

Assange & Sweden

WITNESS STATEMENT

BJÖRN HURTIG

Submitted to extradition hearing held 7-8 February 2011
at City of Westminster Magistrates' Court,
Judge Howard Riddle presiding

For additional information, see:
www.nnn.se/nordic/assange.htm

WITNESS STATEMENT

(CJ Act 1967, s.9 MC Act 1980, ss.5A(3)(a) and 5B;

Criminal Procedure Rules 2010, Rule 27)

STATEMENT OF BJORN HURTIG

Aged: Over 18

Occupation: Lawyer

This statement (consisting of 10 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true

Signed.....Dated.....

I, Bjorn Hurtig, of Försvarsadvokaterna Väst AB, Hantverkaregatan 78, Box 12107, SE-102 23, Stockholm Sweden, make this statement and say as follows:-

1. My name is Bjorn Hurtig and I am 45 years old. I am an experienced Swedish criminal trial lawyer, having been admitted to practice in 1995. I graduated in law from Lunds Universitet and am now a partner of a law firm specialising in criminal law. I am in court almost every working day and I have been practicing in the field of criminal law for the past 15 years.
2. I am the defence counsel for Mr. Julian Assange in relation to the criminal investigation against him in Sweden. I submit this witness statement in relation to the extradition proceedings being heard on 7-8 February 2011. This statement confirms and supplements the information I provided for the purposes of Mr Assange's bail application on 15 December 2010, which was annexed to the Witness Statement of Mark Stephens dated 14 December 2010.

Rape Trials in Sweden

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3. It is my considered opinion, based both on my trial experience in Sweden and my experience as Mr Assange's allocated defence attorney that the manner in which Ms. Ny has handled the cases thus far is not in compliance with the concept of a fair trial. I also have further concerns, which I set out below.
4. He will *most certainly* be brought to trial behind closed doors. Notwithstanding various guarantees in Europe of open justice, it is traditional in Sweden for sex offence trials to be heard in secret. This tradition grew up a long time ago, before the war, to prevent the press reporting "immoral" evidence and was later advanced to protect the privacy of complainants and of defendants. There have been a few cases to my knowledge where defendants have tried to lift the secrecy but their applications have always been rejected. In other words, Mr Assange, notwithstanding the avalanche of publicity damaging to him about the prosecution case, will be tried in secret and the public will not be aware of any exposure in the court room of the weakness of that case. Prosecution witnesses need not worry about other witnesses coming forward to refute their evidence because their evidence will not be heard in public.
5. The trial will be heard by a judge and three laypersons who sit with him or her. The three laypersons, appointed by political parties, are often members of the parties that appoint them.
6. I should add that the danger caused by media prejudice is also present at Court of Appeal level, where the hearings will again be in secret.

Trial by media

7. Mr Assange's vulnerability to an unfair trial has come about because of a series of unfair conduct by police and by prosecutors, which has seriously damaged him in public opinion in Sweden. I instance the following matters.
8. The two complaints were made to the police on Friday 20 August 2010. The complainants were not properly interviewed and no questions were asked about their previous links with *Expressen* newspaper or the extent to which they had put their heads together to agree on the allegations they would make. These matters, among others, cried out for investigation yet before any investigation began, a prosecutor told *Expressen* newspaper that Mr Assange

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was being investigated for the crime of rape. This was a serious breach of the Swedish anonymity law because it entitled *Expressen* - followed by every other newspaper and news outlet in the country - to report that my client was a suspected rapist. The news went out throughout the world - a consequence that the Prosecutor, Ms Kjellmand, must have realised would happen. Notwithstanding her serious breach of law and the damage that she has done to undermine this investigation before it started, she has not been disciplined and the Justice Ombudsman has refused to accept a complaint that has been made against her (Exhibit BH1).

9. Some relief was provided for Mr Assange by reports of Eva Finne's decision that there was no evidence to support a rape charge. However, on 24 August 2010, Claes Borgstrom was appointed as lawyer for both complainants. I should explain that in Sweden, victims can have their own lawyer paid for by the state, even before charges are brought or confirmed against their accused.

