 PM, in via del Melo, coming from via della Pergola, after she had gone to bed around about 11.00 or 11.30 PM, since she only presented herself to the investigators a year after the fact, on the urging of a young journalist who had pointed out to her the importance of her contribution of information. The Hellmann Court of Appeal preferred – in full agreement with the defence pleadings – to favour the information the unreliable Rudy Guede had conveyed in his chat with his friend Benedetti, i.e., that he was in via della Pergola around 9.00/9.30 PM on the first of November 2007; this information was correlated with the victim's telephone records, which registered:

a) an unanswered call at 8.56 PM

b) the dialling of the number 901, corresponding to an answering service at 9.58 PM, immediately after which the call was blocked

c) at 10.00 PM the dialling of the first number in the list of phone numbers for the Abbey bank, without however the dialling of the required dialling code

d) at 10.13 PM a GRPS connection of the length of nine seconds, most probably linked to a multimedia message, without the necessity of human interaction.

On the basis of these facts, the Hellmann Court reached the conclusion that Miss Kercher had not called her family again in the period of time between 8.56 and 11.00 PM, since shortly after the first attempt an unexpected event may have occurred, such as for example the attack, and the dialling of the number at 10.00 PM could have been done **[61]** by another person, who was not familiar with that mobile phone, while attempting to silence it, a fact which would place the time of death at before 10.13 PM.

The reconstructive path is permeated with factual deductions deriving from a series of conjectures and baseless suppositions, without any reliable, demonstrative basis, in spite of [other] findings of significant value which conflict with those [deductions] and have a greater probative value, which were reduced in their importance on the basis of an unsatisfactory reasoning, which stands out because multiple passages contradict other passages of the statement of reasons, and because of manifest illogicality which must be rightfully censured in this venue.

We have already mentioned the unreliability of the information offered by the wavering Rudy Guede, about whom the first instance judge presided over his trial wrote that "he cannot be believed and even someone wanting to believe him is not able to do so". It is sufficient to recall that it was the same Sollecito Defence which on pages 81 and 82 of his defensive brief, refers to the cutting judgment expressed by the person who judged him on the matter under examination [*de qua*], as well as quoting another passage of the judgment where it was said that Guede was following, as a skilful internet user, the news of the investigation via the internet through a Mediaset broadcaster and that, word for word: "he demonstrates that he is very able and not at all inexpert in constructing an alibi and in adjusting his claims gradually while the media publish updates of the developments in the investigations" (pages 19 and 20 of the first instance conviction of Guede). Thus the chat

he had with his friend Giacomo Benedetti could not be used as the inferential basis to overturn the rigorous detailed discussion by the First Instance Court to determine the time of death, without following a collision course with established facts, precisely in the judgment which saw Guede as a defendant and which convicted him, despite what the former had revealed in that same chat [which was] raised [by the Hellmann Court of Appeal] to the parameter of evaluation. Not to mention that in the chat Guede placed Amanda in that house, he reported of having heard the unbearable scream, which supposedly made him come out of the bathroom five minutes after Amanda entered the house, and he said that he had not seen the broken window pane in Ms Romanelli's bedroom during all the time he was in the house. Such claims were completely disregarded by the Hellmann Court, in a passage immediately after the judgment under appeal, when [the judgment] determined that it was Guede who had entered the Ms Romanelli's room through the window, after throwing a four kilogram rock from the ground outside under the window, thus creating an irremediable internal contradiction, which highlights the mounting degree of illogicality that permeates the judgment which is the subject of the present scrutiny, so to make the intervention of this Supreme Court compulsory.

