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Italy's Persecution of Amanda Knox and Raffaele Sollecito Recalls the Dreyfus Affair

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GroundReport | Author: [S. Michael Scadron](#)
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Introduction and Premise

On March 25, 2015, the case against Seattle native Amanda Knox and her one time [Italian](#) boyfriend, Raffaele Sollecito, will be heard by the Italian Supreme Court in what may be the pair's final attempt to set right a miscarriage of justice reminiscent of the infamous Dreyfus Affair of the nineteenth century.

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 in the Umbrian hill city of Perugia. 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 convicted of the crime in a separate abbreviated trial in which evidence was not contested. The conviction of Knox and Sollecito was overturned two years later, when an appellate court found them innocent. The prosecution appealed and the Italian Supreme Court annulled the acquittal in March 2013, ordering a re-trial by a different appellate court. As a result Knox and Sollecito were once again convicted, setting the stage for yet another, possibly final, appeal to Italy's high court. Parallels between Italy's case against Knox and Sollecito and the Dreyfus Affair are compelling.

Alfred Dreyfus was a Jewish French army captain who, in 1894, was accused of delivering secret documents to Germany. He was convicted of treason in a closed trial and deported to Devil's Island to serve a life sentence. Before long, evidence emerged that proved Dreyfus' innocence and pointed to another man as the real traitor. Nevertheless, rather than concede to a miscarriage of justice, the French army fabricated evidence in order to maintain the initial guilty verdict. For years, the French army resisted calls for a re-trial (or "revision" of the verdict). Anti-Semitism contributed to sway public opinion against Dreyfus, but the driving force behind his persecution was preservation of the army's honor. In other words, patriotism versus justice, one or the other but not both.

Similarly, despite little credible evidence against Knox and Sollecito, and with the weight of the evidence pointing to another man as the real killer, the Italian judiciary has so far refused to admit to this travesty of justice. Although there were undercurrents of anti-American bias behind the investigation and initial conviction of the pair, the driving force behind their continued persecution is, as with Dreyfus, not so much bias as the need to preserve the honor and dignity of the magistrates involved in the case, and the Italian judiciary as a whole. And, as with Dreyfus, the Italian justice system has acted perversely to tip the scales of justice against the two. Here again, patriotism is pitted against justice.

Suspicion and Arrest

In *The Proud Tower*, historian Barbara Tuchman argues convincingly that Dreyfus' arrest and conviction weren't brought about to condemn an innocent man, but were "the outcome of a reasonable suspicion acted on by dislike, some circumstantial evidence and instinctive prejudice."

In September 1894, the French Intelligence Services intercepted an unsigned message, referred to as the Bordereau, revealing that someone was selling secrets to the German Military. The nature of the secrets led French Intelligence to conclude that the spy was an artillery officer and member of the General Staff. Suspicion soon fell on Dreyfus, one of several officers who met the criteria and whose boyhood home was in Alsace, a French province under German rule since the Franco-Prussian War of 1870-71. Some members of his family still lived there. Also, he was a Jew, forever the outcast. Further fueling suspicion, Dreyfus was thought to be spy-like in his demeanor, cold and quiet, without friends or visible emotions.

Despite scant evidence, Minister of War Auguste Mercier became convinced that Dreyfus was their man. Acting on his suspicion, General Mercier hired a handwriting expert for the purpose of comparing Dreyfus' handwriting in a letter dictated to him to the Bordereau. Unfazed that the letter didn't match the handwriting in the memorandum, the expert concluded, and would later testify, that the discrepancy was only proof of self-forgery, an effort by Dreyfus to deceive. In October 1894, Dreyfus was accused of spying, arrested, and sent to prison to await his court-martial.

As with the Dreyfus Affair, the case against Knox and Sollecito began not out of a deliberate plot to frame two innocents, but as a rush to judgment, a desperate need for the Italian authorities to solve the Kercher murder as soon as possible. The 20-year-old Knox came under suspicion largely due to cultural misunderstanding and bias. In Perugia as an exchange student studying Italian, she was naïve and quirky. She'd met Sollecito at a

classical musical concert and the two had been dating less than a week. The police focused their attention on Knox almost immediately. They questioned her for over 50 hours in the week following the murder. They would later claim they became suspicious because of her behavior, such as acting too cozy with Sollecito and doing yoga stretches while waiting to be questioned at the police station. Prejudiced in favor of their suspicions, on November 5-6 they subjected her to an all-night interrogation during which twelve officers tag-teamed her, tormenting her until she broke down and told them what they wanted to hear. She named Patrick Lumumba, owner of the bar where she worked part-time, as the killer.

