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International Public Opinion with High-Profile Cases: An Analysis and Solution for the Amanda Knox, Natalee Holloway and Ryan Lochte Cases

ALEXA HORNER*

INTRODUCTION

There is an evident fascination with American popular culture abroad. In 2011, Hollywood's global ticket sales hit \$32.6 billion, with American box offices making up only \$10.2 billion of those sales.¹ Film is just a small sliver of "popular culture," as the term encompasses "shared beliefs, values, . . . traditions, . . . and ways of thought" in a society.² The essence of American popular culture finds its roots in our economic, political and social realms, and has been projected throughout history in broadcast journalism, film, television and social media.³ Beginning with the Cold War, American foreign diplomacy incorporated popular culture, using it to advance "America's story" with "foreign audiences."⁴

While American popular culture is vast, a specific and significant part of American popular culture comes from the American justice system. Apparent in crime dramas, Netflix documentaries, and televised high-profile trials, there is an indulgence in the "entertainment appeal" of the criminal justice system. This seems to have followed suit internationally, through a specific class of cases taking over the spotlight in the last ten years. The high-profile international cases involving

*J.D. Loyola Law School, Los Angeles. Thank you to Professor Kevin Lapp and Professor Cesare Romano for assistance in the creation of this note.

1. Pamela McClintock, *Global Box Office Hit \$32.6 Bil in 2011, Fueled by Exploding International Growth*, THE HOLLYWOOD REP. (Mar. 22, 2012, 11:00 AM), <http://www.hollywoodreporter.com/news/global-box-office-china-international-growth-326-303324>.

2. MARTHA BAYLES, THROUGH A SCREEN DARKLY: POPULAR CULTURE, PUBLIC DIPLOMACY, AND AMERICA'S IMAGE ABROAD 14 (2014).

3. BAYLES, *supra* note 3, at 6.

4. *Id.* at 14-15.

American defendants abroad, Amanda Knox, Ryan Lochte, and American victim, Natalee Holloway, are prominent illustrations of this international intrigue.

Although the Amanda Knox, Natalee Holloway and Ryan Lochte cases had vastly different circumstances, all three fell into the intersection of crime and American popular culture abroad, gaining an audience of the world. Because of the mass attention, people and states soon had a “stake in the game,” developing an international public opinion around all three cases. This worldwide public opinion and media attention magnified the jurisdictions that held these cases, unfortunately affecting the cases’ criminal procedure fairness from the investigation to the prosecution.

Using these three cases, this note will explore how the international impact of public opinion can shape the criminal justice system Americans face abroad. By comparing the facts, criminal procedures, media involvement and outcomes of these cases, it is apparent that there was a lack of impartiality in the justice systems of the individual countries handling them, thus lowering the burden of proof in all three cases. To prevent future legal situations like these, there should be a neutral forum established to hear such high-profile cases, especially involving well-known, non-residents in a foreign state. This note will explore creating a model for a “high-profile justice system” to control these types of cases, rather than the specific state’s traditional criminal justice system. Having an unbiased and high profile trained adjudicator for cases such as these would help to control the bias created by the media and states, thus avoiding potentially serious human rights violations.

In Section I, this note will analyze the international history behind high-profile cases and the qualities and characteristics behind them. Section II will analyze current models implemented for high profile-like situations: “Brazil’s Specialized Court System,”⁵ the ICC and American scholar solutions.⁶ In Section III, this note will analyze the high-profile

5. The term “Brazil’s Specialized Court System” will herein encompass both the Pelè Act’s Brazilian Sport Judicial System and the Fan and Great Events Court.

6. See generally *How the Court Works*, THE ICC, <https://www.icc-cpi.int/about/how-the-court-works/Pages/default.aspx#legalProcess> (last visited Dec. 7, 2016); see generally William N. Irvine, Jill Pilgrim and Olavo F. Bernardes, *The Sports Court System in Brazil*, PRECISE ADVISORY GROUP 1-3 (2013) <http://preciseadvisory.com/wp-content/uploads/2013/07/Sports-Court-Article-PAG-Final-07-09-13.pdf>; see generally Laurie Nicole Robinson, *Professional Athletes Held to a Higher Standard and Above the Law: A Comment on High-Profile Criminal Defendants and the Need for States to Establish High-Profile Courts*, 73 IND. L.J. 1313, 1316 (1998); see generally Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2 WIS. L. REV. 291, 381 & 384 (2006); see generally Jaime N. Morris, *The Anonymous Accused: Protecting Defendants’ Rights in High-Profile Criminal Cases*, 44 B.C. L. REV. 901, 920 (2003).

characteristics and international legal aspects underlying the Amanda Knox, the Natalee Holloway and the Ryan Lochte cases. Finally, Section IV will argue how establishing a “high-profile justice system,” set up with various aspects from the Brazil Specialized Court System, the ICC and American scholar solutions, would benefit high-profile, criminal situations of non-residents abroad.⁷ This note will conclude with how a court such as this would have changed the outcomes of the Amanda Knox, Natalee Holloway and Ryan Lochte cases, and benefited the domestic nations and world as a whole.

I. BACKGROUND: HISTORY OF HIGH-PROFILE TRIALS AND PUBLIC OPINION

High-profile trials still remain in the forefront of media attention, and thus become part of popular culture. High-profile cases have had a particular niche in society’s culture by impacting entertainment, criminal justice, morals, beliefs, and values of the public. The fascination with high-profile trials is anything but recent or solely American; it has its origins in Roman and English culture.⁸ Beginning in the Roman Era with murderous coliseum fights⁹ continuing to the Elizabethan Era with the “great period in murder,”¹⁰ the public’s captivation with murder for entertainment and high-profile cases influenced societal values and norms.¹¹ Back in the United States, the rebel era sparked in the 1930s, birthing the infamous and ever popular “gangster films,” of the 60s, bringing into play extensive violence and a “moral” battle between the “Mafia...and the American legal system.”¹² Soon fictional entertainment turned into a thirst for reality television, triggering the real-life courtroom genre. From the trial spectacles involving the prosecutions of OJ Simpson to more recently, George Zimmerman, the modern-day world has not lost its fascination with the thrilling appeal of high-profile crime.

7. *Id.*

8. Keith Hopkins, *Murderous Games: Gladiatorial Contests in Ancient Rome*, HISTORY TODAY (Jun. 6 1983), <http://www.historytoday.com/keith-hopkins/murderous-games-gladiatorial-contests-ancient-rome>; see also GEORGE ORWELL, *DECLINE OF THE ENGLISH MURDER AND OTHER ESSAYS* 1 (1965).

9. Hopkins, *supra* note 8.

10. ORWELL, *supra* note 8.

11. *Id.*; see also Hopkins, *supra* note 8.

12. BAYLES, *supra* note 3, at 82-83.

A. International History Behind High Profile Trials

1. Roman Times

The age of the Roman Empire was one of the earliest periods where the public became fascinated with murders, turning the lives lost into a social and public sport. During 80 A.D., the Roman Coliseum was reserved for “100 days of games.”¹³ As 50,000 Romans typically poured into the arena, gladiators and criminals fought to the death as citizens watched for pleasure.¹⁴ A quote from a Roman senator sums up the ancient scene vividly:

The combatants have no protective covering; their entire bodies are exposed to the blows . . . This is what lots of people prefer to the regular contests, and even to those which are put on by popular request. And it is obvious why. There is no helmet, no shield to repel the blade. Why have armour? Why bother with skill? All that just delays death.¹⁵

However, for the Romans, it was beyond just pure entertainment and idolized gladiators.¹⁶ The games helped solidify justice for crimes committed in the state.¹⁷ Roman citizens watched in awe as criminals were punished horrifically, sometimes “limb by limb.”¹⁸ These so called “spectacular punishments” helped restore “law and order” and “reconstitute sovereign power.”¹⁹ For Romans, the Coliseum was a bloody version of the modern day courtroom.

2. Elizabethan Era

The Elizabethan Period also contributed to the public interest in high-profile crimes by generating attention to murders involving the “middle class, sex and drama.”²⁰ During the years of 1850 to 1925, a number of shocking and mysterious murders occurred, labeling the time as “the great period in murder.”²¹ The themes that seemed to grasp the British attention involved a “suspicious” setting, usually infused with a “motive” to earn a “social” status or to not fall victim to a “scandal.”²²

13. Hopkins, *supra* note 8.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 9.

19. *Id.*

20. ORWELL, *supra* note 8.

21. *Id.*

22. *Id.*

Furthermore, this era went beyond just the crime itself, and took a step towards integrating crime with entertainment purposes. In George Orwell's essay, *The Decline of the English Murder*, he described this murderous entertainment in the everyday home of a Brit:

It is a Sunday afternoon. Your pipe is drawing sweetly, the sofa cushions are soft underneath you, the fire is well alight, the air is warm and stagnant. In these blissful circumstances, what is it that you want to read about? Naturally about murder.²³

The widespread reach of these crimes, going all the way into the home of the average citizen for entertainment, truly seemed to set the stage for the current setting of contemporary high-profile trials.

B. High Profile Trials: Characteristics and Qualities

Taking attributes from history's entertainment crime forums, the modern day high-profile case has its unique characteristics and qualities. Today's everyday case becomes high profile through the distinct persona of the defendant, their personal actions before and during trial, and the media involvement in the case that develops "the court of public opinion," ultimately influencing the trial and trial outcome.²⁴

1. Persona of the Defendant

The persona of the defendant is crucial for earning the high-profile trial status. To captivate the attention of a widespread audience or the media, this type of trial needs some combination of unique traits involving "race, gender, class and athletics."²⁵ These "made-for-tv" qualities seem to resonate with viewers and media by touching upon personal ideals and values; thus fueling an interest to have an opinion about the case.²⁶ Gender plays a huge role in these cases as well, more so on the side of the victim, with many scholars exploring the idea in the theory of "the missing white woman."²⁷ Discussed in Sarah Stillman's

23. *Id.*

24. See generally Dana E. Brede, *High-Profile American Trials and 3 Resonating Questions to Consider*, REGIS UNIVERSITY, <http://criminology.regis.edu/criminology-programs/resources/blog/high-profile-american-trials> (last visited Oct. 12, 2017); see generally Michelle Gonzalez, *Innocent Blood on Manicured Hands: How the Media Has Brought the New Roxie Harts and Velma Kellys to Center Stage*, 16 U. DENV. SPORTS & ENT. L. J. 51, 56-60 (2014)

25. *The Practice and Ethics of Trying Cases in the Media*, DUKE U. (Sept. 28, 2007), <https://law.duke.edu/conference/2007/publicopinion/>.

26. Brede, *supra* note 24.

27. Paul Farhi, *Bad girls and gone girls: why the media tired of 'missing white women,'* WASH. POST (Dec. 13, 2015), <https://www.washingtonpost.com/lifestyle/style/bad-girls-and-gone->

essay, *The Missing White Girl Syndrome*, Stillman describes how female victims over males gain more attention, with cable news creating “anecdotes of victims,” which are typically women who are “white, wealthy, and . . . attractive,” taking up the resources of the mass media.²⁸ Additionally, athletics seem to play a role in the high-profile trial, with many in the legal field surmising that there is a correlation between the “American celebrity-athlete and crime,” eventually gaining mass media attention.²⁹ Scholars believe the athlete defendant’s foolish decision-making comes from their “student-athlete” days when they were held to a pristine status, thus not taking responsibility for their actions due to the monetary and fame value they brought to campus.³⁰ Over the years, the media has become more scrutinizing of the athlete, in an effort to bring them off their “pedestals” and feed the viewers’ “appetite” for the investigation of the celebrity.³¹

2. Personal Actions of the Defendant

Many times the viewers and media are not to blame in the publicity of these cases, as personal actions of defendants can catapult themselves into the spotlight. After charges are brought or an investigation ensues, this class of defendants sometimes takes a more active role in fueling the “media fire” by commentating, having erratic behavior or making choices that spur questions if they are truly innocent.³² For example, in the Knox case, it is alleged Amanda Knox “performed cartwheels” in the police station prior to her investigation.³³ Many defendants take the spotlight and see the attention as “intoxicating,” and they seemingly need more.³⁴ Others, particularly “kids in big trouble,” believe “life [is] without consequences,” and do not realize the enormity of the allegations,³⁵ causing the media to grasp onto these storylines and take these actions to magnified levels.

girls-why-the-media-tired-of-missing-white-women/2015/12/09/5660fb52-9934-11e5-94f0-9eeaff906ef3_story.html.

28. Justin Joffe, *Race and Gender: Media Bias in Covering Missing Persons*, THE MISSING, <http://themissingny.nycitynewsservice.com/part-two/race/> (last visited Oct. 10, 2017).

29. Robinson, *supra* note 6.

30. *Id.* at 1318.

31. *Id.* at 1324.

32. Barbie Nadeau, *Van Der Sloot, Holloway's Suspected Murderer, Fumbles Again*, NEWSWEEK (Jun. 3, 2010, 8:00 PM), <http://www.newsweek.com/van-der-sloot-holloways-suspected-murderer-fumbles-again-73123>.

