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## Amanda Knox, Raffaele Sollecito and The European Court of Last Resort

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Italy's bizarre persecution of Amanda Knox, an American citizen, and Raffaele Sollecito, an Italian citizen, ignores the presumption of innocence required by at least two international human rights treaties. The International Covenant for Civil and Political Rights (ICCPR), a treaty monitored by the United Nations, specifically requires that a presumption of innocence be afforded all defendants in a criminal trial (Art. 14, Section 2). The European Convention for Human Rights (ECHR) contains a similar requirement (Art. 6, Section 2). Italy is a member of the ECHR, and if the country's supreme court, the Court of Cassation, fails to set this right on final appeal, the European Court for Human Rights may have to step in.

To briefly recount, the sorry saga began on November 1, 2007, when Knox's housemate, Meredith Kercher, was found murdered, her throat slashed, in the cottage she shared with Knox and two Italian women. On scant evidence, Knox and Sollecito were convicted of murdering Kercher in December 2009 following a year long trial. A third man, Rudi Guede was also convicted of the crime in a separate fast track trial in which the evidence was not contested.

Knox and Sollecito have proclaimed their innocence from the start. It seemed their nightmare was over when on October 3, 2011 the two were acquitted by an appellate court in Perugia and freed from prison after having served nearly four years. There are two options for an acquittal under Italian law: (1) insufficient evidence, or (2) innocent/not involved in the crime. Knox and Sollecito were found innocent. This result was an insult to the magistrates who prosecuted and judged the case at the first trial. In Italy, insults must be avenged and reputations preserved.

Despite all the hoopla surrounding the case, innocence is consistent with the known facts. As several high-ranking FBI agents, crime scene experts, and forensic scientists have stated, it is a scientific impossibility that Knox or Sollecito could have been involved in the crime without leaving a trace of themselves, whereas, by contrast, an abundance of forensic evidence was left by Guede, the actual killer. There is no evidence that Knox or Sollecito were involved in a conspiracy with Guede. None. All the crime scene evidence points to Guede who, unlike Knox and Sollecito, had a motive and criminal history.

But none of this mattered to the Court of Cassation. The high court annulled the acquittal in March 2013, and ordered a re-trial by an appellate court sitting in Florence. In its opinion, the Court of Cassation all but directed that the Florence court find Knox and Sollecito guilty. The court concluded that once the evidence was considered by way of an "osmotic" approach, the presence of the two defendants at the crime scene would be obvious and all that would be left would be to determine their respective roles. In other words, the Court of Cassation directed the Florence court to presume guilt, not innocence.

The high court further restricted the ability of the defendants to mount a defense at their re-trial by binding them to a ruling in Guede's fast track trial that he (Guede) hadn't acted alone in committing the crime, even though neither Knox nor Sollecito had an opportunity to be heard at that trial as they were not parties to the proceeding. Indeed, neither the fact of multiple attackers nor the identity of those attackers as Knox and Sollecito, had been contested at Guede's trial.

Predictably, given the high court's instruction, on January 30, 2014 the Florence court, after reviewing essentially the same evidence that was before the appellate court in Perugia, convicted Knox and Sollecito of murder, sentencing them to 28 ½ years and 25 years, respectively. In its lengthy opinion, released April 29, 2014, the court found that the three accomplices – Knox, Sollecito and Guede – acted in concert, with Knox striking the fatal blow. Relying on evidence rejected by the Perugia court, the Florence court wove a narrative rooted more in speculation than fact, a fantasy crime novel rather than a true crime book, arising from a pre-conceived determination of guilt. Indeed, the judge who presided over the acquittal, now retired, has declared the Florence court's written report pure fantasy.

The contrast between the acquittal verdict reached in Perugia in 2011, and the guilty verdict reached in Florence in 2014, can only be attributed to one thing: The Perugia court afforded a presumption of innocence, whereas the Florence court presumed guilt.

As of today, there remains one more appeal to the high court. Unless, on this final appeal, the Court of Cassation annuls or reverses the conviction of Knox and Sollecito, Italy will remain in violation of the ICCPR and the ECHR. In that event, the European Court for Human Rights, charged with the responsibility for enforcing the ECHR, will almost certainly become the court of last resort in this case, a happenstance that can only serve to embarrass the Italian judiciary.

I am a retired Senior Trial Counsel with the U.S. Department of Justice. I currently serve on the advisory board of Injustice Anywhere.

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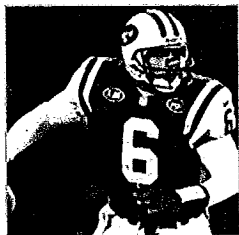
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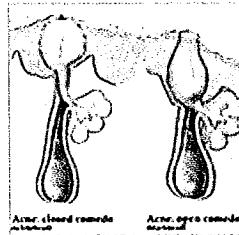
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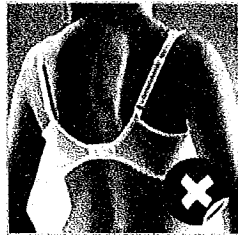
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