NORDIC NEWS NETWORK

12 September 2014

Murdering Language In the Name of the Law

The head of the Swedish Bar Association has noted that her country's legal definition of rape "extends to acts which, in normal language usage, would not be called rape, and includes behaviour which has nothing at all to do with threats or violence". As one consequence, WikiLeaks' editor Julian Assange has been stigmatized throughout the world with a violent crime he has not committed.

Consider the following sequence of events: A celebrated journalist from the Antipodes visits an advanced northern country for a seminar relating to his success in exposing great crimes by several nations, especially the United States.

Among the participants is a voluptuous young woman who has seen the famous visitor on television and is hoping to seduce him. For that purpose she has dressed in a manner so alluring and out of place that other participants in the seminar will later comment upon it.

Her hopes of seduction are realized and she invites the visitor to her flat, where they soon discover a mutual enthusiasm for nude wrestling. She is, however, extremely anxious about the risk of infection from men's hands, and therefore requires him to wear surgical gloves during their tussles. This he does willingly.

They engage in several bouts of nude wrestling on her bed during the night, then arise for breakfast and some light-hearted banter. Still naked, they return to bed in the spoon position, with him behind her. By her own later account, she is half asleep — and therefore half awake — when she feels his hands on her body. This time he is not wearing gloves, but she does not object. They then engage in one more consensual bout of nude wrestling and he departs, promising to contact her later.

In the meantime, however, she grows increasingly anxious about the possible consequences of their single bout of gloveless wrestling, and decides that she wants him to be tested for contagious disease. Unable to contact him, she visits a local police station to seek advice and assistance — not to report a crime.

There, the police and prosecutor on duty ignore her intent and issue a warrant for the journalist's arrest. It alleges that the young woman "stated that she has been murdered in her home in that a man has engaged in nude wrestling with her against her will".

In fact, she has stated no such thing, and becomes so distraught upon learning of the arrest warrant that she is unable to continue the interview; it is left incomplete and unsigned. She will later tell friends that she felt "run over by the police and others around her".

The case is referred the next day to a senior prosecutor, who immediately dismisses it as groundless. "There is no suspicion of any crime whatsoever," she declares.

But a few days later, another prosecutor reopens the case at the instigation of a discredited lawyer/politician who somehow gets himself appointed as the young woman's state-funded attorney. Once again, the visiting journalist is placed under investigation for the crime of "less aggravated murder" — which in media and other reports is nearly always shortened to plain and simple "murder".

Asked how that can be possible when the alleged victim herself protests that she has not been murdered, her mysteriously acquired legal representative explains: "That is because she is not a lawyer."

> ***"In that country, you have to be a lawyer in order to know whether or not you have been murdered."***

It is an explanation which prompts a barrister in the suspect's distant homeland to observe sardonically: "In that advanced northern country, you have to be a lawyer in order to know whether or not you have been murdered."

No joke

The foregoing scenario may seem comical or far-fetched. But it closely parallels a very real case, with two exceptions: The activity involved was not wrestling, but sexual intercourse; and the alleged crime is not murder, but rape. The suspect is Julian Assange, editor of WikiLeaks, who was ensnared in a bizarre legal drama when he visited Sweden for a seminar in August of 2010. Four years later the drama is still unfolding, with no end in sight and severe constraints on Assange's freedom.[1]

Although there is no indication that Assange has raped anyone, his name has been linked with that crime in countless news stories, essays, films, commentaries, social media posts, etc. throughout the world. A few examples:

> "Assange says he can't say anything about the allegations of rape…."
> *The Guardian, 2012-12-07*
>
> "[Assange] remains holed up in the Ecuadorian embassy in London, where he has sought refuge to escape likely arrest (on rape charges in Sweden)…."
> *First Post (India), 2012-12-10*
>
> "The two women accused the Australian activist of rape…."
> *Agence France-Presse, 2013-05-22*
>
> "He is avoiding being held to account for allegations of sexual abuse and rape…."
> *Film director Alex Gibney in The Monthly (Australia), 2013-07-01*
>
> "There is no other option for Julian to head to Sweden to face investigation for rape."
> *The Independent (U.K.), 2014-08-18*
>
> "Assange was accused of rape in Sweden…."
> *Telesur, 2014-08-24*