33. *Id.*

34. *Id.*

35. *Id.*

3. Public Opinion: The Media's Role in Influencing the Trial Outcome

Once the defendant enters the limelight, public opinion naturally emerges. Many scholars call the phenomenon “trying cases in the court of public opinion.”³⁶ This occurrence is described as “public support for one side or the other in any given court case.”³⁷ As the media broadcasts every portion of the investigation, possible grand jury, indictment, and the trial itself, the public forms a strong force of an opinion, sometimes seeping into the courtroom and affecting the verdict, like in the Amanda Knox case with jurors being influenced by the web.³⁸ From social media usage potentially infiltrating the jury, to media attention and scrutiny of the court's players, public opinion can be controversial by affecting the criminal procedure of the cases.³⁹ With controversy come consequences in trying to balance the public scrutiny and the defendant's right to a fair and just trial.⁴⁰ Where entertainment has largely fictional story lines, there are real victims and defendants in these cases. In some of these trials, the media walks a fine line between the journalistic duty of reporting and being the fact-finder to sway the outcome.

II. FORUMS FOR HIGH-PROFILE CRIMINAL SITUATIONS: INTERNATIONALLY AND DOMESTICALLY

In the international setting, the sets of rules and the way they are enforced in the criminal law context is rooted in state sovereignty, which is the power within the particular state domain to “make, apply, and enforce rules of conduct upon persons.”⁴¹ The charter of the United Nations validates this power, by recognizing “the principle of non-interference in the internal affairs of a state.”⁴² The reason for this state sovereignty approach to criminal law is due to the fact domestic proceedings are usually the most feasible method to try an individual's conduct in that state's territory, especially with the ease of access to “[v]ictims, defendants, witnesses and evidence.”⁴³ Additionally, the

36. Brede, *supra* note 24.

37. *Id.*

38. Nadeau, *supra* note 32.

39. *Id.*

40. Brede, *supra* note 24.

41. SARAH WILLIAMS, HYBRID AND INTERNATIONALISED CRIMINAL TRIBUNALS: SELECTED JURISDICTIONAL ISSUES 11 (Michael Bohlander ed., 2012) (citing V. LOWE & C. STAKER, JURISDICTION 313 (M. Evans ed., Oxford Univ. Press 2010)).

42. *Id.* at 13.

43. *Id.*

domestic setting allows the state to “tailor the design of the system” to assist with specific issues of criminal justice.⁴⁴

Although there is state sovereignty, there is a greater international responsibility of all states to conduct fair trials, investigations and prosecutions. As a matter of international law, most states have accepted that the “jurisdiction to prescribe,” or the “authority of a state to prescribe rules,” must be used in the territory.⁴⁵ In regards to enforcing these rules, it is a “right” as opposed to an “obligation,” that is largely based upon treaties.⁴⁶ If a state is found in violation of a treaty that has codified the principle of “*aut dedere aut judicare*” or the “duty to prosecute or extradite,” there can be penal sanctions upon the state.⁴⁷

An example of this is found in human rights courts. In December of 1948, the states and parties to the UN made a universal declaration, essentially a “wish list” of the basic human rights standards of states.⁴⁸ The big three human rights the UN declared were the “right to life, freedom from torture and the right to a fair trial.”⁴⁹ Today, UN Article 14 of the International Covenant on Civil and Political Rights declares “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”⁵⁰

Following the UN’s lead to establish universally recognized human rights, human rights courts evolved.⁵¹ Today, there are three regional human rights courts: the European Court of Human Rights, the Inter-American Human Rights Court, and the African Commission on Human and Peoples’ Rights.⁵² The European Court of Human Rights (ECHR), for example, has jurisdiction over Council of Europe member states that have ratified the ECHR treaty.⁵³ For the European Court of Human Rights to hear a case, the individual or entity must have exhausted state remedies first.⁵⁴ Additionally, the court is not a “fourth instance of jurisdiction” nor is it another court that holds a trial and overturns the state’s case.⁵⁵ Rather,

44. *Id.*

45. *Id.* at 11.

46. *Id.* at 13.

47. *Id.* at 13-14.

48. Cesare Romano, Loyola Law School Professor, Lecture at Loyola Law School’s Intersession: International Courts and Tribunals (Jan. 9, 2017-Jan. 12, 2017).

49. *Id.*

50. THE LAWYER’S COMMITTEE FOR HUMAN RIGHTS, WHAT IS A FAIR TRIAL? A BASIC GUIDE TO LEGAL STANDARDS AND PRAC. 2 (1999) (citing G.A. Res. 2200 (XXI) A, Int’l Covenant on Civil and Pol. Rights (Dec. 16, 1966)).

51. Romano, *supra* note 48.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

the court evaluates the way the trial was held and identifies if there was a treaty violation and on a larger scale, an international law violation.⁵⁶ In regards to criminal law, the court incorporates “the right to a fair trial,” “lack of effective investigation” and “non-enforcement” as potential claims for violation.⁵⁷ Once the court makes a ruling, the judgment could include state-issued monetary awards to the individual or entity.⁵⁸ Furthermore, the individual or entity whose right was violated can show the judgment to their national state’s legislature or executive branch in an effort to convince them to issue a pardon or change the law.⁵⁹

While human rights courts are an excellent remedy for individuals facing a significant human rights violation, there is an issue with using these courts solely to resolve or get rid of violations. This is due to the fact that the courts’ judgments are not binding on a state, and are adjudicated after the violation has occurred.⁶⁰ For example, in the high-profile trial setting, U.S. citizen Amanda Knox filed a European Court of Human Rights complaint for a violation on her right to a fair trial and to appeal her slander conviction, alleging she faced “psychological pressure” and “inhuman and degrading treatment” by the Italian police during their investigation.⁶¹ The court granted Knox the right to file this complaint, agreeing that she has jurisdictional basis for the court to hear her claims.⁶² But for Knox, this potential judgment could come at least ten years after her initial indictment. More importantly, it does not take back her initial wrongful conviction, years in prison or even the severe emotional trauma she faced. In order to solve these human rights issues, there must be state-sponsored action and accountability before these violations occur.

In the high-profile trial arena, various forums and scholarly solutions have come to fruition to proactively avoid these human rights issues in the high-profile trial setting.⁶³ These current implemented

56. *Id.*

57. European Court of Human Rights, *Violation by Article and by States (1959-2016)*, http://www.echr.coe.int/Documents/Stats_violation_1959_2016_ENG.pdf (last visited Mar. 20, 2017).

58. Romano, *supra* note 48.

59. *Id.*

60. *Id.*

61. Nick Squires, *European Ct. H.R. Grants Amanda Knox Appeal Over Claim Police ‘Slapped Her in Custody,’* THE TELEGRAPH (May 18, 2016, 10:48 AM), <http://www.telegraph.co.uk/news/2016/05/18/european-court-of-human-rights-grants-amanda-knox-appeal-over-cl/>.

62. *Court Allows Amanda Knox to Sue Italy for Trial ‘Abuses,’* BBC NEWS (May. 18, 2016), <http://www.bbc.com/news/world-europe-36322516>.

63. See generally Irvine et al., *supra* note 6, at 1-3; see generally *How the Court Works*, *supra* note 6; see generally Robinson, *supra* note 6, at 1338; see generally Morris, *supra* note 6, at 920; see generally Findley & Scott, *supra* note 6 at, 7 381, 384.

forums have proven to be successful solutions, particularly filling the need for a highly trained, neutral adjudicator. Brazil's Specialized Court System, the International Criminal Court, and the American Scholar ideas of implementing a U.S. judge-based, high-profile court using defendant anonymity and an advisory investigator, prove to be exemplary templates that "tailor the design of the system" to assist with specific issues of high-profile trials.⁶⁴ Aspects from these forums could be used to create a domestic model for states needing to implement a court specializing in high-profile cases.

A. Brazil's Specialized Court System for High-Profile Sports Situations

In Brazil, sports have remained an ever-growing part of its economy, as studies have shown that as of 2014, Brazil sat in fourth place as one of the world's largest spenders on sports, accounting for a 7% rise in sports spending since 2000.⁶⁵ However, with the Brazilian sports fascination comes worldwide attention to the organizations and players. To combat the potential for these specialized high-profile event situations issues, in 1988, Brazil drafted its constitution and created a sports provision under the Pelè Act to handle smaller-scale sports misconduct and disputes with the Brazilian Sports Justice System.⁶⁶ Subsequently thereafter in 2013, the Special Civil and Criminal Courts in Sports, Cultural and Major Events (C.E.J.S.P.), a special organ of the "Court of Justice of Rio de Janeiro" (Tribunais de Justicia dos Estados, T.J.-R.J.), created the "Special Judge of the Fan and Great Events" court to handle more specialized criminal and civil conduct in a bigger event situations.⁶⁷

1. The Pelè Act: Brazilian Sports Justice System

The Pelè Act codified the Brazilian Sports Justice System, which incorporates the smaller-scale sports courts, comprising of a Supreme Sports Court and state sports court.⁶⁸ As for subject matter jurisdiction,

64. WILLIAMS, *supra* note 41, at 13; *see generally* Irvine et al., *supra* note 6, at 1-3; *see generally* *How the Court Works*, *supra* note 6; *see generally* Robinson, *supra* note 6, at 1338; *see generally* Morris, *supra* note 6, at 920; *see generally* Findley & Scott, *supra* note 6, at 381, 384.

65. A.T. KEARNEY, THE SPORTS MKT., MAJOR TRENDS AND CHALLENGES IN AN INDUSTRY FULL OF PASSION 4 (2011).

66. Irvine et al., *supra* note 6, at 1; *see also* THE INT'L BAR ASS'N', MAJOR SPORTING EVENTS IN BRAZIL: BUSINESS OPPORTUNITIES AND THE LEGAL FRAMEWORK 32 (2010).

67. *TJ-RJ to Create Fan and Grand Events Court*, CONSULTOR JURIDICO (Jun. 11, 2013, 7:16 PM), <http://www.conjur.com.br/2013-jun-11/rio-janeiro-juizado-especial-torcedor-grandes-eventos>; *see also* *TJ Do Rio Creates Special Judge for Fan and Major Events*, JUSBRASIL (Oct. 1, 2017), <https://tj-rj.jusbrasil.com.br/noticias/100555511/tj-do-rio-cria-juizado-especial-do-torcedor-e-dos-grandes-eventos>.

68. Irvine et al., *supra* note 6 at 1.

the sports courts only deal with “sports-related disciplinary matters and infractions,” such as “on-field misconduct.”⁶⁹ All courts have a disciplinary commission that “operates under their direction” to handle the disciplinary action.⁷⁰ The setup of both the Supreme Sports Court and state sports courts is unique, with each court consisting of a “9-member panel of judges.”⁷¹ “Two members” have to be lawyers appointed from the “Federal Brazilian Bar Association” (at the local level, the Regional Brazilian Bar), “two from the Brazilian Soccer Federation, two from the team owners association, one from the referee’s association, and two from the athlete’s association.”⁷² Once a decision has been made and the disciplinary commission carries out the punishment, the defendant must exhaust all appeals within the sports court system before moving to a Brazilian civil court of general jurisdiction.⁷³

The Sports Court system has been utilized in various situations. One notable use was in the case of UFC heavyweight star Roy Nelson, where he was accused of kick-pushing a referee at a UFC Fight Night.⁷⁴ In providing the judgment for the case, a judge from the sports court suspended Nelson and fined him \$23,400, with the potential to reduce the sentence with a formal apology.⁷⁵ The Brazilian Sports Court System has gained overwhelming support among Brazilians, and has developed a strong reputation “for its legal decision making and unbiased opinions.”⁷⁶ This system has become so reputable, that even when a defendant appeals a sports court decision to an outside Brazilian court of general jurisdiction, these courts will rarely overturn the judgment.⁷⁷

2. Fan and Great Events Court

Created in 2013 under the Executive Act TJ/RJ N^o. 1978/2013, DJERJ de 21.05.2013, the specialized “Fan and Great Events Court” was established to “coordinate all the actions of the first degree of the judiciary state of Rio de Janiero in relation to the great events” and to be “regulators concerning special criminal judges in sports, cultural events

69. *Id.*; see also THE INT’L BAR ASS’N, *supra* note 66, at 54.

70. Irvine et al., *supra* note 6, at 1; see also THE INT’L BAR ASS’N, *supra* note 66, at 12.

71. Irvine et al., *supra* note 6, at 2.

72. *Id.*

73. *Id.* at 3.

74. Steven Marrocco, *Brazilian Sports Court to Review Roy Nelson’s Case, Determine New Suspension and Fine*, MMA JUNKIE (Dec. 5, 2016, 2:45 PM), <http://mmajunkie.com/2016/12/brazilian-sports-court-to-review-roy-nelsons-case-determine-new-suspension-and-fine>.

75. *Id.*

76. Irvine et al., *supra* note 6, at 3.

77. *Id.*

and great events.”⁷⁸ Sitting below the larger Court of Justice of Rio de Janeiro that is comprised of state courts, the Fan and Great Events Court is comprised of five magistrates.⁷⁹ According to Judge Marcello Rubioli, the Court ensures that the “judge is independent and does not have interests in either side,” and will even examine issues relating to “confidence in the police.”⁸⁰ Because of the Rio 2016 Olympic Games, the Fan and Great Events Court created seven additional regional posts in Rio de Janeiro headed by Judge Rubioli.⁸¹

The Court was very active in several Olympic related matters.⁸² Using one of the courts, Justice Rubioli issued a judgment against Mr. Hickey, the president of the Olympic Committee of Ireland, for allegedly “ticket touting” during the Rio Olympics.⁸³ Additionally, American swimmer Ryan Lochte initially faced a sports court with Judge Rubioli to defend his false police report charge.⁸⁴

Because of the specialized function of both the Pelè Act’s Brazilian Sports Judicial System and the TJ-RJ’s Fan and Great Events Court, Brazil’s Specialized Court System proves to be just one successful template for handling specialized and high-profile cases.