The next day the police arrested Knox, Sollecito and Lumumba, theorizing that the three had killed Kercher as part of a sex game gone wrong. Sollecito, who also had been interrogated, was Knox's alibi and what better way to quash an alibi than to name him as part of the conspiracy. Case closed, the police announced. The prosecution fell to Public Minister Guiliani Mignini, known as a conspiracy theorist obsessed with satanic rituals, who himself had been charged with abuse of office in another case. Mignini and the police pointed to Knox's lack of affectation and portrayed her as a sex-crazed American girl. The tabloid press lapped it up like pigs at a trough and within hours, Foxy Knoxy, as the press dubbed her, became the focus of a media storm. Fabio Giobbi, one of the case investigators, told reporters that he was proud to have arrested Knox and the others before the forensic evidence was analyzed because he could tell she was guilty on account of her behavior.

Within a few weeks, however, the results of the forensic evidence would be released and the case would fall apart, or so it would seem.

Discovery and Concealment

Realizing that the case against Dreyfus was fragile, Major Joseph Henry, acting as prosecutor and on orders from Foreign Minister Mercier, provided the court with a secret incriminating file consisting of fabricated documents, a dossier that was withheld from the defense. Sitting in closed session, in December 1894, the court convicted Dreyfus of high treason, condemning him to deportation and degradation. In April 1895, he was transferred from a prison in French Guyana to Devil's Island, a barren rock off the coast of South America, where he was placed in perpetual solitary confinement.

In March 1896, Col. Georges Picquart, the newly appointed Chief of Intelligence Services, discovered evidence identifying Major Ferdinand Walsin Esterhazy as the author of the Bordereau that had led to Dreyfus' court-martial. Picquart informed the General Staff of his suspicion that Esterhazy was the real spy, but the Army refused to reconsider its judgment and transferred Picquart to North Africa. In 1897, with the help of Picquart, Dreyfus' family contacted the President of the Senate, Auguste Scheuer-Kestner, to make the case for innocence. Persuaded that Dreyfus had been wrongly convicted on false evidence, Scheuer-Kestner penned an open letter to Le Temps in which he declared Dreyfus innocent.

Meanwhile, Major Henry, with the help of Colonel de Clam, forged two documents (later known as the "Faux Henry") pointing to Dreyfus' guilt in order to perpetuate the original guilty verdict. They also informed Esterhazy of the accusations against him, warning him to be careful. As the circle of Dreyfus supporters ("Dreyfusards") grew larger, Esterhazy was persuaded to request a court-martial to clear his name. He was brought to trial in January 1898 and promptly acquitted. Around that time, the continuing injustice prompted Emile Zola, the French writer, to publish J'Accuse, his declaration leading to the mobilization of intellectuals. For this he would be convicted of libel. Divisions continued to deepen over the "Affair" as did international outrage. The resulting turmoil would plague France until well beyond the turn of the century.

Several weeks after the arrests of Knox, Sollecito and Lumumba, forensic evidence collected in the immediate aftermath of the murder and analyzed in the police lab demonstrated that none of the three arrested had been present at the crime scene. Instead, all the forensic evidence pointed to a different man entirely, Rudi Guede, who had a criminal history of breaking and entering and theft and had fled to Germany soon after the murder. Guede was extradited and returned to stand trial. Lumumba, who had an airtight alibi, was released but not

Knox or Sollecito. Knox had become the center of a media-frenzy. The authorities had to maintain their conspiracy theory to save face and avoid ridicule, especially Mignini who was in dire need of redemption. So they simply substituted Guede for Lumumba and persisted in their theory that the three had killed Kercher in a sex game gone wrong.