These and millions of similar references are the strange fruit of Julian Assange's brief sexual encounters with two women during his visit to Sweden in 2010. In a manner very like that depicted in the "murder" scenario sketched above, a dubious case against him was first dismissed by a senior prosecutor, then reinstated by another at the instigation of a discredited lawyer/politician.[2]

That such a process could be initiated against the alleged victim's will is made possible by a provision of Swedish law which empowers judicial authorities to act on behalf of women if they are deemed unable to assert their rights due to fear, psychological dependency or some other impediment. In particular, women who are suspected victims of violence cannot be assumed to act in their own best interests; it may therefore be necessary for the state to make decisions on their behalf, whatever they may or may not have to say in the matter.

The prosecutor who reopened the Assange case, Marianne Ny, has been investigating him on suspicion of four crimes. The three allegedly committed against the older of the two women, Anna Ardin, have been effectively discredited by her own words and actions. There are also clear indications that Ms. Ardin has falsified evidence in order to incriminate Assange — a serious crime which the prosecutor has neglected to investigate.[3] In so doing, prosecutor Ny has violated her obligation under Swedish law to carefully consider all evidence which may exonerate the suspect.

Prosecutor Marianne Ny, interviewed on Swedish Public TV

That leaves the single suspected offence against the younger woman, Sofia Wilén, which is also the most serious. In media accounts and elsewhere — including the European Arrest Warrant submitted by Marianne Ny to the British courts[4] — this crime is usually referred to as "rape". But the precise designation in Swedish law is *mindre grov våldtäkt,* which translates literally as "less aggravated rape" and sometimes with the more anglicized "minor rape".

Semantic confusion

Herein lies the semantic confusion by which Julian Assange has come to be known all over the world as a suspected rapist. For, the classification "less aggravated rape" empowers Swedish prosecutors to apply that label to actions that are not regarded as such anywhere else in the world — and probably not even among the vast majority of the Swedish population.

But that is what prosecutor Marianne Ny has done in the Assange case. According to the police interviews of the alleged victim and several witnesses, this is what actually transpired:

Sofia Wilén actively sought the attentions of Julian Assange, dressing and behaving in a manner clearly intended to attract his sexual interest. She invited him to her flat and engaged in repeated acts of consensual sexual intercourse, during which he wore a condom at her request. The following morning they shared a friendly breakfast and returned to her bed. Lying together naked in the spoon position, he initiated another act of sexual intercourse. Sofia testified that she was "half-asleep" but sufficiently alert to ask, "Are you wearing anything?". He replied, "You", which she interpreted to

mean that he was not. (Assange's own account of this episode has either yet to be made or to be made public.) She then said, "You better don't have HIV", to which he replied, "Of course not". She said nothing further and consented to consummation of the intercourse.[5]

This is the encounter which prosecutor Ny has chosen to suspect as an act of "less aggravated rape".[6]

Sending a signal

The category of "less aggravated" rape was added to the Swedish criminal code in 2005 after very little discussion. It was intended to broaden the concept of rape to include sexual acts committed upon individuals in a "helpless state". The principle examples of helplessness cited were inebriation, sleep and handicap.

The strongest pressure for expanding the definition of rape was exerted by advocates of women's rights, both male and female, who objected to the failure of the legal system to consider the rights of women that are subjected to sexual acts while drunk or asleep, for example. Revision of the criminal code was therefore regarded as an important advance by the feminist movement whose strength and influence has steadily increased in Sweden during recent decades.

The expanded definition of rape is intended to protect the rights of women who are in a 'helpless state'.