[62] Not even the effort employed to fix the broken logic through an analysis of the records of the victim's mobile phone, can constitute a useful remedy. In fact it has a totally implausible ring that an alternative reconstructive hypothesis can be based on the fact that, since the victim did not make the call home again after 8.56 PM, it would be necessary to believe that this was due to the occurrence of the tragic event: the first missed reply of family members could have led the young woman to remember evening commitments of the former that could have stretched out until late and therefore it is completely reasonable to think that the young Englishwoman gave up [ringing again], for reasons not necessarily linked to the fate which would befall her a little later. Further, it is implausible to link the call made to the first number in her phone's contacts list to an attempt by the killer to silence the phone, whereas if this had been his/her aim, he/she

would have certainly carried it out by other means. In fact reality would show that the victim's two mobile phones were thrown – while still functioning – down an escarpment in via Sperandio, after midnight, so that the one with the English SIM card rang the next morning and the ringing permitted its finding.

But the most obvious strain in the interpretation is certainly recognisable in the undervaluing of the declarations of no less than three witnesses, in harmony with one another and absolutely independent. The Hellmann Court of Appeal confused the racket in the square with "the heart-breaking scream" referred to by the witnesses, Capezzali and Monacchia, while they had only shortly before gone to bed, at a time after that which the court of appeal fixed as the moment of the attack, in patent conflict with the details gathered. Ms Capezzali said that she had gone to sleep about 9.00 or 9.30 PM, had got up in the dark, most likely a couple of hours later, as it was her habit to go to the bathroom, at that time taking medication which had a diuretic effect: at that moment she heard a woman's scream defined as "harrowing", "unusual", "long" and "single" which made it difficult for her to go back to sleep, and shortly after, when she was about to go back to her bedroom, she heard running on the iron stairs and then on the gravel and the dry leaves in via della Pergola. But Ms Monacchia was even more precise on the time, and said that she went to bed about 10.00 PM, when after being asleep she was awakened by the noise of animated discussion between a man and a woman going by, along the little street adjacent to her window, and shortly after she heard a woman's loud, sharp scream, coming from below, that is from via della Pergola. Ms Dramis, in turn, provided a significant fact regarding the time, since she said that she had arrived home after 10.30 PM, having been to a film screening from 8.00 until 10.00 PM, [and that] she had fallen asleep until, shortly afterwards, she heard running steps below the window, such as she had never heard before. The reliability of the evidence could not be disclaimed just **[63]** because Ms Dramis and Ms Monacchia took it upon themselves to make their contribution of information available to justice [officials] only a year after the event, since the tardy recognition of the

usefulness of the information does not in itself weigh upon the quality of the information itself.

Once again what is in play is not the assessment process, but the completeness of the platform on the basis of which consequences are drawn. Before concordant pieces of data convergent towards a time necessarily later than the one established by the court, back to which the heart-rending scream of the unfortunate Meredith needs to be tracked, the appeals court preferred to draw the threads from Guede's presentation of facts, [which he] delivered in a context outside the court, and anyway absolutely false (given that the accused declared himself to be uninvolved in the murder). The conclusions drawn appear even more jarring if one only considers that the heart-rending scream was mentioned even by Amanda herself in her handwritten letter when the fact was not yet in the public domain. Not only this, but the reconstruction made by the Hellmann Court of Appeal is not even in line with the relevant post-mortem findings, which indicated a time of death range from 6.50 PM to 4.50 AM on 2 November, thus at a time around 11.00 to 11.30 PM according to the calculated average, so as the First Instance Court had argued, with greater adherence to the available evidence.

Thus, the statement of reasons suffers from a grave lack of logic and from inconsistency with other available evidence also on this point, openly showing an obvious explanatory inadequacy to which the judge of remand will have to bring remedy.

