

EXPERT REPORT BY SVEN-ERIK ALHEM

1. My name is Sven-Erik Alhem. My date of birth is 5 April 1942. After graduating in Law from Lund University in 1968, I was admitted to practice in the District Court in Malmo on 1 January 1969. Aside from my time working at the Justice Department (1976-1978) and as administrative chief to the President of the Court of Appeals in Skane and Blekinge (1980-1985), I spent the great majority of my legal career in Sweden working as a Prosecutor. During the 1990s I served as Chief District Prosecutor in Stockholm and later as Director for the Regional Prosecution Authority in Stockholm and then as a Director in Malmo until my retirement on 1 July 2008. Since that time, I have been a lecturer both at Lund University and in several other contexts, and I am also frequently engaged as a social commentator on legal matters.
2. I understand my duties as an expert witness and that the purpose of this report is to assist the court. I can confirm that its contents are true to the best of my knowledge and belief.
3. From the outset, I wish to make clear that my only interest in this case is that justice is done, whether that be the ultimate prosecution and conviction of Mr Assange, or that the criminal investigation be dropped. I am not concerned about the outcome in this particular case; simply that the proper procedures are followed so that justice can be done and be seen to be done.
4. I have been asked to explain, from my legal knowledge and experience, Swedish law and procedure in a number of respects. I set out my considered opinion below.
5. Let me first briefly comment on the remarkable event of the prosecutor, at the outset of the investigation on 20 August 2010, confirming to the media that Mr Assange was considered a likely suspect of rape in Sweden and was remanded in his absence. Such confirmation of the identity of a suspect to the media is, in my view, completely against proper procedure and in violation of the Swedish law and rules regarding preliminary investigations. In accordance with Swedish secrecy and confidentiality laws, confidentiality applies to everything that occurs during a preliminary investigation. The prosecutor, by confirming Mr Assange's

identity as a suspect under investigation for rape at that early stage, therefore acted in breach of these rules - this should never have happened, but there is no remedy for it and the prosecutor has not been disciplined. The confirmation from the prosecution led to the news spreading around the world.

6. I have been following this case closely in Sweden since this unlawful disclosure of the criminal investigation against Mr Assange to the press by the first prosecutor. I am therefore aware of the procedure and chronology of the case. I have also been provided the European Arrest Warrant, the Opening Note of the Prosecution, the Skeleton Argument for the Defence and parts of the Swedish police case file documents provided to Mr Bjorn Hurtig. I have also been informed by Mr Bjorn Hurtig about the efforts made by Mr Assange to be interviewed by the police while Mr Assange was still in Sweden and also later on after having left Sweden for the UK.

Law and Procedure in Criminal Investigations for Sexual Offences

7. I am asked first to set out for the benefit of the court some aspects of Swedish legal procedure in criminal investigations in sexual offence cases.

Sexual offence investigations are to remain confidential until suspect is charged

8. First, under Swedish law investigations as a main rule must remain secret and the Prosecutor must not confirm publicly the identity of suspects under criminal investigation until they are charged with a crime (see SFS 2009:400 Law about Public Access to Information and Security, Chapter 18 and 35).

Rape suspects not entitled to bail

9. Rape suspects are kept in custody awaiting trial and, in my experience, this can take, in extreme cases, many months while matters are further investigated. Sweden has no system of providing security for pre-release detention.

Rape trials held in secret

11. Rape and sexual offence trials are invariably held in secret. There is no unconditional right to a public hearing for criminal defendants in rape cases.

The Criminal Investigation Against Mr Assange

12. From my legal knowledge and experience, when a prosecutor has to consider if

there are sufficient grounds to complete a preliminary investigation regarding rape, it is extremely important that, at a very early stage, the prosecutor obtains the suspect's story and his complete views on the charges. When considering the question of remand in a court of law, it is of course equally important that this information is available as well. Otherwise the grounds for any decision to arrest the suspect may be without sufficient and fair basis. It is also an imperative according to the Swedish legal procedure that the accused shall have the opportunity to respond to the accusations at the earliest possible time when he still remembers the intimate details. According to the information given to me, Prosecutor Ny declined the opportunity to interview Mr Assange after she took over the case on 1 September, despite the fact he remained in Sweden until 27 September 2010 and had been voluntarily interviewed on 30 August 2010 in relation to the three lesser charges then being investigated by Ms Finne.