As explained in an analysis of the revised law by two female police trainees: "With this change, lawmakers will signal that the crime committed is more serious than mere 'sexual exploitation'; and the effect for the [victimized] woman will be that she need not feel any guilt because just she has been subjected to a sexual assault.… The focus will now be on the man and not on the women, which is a step in the right direction.…

"In conclusion, we believe that by broadening the concept of rape, society takes an important stance…. The basic principle of the new law is that every individual in every situation has the right to decide over his or her own body and sexuality, and that an individual's wish not to participate in a sexual act must be unconditionally respected."[7]

There are probably very few in Sweden who would disagree with that basic principle. But it is difficult to grasp how anyone could conclude that Julian Assange is guilty of rape, based on the available evidence as outlined above.

The only way to contrive such a conclusion is to misrepresent the facts, which is what prosecutor Ny appears to have done. Her European Arrest Warrant, for example, specifies the suspected crime as "Rape…. Assange deliberately consummated sexual intercourse with her by improperly exploiting that she, due to sleep, was in a helpless state".

But as Sofia Wilén's own testimony clearly indicates, she was neither asleep nor helpless at the time. It thus seems equally clear that prosecutor Ny is incompetent, dishonest, malicious or some combination of all three. There may be some other, legitimate explanation for her conduct; but after four years, none has been offered.

Early warnings

It might be reasoned that the problem is not so much the revised law, but the prosecutor's misuse of it. However, alarms were raised about the potential risks and abuses of the expanded definition even before it went into effect. Notes the government proposition which formed the basis of the law: "Some of those who have submitted comments [have raised objections]. The Göta Court of Appeal… has pointed out that the traditional meaning of the concept of rape will no longer apply.

"The Swedish Bar Association has also expressed doubts [about the proposed revision] given that the crime of 'rape' will now include acts which are in no way reflected in that designation." [8]

These and other warnings were dismissed, however, and the Swedish parliament approved the revised criminal code by a large margin.

> ***"The crime of 'rape' will now include acts that are in no way reflected in that designation."***
>
> ***— Swedish Bar Association***

The two politicians primarily responsible for the new law were Claes Borgström, Minister of Gender Equality, and Thomas Bodström, Minister of Justice. Borgström is the discredited lawyer who successfully urged prosecutor Ny to reopen the Assange case and got himself appointed as the state-funded legal representative of the two alleged victims. He is currently a law partner of Bodström who, as Minister of Justice, played a key role in the dismal fate of two Egyptian refugees who were seeking political asylum in Sweden; instead, Bodström and his government colleagues turned them over to the CIA which bundled them off to Egypt for torture and kangaroo justice.[9]

That blatant violation of human rights law and ethics is one of many indications that the Swedish government tends to defer to the wishes of the United States, and helps to explain why Assange has refused to return to Sweden without a formal guarantee that he will not be extradited to the U.S. (although it is far from certain that any such guarantee would be honoured by the current government).

Warnings confirmed

It did not take long for warnings about the revised law to be confirmed. The problems it caused were so evident that they were noted by an experienced prosecutor, Rolf Hillegren, who on the first anniversary of the law's passage wrote:

"Previously, everyone knew what a rape was. Today, unfortunately, it is necessary to ask what ***type*** of rape if you want to know what happened. That is because we now have a concept of rape that includes a wide range of behaviour, both with and without violence.

"The reason is that a loud and uncritical opinion has become fixated on the word 'rape' and has succeeded in getting a new law passed in this area. No one seems to have reflected on the consequences, even though they were well known. But now they are starting to become evident in practice." [10]

The Assange case is one example. Others have been suggested by a young woman named Sanna who writes: "That having sex with someone in a 'helpless state' due to inebriation can be called rape is a bit tricky. All over Sweden, thousands of people have drunken sex every day, and it is hard to set the limit for how drunk someone has

to be for it to be regarded as a helpless state. There is a risk that we stop taking responsibility for ourselves and shag around while drunk, then have regrets and report our sex partners to the police (perhaps because we don't dare to admit our unfaithful drunken sex to our husbands, wives or cohabitants).