The dilemma they faced was that while there was an abundance of evidence against Guede, there was none against Knox and Sollecito. Not to worry. As happened with Dreyfus, they would invent the proof they needed to tip the scales of justice in favor of guilt: a knife and bra clasp. The knife, chosen at random from Sollecito's kitchen, contained Knox's DNA on the handle (she'd used it for cooking), but otherwise proved incompatible with some of the victim's wounds and was inconsistent with the imprint of a knife on a bed cover. If, however, Kercher's DNA was found on the blade, that would make for incriminating evidence.

Several pre-eminent forensic scientists, including Peter Gill of the U.K., known for pioneering the use of DNA for criminal profiling, have instructed that the smaller the size of a DNA sample, the less likely it came from the crime scene and the more likely the result of innocent transfer or contamination. International protocols are set to ensure the sample is large enough to be reliable. The forensic police tested the knife at the same police lab where the victim's DNA was present in abundance due to prior testing. Overriding international and laboratory protocols, forensic investigator Patrizia Stefanoni reported finding a trace of the victim's DNA on the blade that even she noted was too small to be reliable. Remarkably, the knife tested negative for blood – a fact withheld from the defense — making it almost certain that if, in fact, the profile on the blade was Kercher's, it was the result of innocent transfer or laboratory contamination and not from the crime scene.

The bra clasp was found to contain a small amount of DNA compatible with Sollecito, but it also contained DNA from several other people. It had been left on the floor of Kercher's bedroom and kicked around by investigators for 46 days before being collected, making transfer or contamination likely. Despite the flawed scientific methodology, both the knife and clasp were used at trial to prove the guilt of the accused. As a result, Knox and Sollecito were convicted in December 2009, following a year long trial and sentenced to 26 and 25 years respectively. Knox was also convicted of criminal defamation for falsely accusing Lumumba.

Divisions and Relentless Persecution

Lining up against Dreyfus were royalists, opponents of the Third Republic, the Catholic Church, the French Army, a majority of the French press, and French patriots who believed that to undo the verdict would bring dishonor to the Army, thereby weakening France in the event of war with Germany. Anti-Semitism, on the rise in Western Europe and rampant in the French Army, reared its ugly head with riots erupting in more than 20 French cities. The Third Republic, made up of a center-left coalition, was shaken by the Affair, which came on the heels of previous scandals. Some feared the Republic was in danger of collapse, making it essential to end the controversy and restore calm.

The Dreyfusards consisted of left-thinking intellectuals such as the artist Claude Monet, the writer Jules Renard, the novelist/critic Marcel Proust, and Zola, but also conservatives like Georges Clemenceau, a politician who as Premier of France following World War I would become chief architect of the Versailles Treaty. He and other conservatives who couldn't fathom the perpetuation of such an obvious injustice, rallied in support of Dreyfus. Also on Dreyfus' side was international outrage.

Despite the intrigues of the Army to quell the case for revision, Major Henry's duplicity soon began to unravel, as did the case against Dreyfus. Henry was tried and sent to prison for his forgeries where he committed suicide by slitting his throat. In 1899, the Supreme Court annulled the initial verdict against Dreyfus. He was re-tried but against all expectation was convicted again and given ten years of hard labor with extenuating circumstance. The new verdict caused an uproar. Ultimately, Dreyfus accepted a presidential pardon with the proviso that he could continue his fight to prove his innocence. Still it took until 1906 before his innocence was officially recognized.

Outrage and disbelief followed the conviction of Knox and Sollecito, particularly among Americans. In a press release, Senator Maria Cantwell (D-Wash.) denounced the verdict as tainted by anti-Americanism and a prosecutor who had been accused and convicted of abuse of office in another case. Largely because the victim was British, some voices in Britain, including the tabloid press, applauded the result while Italians were divided. The Guilters bought into the false public image of Knox as a bad girl into drugs, partying and sex, while Sollecito, accused primarily to remove Knox's alibi, was largely ignored.

The Innocentisti, including several retired FBI agents (such as John Douglas, the legendary profiler), crime scene experts and forensic scientists, pointed to the scientific impossibility that Knox or Sollecito could have been involved without leaving a trace of themselves at the crime scene, when there was so much evidence of Guede. Guede, they argued, had the motive (theft) and criminal history. He'd broken into several places in the months preceding the Kercher murder, including a law office in Perugia, where he had thrown a rock at an upstairs window just as had occurred in the Kercher break-in. Neither Knox nor Sollecito, they argued, had any motive or hint of violence in their pasts. Both were serious students, kind and considerate of others, and Knox, in particular, had been unfairly maligned by the authorities and in the media.