B. *The International Criminal Court*

Although not applicable to domestic states trying domestic crimes, the establishment of the International Criminal Court has proved to be successful in “high-profile, crisis situations.”⁸⁵ International criminal courts had their genesis dating back to the establishment of the International Military Tribunal at Nuremberg after World War II in 1945.⁸⁶ For the years following the Nuremberg Trials, the Cold War

78. Decreto No. 1978/20, de 21 de Pode de 2013, DIÁRIO OFICIAL DO RIO DE JANEIRO [D.O.E.R.J.] de 21.11.2008 (Braz).

79. *Id.*

80. Vinod Sreeharsha, *Judge Discusses Case Involving American Swimmers*, N.Y. TIMES (Aug. 18, 2016), <https://www.nytimes.com/2016/08/19/sports/olympics/brazilian-judge-discusses-case-involving-american-swimmers.html>.

81. *Aqui as Instituições Funcionam’, diz Marcello Rubioli Sobre Caso de Nadadores Norte-Americanos*, AMAERJ (Aug. 20, 2016 10:57 AM), <http://amaerj.org.br/noticias/aqui-as-instituicoes-funcionam-diz-marcello-rubioli-sobre-caso-de-nadadores-norte-americanos/>.

82. *See generally Hickey Given Go-ahead to Leave Brazil*, RTE (Dec. 12, 2016, 23:58), <https://www.rte.ie/news/2016/12/12/838297-pat-hickey-rio-olympics/>; *see generally* Sreeharsha, *supra* note 80.

83. *Hickey Given Go-ahead to Leave Brazil*, *supra* note 82.

84. Sreeharsha, *supra* note 80.

85. SONJA STARR, *Extraordinary Crimes at Ordinary Times: International Justice Beyond Crisis Situations*, 101 NW. U. L. REV. 1257, 1257, 1307 (2007).

86. JERRY E. NORTON, *The International Criminal Court: An Informal Overview*, 8 LOY. U. CHI. INT’L L. REV. 83, 83-84 (2010).

marked a freeze in international criminal law indictments of the most serious crimes.⁸⁷ However, with the end of the Cold War came a window for the establishment of an International Criminal Court, largely fueled by “strong pressure from public opinion outraged by the continued impunity of egregious perpetrators of international crimes.”⁸⁸ The human rights violations from the 20th century were astonishing, with as many as “170 million civilian . . . victims of war crimes, crimes against humanity and genocide.”⁸⁹ Former President Bill Clinton acknowledged the correlation between the high number of massacres and the serious lack of an international means for trying perpetrators, stating: “We have an obligation to carry forward the lessons of Nuremberg. Those accused of war crimes, crimes against humanity and genocide must be brought to justice. There must be peace for justice to prevail, but there must be justice when peace prevails.”⁹⁰

Professor Rudi Rummel summed up the international community’s lack of accountability in trying these serious crimes by stating, “A person stands a much better chance of being tried for taking a single life than for killing ten thousand or a million.”⁹¹ With the increasing awareness of these problems, there was a strong desire to establish a more long-term court, acting along the principles of international “crimes and . . . court procedures.”⁹² Initiated on July 1, 2002 by the “Rome Statute,” the court was “ratified by 60 countries,” setting up subject matter jurisdiction for the four most “serious” international crimes to be tried by the court: “Genocide, Crimes against Humanity, War Crimes, and Crimes of Aggression.”⁹³

To date, the ICC has had “9 convictions total, 1 acquittal, 6 individuals in custody, and 23 cases” involving these serious international crimes.⁹⁴ The ICC is set up similarly to a civil American court, with three sitting trial judges, and no jury, but like a criminal court with a prosecutor deciding when and how to try the cases.⁹⁵ The role of the judges was argued staunchly by common law supporters against civil law supporters,

87. RUTH MACKENZIE, CESARE ROMANO, YUVAL SHANY & PHILIPPE SANDS, *THE MANUAL ON INTERNATIONAL COURTS AND TRIBUNALS* 158 (2d ed. 2010).

88. *Id.*

89. WILLIAM DRISCOLL, JOSEPH P. ZOMPETTI & SUZETTE ZOMPETTI, *THE INTERNATIONAL CRIMINAL COURT: GLOBAL POLITICS AND THE QUEST FOR JUSTICE* 172 (2004).

90. *Id.* at 173-74.

91. *Id.* at 172.

92. Norton, *supra* note 86, at 84.

93. *Id.* at 85-86; *see also* DRISCOLL ET AL., *supra* note 89, at 175.

94. *How the Court Works*, *supra* note 6.

95. *Id.*; *see also* Emilia Justyna Powell & Sara Mitchell, *The Creation and Expansion of the International Criminal Court: A Legal Explanation*, U. IOWA DEP’T POL. SCI. PUB. 1, 13 (2008).

but a compromise overseen by The Preparatory Committee (a neutral committee designed to conciliate the opposing civil and common law delegations during ICC drafting proceedings) ultimately came to the conclusion of a mixture of the two, with judges having “autonomous powers . . . [in the] collection of evidence,” and a duty to uphold “the rights and interests of the defense.”⁹⁶ However, the standard of proof is the same as the American criminal court, with the prosecution needing proof “beyond reasonable doubt.”⁹⁷ Additionally, in the initial stages of investigation, the prosecution can only bring an indictment in very narrow circumstances, balanced by the approval of the judges deciding if there is “enough evidence for the case to go to trial.”⁹⁸ The ICC defines these situations as follows:

The Office of the Prosecutor must determine whether there is sufficient evidence of crimes of sufficient gravity falling within the ICC’s jurisdiction . . . [and] whether opening an investigation would serve the interests of justice and of the victims. If the requirements are not met for initiating an investigation or if the situation or crimes are not under the ICC’s jurisdiction, the ICC’s Prosecution cannot investigate.⁹⁹

The Investigation Division at the ICC is comprised of investigators along with “cooperation advisers” that oversee the investigation process.¹⁰⁰ Overall, the court has a form of checks and balances, balancing the rights of the defendant with the overall agreed to rights of the states.¹⁰¹

The ICC also has a separate division, the “Jurisdiction, Complementarity and Cooperation Division” that solely analyzes all questions of jurisdiction.¹⁰² For a crime to initially have potential jurisdiction of the court, it must first be committed “by a State Party national,” or “in a state that has accepted” the ICC, or handed over by the “UN Security Council,” with whom they have a “cooperation agreement.”¹⁰³ Additionally, many nations, including the U.S., were afraid of the far-reaching “universal juris” the court could have, eventually impacting each nation’s “domestic sovereignty.”¹⁰⁴ Because of this concern, the second part of the ICC’s jurisdiction over the nations

96. Powell & Mitchell, *supra* note 95, at 11-13.

97. *How the Court Works*, *supra* note 6.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.* at 4.

104. Romano, *supra* note 48.

who have ratified the Rome Statute is based on “complementarity,” meaning the national court will have jurisdiction over the violation of one of the four crimes, but the ICC will only exercise its judicial process when the national authorities are “unwilling or unable to prosecute.”¹⁰⁵

The ICC was created only to “complement that of national courts,” so it steps in for the following two scenarios: 1) when the national body has not “initiated” proceedings (in which case “unwilling and unable” is not analyzed since “not initiating” meets “unwilling”) or 2) when the national body has begun or carried out the investigation and or prosecution of the accused, and it did not meet the “genuine” standard.¹⁰⁶ While the “genuine” standard is difficult to define, Article 17, Section 2 of *The Rome Statute* describes that the ICC’s jurisdiction may exist in regards to the violation of “the principles of due process recognized by international law” in one of several particular scenarios such as:

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are not being conducted in a manner which, in the circumstances, is consistent with an intent to bring the person concerned to justice.¹⁰⁷

The ICC leaves open a final option of complementarity, with a different realm called, “positive complementarity.”¹⁰⁸ Unlike Article 17, Section 2, where the office looks into a state for their “unwillingness and inability,” positive complementarity is state-initiated, meaning a state could request “assistance” from the Court.¹⁰⁹ Further described in Article 93, Section 10, assistance can be anything from investigation to trial.¹¹⁰ The benefit of including this type of complementarity in the Rome Statute is that it alleviates the sovereignty issue, by allowing a “horizontal relationship” between the ICC and the states.¹¹¹ According to the Office of the Prosecutor, this helps the world “achieve a common responsibility . . . of [prosecuting] massive crimes.”¹¹²

105. DRISCOLL ET AL., *supra* note 89, at 175.

106. MACKENZIE ET AL., *supra* note 87, at 159; *see also* SARAH M. NOUWEN, COMPLEMENTARITY IN THE LINE OF FIRE: THE CATALYSING EFFECT OF THE INTERNATIONAL CRIMINAL COURT IN UGANDA AND SUDAN 3 (2013).

107. Rome Statute of the International Criminal Court art. 17, §2(c), July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002).

108. THE INTERNATIONAL CRIMINAL COURT AND COMPLEMENTARITY 23 (Carsten Stahn & Mohamed M. El Zeidy eds., 2011).

109. *Id.* at 23-24.

110. *Id.*

111. *Id.* at 24.

112. *Id.*

C. American Scholars' Court Solutions to High-Profile Cases in the US

In the United States, scholars have discussed the need for a domestic solution to resolve the various trial-related issues in high-profile cases.¹¹³ Scholar Laurie Nicole Robinson proposes one possible solution: establishing a court with a judge specifically trained in high-profile cases to ensure the defendant's right to a fair trial.¹¹⁴ Robinson suggests these judges should be recommended by the bar association and then appointed for life by a state official.¹¹⁵ The specialized training, Robinson contends, should be comprised of prior "good or bad" experience on high-profile cases, involvement in mock trials, taking educational courses covering media control, consistency in sentencing and pertinent state law.¹¹⁶ Robinson also still acknowledges the defendant's due process rights, and presents the judge-based, high-profile court solution as the defendant's choice, with the option of still undergoing a jury trial.¹¹⁷ Under the judge-based, high profile-court solution, all other criminal procedure matters stay the same, with the prosecution first putting forth its case, the defense following, and then the judge posing questions to elicit facts, make evidentiary findings and decide witness credibility.¹¹⁸

Additionally, Robinson discusses how using this method, in a slightly more modified way, has been attempted in other U.S. high-profile cases.¹¹⁹ For example, in the infamous 1994 case of the Menendez Brothers, who were on trial for murdering their parents, the Los Angeles County Superior Court specially selected judges based on their high-profile case experience.¹²⁰ Judge Judith L. Champagne, Judge Paul Flynn and Judge George W. Trammell III were chosen based on their high-profile trial work on cases involving Heidi Fleiss, the "Madam to the Stars," Snoop Dogg, and Reginald Denny, respectively.¹²¹ The final judge, Judge Stanley Weisberg was added to the team for his renowned ability to "control a case."¹²²

Another scholar, Jaime N. Morris, presents her solution to high-profile case predicaments: using the civil case method of defendant

113. See Findley & Scott, *supra* note 6, at 295, 381, 384; Morris, *supra* note 6, at 904, 944; Robinson, *supra* note 6, at 1338.

114. Robinson, *supra* note 6, at 1314.

115. *Id.* at 1339.

116. *Id.* at 1340-1343.

117. *Id.* at 1335, 1338.

118. *Id.* at 1350.

119. *Id.* at 1339 (citing Jean Guccione, *The Whole World's Watching*, 82 Cal. Law 33 (1994)).

120. *Id.* at 1341.

121. *Id.*

122. *Id.*

“anonymity.”¹²³ In civil trials, Morris explains, Federal Rule of Civil Procedure 10 (a) instructs the parties to list their names on the complaint.¹²⁴ However, case law shows judges permit defendant anonymity during situations with “constitutional overtones.”¹²⁵ In determining this inquiry, courts apply a three-part test to balance the plaintiff’s privacy rights with the “presumption of openness”: “(1) plaintiffs challenging governmental activity; (2) plaintiffs required to disclose information of the utmost intimacy; and (3) plaintiffs compelled to admit their intention to engage in illegal conduct.”¹²⁶ Morris believes using this method will greatly reduce media bias from seeping into the courtroom, as the jury (and even potentially the judge) will have no knowledge as to the identity of the high-profile defendant on trial.¹²⁷

Finally, University of Wisconsin professors Keith A. Findley and Michael S. Scott put forth a proposal to solve the various investigation issues of wrongful conviction, which can be in turn used in high-profile case situations.¹²⁸ According to Findley and Scott, media pressure can give police investigators “tunnel vision” to close a case, in an effort to reassure society of their ability to solve crimes and keep communities safe.¹²⁹ “Unrealistic public and media expectations” can adversely affect the direction of a case starting at the investigation stages.¹³⁰ To avoid these issues, Findley and Scott propose the idea of “assigning an advisory investigator” or “investigative supervisor” to these types of cases.¹³¹ This investigator would be a neutral third party lieutenant or sergeant with extensive experience in “tunnel vision,” and training in the methods and tools to avoid such problems.¹³² The advisor would thoroughly and consistently analyze evidence, provide substantive suggestions to the investigatory team and eventually review all of the findings.¹³³ At the end of the investigation, Findley and Scott recommend having the advisory investigator present an “oral briefing” of the case findings to the

123. Morris, *supra* note 6, at 921.

124. *Id.* (citing Fed. R. Civ. P. 10 (a)).

125. *Id.* at 921 (citing *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981); *Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 685 (11th Cir. 2001)).

126. *Id.* at 923 (citing *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981); *Doe v. Frank*, 951 F.2d 320, 322 (11th Cir. 1992)).

127. *Id.* at 936.