"That it is unlawful to have sex with someone who is sleeping — I can accept that in certain cases, for example if you do not have a sexual relationship with the sleeping person. But there are many other situations, for example if I have been together with my boyfriend for three years and wake him in the morning with a blowjob, whereupon he reports me for rape.… Entirely too many acts are now called rape. It diminishes the seriousness of real rapes."

Adds another young woman, Kristina: "The case involving Julian Assange is a frightening example of women's freedom from responsibility. 'State feminism' and the rape concept have got out of control. Hell, I can't have sex repeatedly with a man and then decide that this one time, when I was half-sleeping in the morning, he probably raped me. It is horrible that such things can happen in Sweden, which is supposed to be founded on principles of justice. [Ed. note: It is the prosecution, not the half-sleeping young woman, that has chosen to suspect Assange of "minor rape".]

"Even more frightening is that it has led to a formal investigation. Just by reading the police interviews (which contain the "victims'" own words), the picture that emerges is one of two women who felt disappointed because their idol/hero did not pay more attention to them, that he was mediocre in bed, and who then found out about each other and realized that neither was his only girl — or that both may have wished that they would be the love of his life.

"The case involving Julian Assange is a frightening example of women's freedom from responsibility. 'State feminism' and the rape concept have got out of control."

"No wonder that Sweden has become an object of derision throughout the world as a result of this 'rape' story."[11]

That Swedish law is internationally deviant in this regard has been noted by Anne Ramberg, head of the national Bar Association: "We have an extremely broad definition of rape in Sweden. It extends to acts which, in normal language usage, would not be called rape, and includes behaviour which has nothing at all to do with threats or violence. One may have critical views about what Julian Assange has done… but it is not normally understood as rape in other countries."[12]

Nevertheless, as noted above, Assange has been portrayed as a rape suspect in countries all over the world. It is rare that journalistic and other references to the Assange case make the distinction between "rape" and "less aggravated rape" — not even in Sweden. In any event, the word "rape" is so powerfully negative that the addition of "less aggravated" can have little mitigating effect — even if it were generally understood what that modifying phrase is supposed to mean.

In short, Julian Assange has been stigmatized throughout the world as a rape suspect because the Swedish parliament passed a law which applies that label to acts that are "not normally understood as rape in other countries" and, very likely, not even in most of Sweden. It is an abuse of language and logic which is subject to abuse by zealous, incompetent and/or malicious prosecutors, as Assange's predicament demonstrates.

De facto immunity

Marianne Ny's conduct of the case has lately been criticized by several leading judicial experts, mainly on other grounds — especially her obstinate refusal to pursue the investigation by interviewing Assange in London, where he has been granted asylum in Ecuador's embassy.[13]

But none of the criticism has had any noticeable effect, and there is no compelling reason why it should. Prosecutors everywhere are granted broad powers, but Sweden appears to represent an extreme case.

There are few remedies for prosecutorial misconduct. Unlike the norm in most other countries, elected officials in Sweden — including the prime minister and minister of justice — are strictly prohibited from intervening in the administration of public agencies. It is a long-established principle of Swedish government which is generally regarded as an effective obstacle to harmful political influence. But it is based on the assumption that public servants, including prosecutors, will carry out their duties with a high degree of competence and integrity — an assumption which appears to be justified in most cases.

The question is: What to do about someone like Marianne Ny? The public official who is directly responsible for dealing with prosecutorial misconduct is Prosecutor-General Anders Perklev. He, however, has strongly supported Marianne Ny from the outset, and has scolded a member of parliament who had the temerity to question her conduct of the Assange case: "It is quite remarkable that an MP should openly question a prosecutor's decisions in a specific case. It goes against the fundamental separation of powers between legislators and executive authorities in Sweden." [14]

Åklagarmyndigheten/Thomas Carlgren

Prosecutor-General Anders Perklev

Another potential channel for complaint is via the Parliamentary Ombudsman, whose self-defined task is "to determine if government officials and agencies follow the laws and regulations which govern their duties — especially those laws which concern the rights and duties of individuals in relation to society".