10. Borgstrom appealed against the dismissal of the rape charge to another prosecutor, Marianne Ny, and she decided both to uphold his appeal and to take over the case herself. The process by which this appeal was decided excluded Mr Assange and his lawyer entirely. They had no right to intervene or argue against it and no one could appear to uphold Ms Finne's decision. This, of course, is a breach of the rule that everyone should be entitled to be heard in relation to matters that affect their liberty or their civil rights. As the Prosecutor to decide that Ms Finne was wrong and that she should reinstitute the investigation, Ms Ny has, by virtue of this procedure, become a judge in her own cause. This is contrary to the well-known principle in the *Hauschildt* case (*Hauschildt v Denmark* (10486/83) [1989] ECHR 7 (24 May 1989)).

Abuse of Process

11. Marianne Ny took over this investigation on 1 September. It is well known and is in fact stated in the Prosecution Manual and the received wisdom of prosecutors, that rape cases must be investigated quickly, among other things because the defendant is almost always put into custody in this kind of case. Sensibly, a new statement was taken from the rape complainant at Ms Ny's direction on 2 September. However, astonishingly she made no effort to

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interview him on the rape charge or to get his side of the story. Eva Finne, pursuing her investigation on the lesser charges, had arranged for Mr Assange to be interviewed on 30 August: he attended voluntarily and answered all questions asked of him by the police. It was therefore obvious to Ms Ny that he was available and willing to be interviewed about the rape allegations after they had been repeated on 2 September. However, she made absolutely no effort to contact him and ask him to deal with it.

12. I telephoned Ms Ny on 8 September after I was appointed to represent Mr Assange and at his request as well as my own judgment I asked her to hear his story. She replied with words to the effect "not right now". I heard nothing more from her and on 14 September I emailed asking her at least to disclose any documents relevant to his case. In the same email, with the intention of hurrying up any interview she required, I asked whether he could leave Sweden.

13. On 15 September, Ms Ny phoned me in relation to my request and I asked her if she could question Mr Assange as soon as possible because he was ready and willing to speak. She refused point blank. I asked why, and she said that the police officer was sick. I pointed out that there were many police officers in Sweden and she could use direct another officer to do the questioning. She replied that there was only one officer that she was prepared to use. Finally, I asked whether Mr Assange could leave Sweden and she said she had no objection. In the following days I telephoned her a number of times to ask whether we could arrange a time for Mr Assange's interview but was never given an answer, leaving me with the impression that they may close the rape case without even bothering to interview him. On 27 September 2010, Mr Assange left Sweden.

14. I note that Ms Ny asserts in her submission to the Svea Court of Appeal that on 27 September she arrested my client in absentia and informed me of this. I have no record of her informing me of this. We were in regular contact during this period about possible dates for Julian to be interrogated, but Ms Ny would not agree to any of my proposals.

15. Finally on 30 September, I was able to speak to Ms Erika Lejnefors, Ms Ny's assistant prosecutor. I passed on to her Mr Assange's offer to return to

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Sweden at his own expense, to be interviewed on 9-10 October so the interview could be conducted on 10 October 2010, which was a Sunday. I pointed out that he had commitments overseas before that date. She declined the Sunday offer because it would involve police working at the weekend. But she said it would be good to have a hearing on the week of the 11th and she would get back to me with a date after speaking with Ms Ny. She phoned me back but she said that she had now spoken to Ms Ny about the prospect of an interview in the week of 11 October and Ms Ny had vetoed the suggestion because "it was too far ahead". I found it astonishing that Ms Ny, having allowed 5 weeks to elapse before she sought an interview with Mr Assange should now decide that it would be "too late" to hear his side of the story if a further week elapsed. I have subsequently seen from the statement that she had made in these proceedings in Sweden that she had decided on 27 September to arrest him in absentia. However, on 30 September I was assured by Erika that inside of this he did not risk being taken into custody.

16. As I set out in my letter (Exhibit BH2), I have - ever since the refusal of an interview on 10 October 2010 - been in fairly continuous dialogue with the Prosecutor's office, offering that Mr Assange would voluntarily undergo interrogation in any number of ways from London. I said that he could answer police questions by telephone, by video link (at his own expense), by Skype or by attending at Scotland Yard's interview suite or at the Swedish embassy in London or by providing an answer on affidavit to written questions. These offers have been made by me with my client's approval. I have never been given a sensible reason by the Prosecutor for rejecting them. It was not until 11 January 2011 that Ms Ny sent me a text message informing me that she could not interview my client in England because of investigative technique requirements. I am informed that Ms Ny has told the press that she is prevented by the law. This is not so.