128. Findley & Scott, *supra* note 6, at 323-324.

129. *Id.* at 323 (citing Nat’l Research Council, *Fairness and Effectiveness in Policing: The Evidence* 227-28 (2004)).

130. *Id.* at 324.

131. *Id.* at 381, 384.

132. *Id.* at 323-24, 381.

133. *Id.* at 384.

prosecutor, which holds them accountable to potentially defending their work.¹³⁴

All three solutions to specialized issues, Brazil's Specialized Court System, the ICC and scholar proposals, have parts that could transfer well to a high-profile justice system model.

III. THE AMANDA KNOX, NATALEE HOLLOWAY AND RYAN LOCHTE CASES: PERSONAS, ACTIONS OF THE DEFENDANTS, AND THE MEDIA INVOLVEMENT & TRIAL OUTCOMES

A. *The Amanda Knox Case*

The Amanda Knox Case became a paradigm for an international high-profile trial through Knox's innocent, "white American girl goes abroad" persona, her personal actions during the investigation and during trial, and the media's portrayal of Knox, ultimately affecting her right to a fair trial. Back in 2007, Amanda Knox, a 20-year-old American student studying abroad found herself facing an Italian court for the brutal murder of her British roommate, Meredith Kercher.¹³⁵ Faced with intense media scrutiny and forms of prosecutorial and police misconduct, Knox was found guilty of murder in 2007, subsequently acquitted in 2011, re-convicted in 2013 and then acquitted by the Italian Supreme Court once and for all in March 2015.¹³⁶ Knox still holds a conviction for slander, after falsely accusing Patrick Lumumba of the murder.¹³⁷

1. Persona of Amanda Knox

Amanda Knox's persona played a huge role in making this trial "high profile." As a white, upper class, young American woman, Knox soon became the media's figurehead in a greater storyline of how an innocent American girl became a killer "seductress" abroad.¹³⁸ A Seattle native, with a teacher father and a high-powered, business executive mother, Knox grew up privileged: attending various preparatory schools

134. *Id.*

135. Kristi Oloffson, *Amanda Knox, Convicted of Murder in Italy*, TIME, (Dec. 04, 2009), <http://content.time.com/time/world/article/0,8599,1945430,00.html>.

136. *Id.*; see generally AMANDA KNOX (Netflix 2016). While Knox and Sollecito were acquitted, Rudy Hermann Guede was convicted and sentenced to 30 years in prison, a sentence that was later reduced to 16 years on appeal, *id.*

137. Squires, *supra* note 62. Knox served a total of four years in prison during her arrest and initial conviction, from which she was found to have served the three years for the slander conviction, *id.*

138. Oloffson, *supra* note 135.

as a kid and eventually the University of Washington for college.¹³⁹ During her collegiate studies, twenty-year-old Knox entered University of Washington's study abroad program in Perugia, Italy.¹⁴⁰ Breaking away from her innocent image, Knox embarked on a heavy romance with Raffaele Sollecito, a Perugian local just five days before the crime occurred.¹⁴¹ The Italian media had a field day with Knox's all-American girl persona.¹⁴² The media stamped an Italian scarlet letter on Knox, twisting her romantic side with Sollecito into a ridiculed and provocative personality with the label "Foxy Knoxy," based on her prosecution-proclaimed involvement with "sex, drugs and alcohol."¹⁴³

2. Her Actions

Knox's media attention also spurred from her unusual pre-trial actions, causing the media to grasp onto her eccentric attitude and frame her into a cold-hearted defendant. On November 2, 2007, the Perugian police received a call from Sollecito alleging his girlfriend, Amanda Knox, had discovered her apartment ransacked with blood in the sink, on the bathmat and feces in the bathroom.¹⁴⁴ Police arrived shortly thereafter to kick down Kercher's locked bedroom door, soon discovering a gruesome murder scene.¹⁴⁵ As camera crews arrived and investigators searched the scene, Knox and Sollecito were seen outside the apartment kissing and being affectionate, which many described as "inappropriate for the moment."¹⁴⁶

As police began questioning individuals, they started to suspect Knox and Sollecito's behavior and called them in for questioning.¹⁴⁷ Reports began surfacing that apparently Knox and Sollecito "performed cartwheels . . . in the police station waiting room."¹⁴⁸ Additionally, Knox could not keep her story straight, and "told investigators multiple stories and lies," giving the impression to the world she was a "liar" and possibly hiding something.¹⁴⁹ While these actions were later to be discovered as a result of coercion, the media was on her heels, taking any slip up as a way

139. *Id.*

140. *Id.*

141. AMANDA KNOX, *supra* note 136.

142. *See generally* Gonzalez, *supra* note 24, at 76.

143. *Id.*

144. AMANDA KNOX, *supra* note 136, at 8.

145. *Id.* at 9.

146. *Id.* at 4.

147. *Id.* at 9.

148. Nadeau, *supra* note 32, at 3.

149. *Id.*

to broadcast her culpability.¹⁵⁰ Public opinion swirled around Knox and the case leading up to trial, as her actions fueled the high-profile trial flame. Attorney Joseph Tacopina summed up the scene perfectly, concluding that although Knox was a “victim of bad press, the prejudice was largely fed by [her] own actions.”¹⁵¹

3. Media Involvement in her Case & The Trial Outcome

Because of the intense media attention, public opinion seeped into Knox’s case, causing the media to influence her trial, even though the prosecution’s case against Knox had gaping holes from faulty evidence, specifically, the flawed police procedures and DNA contamination.¹⁵² After receiving “coverage in three countries,” the case shocked the world.¹⁵³

As Knox and Sollecito’s innocence became uncertain, Sollecito was pulled into the police station for questioning.¹⁵⁴ The police became aggressive, even calling Amanda a liar and a “stupid slut, a cow,” eventually confusing him to the point of providing a false account of the night’s events.¹⁵⁵ Knox was subsequently pulled in for 53 hours of questioning over five days, where investigators “slapped [her] behind the head” and refused her right to a lawyer, all while in the midst of an evident language barrier without a translator.¹⁵⁶ After only three short days of a questionably thorough investigation, Knox was arrested and investigators rushed to hold a large press conference.¹⁵⁷ The police chief stated they had “great satisfaction for the Perugian police for having found the answers in such a short time” and it was due to “the press [putting] pressure on [them] and as a result [they] felt the responsibility for a city that wanted a definitive answer right away.”¹⁵⁸

During the Italian trial under the burden of proof “guilt until innocence,” prosecutors painted the story that Knox and Kercher got into a heated argument after Knox solicited Kercher for a “sex game” with

150. *See generally id.*

151. *Id.* at 4.

152. *Id.*; *see generally* AMANDA KNOX, *supra* note 136.

153. Oloffson, *supra* note 135.

154. *See generally* AMANDA KNOX, *supra* note 136, at 10.

155. *Id.*

156. Daniel Bacher, *Amanda Knox on Life After Wrongful Conviction*, ROLLING STONE, (Aug. 10, 2017), <http://www.rollingstone.com/culture/features/amanda-knox-on-life-after-wrongful-conviction-w497051>; *see also* AMANDA KNOX, *supra* note 136, at 10. During this interrogation, Knox falsely accused Patrick Lumumba of committing the crime, *id.*

157. AMANDA KNOX, *supra* note 136, at 12.

158. *Id.*

Sollecito, who was Knox's alleged accomplice to the crime.¹⁵⁹ According to prosecutors, Knox allegedly stabbed Kercher after she denied the invitation, and then had her proclaimed acquaintance, Rudy Hermann Guede, sexually assault Kercher.¹⁶⁰ However, the physical evidence was lacking in comparison to the "sensationalism . . . of the case."¹⁶¹

The first piece of the prosecution's evidence put forth was the alleged stabbing knife, which investigators found in Sollecito's apartment with both Knox's and Kercher's DNA.¹⁶² However, on appeal, it was discovered the knife did not correspond whatsoever with Kercher's wounds.¹⁶³ Additionally, Kercher's DNA present on the knife was a scarce and small amount, which DNA expert Dr. Carla Vecchiotti claimed increases the likelihood of contamination.¹⁶⁴ Because of this suspicion, Vecchiotti pushed for answers on the DNA testing methodology and soon discovered crime lab investigators "examined 50 of Kercher's samples at the same time" because the lab was unable to "shut down because Kercher had died."¹⁶⁵ It was proven on appeal that the knife was undoubtedly contaminated.¹⁶⁶

Additionally, according to the prosecution, Knox's DNA also appeared on Kercher's bra clasp, which was found 46 days after the crime.¹⁶⁷ However, the DNA on the clasp proved, on appeal, to also be contaminated as police improperly searched the scene by rarely changing booties and protective gloves, and even going inside "without protective suits."¹⁶⁸ Furthermore, two other DNA profiles appeared on the clasp, yet "police never noted them as evidence."¹⁶⁹ It became evident that without the clasp and the knife, there was "no trace of [Knox] in the room where Meredith was murdered, and there's no reliable trace of Raffaele in the room where Meredith was murdered."¹⁷⁰

The most unsettling part of the case, however, was the prosecution's quest for a guilty verdict, as they acknowledged scouring the web in an

159. Douglas Preston, *Amanda Knox: Victim of Italian Code Which Puts Saving Face before Justice*, THE GUARDIAN (Oct. 4, 2011), <https://www.theguardian.com/world/2011/oct/04/knox-acquittal-only-possible-verdict>; see also Oloffson, *supra* note 135.

160. *Id.*; see generally AMANDA KNOX, *supra* note 136.

161. Nadeau, *supra* note 32.

162. See generally AMANDA KNOX, *supra* note 136.

163. *The Truth About the Knife*, INJUSTICE IN PERUGIA, <http://www.injusticeinperugia.org/TheKnife.html>, (Last visited Nov. 18, 2017).

164. AMANDA KNOX, *supra* note 136.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

effort to search for “salacious information” on Knox and Sollecito that they could use as evidence.¹⁷¹ From using a Myspace picture of Knox posing next to a machine gun, to showing a picture of Sollecito dressed up as a mummy for Halloween with a meat cleaver, the prosecution did not shy away from portraying the two as killers.¹⁷² Even Knox’s diary was somehow “leaked from prison” to the media revealing how the prison system was testing her for HIV and even listed all of her sexual partners.¹⁷³ While most of the uncorroborated information attempting to portray Knox as a sex-crazed killer constituted inadmissible “character evidence” under the United States Rule 404 of the Federal Code of Evidence, Italy’s criminal procedure allows such evidence to be heard by the “lay judges,” letting them decide if it is “credible.”¹⁷⁴ However, Italian “lay judges,” which are comprised of six citizens and decide the case along with two bona fide judges, can still consult outside sources and even talk about the case with others while the trial persists, as the concept of “jury sequestration” is not fully implemented into the Italian judicial system.¹⁷⁵

While Knox was eventually acquitted, the significant unfairness in the Italian justice system’s handling of Knox’s case “caused widespread international controversy and scrutiny” of their justice structure.¹⁷⁶ In its opinion, The Italian Supreme Court even acknowledged the system’s failure of the case with its “numerous deficiencies, contradictions and manifest lack of logic.”¹⁷⁷ For Knox, the media heavy criminal proceedings and tainted evidence was a recipe for disaster in a system where she was already labeled “guilty.”¹⁷⁸

B. The Natalee Holloway Case

Natalee Holloway’s disappearance in Aruba remains an infamous international puzzle, due to Holloway’s “innocent white American” victim persona, suspect Joran van der Sloot’s actions, and the media flurry surrounding the facts of the case, eventually leading to significant

171. Nadeau, *supra* note 32..

172. AMANDA KNOX, *supra* note 136.

173. *Id.*

174. Danielle Lenth, *Life, Liberty, and the Pursuit of Justice: A Comparative Legal Study of the Amanda Knox Case*, 45 McGeorge L. Rev. 347, 365, 367; *see also* Stephanie M. Hunziker, *Amanda Knox Case Is a Lesson in Understanding the Italian Justice System*, IN PUBLIC SAFETY (Apr. 2, 2015), <http://inpublicsafety.com/2015/04/amanda-knox-case-is-a-lesson-in-understanding-the-italian-justice-system/>.

175. Preston, *supra* note 159; *see also* Hunziker, *supra* note 174.

176. Brede, *supra* note 24.

177. Corte Cost., Cass., Marzo 2013, n. 32598, Foro it. I 2013, 1, 98 (It.).

178. *Id.*

flaws in the investigation and the unfortunate release of Joran van der Sloot.¹⁷⁹ After bizarrely vanishing in 2005 on her high school graduation trip to Aruba, Natalee Holloway's perplexing disappearance and further non-existent prosecution of alleged killer Joran van der Sloot for the murder still remains a mystery to this day.¹⁸⁰ Even more recently, Dave Holloway, spearheaded an 18-month private investigation in "The Disappearance of Natalee Holloway" documentary series.¹⁸¹

1. Persona of Natalee Holloway

Natalee Holloway's victim persona as an angelic and innocent American "princess" who disappeared abroad, sparked immediate media interest, making this a high-profile case.¹⁸² The eighteen-year-old Alabama native went missing after hitting the Aruban bars late at night with friends, and apparently leaving with three men, one of whom was Joran van der Sloot.¹⁸³ Van der Sloot was never tried for the crime and the case was closed in 2008, with his alibi being that he departed from Holloway on the beach after leaving the bar.¹⁸⁴

The news of Holloway's disappearance swept the media, with pictures of Holloway gracing television screens across the world.¹⁸⁵ World news media and journalists flooded the island just days after her missing report.¹⁸⁶ In an essay by Sociologist Paul Mokozycki, he described Holloway's media image as "telegenic" and "commanding attention."¹⁸⁷ Opposite to Knox, Holloway was portrayed in the news as innocently "pure," which some regard had to do with her class, sexuality and age.¹⁸⁸ Although this positive image was effective for Holloway and

179. Joffe, *supra* note 28, at 3.

180. Chris Boyette, *New Clues, Questions in Natalee Holloway Case*, CNN (May 30, 2015, 10:36 AM), <http://www.cnn.com/2015/05/28/world/natalee-holloway-new-tip/>.