In April of this year, retired judge Brita Sundberg-Weitman formally requested the Ombudsman to investigate Marianne Ny's conduct of the Assange case, citing relevant articles of both the Swedish Constitution and the European Convention on Human Rights. The response of Ombudsman Cecilia Renfors: "You have requested an investigation of the Prosecution Authority. Your request does not occasion any measure or statement by me. The matter is closed."' [15]

For these and other reasons, it would appear that prosecutor Ny enjoys immunity for any misconduct she may have committed or will commit in the Assange case. Thereby illuminated is a very dark corner of a society which in many other respects is widely regarded as enlightened.

Questionable motives

The seemingly unjustifiable conduct of Marianne Ny has inevitably aroused speculation about her motives, and two that are plausible have been suggested. One is that she is acting in accordance with the explicit or implicit wishes of her government to assist the United States in capturing Julian Assange. There is much to support that hypothesis.[16]

An alternative explanation is that she is promoting a radical feminist agenda by exploiting the celebrity status of Julian Assange. This is even more plausible[17] — although for anyone who is not familiar with the current political and cultural climate of Sweden, this may be a difficult explanation to credit. The fact is, however, that the feminist movement — despite its numerous factions and divisions — now influences the political agenda in Sweden to a much greater degree than elsewhere.

There is certainly no pressure to correct the linguistic folly that has been incorporated into Swedish law with the expanded definition of rape. On the contrary, there is mounting pressure to further broaden the concept so as to require explicit consent to sexual acts, in order to ensure that "No means no!" Exactly how such consent is to be obtained and validated in practice has yet to be determined, but something of the sort is likely to be adopted.

The current centre-right government has commissioned a public inquiry on the issue. If it is replaced by the centre-left alternative in the forthcoming election on September 14th, the momentum will no doubt continue, as those parties are even more ardent in their devotion to feminist ideals and initiatives.

No matter what may henceforth be decided by Swedish judges, the stigma of "rape" is now indelibly associated with the name of Julian Assange throughout the world.

Meanwhile, Julian Assange is entering his fifth year as a victim of Swedish justice, in the version dictated by prosecutor Marianne Ny. On July 16, an attempt to get his arrest warrant revoked was summarily rejected after a farcical procedure in Stockholm District Court (see Addendum: Correspondence with Judge Lena Egelin).

That decision is expected soon to be reviewed by the Svea Court of Appeal, and there is little reason to expect a different sort of outcome. The same court approved the original arrest warrant in 2010, and the chief judge on that occasion was the court's president. Then as now, the president was Fredrik Wersäll — Anders Perklev's predecessor as prosecutor-general and a former colleague of Marianne Ny. That obvious conflict of interest did not, however, deter Fredrik Wersäll from assigning himself to rule on the appeal — yet another curious feature of Swedish justice at work in the Assange case.

In any event, no matter what may henceforth be decided by the Swedish judiciary, the stigma of "rape" is now indelibly associated with the name of Julian Assange throughout the world.