13. In my opinion, good prosecution practice required that Mr Assange be interviewed about the alleged rape within a week of Ms Ny reviving the investigation, as the prosecutor already had the complainants' allegations and she arranged for the alleged rape victim to be re-interviewed on 2 September 2010. I understand that the prosecutor declined the offers to meet for interview simply because the police officer at the time was sick. This is no excuse for the prosecutor's failure to interview Mr Assange: others could read the file or her assistant could direct them on the questions to ask.
14. It is also of importance to point out the essential prerequisites for completing a preliminary investigation regarding rape, namely so that the prosecutor can responsibly predict that the Court will be able to convict on the evidential level of "beyond reasonable doubt". If sufficient supporting evidence is missing, the Supreme Court of Sweden has ruled that it is not enough that the accuser is more credible than the suspect for the evidential level just mentioned to be considered reached (See decision of the Supreme Court in Sweden NJA 2009 s. 447 I o II and B 2937-10). In regards to the timeline, it is catastrophic that so much time has passed without a very detailed interrogation having taken place with Mr Assange regarding the suspected rape, and for this reason alone I have doubts that he can now be sure of obtaining a fair trial.
15. It should also be noted that extraordinary mistakes were made earlier in the

investigation (which can be placed at the door of the police rather than Ms Ny) because they appear to have interviewed both complainants together and allowed contamination of their evidence. This is not the professional way of making interrogations.

16. Since the rape allegation is essentially built on the complainant's story, the prosecutor should have at every point acted to have Assange give his detailed statement during interrogation. Only then would there be a basis for assessing for whether there was reason to complete the investigation in order to charge him. To use the European Arrest Warrant without first having tried to arrange an interrogation in England at the earliest possible time via a request for Mutual Legal Assistance seems to me to be against the principle of proportionality. This is especially so due to the fact that the criminal suspicion clearly has been hard to assess and if detailed, explanatory and annotated information were to be added to the investigation from the accused himself, the situation regarding evidence might well have been such, that the prosecutor would have found it impossible to produce a charge. In my view, only when it was first shown that it would be impossible to get Assange interrogated in England by using Mutual Legal Assistance from England, should an application for an EAW have been submitted. Since I understand that he has been willing to be interviewed by these means since leaving Sweden, I regard the prosecutor's refusal to at least try to interview him as being unreasonable and unprofessional, as well as unfair and disproportionate.
17. In my opinion, a reasonable and professional prosecutor would have sought to interview Mr Assange in London in order to advance the investigation and in order to find out as soon as possible if there were reasons or not to complete the investigation in order to be able to prosecute and hence to extradite him for prosecution. This would be possible if the British authorities agreed and I see no reason why they would not agree to that course of action. This would have been the best and most appropriate solution in order to conduct the interrogation and to obtain Mr Assange's extremely important evidence. I therefore really cannot understand why the prosecutor has not pursued that course.
18. I understand that Ms Ny has said that Swedish law prevents her from taking this course. There is, however, nothing in Swedish law that I know of to prevent a

prosecutor from seeking mutual legal assistance to have a suspect interviewed.

19. In my opinion, a prosecutor should not seek to arrest and extradite Mr Assange simply for the purposes of questioning as long as other means have not been tried or failed. It should be regarded as a breach of the principles of proportionality to try to have Mr Assange extradited purely for the purposes of questioning him in order to further the investigation. Imagine for a moment that Mr Assange, after having been finally extradited to Sweden, is questioned here and immediately after the interview is released because there are no longer any reasons to continue the criminal investigation based on the evidence. The disproportionate course would at least in such a situation be evident to the whole world, as I see it.

20. I have also been asked about the procedure whereby Claes Borgstrom, representing the claimants, managed to have the investigation resurrected before a new Prosecutor after the investigation was discontinued by Eva Finne, Chief District Prosecutor in Stockholm. I can confirm that this is permitted under Swedish law, despite the fact that neither Mr Assange nor his lawyer were notified or provided the opportunity to participate or make any submissions. Swedish law would not allow any complaint to be raised that this procedure is an abuse of process, no matter how many times the case was dropped and resurrected and no matter how oppressive to the defendant. Nor would it matter that Ms Ny is the person who both makes the decision to revive the rape investigation and then handles that investigation herself. It may still be considered that here, in a sense, she is "judge in her own cause" - having decided to reverse Ms Finne's decision, she may be perceived as having an interest in deciding to charge Mr Assange. At least it is understandable that Mr Assange might have that perception, whether or not it is well-founded.

Signed:


SVEN-ERIK ALHEM

Date:

28 Jan 2011