181. Maria Perez, *What Happened to Natalee Holloway: Five Facts About Her Disappearance*, NEWSWEEK (Sept. 23, 2017, 7:00 PM), <http://www.newsweek.com/natalee-holloway-joran-van-der-sloot-crime-investigations-670101> (according to leading forensic sources, additional testing on the found bone fragments, which match Holloway's European Descent, took place on October 6th, 2017); *see generally The Disappearance of Natalee Holloway* (Oxygen Aug. 19, 2017-Sept. 23, 2017).

182. *Media Under Fire for Missing Persons Case*, NBC NEWS (Jun. 15, 2005, 7:25 PM), http://www.nbcnews.com/id/8233195/ns/us_news-life/t/media-under-fire-missing-persons-coverage/#.WAQ_4tCshFM.

183. Boyette, *supra* note 180.

184. *Id.*; *see also* Perez, *supra* note 181.

185. Farhi, *supra* note 27.

186. Perez, *supra* note 181.

187. Joffe, *supra* note 28.

188. *Media Under Fire for Missing Persons Case*, *supra* note 182.

her family, the heavy media influence eventually forced Aruban officials to back off the case.¹⁸⁹

2. Van der Sloot's Actions

Joran van der Sloot basked in the media attention and over-exaggerated his “bad boy behavior,” increasing the media attention for his actions.¹⁹⁰ Van der Sloot acted anything but innocent in regards to Holloway's murder, largely due to his voluntary commentary on the case.¹⁹¹ Van der Sloot was in the forefront of television, and even “demanded payment” for when he would confess on television appearances.¹⁹² Occasionally “joking he sold Holloway as a sex slave,” to even being exposed by a hidden camera admitting to killing Holloway and “dumping her at sea,” van der Sloot's actions caused the media spotlight to grow.¹⁹³ He also threatened journalist Peter V. Vries after a critical news story came out.¹⁹⁴

However, it was van der Sloot's money-hungry quest that led to his ultimate arrest and conviction.¹⁹⁵ After avoiding murder charges for years in the Holloway case, van der Sloot eventually was charged in 2010 by a U.S. Federal Grand Jury with wire fraud and extortion for exploiting Beth Holloway's desire for closure, and demanding \$250,000 in exchange for revealing the location of her daughter, Natalee Holloway's, remains.¹⁹⁶ Beth Holloway gave a partial sum to van der Sloot, but he exchanged the cash for false information, and avoided arrest from the authorities by using the cash to flee to Peru.¹⁹⁷ After his escape, van der Sloot boldly sent an email to Holloway family attorney, John Q. Kelly, which finally provided evidence for the extortion charge:

189. Harvey C. Fisher, *U.S. vs. Aruban Justice; Saga of the Missing American Teen*, N. J. LAWYER (Nov. 21, 2005), <https://advance.lexis.com/document/?pdmfid=1000516&crd=bf6c92c4-1165-4f4d-97c0-a53860e4da78&pdccid=urn%3AcontentItem%3A4HR8-NY10-02DG-92B7-00000-00&pdcontentcomponentid=291264&pdteaserkey=sr3&ecomp=q85tk&earg=sr3&prid=ecb7780f-91c5-4859-8211-1e41137e184b>.

190. Nadeau, *supra* note 32.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. See generally *Van der Sloot Indicted on Wire Fraud, Extortion Charges*, CNN, (Jun. 30, 2010, 8:22 PM), <http://www.cnn.com/2010/CRIME/06/30/peru.murder.case/>; see also Jeff Truesdell, *Van der Sloot Will Face US Charges in Natalee Holloway Case*, PEOPLE CRIME (Mar. 10, 2014, 11:45 AM)

<http://people.com/crime/joran-van-der-sloot-will-face-u-s-charges-in-natalee-holloway-case/>.

196. *Van der Sloot Indicted on Wire Fraud, Extortion Charges*, *supra* note 195.

197. Truesdell, *supra* note 195.

Hey, after talking to my lawyer I will not be turning myself in. I did not tell you the truth so the information you have is worthless check it out all you want but it is not true. I will be in trouble if I do tell you the truth . . . I'm sorry for making a fool out of you if that is why [sic] you think. I think you are a nice man and a man of your word and I am most definitely not. Take care. Joran.¹⁹⁸

While in Peru, van der Sloot met Stephany Flores, who allegedly confronted van der Sloot for his involvement in the Natalee Holloway disappearance.¹⁹⁹ Five years to the date of Natalee's disappearance, van der Sloot murdered Flores, leading to him being convicted and locked up to serve a 28-year prison sentence for the murder of the Peruvian woman.²⁰⁰ Van der Sloot will likely serve a further sentence for the extortion charges once he is extradited to the US, hopefully providing justice once and for all for the Holloway family.²⁰¹

3. Media Involvement in the Holloway Case & the Trial Outcome

News of Holloway's disappearance swept the world, in both print and broadcast media. Following the night of Holloway's disappearance, Fox News anchor Greta Van Susteren, picked up the story, with her reporting setting the stage for the media frenzy: "Tonight, a frantic search is under way for a missing Alabama girl."²⁰² From there, news outlets grasped onto the mystery, with even *The New York Times* publishing eight articles about the case.²⁰³

The overwhelming news coverage even led the Holloways to file a lawsuit against the National Enquirer in *Holloway v. America Media, Inc.*, after they published false articles about the burial of Natalee Holloway.²⁰⁴ The complaint suggested that the news corporation's coverage caused the family severe emotional distress after seeing the falsified articles that "described a map . . . [showing] where Natalee's body was located, a 'secret graveyard' where Natalee had been buried alive . . . and the treatment of her corpse."²⁰⁵ Because of the widespread attention to the case, Aruban officials pulled back their investigation in

198. *Id.*

199. Perez, *supra* note 181.

200. *Id.*; see also Truesdell, *supra* note 195.

201. *Id.*

202. Carol Robinson, *Natalee Holloway 10 Years Later: New facts, and Doubts, About the Cases Future*, AL.COM (May 24, 2015, 9:22 AM) http://www.al.com/news/birmingham/index.ssf/2015/05/natalee_holloway_10_years_late.html [hereinafter *Natalee Holloway 10 Years Later*].

203. *Id.*; see also Joffe, *supra* note 28.

204. *Holloway v. Am. Media, Inc.*, 947 F. Supp. 2d 1252, 1254 (2013).

205. *Id.*

fear of worldwide scrutiny and eventual tourism decline as the media seized onto any moment where the “Aruban police tripped up and made obvious mistakes.”²⁰⁶

The small Dutch-operated island, holding just a population of 110,000, soon felt the media pressure as they were cast into the limelight.²⁰⁷ The attention forced the Aruban government to take up their “entire yearly budget,” allegedly spending “millions and millions” to try and investigate the case.²⁰⁸ With the attention and heavy spending, the tourism and local businesses started hitting a slow decline.²⁰⁹ Suddenly, the investigation into Holloway’s disappearance and “requests for information . . . hit a brick wall.”²¹⁰ One business owner even explained that he spoke to the media regarding the case, and he subsequently received a threatening phone call from government agents.²¹¹ According to a well-known Aruban businessman and newspaper owner, Jossy Mansur, officials wanted “to get rid of the case. They want[ed] the case closed . . . [i]t did its damage to the island.”²¹² Likely in part due to this mass attention, the Aruban authorities and law enforcement, from the investigation to the prosecution, “botched the whole thing.”²¹³

For example, the police’s investigation quickly revealed Holloway left the bar with Deepack Kalpoe, Satish Kalpoe, and Joran van der Sloot, who claimed they drove Holloway back to the hotel.²¹⁴ However, video surveillance subsequently revealed that Holloway was never dropped off at the hotel, nor were the men anywhere in sight.²¹⁵ With this highly probative evidence, the Aruban police took a long eighteen days to arrest the three of them, which concerned even American legal scholars.²¹⁶ Holloway’s father expressed his concern with this lapse in the investigation, stating how the length of time before the arrest “disturbed [him]” and the fact the three men “couldn’t get their story straight, [tells] you right there they were the suspects.”²¹⁷

206. Fisher, *supra* note 189; *see also* Perez, *supra* note 181.

207. *Natalee Holloway 10 Years Later*, *supra* note 202.

208. *Id.*

209. *See generally id.*

210. Fisher, *supra* note 189.

211. *Natalee Holloway 10 Years Later*, *supra* note 202.

212. *Id.*

213. *Id.*

214. *The Disappearance of Natalee Holloway*, *supra* note 181.

215. *Id.*

216. *Id.* (Wendy Murphy, CBS news legal analyst, claiming the three men “were allowed to be free for some 18 days. That gave them an awful lot of time to talk to Joran’s father, a judge to be, and get their story straight to some extent and literally be able to go to the police with something that gave cover”).

217. *Id.*

Additionally, the Aruban “Dutch-oriented” legal system, which allows judges to control the judicial process rather than juries, may have played a significant factor in the faulty investigation and likely non-prosecution of van der Sloot.²¹⁸ Because the system is judge-controlled, many argue that Joran van der Sloot’s father, Paulus van der Sloot, a Dutch judge and Aruban judge-in training, largely influenced the investigation.²¹⁹ Furthermore, van der Sloot’s father was a Ministry of Justice member, where he would deal with complaints from people against the police, so he worked closely with the officers and was very influential over the departments.²²⁰ The police commissioner, Jan van der Straaten was even Joran van der Sloot’s godfather.²²¹ It is further alleged van der Sloot’s father had video cameras installed in the interrogation rooms during his son’s interrogations and even altered the transcribed recorded interviews.²²² According to Mansur, many police reports were eventually destroyed, revealing to him that the entire investigation was a “cover-up.”²²³

Lastly, one witness played a huge part in revealing the unwillingness of the prosecution to investigate.²²⁴ Witness Jurrien de Jong, an Aruban local, claimed he saw Holloway and a man run into a construction site at the Marriot hotel, which was under construction at the time.²²⁵ De Jong claims he saw the man carrying a woman’s “limp” body and dump it into a “crawl space.”²²⁶ Although his claims turned out to be mistaken, de Jong tried to convince the prosecution to investigate what he saw.²²⁷ However, Chief Prosecutor Eric Olthof made a statement that, “no construction [existed]. When there’s no construction, Natalee Holloway can’t be buried in the crawl space under the foundation.”²²⁸ When examining Google Earth Satellite images, there are “blurry outlines of structures that could resemble a construction site.”²²⁹ Holloway’s father also confirmed the images, claiming, “I can tell you for a fact . . . there was definitely construction in that area.”²³⁰

218. Fisher, *supra* note 189.

219. Nadeau, *supra* note 32.

220. *Natalee Holloway 10 Years Later*, *supra* note 202.

221. *The Disappearance of Natalee Holloway*, *supra* note 181.

222. *Natalee Holloway 10 Years Later*, *supra* note 202.

223. *Id.*

224. Boyette, *supra* note 180.

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

Even after confessing several times and with all of the circumstantial evidence against him, Joran van der Sloot was never charged in the murder.²³¹ Playing a large part in this was the lack of physical evidence, in particular Holloway's body, as Aruban law requires physical evidence, even if there is a confession.²³² However, twelve years later, Holloway's alleged remains, which were confirmed by a second witness who claimed to have helped van der Sloot dispose of the body, have given the Holloway family new-found hope.²³³ Nevertheless, this discovery was only due to the Holloway's hiring an outside private investigatory team as the family gave up confidence in the Aruban officials after the numerous evident deficiencies.²³⁴ van der Sloot himself even said, "I think that was one of the worst police investigations that ever took place."²³⁵

C. The Ryan Lochte Case

Lastly, in the case of Olympic star Ryan Lochte, his effort to place himself in the media via a television interview led to his ultimate demise. As news stories erupted on Lochte being the victim of a "supposed robbery" during the 2016 Olympic Games in Rio De Janeiro, Brazil, the case generated attention because he had potentially falsified the criminal claims, causing a media frenzy covering the athlete's story.²³⁶ Because of his arrogant athletic persona and time in the Olympics coming to an end, the media destroyed Lochte, and Brazilian officials thoroughly looked into the case to protect their own reputation, and within days indicted him on one count of falsifying a police report, facing a potential sentence of 18 months in prison.²³⁷ Just as of July 15, 2017, the 5th Criminal Chamber of the T.J-R.J. on appeal dismissed Lochte's charges.²³⁸

231. Nadeau, *supra* note 32.

232. *The Disappearance of Natalee Holloway*, *supra* note 181.

233. *Id.*

234. *Id.*

235. *Joran van der Sloot Makes Bombshell Confession in Natalee Holloway Case*, EXTRA TV (Mar. 16, 2016), <http://extratv.com/2016/03/16/video-joran-van-der-sloot-makes-bombshell-confession-in-natalee-holloway-case/>.