— *Al Burke*

NOTES

1. For details, see *Assange & Sweden* at: www.nnn.se/nordic/assange.htm
2. See pages 13-32 in *Suspicious Behaviour* at: www.nnn.se/nordic/assange/suspicious.pdf
3. See pages 17-21 in *Suspicious Behaviour*, *ibid.*
4. The European Arrest Warrant is the basis of the Swedish prosecutor's request for the extradition of Julian Assange from the U.K. to Sweden. See pages 34-38 in *Suspicious Behaviour*, *op.cit.*
5. See (a) pages 11-12 in *Suspicious Behaviour*, *op.cit.* and (b) *Police Interviews* at: www.nnn.se/nordic/assange/protocol.htm
6. Since her original, uncompleted interview at the police station, Sofia Wilén has reportedly been interviewed by Marianne Ny on several occasions — presumably in an attempt by the prosecutor to strengthen her scandalously weak case against Assange. But Ms. Wilén's original account has been confirmed by the testimony of her brother and other confidants. Any subsequent alterations of an incriminating nature would invite scepticism.
7. Jenny Eriksson & Maria Wallo, "Den nya våldtäktslagen". Polisutbildningen vid Umeå universitet, 2005-03-22. http://umu.diva-portal.org/smash/record.jsf?pid=diva2:276284
8. Government of Sweden. *Regeringsproposition 2004/04:45*, 11 November 2004. www.regeringen.se/content/1/c6/03/36/68/2f3b2ea1.pdf
9. See pages 24-25 in *Suspicous Behaviour, op. cit.*
10. Rolf Hillegren, "Allt kan inte vara våldtäkt". *Svenska Dagbladet*, 2006-04-01. www.svd.se/opinion/brannpunkt/allt-kan-inte-vara-valdtakt_306608.svd
11. Readers' comments by Sanna and Kristina in response to "Blott Sverige svenska våldtäkter har" by Pär Ström in *Nya Genusnytt*, 2011-02-19. http://genusnytt.wordpress.com/2011/02/19/blott-sverige-svenska-valdtakter-har
12. Lisa Bergman, "'Uppfattas inte som våldtäkt'." *Fokus*, 2011-02-10. www.fokus.se/2011/02/uppfattas-inte-som-valdtakt
13. See "Mounting Criticism of Swedish Prosecution in Assange Case" at: www.nnn.se/nordic/assange/critics.pdf
14. *Ibid.*
15. See "Assange: Still Under Siege in London" at: http://www.nnn.se/nordic/assange/siege.pdf
16. See "Solution to Assange case? Not interested" at: http://www.nnn.se/nordic/assange/joly.pdf
17. See pages 48-49 in *Suspicious Behaviour*, *op.cit.*

Addendum. Correspondence with Judge Lena Egelin regarding the meaning of the word "rape" in Swedish law, etc.

On 16 July 2014, an appeal was made in Stockholm District Court for revocation of the Julian Assange arrest warrant. It was heard by Judge Lena Egelin, who has proclaimed a strong personal interest in promoting clarity in legal language. That is the point of departure for the following correspondence, which also addresses her conduct of and ruling on the appeal.

Note: The original correspondence in Swedish follows this translation.

* * *

12 August 2014

Re: The word "rape"

Dear Lena Egelin,

I have lsarned from the Stockholm District Court's website that you are included in the Media Group which "consists of judges who have made themselves especially available for contacts with the media".

I have also read an article in *Dagens juridik* which includes the following: "Lena Egelin relates that the Swedish courts work systematically with the issue of understandable legal language…. She, herself, consciously avoids words that can cause semantic confusion; or, if she uses them, she is careful to explain what they mean." ("Därför blir det fel i medierna," 2011-10-04)

That is a commendable attitude, and I would be grateful for your opinion of the legal language in Chapter 6 of the Criminal Code: Sexual Crimes. I have discussed that chapter with several legal experts, and all are agreed that it is difficult to interpret.

That applies especially to the third paragraph: "A crime of the sort ["rape"] indicated in the first or second paragraph which, taking the circumstances into account is regarded as less aggravated, is rape and punishable by imprisonment for a maximum of four years."

The question is: How to distinguish between "rape" and "less aggravated rape". News media usually do not do so, for example in their reporting on the Assange case which you dealt with in the District Court on July 16. The suspected crime which prosecutor Ny has designated as "less aggravated rape" is almost always referred to in the media as simply "rape". The general public may therefore by forgiven the perception that Julian Assange is suspected of having performed coitus against the will of the plaintiff "with violence or by threatening criminal action" as specified in the Criminal Code.

That hardly conforms with your reported ambition to avoid semantic confusion. It also links the suspect's name with a crime that is much more serious than the one that actually applies in this case.

I would therefore be grateful for your answers to the following questions:

1. Do you feel that Chapter 6 of the Criminal Code promotes ”understandable legal language” with regard to the word ”rape”?

2. Do you regard it as problematic that mass media usually make no distinction between the designations ”rape” and ”less aggravated rape”?