The appeal, presided over by Judge Claudio Hellman, resulted in acquittal in October 2011 based on actual innocence, chiefly because the court-appointed experts demolished the validity of the DNA evidence pertaining to the knife and bra clasp. In his decision, Judge Hellman noted that there wasn't one piece of objective evidence pointing to guilt. Essentially, he found the prosecution's case, and the prior judgment of the lower court, lacking in logic or common sense. Knox and Sollecito were set free with Knox returning home.

The Hellman Court's exoneration of the two defendants proved to be an insult to the magistrates involved in the case. In Italy such insults must be avenged and reputations preserved. In 2013 the Supreme Court annulled the acquittal and ordered a re-trial to be governed by a presumption of guilt. Not surprisingly, the re-trial resulted in a second conviction and an increased sentence for Knox.

Patriotism Versus Justice

The disaster of the Franco-Prussian War of 1870 had left France shaken and determined to recover its former glory. When French intelligence intercepted the unsigned message in 1894, it became clear that Germany had plans of its own to sabotage the French military through espionage. When suspicion fell on Dreyfus, a mood of hysteria enhanced by anti-Semitism helped seal the officer's doom. Realizing the evidence against Dreyfus was weak, Major Henry, Esterhazy and others fueled the growing momentum by leaking false information to the press pointing to Dreyfus as the culprit, and in so doing created in him a convenient scapegoat. Even so, the Army might have acquitted him had it not been for the further intervention of Henry who, with War Minister Mercier's approval, provided the court with the secret file consisting of fabricated documents.

Once Dreyfus was convicted and condemned any acknowledgement that the Army had engineered such a miscarriage of justice would have served as a blow to French pride. Thus, it became imperative for the Army and its supporters to resist any and all efforts to bring about a re-trial or revision to the guilty verdict. They used the Nationalist Press to spread rumors and obscure the truth. The honor of the Army was at stake and to French patriots that could mean redemption in the event of war with Germany.

On the other side of the coin, those who believed France to be the bastion of liberty and reason could not fathom perpetuation of so obvious an injustice. Supporters of the Third Republic teamed up with leftists and some conservatives to fight for revision. As Clemenceau put it: "[t]here can be no patriotism without justice... as soon as the right of one individual is violated, the right of everyone is jeopardized."

The Italian judiciary is completely independent of the rest of the government. Overseen by the Justice Ministry, it appoints and polices its own members –magistrates who act as prosecutors as well as judges. It is dominated by left-leaning hardliners who have steadfastly resisted calls for reform over the years. Former Prime Minister

Silvio Berlusconi, well known for his running battles with the justice system, has complained that Italy is less a democracy than a dictatorship of the judges.

Italy's judiciary, as opposed to the Italian government, has had a tense relationship with the United States in recent years. In 2003, operating with the cooperation of Italy's spy chief, CIA agents orchestrated the kidnapping and rendition of suspected terrorist Abu Omar, an Egyptian cleric living in Milan. In 2006, a Milan court indicted the agents involved as well as the spy chief and his deputy. The 2007 trial in absentia resulted in convictions, upheld by Italy's Supreme Court, of more than 20 CIA operatives, an embarrassment for the United States. International arrest warrants were drawn up and an extradition request issued, although the Italian government refused to forward the extradition request to the United States.

Once suspicion fell on Knox she became a convenient scapegoat, the beautiful American girl with the eyes of an angel and the soul of the devil. According to her family and friends, she was nothing like that – naïve and non-conformist perhaps, but always kind and compassionate to the bone. As with Dreyfus, the prosecution leaked false information to the media and the tabloid press embellished upon it. In such a climate it is little wonder she was convicted. Sollecito, as her Italian lover and only alibi, became collateral damage.