17. Indeed, as far as I know, Swedish law does not prevent Mr Assange being interviewed in London or by telephone/videolink/Skype etc. These investigative techniques are not prevented by Swedish law and are in fact encouraged by Mutual Legal Assistance procedures, such as the EU Convention on Mutual Legal Assistance in Criminal Matters (2000, C197/01) and Protocol (2001/C326/01). Arrangements can readily be made by a prosecutor in Sweden to obtain Mutual Legal Assistance with the United

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Kingdom, so as to have Mr Assange's side of the story placed on record. The use of these procedures is also specifically mandated in the Prosecutor Manual, the Manual on European Arrest Warrants and the Manual on International Legal Assistance.

18. I have read suggestions that Ms Ny has made in the press that it would be contrary to Swedish law to interview him abroad. This is wrong, because there is no such law and where a prosecutor wishes only to obtain the suspect's side of the story before deciding to proceed with the charge, it seems both unreasonable and disproportionate not to accede to such an offer. I should add that, at one stage, I was told by the assistant prosecutor that they only wanted Mr Assange to come to answer questions and that it was more than likely that the entire matter would be dropped if he did not say anything detrimental to his situation, from which I infer that the evidence against him in this case is very weak. However, when we requested, at the insistence of his lawyers in London, of an undertaking that he would not be arrested, the prosecutor declined.

19. Another reason why it is difficult now for my client to receive a fair trial is that I have not been provided with all the evidence against him, including important exculpatory evidence. A clear example of this is the witness, Goran Rudling, who provided a lengthy statement to the police investigator on 15 September. The Prosecutor's office has never mentioned this despite the fact that it revealed evidence of obvious and crucial significance to the defence, namely that one complainant had acted entirely inconsistently with her story the very day after the alleged assault and had then tried to destroy the evidence. I only know about this because Mr Rudling has contacted the defence. Another example of new evidence which I have not been allowed to see includes new interviews with the complainants. I have been briefly allowed to see other exculpatory evidence but have not been permitted to take copies or to show my client. I consider this to be contrary to the rules of a fair trial. These include text messages to and from the complainants showing that they expected to receive money as a result of making the complaint and I have been shown the text messages in which they talk about contacting *Expressen* - which was the tabloid that extracted the admission from the Prosecutor, in order to blast Mr Assange's reputation. There are references to 'revenge' in the text messages which tie in with a complainant's "revenge" website in

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which she has urged women to lie about men in order to obtain revenge upon them for infidelity. This material is all obviously relevant.

20. Another example of the oppressive behaviour of the prosecution is its refusal to serve any evidence at all which is translated into English. I was provided with a 98 page police file, which I sent to my client's London solicitors but they had to have it translated into English at their client's expense. It contained the vital evidence of the two complainants.
21. A further example of prosecutorial oppression is the following. When I spoke to Ms. Ny about travelling to London to attend the bail hearing on 14 December 2010, she told me, during a telephone conversation, that I could reveal the contents of the remand warrant, but that she did not want me to reveal what I knew about the list of text messages. To support this request she quoted ethical rules for lawyers. Following this, I contacted the Bar Association whose opinion was favourable to my right to reveal all the facts which I had inspected even if these had been brought to my attention during a remand hearing which was held behind closed doors.
22. Another example of efforts to prejudice the media against Mr Assange is the striking fact that it has supplied the newspapers with evidence against him which it has not supplied to me, as his lawyer. Indeed, certain evidence was provided to the media in August/September - months before I received it. I have been refused access to the full file by Ms Ny on the alleged basis that it would prejudice her investigation at a time when she must have known that the police had already provided much of that file to the media.

The Arrest Warrant

23. I have examined the European Arrest Warrant in Swedish and in English. I note that the warrant is described as one for *lagföring*, which is translated into English as 'for the purposes of conducting a criminal prosecution'. The word *lagföring* means, literally, 'legal process' and refers to the entire criminal investigation, leading up to and including prosecution. There is a separate word for 'prosecute' or 'indict': *åta*. Therefore it is not clear from this use of language that the warrant is for prosecution - *lagföring* refers to the whole investigative process - and not simply prosecution.