236. See generally John Ziegler, *What the Ryan Lochte Fiasco Tells Us about the News Media and Selective Outrage*, MEDIAITE (Aug. 21, 2016, 4:13 PM), <http://www.mediaite.com/online/what-the-ryan-lochte-fiasco-tells-us-about-the-news-media-and-selective-outrage/>; Marquita Peters, *Brazilian Court Tosses Criminal Case Against Olympic Swimmer Ryan Lochte*, NPR (Jul. 15, 2017, 7:37 PM), <http://www.npr.org/sections/thetwo-way/2017/07/15/537462331/brazilian-court-tosses-criminal-case-against-olympic-swimmer-ryan-lochte>.

237. *Id.*

238. *Rio's Public Prosecutor's Office Visits Habeas Corpus for Ryan Lochte*, FOLHA DE S. PAULO (Sept. 15, 2017, 5:55 AM), <http://www1.folha.uol.com.br/esporte/2017/09/1922977->

1. Persona of Ryan Lochte

Unlike Natalee Holloway who had an “innocent” persona, Ryan Lochte faced harsh criticism, which some believe was due to his arrogant male attitude and the winding down of his athletic career.²³⁹ As a white male and “borderline celebrity,” Lochte was an attractive and easily sellable story for the media.²⁴⁰ Additionally, after he participated in four Olympics and won twelve medals, his swimming journey was likely meeting its end.²⁴¹ Although he “hinted” at maybe trying to return for another Olympics, his chances were not looking good.²⁴² For the media, there was no real harm in tarnishing Lochte’s reputation, as he would likely have less “fame” and “relevance” after his swimming career ended.²⁴³ Lochte was the quintessential example of the athletic persona that the media was quick to “tear down” off his Olympic pedestal.²⁴⁴

2. His Actions

Ironically, Lochte’s own action of going to the media himself started the entire criminal investigation ordeal.²⁴⁵ Just a day after the final swimming competition, Lochte exaggerated the supposed robbery story to his mother, Ileana Lochte, who then made comments to *USA Today*, and media reports then took off.²⁴⁶ In less than twenty-four hours, initial reports spread rapidly, prompting State Department officials at the United States Olympic team’s hospitality house to question Lochte about the incident.²⁴⁷ Instead of leaving the alleged robbery event at that, Lochte’s bravado led him to walk right across the street from the house to the beach to give a detailed interview with Billy Bush of the *Today Show*.²⁴⁸ Lochte described the event vividly as follows:

ministerio-publico-do-rio-recorre-de-habeas-corpus-para-ryan-lochte.shtml?utm_source=twitter&utm_medium.

239. See generally Ziegler, *supra* note 236.

240. *Id.*

241. Karen Crouse, *10 Month Ban for Ryan Lochte After Rio Scandal is Largely Symbolic*, N.Y. TIMES (Sept. 18, 2016), https://www.nytimes.com/2016/09/09/sports/olympics/ryan-lochte-suspended-10-months-for-rio-scandal.html?_r=0.

242. Ziegler, *supra* note 236; Crouse, *supra* note 241.

243. *Id.*

244. Robinson, *supra* note 6, at 1317, 1324.

245. See generally Ziegler, *supra* note 236.

246. Maggie Maloney, *A Timeline of #LochteGate*, COSMOPOLITAN (Aug. 19, 2016); see also Crouse, *supra* note 241.

247. Simon Romero, *U.S. Swimmers’ Disputed Robbery Claim Fuels Tension in Brazil*, N.Y. TIMES (Aug. 18, 2016), <https://www.nytimes.com/2016/08/19/sports/olympics/police-say-ryan-lochte-lied-about-gunpoint-assault.html>.

248. *Id.*; see also Maloney, *supra* note 246.

I was with a couple swimmers . . . we got pulled over in our taxi. And, these guys came out with a badge, a police badge, no lights, no nothing, just a police badge. They pulled us over, they pulled out their guns, they told the other swimmers to get down on the ground . . . I refused. I was like, 'We didn't do anything wrong, so I'm not getting down on the ground,' and then the guy pulled out his gun. He cocked it, put it to my forehead he said, 'Get down.' I put my hands up . . . He took our money, he took my wallet. He left my cell phone, he left my credentials.²⁴⁹

After the interview, Lochte took to social media and "tweeted" out to followers thanking them for their support regarding the robbery.²⁵⁰ Just days later, he sent out another tweet, this time with an odd, unrelated subject matter stating, "my hair is going back to its normal color tomorrow."²⁵¹ Clearly at this point, overly confident Lochte showed no signs of taking back the story or recognizing the seriousness of the allegations. Even as Brazilian police reports began to surface about the incident and its potential falsity, Lochte again catapulted himself into the limelight, by once again going to the *Today Show* and speaking with Matt Lauer.²⁵² In this interview, Lauer stated Lochte "softened" details of his story, saying that he had actually stopped at a gas station rather than being pulled over by fake officers.²⁵³ Lochte also cleared up the "gun pointed at my head" claim, saying now it was just "pointed in my direction."²⁵⁴ Lochte's reasoning for the varying stories, he claimed, was due to the stress of the incident.²⁵⁵ To others, it actually looked like Lochte fibbed the story's facts to make it more entertaining, and was now stuck in a "nonsensical story" and "in way over his head."²⁵⁶ However, for the natives of Rio de Janeiro, they saw this as more than just a foolish athlete, and Lochte went quickly from "victim to villain."²⁵⁷

3. Media Involvement In His Case & The Trial Outcome

As details began emerging of Lochte's possible lies, he soon transitioned from Olympic Gold to media gold. Shortly after the airing of

249. Maloney, *supra* note 246.

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

254. Maloney, *supra* note 246.

255. *Id.*

256. Ziegler, *supra* note 236.

257. Neil Gluckman, *Ryan Lochte's Rio Row Puts South Florida Lawyer in the Spotlight*, LAW.COM (Aug. 18, 2016), <http://www.law.com/sites/almstaff/2016/08/18/ryan-lochtes-rio-row-puts-south-florida-lawyer-in-the-spotlight/?sreturn=20170214005102>.

Lochte's second television interview, the media even had a twitter "hashtag" trending titled, "#LochteGate," a spoof on the infamous Watergate scandal, that was soon plastered all over the web.²⁵⁸ After the *Associated Press* reported police investigating the robbery "found little evidence supporting the account," the next morning, a Brazilian judge issued seizure orders of the passports of Lochte along with the two other swimmers, Bentz and Conger, to ensure their stay in the country so police could get to the bottom of the differing stories of the robbery.²⁵⁹ Although Lochte had already taken a flight back to the United States, police invited "dozens of camera crews" to film as they detained the other two U.S. swimmers from the airport amid boarding their flights.²⁶⁰

Immediately after questioning the two swimmers, Brazilian police officials held an internationally televised news conference to describe their account of the incident.²⁶¹ Sharply contrasting Lochte's version, Fernando Veloso, the Brazilian chief of police, described the events as "vandalism" with the swimmers trashing the gas station restroom by breaking a soap dispenser and mirror.²⁶² According to video surveillance, the "cops" Lochte claimed robbed them, were actually security guards who confronted them about the bathroom destruction.²⁶³ Additionally, Veloso described Lochte as fabricating the story, which "damag[ed] Rio's image at its moment on the global stage."²⁶⁴ According to Veloso, "the only truth they told is that they were drunk."²⁶⁵ These harsh and widely broadcasted words soon led to the iconic television shots of the men leaving the police station fighting through the newly formed crowds, being shouted and screamed at as "liars."²⁶⁶ Just hours later, Brazil indicted Lochte and the others for "false reporting of a crime."²⁶⁷ Within a matter of just four days, the Lochte fiasco went from an embellished story to a highly publicized international criminal investigation.

258. Maloney, *supra* note 246.

259. *Id.*

260. Taylor Barnes & David Meeks, *USA Today Sports Investigation Raises Questions about Rio Cops, Lochte Incident*, USA TODAY SPORTS (Aug. 21, 2016, 7:03 PM), <http://www.usatoday.com/story/sports/olympics/rio-2016/2016/08/21/investigation-ryan-lochte-rio-olympics-authorities/89082232/>.

261. *Id.*

262. *Id.*

263. Joyce Hanson, *U.S. Olympic Swimmer Ryan Lochte Indicted in Brazil*, LAW360.COM (Aug. 26, 2016), <https://www.law360.com/articles/833313/us-olympic-swimmer-ryan-lochte-indicted-in-brazil>.

264. Romero, *supra* note 247.

265. Maloney, *supra* note 246.

266. Romero, *supra* note 247.

267. Maloney, *supra* note 246.

Many believe the roots of Brazil's quick rush to indictment stemmed from the months leading up to the Olympic games.²⁶⁸ Brazil found itself in the forefront of media coverage as they encountered scrutiny due to the country's high crime and unsafe infrastructure.²⁶⁹ Additionally, the games in Rio ended up surpassing skeptics' expectations, and actually were described as "memorable" and "iconic."²⁷⁰ As a result, Lochte's story distracted the world from the streak of success Rio was having. For many locals, the issue touched on protecting the "sovereignty and nationalism" of the country with large influx of critical Olympic visitors along with bringing out the "insecurities of the host city" fighting heightened crime, in particular with drug gangs and guns.²⁷¹ A waiter at a local café stated these citizens' feelings perfectly stating, "these guys from abroad think they're superior to us, that they can come here, make a mess, lie about it and stain the image of Brazil."²⁷² The intense coverage even led many to question tensions between Brazil and the U.S., eventually forcing Brazil President Michel Temer's chief of staff to comment, "this episode will not in any way interfere in the relations between the U.S. and Brazil."²⁷³

As soon as the reported story of Lochte's robbery became highly publicized, Brazil, in an effort to defend the country's reputation, launched a thorough investigation, and rushed to charge Lochte, with the world's eyes on Brazil.²⁷⁴ Already with 85,000 police officers and soldiers specifically deployed for the games, the efficiency of the investigation irritated many Rio natives who faced crime daily with far more inadequate means of safety control.²⁷⁵ While the investigation was immediate and extensive, some were suspicious of the "quick characterization" that a crime had occurred, suggesting Lochte and the other swimmers' accounts may have actually been correct.²⁷⁶

For one, Brazilian officials' claims about the gas station damage, specifically the "broken soap dispenser and mirror inside the restroom," were questioned by many independent sources.²⁷⁷ Correspondents from *USA Today* and the *Today Show* visited the "crime scene" just days after

268. See Romero, *supra* note 247; see also Crouse, *supra* note 241.

269. See Romero, *supra* note 247; see also THE INT'L BAR ASS'N, *supra* note 66, at 6.

270. Azadeh Ansari & Steve Almasy, *Ryan Lochte: 'I Over-exaggerated' Olympics Robbery Story*, CNN (Aug. 22, 2016), <http://edition.cnn.com/2016/08/20/sport/us-olympics-swimmers-reported-robbery-future/>.

271. Romero, *supra* note 247; see also Crouse, *supra* note 241.

272. *Id.*

273. Romero, *supra* note 247.

274. Ziegler, *supra* note 236; see also Romero, *supra* note 247.

275. Romero, *supra* note 247.

276. Barnes & Meeks, *supra* note 260.

277. *Id.*

the incident occurred and did not observe any damage to the bathroom whatsoever or even newly installed replacements of the supposed broken items to suggest repair.²⁷⁸ Additionally, the gas station surveillance tapes featuring the three men in the gas station that Brazilian police showcased on the airwaves also became doubted for their authenticity.²⁷⁹ In particular, swimmer Gunnar Bentz stated “he did not see anyone damage the bathroom or even enter it.”²⁸⁰ On the other hand, Brazilian officials stood by the bathroom vandalism claims as their main defense to the incident.²⁸¹ The reason for the differing stories, a Lochte source claimed, is due to “three minutes of the gas station security footage [being] missing.”²⁸² Specifically, the surveillance video time stamps “jump[]” three minutes, missing the portion of the Brazilian claimed “vandalism” that allegedly took place inside the gas station.²⁸³

Furthermore, more third-party investigation work revealed the security guards whom the Rio authorities declared were protecting the station and confronting the swimmers over the “vandalism” were “off-duty prison guards” actually part of law enforcement.²⁸⁴ According to a Rio Judge, João Batista Damasceno, the law in Brazil does not permit anyone, let alone law enforcement, to resolve a payment amount on their own without state intervention and even further, “draw guns to collect” it.²⁸⁵

Lastly, other investigators cast doubt upon the testimony from the post-flight detention of Bentz and Conger as well.²⁸⁶ While Veloso in the press conference claimed the other swimmers’ testimony contrasted Lochte’s lie-filled story, the swimmers’ testimony could not be confirmed because chunks of their accounts, specifically their security guard confrontation, were completely missing from the record.²⁸⁷ The testimony was also taken off the Brazilian authorities’ web pages, and *USA Today* even tried to request the missing portion, and the authorities denied the request.²⁸⁸

278. *Id.*; see also Maloney, *supra* note 246.