In May 2011, in the midst of the first appeal, as DNA testing of the knife and clasp was being exposed as unreliable, 11 lawmakers from Berlusconi's center-right coalition petitioned the Justice Ministry to investigate the prosecution's handling of the case. They requested that inspectors be sent into the office of the magistrates in Perugia for that purpose. While nothing came of this request, the Hellmann Court's exoneration of Knox and Sollecito in October 2011, coupled with its declaration that the case was nonsense, proved a further insult to the magistrates who had brought the case to trial. Following the verdict, Judge Hellmann added fuel to the fire, infuriating Italian chauvinists by stating in an interview that the impetus for the case was political, that many wanted Amanda in prison because she was American.

After the Supreme Court's annulment of the acquittal in March 2013, Judge Hellmann gave an interview with the Italian newspaper La Stampa in which he said he wasn't surprised by the reversal because the prosecutor's lobby had strong influence in the high court. He was, of course, referring to factions opposed to Berlusconi's center-right coalition, an influence on the left side of the political spectrum.

What had started as a campaign to win a conviction at any price, to save face for the police and magistrates involved in the case, had by this point transitioned into a more general mandate to restore the dignity of the Italian justice system. If the case were to be seen as a railroading of two innocents, the pride and credibility of the judiciary would be gravely damaged. Just as Dreyfus had become a scapegoat necessary to preserve the honor of the French Army, Knox and Sollecito had become pawns caught between warring factions in the Italian Judiciary's political machinations.

The Road Ahead for Knox, Sollecito and the Italian Judiciary

While any prediction as to what the Italian Supreme Court might do is a fool's errand, there appear to be several options when the appeal from the last conviction comes before the Court next March.

First, the Court may ratify the conviction rendering it final. This would likely result in a further appeal to the European Court for Human Rights. There are a number of issues that may prompt the European Court to hear the case, not the least of which is violation of the presumption of innocence guaranteed to criminal defendants by the European Convention for Human Rights (ECHR). When a panel of judges of the Italian Supreme Court annulled the acquittal verdict of Knox and Sollecito in 2013 and ordered a re-trial by an appellate court in Florence, it all but directed the Florence Court to find the defendants guilty. The Court also accepted as fact incriminating evidence from Guede's trial even though Knox and Sollecito had no right to contest such evidence. After reviewing the same evidence previously rejected as nonsense by the Hellmann Court, the Florence Court convicted the two as it had been instructed to do. Judge Hellmann, by then retired, declared the

Florence Court's reasoning pure fantasy. The European Court enforces the ECHR so ratification of any conviction based on presumption of guilt would present an open invitation to the European Court to hear the case, a circumstance that would only serve to embarrass the Italian Judiciary.

A second option for the Court is to annul the conviction and grant absolution to the defendants without further judicial involvement. Taking this path might require a correction to the last ruling by the high court, an option available if the court appoints an enlarged panel (referred to as United Sections) to hear the appeal. There are over 300 judges on the Italian Supreme Court so it is not beyond the pale that some judges would be moved to right such an obvious injustice before it is etched in stone.

A third possibility is for the Court to annul the conviction and send it to a different appellate court for further review. This may be the least attractive option in light of the length of time already spent on the case by the courts and the fact that the record has been fully developed.

Finally, the Court could opt for a compromise verdict, somewhat like the Dreyfus Affair when at re-trial Deyfus was found guilty with extenuating circumstances and given a reduced sentence. Here, for example, the Court might find Knox and Sollecito guilty, but of some lesser offense, and sentence them to time served. In other words, half a loaf for justice and half a loaf for patriotism. Such a resolution might satisfy everyone, or just as likely satisfy no one.

Conclusion

Writing about Dreyfus for the New Yorker ("Trial of the Century," Dec. 28, 2009), Adam Gopnik recalls the lesson that Clemenceau had tried to teach the jury at Zola's trial: by running afoul of the law to protect the nation you bump up against something worse and end up breaking the nation.

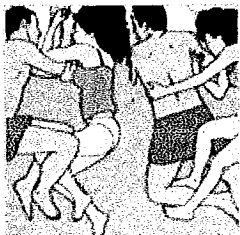
So far, the Italian Judiciary, like the French Army in Dreyfus, has steadfastly refused to concede a miscarriage of justice. We will soon see whether it continues on this misguided path, diminishing its credibility in the eyes of the world, or chooses to reverse course.

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

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