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24. The Prosecutor, Ms Ny, has consistently and repeatedly stated that she has not yet decided whether to prosecute or not and that she is seeking the warrant in order to question my client. This position was also confirmed by Nils Rekke, head of the legal department at the Prosecutors' Office in an interview with the BBC on 16 December, in which he stated "*No, there is no charge in the sense that the criminal prosecution is still going on and the prosecutor has not yet decided whether to prosecute or not*" (Exhibit BH3).

25. From early September 2010 I have been in regular contact about this case with Ms Ny and her deputy Ms Leijnefors over the question of interviewing my client. I can absolutely assure the court that they have always represented to me that they had made no decision to prosecute him on any of the allegations listed in the warrant. On the contrary, they have maintained that they only want to hear his side of the story and although they were seeking an arrest warrant they did not want to arrest him if he came to Sweden to give them an interview. I refer, in particular, to a matter that Ms Ny has admitted, namely, that Ms Leijnefors informed Mr Hurtig that despite the arrest warrant he would not be sought out if he returned to Sweden voluntarily for an interview and he would not risk being taken into custody. In fact the representation was that he could come in discretely and most certainly return discretely after questioning. Whether true or not, this was certainly the strongest representation that no prosecution process had begun. Both Ms Ny and Ms Leijnefors have always insisted that they have no intention of deciding whether to proceed with a prosecution until Mr Assange is interviewed.

26. This position cannot logically be maintained with respect to the three lesser charges in about which Mr Assange voluntarily attended police questioning on 30 August at a time when they were still under investigation by Eva Finne. Ms Ny took over these cases as well on 1 September by her own decision and it cannot be said that she has gathered any incriminating evidence since. On the contrary, on September 15th, the prosecution received the evidence of Mr Rudling that the complainant had acted inconsistently with her complaint and had tried to destroy evidence exonerating Mr Assange. Moreover on 20th she received evidence from two journalists who well knew the complainant and had observed her relationship with Mr Assange and their evidence was also

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totally inconsistent with the complaint. I have received no request from the prosecutor to reconsider the answers he gave on 30 August or to answer further questions about the lesser offences.

27. I have also been directed to the conduct alleged at box (e) of the EAW, and to the fact that there is no allegation in respect of any of the offences that Mr. Assange did not reasonably believe the complainants were consenting to the contact complained of in each of the four incidents. I am informed by Mr Assange's lawyers that the prosecuting counsel in the extradition proceedings in the UK, will argue that it may reasonably be inferred in each case that the allegation is that Mr. Assange did not reasonably believe he had consent to act as alleged.

28. In this regard, I would draw attention to the fact that on 27 October 2010 the Sexual Offences Commission of 2008 submitted a report entitled Sexualbrottslagstiftningen - utvärdering och reformförslag (Legislation on sexual crimes - evaluation and proposed reforms) (SOU 2010:71) to the Minister of Justice Beatrice Ask. The report evaluates the application of the legislation on sexual crimes introduced in 2005 and proposes additional amendments. "The reasons for a consent based regulation was under consideration by the Committee"...who concluded that reasons for its introduction are "not strong enough to break the approach that has prevailed for a long time".

29. The report specifically compares the provisions of Swedish law with those of English law (citing Professor Ashworth's book at page 125) and rejects the English approach on the basis that it would place the victim at the heart of the criminal investigation. In consequence the Committee declined to propose a rape provision based only on consent and chose to endorse the existing system based on coercion.

30. I would therefore say that it is not implicit in the EAW that the Prosecutor is alleging that Mr Assange did not reasonably believe in consent in respect of each of the four instances. Under Swedish law a prosecutor may investigate a case and even bring it to trial, where there is no, or no sufficient evidence, of lack of consent or of intention to obtain sexual satisfaction against the wishes of the other party.

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31. Finally, I can confirm that Ms. Ny is not the Director of Public Prosecutions, as she is incorrectly described in the English version of the EAW (see page 5). The Swedish word to denote her title is överåklagare and in fact means "Senior Prosecutor" and she is one of a number of senior prosecutors. The Director of Public Prosecution in Sweden (i.e. the most senior Prosecutor in Sweden and the equivalent to the DPP in England, Keir Starmer) is the *Riksåklagaren* - the Prosecutor-General - Mr Anders Perklev.

32. Most regrettably, I have recently had a serious criminal case put in for trial beginning on 7 February 2011. My client faces a long prison sentence if convicted and although I have requested the court is unlikely to move it. However, I would be available to travel to London to give evidence if required on February 21, 22, 23, 25, 28.

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