279. Maloney, *supra* note 246.

280. Barnes & Meeks, *supra* note 260.

281. *Id.*

282. Maloney, *supra* note 246.

283. Maloney, *supra* note 246; Maria Mercedes Lara, *Source Says Missing 3 Minutes of Video Footage of Ryan Lochte and Teammates ‘Backs Up’ Their Robbery Claim*, PEOPLE <http://people.com/sports/video-of-ryan-lochte-at-gas-station-backs-up-their-robbery-claim-source/>

284. Barnes & Meeks, *supra* note 260; see also Romero, *supra* note 247.

285. Barnes & Meeks, *supra* note 260.

286. *Id.*

287. *Id.*

288. *Id.*

Regardless of the holes in the investigation, two of the swimmers made public apologies and one made a plea deal with the Brazilian authorities to donate \$11,000 to a Brazilian charity in exchange for evading prosecution.²⁸⁹ The Brazilian authorities requested that Lochte, on the other hand, defend his charge of filing a false robbery report in Rio in the Brazilian Sports Court.²⁹⁰ The crime Lochte faced has a maximum sentence of eighteen months in prison.²⁹¹ However, the U.S. and Brazil have a unique “extradition treaty” so, if Lochte were to be found guilty, the U.S. could refuse extradition and punish Lochte themselves without him having to return to Brazil to serve a potential sentence.²⁹²

However, officials believed Lochte had a chance at overcoming the indictment, especially with a defense using the legal definitions of “robbery” and “filing a false police report” to show that Lochte’s alleged crime may not have met the elements.²⁹³ In terms of the robbery (the crux of the false police report), Judge Damasceno explained if the “amount taken [by the security guards] is higher than the value of the damages, with the use of a weapon by the ‘security,’ [then] this is a robbery.”²⁹⁴ Additionally, the “Portuguese-English” language barrier likely played a role in the incident, with Lochte having felt confusion with a security guard pointing a gun at them while demanding money.²⁹⁵ Lochte’s defense team hinted at this “language-barrier” defense, with his attorney, Jeffrey Ostrow, claiming “his client was the victim of a robbery...[because] at the end, they had a gun pointed at them, and they had to give up all their money to police.”²⁹⁶ Regardless, according to Deborah Srour, a Brazilian attorney, the swimmers’ actions did not seem to meet the crime of “filing a false police report,” because “this crime only happens when you go to the police and you make a report” whereas here, “this did not happen.”²⁹⁷ But, the attorney did add that Brazilian authorities are “notorious” for going after defendants in cases like Lochte’s, which is likely evident in the fact they established a court just for trying major sporting event crimes.²⁹⁸ All these trial predictions

289. Ansari & Almasy, *supra* note 270.

290. Hanson, *supra* note 263.

291. *Id.*

292. *U.S. Swimmer Lochte’s Legal Troubles Mounting in Brazil with Charge of False Reporting*, CHI. TRIB. (Aug. 25, 2016), <http://www.chicagotribune.com/sports/international/ct-rio-police-charge-lochte-20160825-story.html>; *see also* Hanson, *supra* note 263, at 1.

293. Barnes & Meeks, *supra* note 260.

294. *Id.*

295. *Id.*; Romero, *supra* note 247.

296. Gluckman, *supra* note 257.

297. Barnes & Meeks, *supra* note 260.

298. *Id.*; Hanson, *supra* note 263.

proved true, as Lochte's charges were eventually overturned on appeal, with the 5th Criminal Chamber of the T.J.-R.J. citing that "Lochte's robbery claim did not constitute the filing of a fake report" and while "Lochte lied about the assault in an interview with 'NBC'" he did not lie to the police.²⁹⁹ Lochte's team expressed satisfaction with the ruling noting the court's "acknowledg[ment] that [Lochte] committed no crime while in Brazil."

The Lochte case proves to be a quintessential example of a quick rush to indictment based on an investigation with alarming evidence holes, all stemming from just one media interview gone wrong. Irrespective of criminal charges, Lochte will still endure long-term consequences from the incident, including the potential loss of sponsors, such as Speedo, Polo Ralph Lauren, and Airweave, facing a ten-month swimming suspension from domestic and international competitions, and a prohibition from participating in the 2017 World Championships.³⁰⁰ When asked about the incident, Lochte summed up the entire ordeal with a fairly succinct and accurate quote, stating "if I hadn't exaggerated the story or told the entire story, none of this would have happened."³⁰¹

IV. USING A HIGH-PROFILE JUSTICE SYSTEM MODEL IN DOMESTIC STATES

All three cases involving Amanda Knox, Natalee Holloway and Ryan Lochte encompassed varying degrees of criminal procedure errors, and some may argue even reached standards of human rights violations including "the right to a fair trial," "lack of effective investigation" and even "non-enforcement."³⁰² Although each state has the principle of domestic sovereignty to handle their own criminal matters themselves, Italy, Brazil and Aruba still have a greater international responsibility to hold themselves accountable to the "jurisdiction to prescribe rules," and even more so, to the UN's declaration that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."³⁰³ All three states, Italy, Brazil and Aruba

299. Peters, *supra* note 236; *see also* Rio's Public Prosecutor's Office Visits Habeas Corpus for Ryan Lochte, *supra* note 238.

300. Ansari & Almasy, *supra* note 270; Crouse, *supra* note 241.

301. Ansari & Almasy, *supra* note 270.

302. The European Court of Human Rights, *supra* note 57, at 1-2.

303. Williams, *supra* note 41 at 11; *see also* THE LAWYER'S COMMITTEE FOR HUMAN RIGHTS, *supra* note 50, at 1.

(operating under the Kingdom of the Netherlands), are member-states to the UN, so they should be held liable as a whole to this rule.³⁰⁴

Even more so, all three states have ratified treaties that prescribe them to human rights courts: Italy and Aruba (Kingdom of the Netherlands), with the European Court of Human Rights and Brazil with the Inter-American Human Rights Court.³⁰⁵ Thus, each state also has human rights obligations to abide by.³⁰⁶ Regardless, states should proactively implement a truly neutral forum that would better serve high-profile cases such as these before they commit human rights violations. By each state implementing a high-profile justice system replicating the methods of the “Brazil Specialized Court System,” the ICC and American Scholar proposals, both the individual defendant and domestic state would benefit.³⁰⁷

Using a high-profile justice system to handle high-profile, international cases such as the Amanda Knox, Natalee Holloway and Ryan Lochte cases, would help ensure more fair and just proceedings by eliminating the intrinsic biases in high-profile matters the untrained judges and investigators often have had in these cases. Because of the overwhelming media attention received, the cases became saturated with inefficient investigations, diminishing burdens of proof and overeager prosecutors, which overshadowed the right of each foreign defendant to receive a fair trial, and for the case to receive a thoroughly adequate investigation.³⁰⁸

For these states, the worldwide media attention ultimately put pressure on their law enforcement to act quickly to get justice for the crimes, often ignoring the lack of evidence and affecting their ability to fully investigate the cases.³⁰⁹ In the Holloway case, Aruba faced negative international media attention that adversely affected their tourism economy, and may have found it actually beneficial to refer this case to a

304. *Member States*, UNITED NATIONS, <http://www.un.org/en/member-states/> (last visited Mar. 20, 2017); *See generally* Harmannus Hoetink, *Aruba*, ENCYCLOPEDIA BRITANNICA (Jan. 4, 2017), <https://www.britannica.com/place/Aruba>.

305. The European Court of Human Rights, *supra* note 57; *see also* *Member States*, ORG. OF AM. STATES, http://www.oas.org/en/member_states/default.asp (last visited Mar. 20, 2017).

306. *Id.*

307. *See generally* Irvine et al., *supra* note 6, at 1-3; *see generally* *How the Court Works*, *supra* note 6; *see generally* Robinson, *supra* note 6, at 1338; *see generally* Morris, *supra* note 6, at 920; *see generally* Findley & Scott, *supra* note 6, at 384; *see generally* *TJ do Rio creates Special Judge*, *supra* note 67.

308. *See generally* Oloffson, *supra* note 135; *see generally* Barnes & Meeks, *supra* note 260; *see generally* Nadeau, *supra* note 32.

309. Nadeau, *supra* note 32

justice system specializing in and trained in high-profile protocols, in place of their traditional court system.³¹⁰

Additionally, it may be more cost effective for the states to have a neutral forum for high-profile trials. For example, the OJ Simpson trial cost Los Angeles County alone nine million dollars, likely in part due to the high costs of handling a sequestered jury.³¹¹ As for Italy, the high expenses associated with holding four high-profile trials can become costly.³¹² In addition, Amanda Knox's decision to file a civil lawsuit against Italy alleging human rights violations could potentially cost the country even more than the original trial ordeal itself.³¹³ With a judge-based, specially trained high-profile forum, Italy could avoid these exorbitant costs.³¹⁴ While the cost to implement such a system might be initially high for a state, the long-term benefits would be great, allowing the state to avoid potential human rights violation sanctions and declines in economic or tourism revenue. Putting a high-profile case in a detached forum specifically designed and trained to deal with bigger "crisis" situations could help ensure a universal standard without any infiltration of media bias.³¹⁵

A. *The High-Profile Justice System Model*

The ideal high-profile justice system model would consist of aspects from Brazil's Specialized Court System, the ICC and the American scholarly solutions. This insulated and specialized model would be a step towards achieving a system of heightened neutrality and effective adjudication.³¹⁶

First, the high-profile justice system model would implement a two-step analysis for the jurisdictional inquiry. Like the Brazil Sports Courts' subject matter jurisdiction being specifically limited to "sports-related disciplinary matters and infractions" or the Fan and Great Events Courts'

310. See generally Fisher, *supra* note 189.

311. *O.J. Simpson Civil Trial: The O.J. Simpson Trial, by the Numbers*, USA TODAY (Oct. 15, 1996, 7:40 PM), <http://usatoday30.usatoday.com/news/index/nns062.htm>; see generally Robinson, *supra* note 8, at 1337.

312. Elisabetta Povoledo, *Amanda Knox is Re-Convicted of Murder in Italy*, N.Y. TIMES (Jan. 30, 2014), <https://www.nytimes.com/2014/01/31/world/europe/amanda-knox-trial-in-italy.html>.

313. Clyde Hughes, *Amanda Knox Can Sue Italy Over Murder Trial Misconduct*, *Euro Court Says*, NEWSMAX (May 19, 2016, 10:22 AM), <http://www.newsmax.com/TheWire/amanda-knox-sue-italy-european-court-of-human-rights/2016/05/19/id/729625/>.

314. See generally Robinson, *supra* note 6, at 137.

315. Starr, *supra* note 85, at 1257.

316. See generally Irvine et al., *supra* note 6, at 1; see generally *How the Court Works*, *supra* note 6; see generally Robinson, *supra* note 6, at 1338; see generally Morris, *supra* note 6, at 920; see generally Findley & Scott, *supra* note 6, at 384.

jurisdiction being for “criminal [matters] in sports, cultural events and great events,” the proposed model would implement a similar and particular subject matter jurisdiction to high profile-related matters and infractions.³¹⁷ To classify a matter or infraction as high-profile, there would be a reviewing committee, like the ICC’s “Jurisdiction, Complementarity and Cooperation Division,” that analyzes the persona of the defendant, the defendant’s actions prior, during and after the arrest or charge, and the media involvement in the case.³¹⁸ Additionally, the court would also have a smaller version of the ICC’s “positive complementarity” jurisdiction option for defendants who do not automatically qualify under the court’s jurisdiction, but who want to request “assistance” from the court.³¹⁹

The high-profile justice system model would also have its own “Investigation Division” like the ICC, but with Findley and Scott’s proposal of having an “advisory investigator” that would be required to review the division’s work, and eventually orally brief both the prosecutor and the judge to guarantee enough valid and reliable evidence to proceed.³²⁰ This would ensure avoiding “tunnel vision” of over-eager investigators feeling the need to rush the investigation due to the high-profile focus of the case.³²¹ Once both the judge and prosecutor approve the investigation stage by performing an evidentiary inquiry, only then can the prosecutor bring the indictment.

The court itself would be entirely judge-based, and like the ICC and a Brazilian Specialized Court, with more than one judge to ensure a “checks and balances” system.³²² Similar to the Brazil Sports Courts and Robinson’s proposal, the judges would be nominated by a bar association and then appointed for life by a state official, ensuring no potential election bias.³²³ Using Robinson’s proposal, the judges would be “specifically trained” in high-profile matters by having prior experience on high-profile cases, mock trials and media educational courses.³²⁴ For the defendant in a judge and jury justice system, like Robinson contends, the defendant should still have the choice under due process to undergo a

317. Irvine et al., *supra* note 7, at 1; *see also* Decreto N°. 1978/20 *supra* note 78.

318. *How the Court Works*, *supra* note 6; Brede, *supra* note 24; *see generally* Gonzalez, *supra* note 24, at 56-60.

319. THE INTERNATIONAL CRIMINAL COURT AND COMPLEMENTARITY, *supra* note 106, at 23.

320. *How the Court Works*, *supra* note 6; *see also* Findley & Scott, *supra* note 6, at 381, 384.

321. Findley & Scott, *supra* note 6, at 323-24 (citing Nat’l Research Council, Fairness & Effectiveness in Policing: The Evidence 227-28 (2004)).

322. *How the Court Works*, *supra* note 6; *see also* Irvine et al., *supra* note 6, at 2.

323. Irvine et al., *supra* note 6, at 2; *see also* Robinson, *supra* note 6, at 1339-40.

324. Robinson, *supra* note 6, at 1340, 1342-43.

jury trial, even if they fall within jurisdiction of the court.³²⁵ However, in a judge-only system, the court should follow the Brazil Sports Court model with the defendant having to first go to the high-profile court, then moving outside to a general jurisdiction court.³²⁶ This ensures that the high-profile court is respected and highly regarded by the justice system as a whole.³²⁷

Lastly, as Morris contends, the defendant in the high-profile court should undergo a civil “anonymity” inquiry, in hopes the defendant’s name is removed from the proceedings to ensure absolute neutrality from the adjudicators.³²⁸ To determine this, the court should consider three-factors: “(1) plaintiffs challenging governmental activity; (2) plaintiffs required to disclose information of the utmost intimacy; and (3) plaintiffs compelled to admit their intention to engage in illegal conduct.”³²⁹ Having an anonymous defendant would greatly enhance the chances of a high-profile case avoiding any intrinsic unfairness, especially in an international setting where a high-profile, foreign defendant, like Amanda Knox or Ryan Lochte, is even more noticeable.