11 - The Court's orders, appointing new genetic experts to report, and rejecting the request for a report on the newly sampled trace

The criticisms brought forward by the Prosecutor General and the Civil Parties of the Hellman Court of Appeal's decision to order a new genetic expert report in the second instance trial only partially hit the mark. Indeed, even if it is immediately obvious that the grounds for reopening the investigation in the appeal trial (hinging on the difficulty of the

subject "*for people who do not have the scientific knowledge to formulate evaluations and alternatives on particularly technical subjects without the help of a court appointed expert*") is insufficient, delegating as it did the task of evaluating the evidence acquired through trial discussion among the parties to external scientific knowledge (a genetic expert report had already been ordered following the rules of article 360 of the Criminal Procedure Code that had made it possible to collect all the different **[64]** interpretations of the acquired data), it cannot be disregarded that the decision to order an expert report is among those evaluations of merit which this Court cannot censure. It is in fact a principle of living law that the judge of merit is entitled to evaluate the evidence of the trial in order to decide whether a request for an expert report is warranted; as long as it is properly justified, this decision cannot be censured on the grounds of legitimacy (Section VI, 21.9.2012, n.456). As the judge must reach his decision on a solid basis of certainty, the right to obtain a deeper understanding of a key part of the body of probative evidence cannot and should not be disregarded, as asserted by the Sollecito Defence. The need to add another expert report to the case file, even within the limits of article 603 of the Criminal Procedure Code, cannot be ruled out simply because the [original] investigations took the form required in article 360 of the Criminal Procedure Code, i.e., through discussion among the expert consultants of the parties (who in any case did not, during the performance of the [original] technical tests, express any of the multiple objections made later, nor did the parties make use of their right to ask for a pre-trial hearing). Thus, apart from the inadequacy of the grounds, this court cannot censure the decision to proceed with a new expert opinion, which, however, even aside from the unfortunate rationale adopted, reveals the uncertainty of the judges regarding previous results -- as they held the evidence to be incomplete -- and thus also regarding the necessity of a decision in favour of a new acquisition, which cannot be questioned on the grounds of legitimacy.

Having said this, it must be added that what certainly must be censured is the management of the mandate conferred on the chosen experts. Indeed, they were asked to attribute the DNA that could be extracted from traces on Exhibits 36 (knife) and 165B (bra

clasp), and to report on possible factors of contamination. In the course of their investigation, the appointed experts found a third trace on the blade of the knife taken from Sollecito's flat (Exhibit 36), apart from the one attributed without objection to Knox and the one attributed with strong objections to the victim, right near the trace from which the DNA attributed to the victim was extracted. This [third] trace was not submitted for genetic analysis due to a decision made unilaterally by one of the experts, Prof. Vecchiotti, without written authorisation from the Court, which had in fact precisely charged her with the task of attributing the DNA found on the knife and bra clasp, because [the previous traces] were deemed to be of insufficient quantity to yield a reliable result, being low copy number. Her decision was later approved by the [Hellmann Court of Appeal] on the assumption that the [new] quantity was [also] too small to permit the two amplifications needed to ensure reliability of the result (page 84 of the [appeal] judgment). Therefore, **[65]** when the Prosecutor General and the Counsel for the Civil Parties submitted a request to complete the analysis on the basis of the scientific explanation provided by Prof. Novelli, a geneticist of undisputed repute recognized by the [appeal] court itself (page 79 statement of reasons), regarding the availability of instruments capable of reliably analysing quantities even smaller than ten picograms in diagnostic fields (such as embryology) in which the need for certainty is no less important than in the courts, the Hellmann Court of Appeal refused on the assumption that the methods mentioned by Prof. Novelli were "*in an experimental phase*" (page 84), thereby freely interpreting and misrepresenting the testimony of the professor, who on the contrary mentioned the use of such techniques in diagnostic domains in which the certainty of the result is essential.

All in all, the *modus operandi* of the Hellmann Court of Appeal which, unacceptably delegating its own function, entrusted to the unquestioned evaluation of the expert the decision of whether or not to submit the new trace for analysis, is open to understandable and justified censure, considering that the test requested by the Court should have been done, lying as it did within the scope of the expert's mission, subject to a discussion of the

