

# Trial of Amanda Knox Highlights the Differences Between the United States and Italian Legal Systems

By Judge Cynthia M. Rufe and Scott P. Sigman, Esquire

In 2011, members and guests of the Temple American Inn of Court traveled from Philadelphia, Pennsylvania, to Rome, Italy where they were hosted by the justices of the Italian Supreme Court, the *Corte Suprema di Cassazione*, which is located in *il Palazzo di Giustizia*. During the visit to the Italian Supreme Court, Temple Inn members, including several state and federal judges, exchanged ideas with the justices about each country's legal system and Inn members were given the opportunity to observe civil and criminal proceedings before the Italian Supreme Court.

The trip was inspired by Temple Inn president, Judge Annette M. Rizzo, who studied law at Temple University—Rome. Rizzo enlisted Judge Cynthia M. Rufe, a former president of the Inn, to chair a committee of Inn members and Temple Law faculty to organize meetings with the local Italian Bar, visits to the Italian Supreme Court and Roman Tribunale, and teaching sessions at La Sapienza, Rome's largest university.



The Italian Supreme Court—*Corte Suprema di Cassazione*

As part of the trip, Inn members were hosted by the President Judge and Vice President Judge of the *Tribunale Penale*, Rome's Criminal Court, where members exchanged ideas with criminal court judges and observed a criminal trial.

Of particular interest was the trial of Amanda Knox, the University of Washington student studying abroad in Perugia, Italy, who was convicted along with others of murdering her British roommate. This case highlights the differences between the United States and Italian justice systems. While both countries have many written procedures in place for prosecuting a defendant in a criminal case and for sentencing a defendant convicted of a crime, there are several very distinct and shocking differences.

As a preliminary matter, Inn members were surprised to learn that defendants in Italy do not have to take an oath to tell the truth—a stark contrast to the United States, which requires an oath before anyone may testify.

Inn members also learned that for the most part criminal trials in Italy occur before a three judge panel instead of a jury. The panel usually includes a senior judge wearing a gold rope on his robe and two more junior judges (maybe only a few years out of law school) wearing a silver colored rope on their robes. Unlike the United States, where most judges serve as lawyers for many years before being appointed or elected to the position, law students can choose a career as a judge instead of a lawyer from the *inizio* (the start).

Interestingly, there is a specific bar exam that a young law school graduate must take to become a judge. Since the exam is very difficult, there are a limited number of judicial seats available at a given time, and the exam may only be attempted three times in a graduate's lifetime, most law students will work at law firms while completing a specific course of study to become a judge. Once a graduate passes the Magistrate Bar exam, there is an 18-month period of required training before being seated as a junior judge.

In more serious cases involving a "blood crime" such as murder, the Italian system allows for a jury, but not a jury of twelve peers as in the United States.

The Italian jury is made up of two judges and six citizens with one of the judges presiding over the trial. The jury is not sequestered until deliberations, verdicts do not need to be unanimous, and a simple majority is required for a murder conviction. The Temple Inn also learned that the jury must file an explanation of why they made their decisions within 90 days from the date of the verdict.

After reaching a guilty verdict, the convicted criminals have an automatic right of appeal from the Courts of First Instance, the *Tribunale*, to the Courts of Second Instance, called the *Corte di Appello*. In the appellate court there is, again, a panel of three judges who hear the appeal, which may include new evidence and testimony, another stark contrast to the United States' appellate process. In more serious cases the appellate court may have an eight-member jury (two judges and six citizens) as in the Amanda Knox case.

All decisions of the *Corte di Appello* may then be appealed to Italy's highest court, the *Corte di Cassazione*, in Rome. However, the *Corte di Cassazione* may only overrule mistakes related to interpretation of criminal law (*errores in iudicando*) or mistakes related to procedure (*errores in procedendo*). Since Italy is a civil law system, the decisions of the *Corte di Cassazione* are only binding to the specific case and not binding for a lower judge who is deciding another case. This is the exact opposite of one of the key foundations of the American legal system, the doctrine of *Stare Decisis*, that a decision made by a superior court is binding precedent on all lower courts.

In the Amanda Knox case for example, Knox was found guilty of murder by an Italian criminal court jury in 2009 and received a 26-year prison sentence. However, on October 3, 2011, after 11 hours of deliberation, an eight-member appellate court jury acquitted her and her ex-boyfriend, Raffaele Sollecito, of murder. The appellate jury had two options to acquit: they could determine that there was not enough evidence to uphold the conviction, or that Knox and Sollecito did not commit the crime. In this case, the appellate jury found that Knox and Sollecito were innocent of murder and did not commit the crime. While the public prosecutor stated that he plans to appeal the acquittal to Italy's highest court, the *Corte di Cassazione*, there is no provision in Italian law to prevent Knox from returning to the United States pending the appeal.

After spending the week in Rome and throughout the Italian Courts, Inn members observed many differences and similarities between the two systems. In 1988, the Italian legal system



Members of the Temple AIC of Philadelphia, Pennsylvania, with justices of the Italian Supreme Court are, from left to right, Paul Weiner, Esq., Hon. Annette M. Rizzo, Scott P. Sigman, Esq., Hon. Anthony Mura, Hon. Stefano Schiro, Hon. Cynthia M. Rufe, and Hon. Tommaso Basile

went through a critical change, which made the Italian criminal system more closely resemble the American system. Prior to that time, Italy had an inquisitorial system where the judge's role was to seek the truth, often acting as the prosecutor as well as judge. This system started during the rise of fascism with the Italian Criminal Code of 1930. However, the new criminal code of 1988 made the Italian criminal system more adversarial wherein investigations were done by police and the prosecutor (*Pubblico Ministero*) and the judge was to remain impartial and was discouraged from conducting the investigations.

Regardless of the similarities, many fundamental differences still remain. Notably, Italy remains, like much of Europe, a civil law jurisdiction where the laws are codified in codes. Instead, the United States is a common law jurisdiction dependant on case law to interpret the codified laws. As a result, Italian law students study codified laws, not cases and past court decisions. Of particular note, is that in the civil trial system, there are no juries, and up until recently, there was no mediation or arbitration program. However, a recent law change (*Decreto Legislativo n. 28 del 4 marzo 2010*) now mandates mediation for certain civil lawsuits before proceeding to trial.

Once arriving back in Philadelphia, Inn members had a renewed faith in the American legal system. Although there are flaws and imperfections, the system we call our own remains supreme for seeking justice while providing due process. ♦

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