Finally, the high-profile court prosecution would still have the same duties in presenting its case, but in this court, would be required to meet the U.S. and ICC strict evidentiary burden of “beyond a reasonable doubt.”³³⁰ Because these cases are so sensitive, the prosecutors should have to meet a higher burden of proof, seeing that the burden in many other high profile cases was consistently and negligently lowered.³³¹ Once the judge makes their ruling and a judgment ensues, there should be a separate, third party Disciplinary Committee, such as the one in the Brazil Sports Court.³³² This would safeguard the case from any preconceived judicial biases toward imposing higher sentences due to the high-profile nature of the defendant.

B. The High-Profile Justice System Model and the Amanda Knox case

In the Amanda Knox case, Knox’s “right to a fair trial” and “lack of effective investigation” were key issues that resulted in her wrongful

325. *Id.* at 1335.

326. Irvine et al., *supra* note 6, at 3.

327. *Id.*

328. Morris, *supra* note 6, at 921.

329. *Id.* at 923; (citing *Doe*, 653 F.2d at 185; *Doe*, 951 F.2d at 322.)

330. *How the Court Works*, *supra* note 6; *see generally* Robinson, *supra* note 6, at 1339.

331. *See generally* Oloffson, *supra* note 135; *see generally* Barnes & Meeks *supra* note 260; *see generally* Nadeau, *supra* note 32.

332. Irvine et al., *supra* note 6, at 1.

conviction.³³³ Not only does the Knox case make it evident that Italy would greatly benefit from having a high-profile justice system, but the European Court of Human Rights' statistics make it clear as well.³³⁴ From 1959-2016, Italy has come in fourth place out of forty-seven countries for having the most judgments "finding violations" in general, and fifth place for having the most judgments involving violations of the defendant's "right to a fair trial."³³⁵

Applying the high-profile justice model to the Knox case, the "Jurisdictional Committee" would likely contend it met the jurisdictional requirements to fall within the high-profile court.³³⁶ First, the case had "high profile-related matters and infractions," with its "sensational" storyline of an American college student going abroad and allegedly killing her roommate.³³⁷ Additionally, her infamous, Italian-alleged persona, "Foxy Knoxy," and her unusual behavior exhibited during the investigation resulted in global media attention, making it undeniably "high profile."³³⁸ Even if Knox did not meet the jurisdictional test, she may have opted for the high-profile model of "positive complementarity."³³⁹ With Knox's personal experience of vicious interrogations, the media's release of and the prosecutor's subsequent use of personal character evidence, Knox may have requested a specialized, high-profile court with solely judges to avoid a bias-clouded, "layperson" jury.³⁴⁰

Furthermore, having an independent, Investigatory Division may have been extremely advantageous to Knox.³⁴¹ The two main "smoking guns" of her initial conviction were the contaminated bra-clasp and knife, which were the result of faulty police procedures.³⁴² Even outside defense investigators later in the appeal stages immediately recognized their evident flaws.³⁴³ Moreover, the prosecution searched for evidence of "salacious information" on the Internet they could use to frame their trial

333. The European Court of Human Rights, *supra* note 57.

334. *Id.*

335. *Id.*

336. *See generally* *How the Court Works*, *supra* note 6.

337. Nadeau, *supra* note 32; *see generally* Oloffson, *supra* note 135.

338. *See generally* Gonzalez, *supra* note 24, at 76; *see generally* Nadeau, *supra* note 32.

339. *See generally* THE INTERNATIONAL CRIMINAL COURT AND COMPLEMENTARITY, *supra* note 106, at 23.

340. *See generally* *How the Court Works*, *supra* note 6; *see generally* Hughes, *supra* note 313; *see* Preston, *supra* note 159; Oloffson, *supra* note 135, at 1; Nadeau, *supra* note 32. .

341. *See generally* *How the Court Works*, *supra* note 6.

342. Oloffson, *supra* note 135; *see generally* AMANDA KNOX, *supra* note 136.

343. AMANDA KNOX, *supra* note 136.

story and ensure a conviction for Kercher’s horrific death.³⁴⁴ Having a neutral investigator that reviewed the findings would have quickly exposed the obvious “tunnel vision” of the police-work and prosecution in Knox’s case.³⁴⁵

Knox may have also preferred a high-profile court with three judges specially trained in high-profile matters rather than just six citizens and two traditionally trained judges who often work with the prosecutor in “fact-finding.”³⁴⁶ The “fact-finding” in the Knox case also involved the prosecution feeding the jury flawed information, such as Knox’s personal diary and the contaminated knife and bra clasp, to bolster their provocative theory that Knox killed Kercher in a sex game.³⁴⁷ Additionally, Italy’s burden on the defendant to prove his or her innocence greatly hurt Knox in a system that already labeled her guilty before the trial even started.³⁴⁸ She may also have chosen to proceed anonymously, due to pre-trial media stories already labeling her guilty and deceptive, which eventually powered the prosecution’s storyline.³⁴⁹ Lastly, Knox may have favored having a third-party disciplinary committee decide her sentencing, as many argue that her sentencing, especially the three-year prison sentence for just slander (although already met with time served), was unexplainably high.³⁵⁰ If this high-profile justice system model had been implemented by Italy, cases like Amanda Knox’s would have greatly benefited.

C. The High-Profile Justice System Model and the Natalee Holloway Case

For the Holloway case, “lack of effective investigation” and “non-enforcement” were the issues that eventually led to the non-conviction of Joran van der Sloot for Holloway’s murder.³⁵¹ For Aruba, which is still run under the Kingdom of Netherlands, the best means of implementing

344. Nadeau, *supra* note 32.

345. Findley & Scott, *supra* note 6, at 323-24 (citing NAT’L RESEARCH COUNCIL, FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE 227-28 (2004)); *see also* Findley & Scott, *supra* note 6, at 381, 384.

346. Hunziker, *supra* note 174; *see also* Povoledo, *supra* note 312; *see generally* Robinson, *supra* note 6, at 1340, 1342-43.

347. Preston, *supra* note 159; *see also* AMANDA KNOX, *supra* note 136; *see also* *The Truth About the Knife*, *supra* note 163.

348. *Id.*

349. Morris, *supra* note 6, at 921; *see also* Gonzalez, *supra* note 24 at 76.

350. Irvine et al., *supra* note 6, at 1; *see also* Squires *supra* note 61.

351. The European Court of Human Rights, *supra* note 78; *see generally* Fisher, *supra* note 189.

a high-profile justice system model might be to have the Netherlands implement the practice, since they have more infrastructure to support it.³⁵² Aruba could use “positive complementarity” to refer the case to a Dutch court with capabilities, thus avoiding any heavy legal costs, tourism decline and negative press.³⁵³ This case would definitely meet the “high profile-related matters and infractions,” as this case featured a shocking story of an American teenager disappearing on the island on her high school graduation trip, resulting in media attention the island had never seen before.³⁵⁴ Additionally, van der Sloot’s consistent “demands [for] payment” in exchange for a confession to the murder brought even more negative attention to the case.³⁵⁵

Also, the high-profile court’s model of having an Investigation Division with a third-party “advisory investigator” would have been highly beneficial in the case, considering van der Sloot’s father had great control over the case with his Ministry of Justice position.³⁵⁶ Moreover, Aruban investigators eventually pulled back their search as a result of the pressure, thus making obvious mistakes, such as waiting eighteen days to arrest the three men when their stories and video evidence immediately conflicted.³⁵⁷ Having a neutral and outside investigator could have helped the case progress more efficiently and avoid “tunnel vision” of the investigators, as they tried to minimize damage to the island’s reputation.

³⁵⁸

The judges in the high-profile justice model, specially-trained in high profile issues, would have also been valuable in the Holloway case, by eliminating the alleged influence van der Sloot’s father has on his judge counterparts.³⁵⁹ In addition, the model’s requirement of having prosecutors and investigators present all evidence directly to the trained judge would have assisted with allegations of evidence-tampering and police “cover-up.”³⁶⁰ Lastly, having van der Sloot potentially proceed

352. Hoetink, *supra* note 304.

353. *See generally* THE INTERNATIONAL CRIMINAL COURT AND COMPLEMENTARITY, *supra* note 108, at 23; *see also* Fisher, *supra* note 189.

354. *See generally* Robinson, *supra* note 6; *see generally* Joffe, *supra* note 28.

355. Nadeau, *supra* note 32.

356. Robinson, *supra* note 6; *see also* Findley & Scott, *supra* note 6, at 381, 384.

357. *The Disappearance of Natalee Holloway*, *supra* note 181.

358. Findley & Scott, *supra* note 6, at 323-24 (citing NAT’L RESEARCH COUNCIL, FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE 227-28 (2004)).

359. Nadeau, *supra* note 32; *see also*, Robinson, *supra* note 6, at 1340, 1342-43.

360. *Natalee Holloway 10 Years Later*, *supra* note 202; *see also* Findley & Scott, *supra* note 7, at 381, 384.

through the case anonymously could have prevented any bias from his father, as the judges would not even know his relation to the case.³⁶¹

D. The High-Profile Justice System Model and Ryan Lochte

Lochte's case immediately fell into the jurisdiction of Brazilian Judge Rubioli's Fan and Great Events Court, as the event involved a "special criminal [situation] in sports...and [a] great event."³⁶² The case of the Olympian even more so belonged in this court, as there were seven additional regional Fan and Great Events courts just created for the Olympics alone.³⁶³ Although the court automatically had jurisdiction over Lochte's case and thus already incorporating the subject matter jurisdiction and trained-judge elements, there could be additional investigation procedures added to the court's model.³⁶⁴

For one, Brazil's Specialized Courts, at least with the Sports Courts or Fans and Great Events Courts, do not have a court specific Investigatory Division nor advisory investigator.³⁶⁵ In the Lochte case, the Rio Chief of Police, Fernando Veloso, was in the forefront of the media, calling press conferences and even allowing news cameras into the airport during the seizure of Bentz and Conger in an effort to defend his country's image for the world to see.³⁶⁶ Having a neutral advisory investigator, with experience in recognizing investigation "tunnel vision" in regards to the media, could have been very beneficial in the investigation stages of the case, as Brazilian authorities rushed to prove the city's swiftness on crime.³⁶⁷ Additionally, an outside investigator could have reviewed the tapes and seen the missing "three minutes of the gas station security footage," which maybe would have reduced the initial charges to begin with.³⁶⁸

Lastly, the Brazilian Sports Court should also implement Morris' proposal of defendant anonymity, especially considering the high regard for sports and sports stars in Brazil.³⁶⁹ Having defendant anonymity in the case would also have benefitted Lochte tremendously, as he already had

361. Morris, *supra* note 6, at 921; *see generally* Nadeau, *supra* note 32.

362. Decreto N°. 1978/20, *supra* note 78.

363. *Aqui as Instituições Funcionam', diz Marcello Rubioli Sobre Caso de Nadadores Norte-Americanos*, AMAERJ, *supra* note 81.

364. Sreeharsha, *supra* note 80.

365. *See generally*, Irvine et al., *supra* note 6, at 1-3.

366. *See* Maloney, *supra* note 246; *see also* Barnes and Meeks *supra* note 260.

367. *See* Findley & Scott, *supra* note 6, at 322-24 (citing NAT'L RESEARCH COUNCIL, FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE 227-28 (2004))

368. Maloney, *supra* note 246.

369. Morris, *supra* note 6, at 921; *see also* Irvine et al., *supra* note 6, at 1.

been labeled by the police and widely publicized as a foreign Olympic star who has come into the country and “damage[ed] Rio’s image at its moment on the global stage.”³⁷⁰ Lochte’s image and brand were definitely tainted by the rush to prosecution, but it seems the Brazilian Specialized Court system eventually played in Lochte’s favor, as his charges were quickly dismissed and regarded as “not constitute[ing] the filing of a fake report.”³⁷¹ It seems as though Lochte’s Olympic status and well-known personality did not cloud the courtroom.

V. CONCLUSION

By looking at the Amanda Knox, Natalee Holloway and Ryan Lochte cases through an analytical lens, it is evident there is a greater, world-wide fascination with high-profile trials. Rooted in popular culture and even becoming the world’s entertainment, these cases were projected onto the television screens and Internet sites for billions of people to see. Moreover, attention to these cases drove international public opinion of the states holding the cases, which in turn influenced their respective domestic criminal justice systems. Furthermore, this effect has even greater potential consequences, with potentially reaching the level of human rights violations, whether that be the violation of a defendant’s “right to fair trial,” like in the Knox case, or “non-enforcement” of a prosecution, like in the Holloway case.³⁷² It is clear this is not just one state’s domestic problem of handling high-profile cases unfairly, but rather, it is a global problem that no state is safe from. As technology advances even more in the decades to come, this problem will only magnify and become an unavoidable reality. By implementing a high-profile justice model more equipped to handle these issues, the problem could be substantially diminished. Thus, it is upon every state, and to their benefit, to hold themselves and others accountable to the U.N.’s statement: “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”³⁷³

370. Romero, *supra* note 247.

371. Peters, *supra* note 236; see also *Rio’s Public Prosecutor’s Office Visits Habeas Corpus for Ryan Lochte*, *supra* note 238.

372. The European Court of Human Rights, *supra* note 57.

373. THE LAWYER’S COMMITTEE FOR HUMAN RIGHTS, *supra* note 50, at 2.