results if they were not deemed reliable. In any case, a member of the panel of experts could not assume responsibility for unilaterally narrowing the scope of the mission, which was to be carried out without hesitation or reservation, in full intellectual honesty, giving a complete account of the possible insufficiency of the material or unreliability of the result. All the more so as the repeat of the genetic tests was requested in 2011, four years after the initial tests; a lapse of time during which significant progress had been made in the instruments and techniques of analysis, as Prof. Novelli, a consultant to the Prosecutor General, stressed. Precisely on receiving the information from this consultant, who spoke of cutting-edge techniques while under oath – the Court fell into another gross misinterpretation, in a significant argument concerning the reliability of the results of the analyses made, by assuming the impossibility of repeating the tests even on traces found at a later time, thereby affecting the logic of the statement of reasons (Section I, 25.6.2007, n. 24667). The Hellmann Court of Appeal also completely ignored the authoritative points offered by Professor Torricelli, who shed serious doubt on the fact that a very small quantity was found; she quantified the useful material in the new trace as 120 picograms (hearing of 6 September 2011, page 91 of transcript), which is sufficient to execute a double amplification, and she opposed the methodology by which Prof. Vecchiotti reached the decision not to proceed, in a report obviously not endorsed by the Prosecutor General and the Civil Parties. The authoritative nature of the observations of the two consultants of the parties **[66]** would have required that the Court deal with their points, which irremediably conflicted with the assumptions of Prof. Vecchiotti, whose points could indeed be accepted by the Court, but only after evaluation of the opposing points, which were of equal scientific value.

It must be concluded that when it rejected the request of the Prosecutor General and of the Counsel to the Civil Parties to complete the expert investigations by analysing the new traces found on the blade of the knife collected in Sollecito's flat, as initially mandated to the experts -- a request that was supported by more than adequate scientific knowledge -- the Court made a flawed decision, by reason of its failure to comply with the relevant laws

which mandate the safeguarding of all parties in their access to evidence (article 190 of the Criminal Procedure Code), especially in an area in which the expert report (as a means of seeking evidence) was requested by the Defence, and was arranged, but was not completed regarding the new trace, even though it demanded a response more than any other.

On this point the claims of error are well-founded, since once the new expert investigation was arranged, it had to be completed, and thus should have also analysed the newly found trace, without fear or a pre-conceived closed mind, but with the more accurate and modern techniques of "experimental" analysis. Not doing so resulted in an error of law for failed acquisition of key evidence, with the resulting defect of obvious lack of logic in the reasoning (again due to incomplete utilisation of the inferential basis, as facts that are not just significant, but essential, were ignored), as correctly denounced by the Prosecutor General submitting the appeal.

12. Genetic investigations

Similarly well-founded is the further objection raised by the public party, on the fact that the [appeal] court passively accepted the assertions of the experts of a vague inadequacy of the investigations carried out by the Scientific Police. The experts did not redo these tests because they deemed the two samples (36 and 165B) inadequate for obtaining a genetic profile, and also because it could not be ruled out that the result that was obtained could have derived from "*contamination phenomena occurring in any phase of the sampling and/or manipulation and/or the analyses carried out*". From page 75 to page 85 the court reiterated the considerations expressed in the expert report, which in truth were the subject of severe disagreement by professors Novelli and Torricelli, consultants to the Prosecutor General and the Civil Parties, whose authority was completely ignored. Prof. Novelli did agree with the fact that there are protocols and recommendations, but added that above all the technician's competence and common sense must come into play, **[67]**

(hearing 6.9.2011, page 59 of transcript), otherwise every DNA analysis from 1986 onwards could be called into question. Not only that, but he added that taking Sollecito's alleles from trace 165B and making a statistical investigation, one finds a probability of one in 3 billion, meaning that there is one person in every 3 billion compatible with that profile. Also Prof. Torricelli, who participated as a reviewer in the preparation of the guidelines invoked by the experts, clarified that it is permissible to depart from protocol out of necessity on a case-by-case basis. She also gave precise arguments underlining the fact that on the bra clasp (trace 165B) the important factor was the Y haplotype, which was very clear in all its 17 loci; so much so that inserting these 17 loci into the database yielded no hits other than Sollecito, whereas if only 11 loci were inserted, they found 31 people with the same haplotype. These observations, made by experts with the same amount of expertise as the ones that wrote the expert report, were not even quoted in the [appeal] statement of reasons, let alone dealt with, in view of their undisputable evidentiary importance, a way of operating [*modus operandi*] that demonstrates an unacceptable incompleteness in the evaluation, which affects the correct application of the rules for interpreting evidence. On this point, it should be recalled that on the subject of examining the statement of reasons, a judge who decides to adhere to the conclusions of a court-appointed expert against the opinions of the consultants of the parties is not bound to provide an autonomous demonstration of the scientific validity of the former and the error of the latter; it is enough for the judge to demonstrate that he has not ignored the opinions of the consultants, especially when they are in irremediable disagreement, and are stated by reputed experts with a level of expertise at least equal to that of the court-appointed experts. So much so that a flaw in reasoning must be recognised when the opinions of the consultants are such as to actually demonstrate fallacies in the conclusions of the court-appointed experts (Section I, 17.1.2009, number 25183), as occurred in this case.

Even more surprising was to accept, without any critical thinking, the thesis of the court-appointed experts on the "*possible*" contamination of the samples, a thesis which is completely disconnected from any scientific basis suitable to adequately justify it in

concrete terms. The unproven hypothesis of contamination was taken as an axiom, once again despite the available information, to nullify the probative value of the data collected by the consultants as per article 360 of the Criminal Procedure Code, although the data acquired did not support this conclusion.

Laboratory contamination was also excluded by these experts. Prof. Novelli said that the origin or vehicle of any contamination must be demonstrated: he added that at the Scientific Police laboratory he had seen the 255 samples **[68]** extracted, had analysed all the profiles, and had not found any evidence of contamination; he ruled out in an absolutely convincing manner that a contamination agent could be present intermittently, or that DNA could remain suspended, and later fall down in a specific place. Dr Stefanoni (the technical consultant who wrote the report as per article 360 CCP), who was also heard in the appeal trial, reiterated that there was no evidence of any contamination: the analyses on the knife had been carried out a full 6 days after the last [previously tested] DNA trace of the victim; the investigations had been at a stand-still for 6 days, as proven in the SAL records (at first wrongly indicated as unavailable), a lapse of time that even the expert Vecchiotti deemed sufficient to avoid lab contamination. In particular, regarding Sollecito, the saliva swab was extracted and tested on 6 November 2007, sample 165B was extracted on 29 December 2007; another profile related to Sollecito's shoe was on 17 December 2007. From 17 December 2007 to 29 December, there were 12 days in which no trace from Sollecito was analysed. Sollecito's DNA was never found alone [at the crime scene], as the only trace of his that was collected and analysed was the one on the cigarette stub found in the ashtray of the kitchen in Knox's flat, mixed with Knox's DNA. Thus, even if perchance we wanted to assume that DNA had migrated from the kitchen to the room of the young Englishwoman, we would also have had to find Knox's DNA on the bra clasp. Nor could it be stated, as it was, that in the lapse of time between the first and second inspections of the crime scene, which were more than 40 days apart, "*everyone had run about*", since the flat had been sealed and nobody had had the opportunity to enter, as shown in the case file.

Hence the objective data indicate an absence of evidence (already highlighted in the first degree statement of reasons, page 281 and following, which refer to the video recording of the evidence collection that was made according to precautionary protocol by the Scientific Police, accustomed to operations of such nature) validating the hypothesis of contamination, or the hypothesis of a degradation of the samples due to time, a degradation which at most could have removed something from the trace, but could certainly not enrich it, since degradation of evidence causes a loss of information.

The Hellmann Court of Appeal accepted the thesis of probable contamination proposed by the court-appointed experts, based on their claim that "*everything is possible*", which precisely because of its generality is not a usable argument, leading again to an error that is both logical and legal in nature. The vehicle of contamination would have had to be identified in order to be used to weaken the facts offered by the technical consultant; it was not sufficient to make a hypothesis about insufficient professionalism of the technicians **[69]** involved in the sampling, above all in a situation in which any laboratory contamination – i.e. the type of contamination which is easier to demonstrate and more common - was mathematically excluded, since all the negative controls to exclude it had been done by Dr Stefanoni, controls which the court-appointed experts, a bit too superficially, considered to be lacking, simply because they were not attached to the consultancy report. As stated by the parties submitting the appeal, the judicial reasoning did not take into account the authoritative opinions disagreeing on the subject of the presence of contamination agents, and no adequate explanation was given on how the assumption [of contamination] could concern only a few traces (precisely the most burdensome ones from the point of view of the Defence) and not others. But above all, it was founded on the wrong belief that it was for the prosecution to prove the absence of contamination agents, whereas the probative facts revealed by the technical consultant [Stefanoni] were based on investigative activities that were adequately documented: sampling activity performed under the very eyes of the consultants of the parties, who raised no objection, and laboratory activity in an uncontaminated environment, activities

which were carried out using methodologies already tested, whose results could certainly be challenged as to their probative value, but not for the preliminary technical activities executed in the technical debate phase, from which it appears that no criticism was expressed at the time, but only later (the first instance opinion dwelled at length on this point, from page 289 to page 298, with a wealth of arguments that were only partially adequately refuted; the observations made by Dr Stefanoni to the court of second degree in the hearing of 6 September 2011 were just as important). This situation was such as to validate a correctness of procedure which inevitably placed the burden of identifying and demonstrating the contaminating factor on the person maintaining its existence, since it cannot be acceptable that the outcome of a scientific investigation could be made invalid on the basis of a "falsificationist" approach based on hypothetical theories of contamination of the sample, as with this opinion every laboratory result could easily be attacked and deprived of probative value. The principle which must be followed, as mentioned by the public party submitting the appeal, is the "*onus probandi incumbit ei qui dicit, non ei qui negat*" ["the burden of proof lies upon the one who asserts, not the one who denies"]. Therefore, by the nature of things, the refutation of the scientific proof would have had to be accomplished by a demonstration of the concrete and specific factual circumstances establishing the claimed contamination.

The new judgment of remand will also have to remedy the reasoning flaw regarding this point. **[70]**

13 – Analysis of footprints and other traces

The criticisms expressed on the subject of the obvious lack of logic of the reasoning concerning the evaluation of the genetic evidence are well-founded.

The [appeal] court evaluated two technical consultancies on the footprint in the victim's blood left by a bare foot on the bathmat of the small bathroom of the flat where the crime

was committed, with [identification] capacity limited to negative comparisons. As a matter of evaluation, this in itself is not subject to censure, however the court of second degree has again fallen into [the error of making] a statement in open contradiction with the available evidence, ending by attributing the contested footprint to Guede, by making an assumption contrary to all the evidence that "*after having left a print on the pillow*", he slipped out of his right shoe "*in the course of the violent aggressive manoeuvres to which he subjected Ms Kercher*" and stained his foot with blood, which he supposedly then washed in the small bathroom, since if it had not happened this way, his right shoe would have also left some bloody traces in the corridor (compare page 100 of the statement of reasons). Not only is this assumption deeply implausible, considering that the print left by Guede on the pillow was made by his hand, which is easily explained by the dynamics of the event, but it is much harder to explain how he might have lost his Adidas sneaker, given a situation in which Guede, jointly with others, as stated in the verdict that convicted him, overpowered the young Englishwoman so as to immobilise her. Not only that, but the above assumption also clashes with the available evidence regarding the bloody shoe prints which indicate that he left the room where the crime was committed to proceed directly to the exit door of the flat. The fact that only the left shoe was stained does not signify that his right foot was unshod, since at most it proves that only his right (sic) shoe stepped in the pool of blood which formed due to the numerous wounds inflicted on the unfortunate victim, very probably with two knives.

Just as deficient is the logic adopted in a further step of the statement of reasons, relating to the discovery of the presence of traces revealed by luminol (not visible to the naked eye), which yielded Knox's profile and the mixed profiles of Knox and Kercher, found in Romanelli's room, in Knox's room and in the corridor. These traces could not be attributed to footprints left on other occasions, as the appeal court implausibly accepted [them to be], since luminol reveals traces of blood and it is not really conceivable that Knox's feet might have been stained with Kercher's blood on some other occasion.

As pointed out by the party submitting the appeal, no justification is given for the coincidence of the presence of Knox's DNA in every trace mixed with the blood of the victim, whereas **[71]** the hypothesis formulated by the judgment of first degree is much more plausible: it emphasized the mixed nature of the traces (including those found in the small bathroom) which, via adequate inductive logic, led to the conclusion that with feet washed of the victim's blood but still bearing some residue, Knox went into her own room and Romanelli's room passing through the corridor during the staging operation as assumed in the initial reconstruction, which is based on the objective fact that only after midnight did the victim's telephones stop connecting to the cell tower of via della Pergola and connect instead with the one on via Sperandio, where they were eventually found; this meant that only after midnight were they removed by unknown hands from the flat in via della Pergola. While according to the prosecution's hypothesis, the mixed traces found in the small bathroom suggested a cleaning activity by Knox, who transferred the victim's blood from the crime room to various points in the small bathroom (on the sink faucet, on the cotton swabs box, the toilet seat, the bidet, the light switch, the bathroom door) where the traces were collected, the Hellmann Court of Appeal entrenched itself behind a position of absolute certainty, without acknowledging what the First Instance Court had observed in disagreement with the defence arguments espoused by the Hellmann Court of Appeal, which decided, in essence, that if the two defendants had remained in the flat of via della Pergola to clean themselves up from the victim's blood traces, thus functioning as vehicles carrying blood to the small bathroom, then some trace of Sollecito would have been found, whereas in response to this objection the First Instance Court plausibly noted that Sollecito could have washed himself in the shower stall with an abundance of water, so as to eliminate traces, perhaps without even any rubbing, leaving to Knox the task of cleaning the sink and bidet with the traces of the victim's blood. The alternative explanation offered in the first instance judgment to the Defence's objections was not taken into consideration, and thus the Hellmann Court of Appeal fell into another error of reasoning, having neglected various circumstances which, in the course of their analysis, they should have examined and if necessary refuted with more weighty arguments.

14 – Knox's statements

A final critical aspect of the challenged judgment must be highlighted, as requested by the Prosecutor General submitting the appeal.

Still incorrectly using a fragmented approach to the evidence, the second degree court has stated that in the period following the murder, it was not possible to draw any negative evidentiary inference against the defendants. The peremptory nature **[72]** of this assumption has obvious repercussions on the logical premises of the statement of reasons, since it was not merely emotional reactions to a traumatic event that were under discussion, but actual statements by the defendant demonstrating knowledge of details of the murder which turned out to coincide with what was later found by investigators. The court of first degree highlighted how Knox always stated that neither she nor Raffaele saw Meredith's room when the door was broken down, as they were both near the living room at that moment and did not enter the crime room, a fact which was confirmed by [other] testimony. It was, however, noted that, on the other hand, all the English girls testifying at the hearing of 13 February 2009, stated that Knox - on the evening of 2 November - had told them that she was the one who found the body of her friend, that it was in front of the closet, covered with a quilt with a foot sticking out, that her throat had been cut and that there was blood everywhere, whereas in her testimony of 13 June 2009, Knox had denied having seen anything. The fact of the multiple details given to her friends, potentially demonstrating knowledge gained prior to the intervention of the police - even if she denied this in the interrogation - was neglected without any explanation on why these elements were deemed irrelevant. This neglect appears even more significant if one considers that on 2 November, before the opening of the door of the room of the victim which led to the discovery of Kercher's body, when in America it was somewhat more than half an hour after 3.00 AM [error: in reality it was 4.47 AM and not 3.47] Knox called her mother a first time at 12.47 PM for 88 seconds, then called her again at 13.27 PM and again at 13.58 PM. These are phone calls, shown by the telephone records, that Knox's

mother herself asked her daughter to explain in a recorded conversation, asking if at the time of the first phone call nothing had happened yet: Knox did not give any explanation of that call, asserting that she didn't remember that very particular call which took place across the ocean in the middle of the night; to a further challenge on the exceptional nature of that call, the defendant said that "*maybe*" she thought "*there was something strange, but I didn't know what to think*". Underestimating this circumstance is not a question of pure evaluation, if it is considered that the details were not correctly incorporated into the information received; indeed, the Hellmann Court of Appeal held that this call was made at the same time as Sollecito's calls to 112 and then[9] to his sister. In reality, the case records show that the first person to show anxiety on the morning of 2 November 2007 was certainly Knox, who called her mother, catching her in the middle of the night, and that Sollecito called his sister three minutes later and then called 112 ten minutes later. This situation **[73]**, undeniable and objective, was inexplicably not linked to the evidence considered above indicating that the defendant had knowledge of facts, which for the judges in the first instance trial constituted a solid inferential basis to demonstrate that, with this call, the young woman revealed to her mother her anxiety about a fact which, if unaware of the event, she could not have known. The Hellmann Court of Appeal judges omitted any evaluation whatsoever of this point, distancing themselves from the reasoning process of the First Instance Court on the basis of sweeping assertions on the subjectivity of people's reactions, a generic discussion which did not refute the reasoning of the First Instance Court. The method of analysis was challenged, but the important substantial facts were not taken into account.

In conclusion, the challenged judgment must be annulled due to the numerous deficiencies, contradictions and manifest lack of logic indicated above. Using the broadest faculty of evaluation, the remanded judge will have to remedy the flaws in argumentation by conducting a uniform and global analysis of the evidence, through which it will have to be ascertained whether the relative ambiguity of each piece of evidence can be resolved, as

[9] Translator's note: Sollecito called his sister before calling the Carabinieri (112). That this is an error is made clear by the next sentence, in which the correct order of the calls is indicated.

each piece of evidence sums up and integrates with the others in the overall assessment. The outcome of such an organic evaluation will be decisive, not only to demonstrate the presence of the two defendants at the crime scene, but also possibly to clarify the subjective role of the people who committed this murder with Guede, against a range of possible scenarios, going from an original plan to kill to a change in the plan which was initially aimed only at involving the young English girl in a sexual game against her will to an act with the sole intention of forcing her into a wild group erotic game which violently took another course, getting out of control.

The defendant KNOX, whose appeal was rejected, is sentenced to payment of trial expenses and to reimbursement of the expenses incurred in this proceeding by LUMUMBA Diya, which are calculated, in view of the number and importance of the issues discussed and the type and entity of the defensive work, with regard to forensic tariffs (compare Cassazione United Sections 14.7.2011, number 40288), as four thousand euros plus general expenses, VAT and CPA.

In the event of a final conviction, the remanded Judge will arrange the payment of costs to the Civil Parties constituted in the murder trial (Kercher family members), also for this proceeding. **[74]**

P.Q.M. [for these reasons]

Annuls the challenged judgment limited to the crimes in paragraph A (in which par. C is included), B), D), E) and to the aggravating factor in article 61 number 2 of the Criminal Code with regard to paragraph F) and remands to a new judgment at the Court of Assizes of Appeal of Florence.

Rejects the appeal of KNOX Amanda Marie and sentences her to the payment of the costs of this trial as well as to the reimbursement of the expenses incurred in this judgment by

LUMUMBA Diya, calculated as the sum of four thousand euros plus general expenses, VAT and CPA as by law.

So decided in Rome, 25 March 2013.

The Reporting Judge	The President
(Piera Maria Severina Caprioglio)	(Severo Chieffi)

Deposited at the Court Clerk's office on 18 June 2013, Supreme Court of Cassation.