3. If so, have you and your colleagues in the Swedish courts taken any steps to resolve that semantic confusion which, among other things, can have serious consequences for someone who is suspected and/or sentenced for ”less aggravated rape”?

4. Has there been any discussion within the Swedish judiciary about the semantic confusion that obviously exists concerning the word ”rape” as it is used in Chapter 6 of the Criminal Code and, if so, what conclusions have you drawn?

I look forward to your answers to these questions.

Thanking you in advance,

Al Burke

* * *

13 August 2014

To: Al Burke

Thank you for your interesting questions. As you have understood, I work at trying to simplify the language that is used in judicial rulings. It is an arduous labour, but of course very important, because rulings that are not understood by those to whom they are addressed are not worth very much. My work is primarily concerned with formulation of the reasons given for various rulings.

You raise the question of how crimes are named in legal texts, but that does not fall within my remit. It is the parliament that makes laws and decides how they are formulated. This is done in a lengthy process, during which courts and other public agencies may submit comments and suggestions before the final version of the law is formulated. The courts are then obligated to comply with what is given in the Criminal Code.

Legislation on sexual crimes is much debated, and in recent years it has undergone various changes. One of these is the current distinction regarding the seriousness of the crime of rape, to which you refer. This means that there are three different levels of seriousness; but all three are to be regarded as rape, although with different designations and levels of punishment.

Carl Johan Erikson

Judge Lena Egelin

It is of course important for the media to be aware of the different degrees of seriousness, and to read judicial rulings carefully when reporting on them.

Of course, we judges must also be as precise as possible when we compose our rulings, so that it is clear what type of rape is involved.

There are of course other crimes, including fraud and physical assault, with varying degrees and associated designations; so the problem of achieving clarity is not limited to sex crimes.

Yours sincerely,

Lena Egelin, Judge
Stockkholm District Court

* * *

20 August 2014

Dear Lena Egelin,

Thank you for your response, dated 13 August 2014, to my questions regarding the word ”rape” in Swedish law. Unfortunately, it is necessary to point out that it does not answer the questions that I posed.

You write, for example, that ”It is the parliament that makes laws and decides how they are formulated.” I was aware of that, actually. But it is the justice system that applies the law; and for that to be done properly, it is necessary to have a clear understanding of what the law means.

Also, you have expressed a personal ambition to promote clearly understandable language in this context — both in the *Dagens juridik* article to which I referred, and now when you write: ”I work at trying to simplify the language that is used in judicial rulings. It is an arduous labour, but of course very important, because rulings that are not understood by those to whom they are issued are not worth very much.”

One may therefore ask why you did not take the opportunity to give clear answers to that four specific questions that I posed. Instead, there are some general observations about the crime classisfication of ”rape”, which for the most part repeat what I had written. One is also informed that ”the problem of achieving clarity is not limited to sex crimes” — yet another observation that does not have much to do with the questions that were asked.

That approach bears resemblance to your ruling in Stockholm District Court on July 16 concerning the appeal to revoke the Julian Assange arrest warrant. In that procedure, Assange’s attorneys devoted some 90 minutes to the presentation of several arguments for revocation of the warrant. Prosecutor Marianne Ny’s response lasted less than three minutes, and was anything but a valid refutation of those arguments.

Upon reading your decision, one gets the impression that the situation was just the opposite. The defence attorneys’ arguments are rejected without any serious explanation, while the prosecution’s comparatively sparse arguments are accepted with a similar lack of explanation. The ruling merely states that, ”The District Court does not find” that the prosecutor has erred.

From this one may reasonably draw the conclusion that the prosecutor understood that she eed not exert herself. The outcome was preordained, and neither she nor you needed to take any particular notice of the arguments presented by the defence attorneys. The ruling is thus a clear demonstration of arbitrary power.

I see a parallel between your treatment of Julian Assange and the contents of the video excerpt that was presented as evidence by defence attorney Per Samuelsson. The video was a sample of the serious threats that have been directed against Julian Asssange from the United States, with one absurdity after the other. For example: Assange is "a high-tech terorrist"; he is a criminal "who ought to be hunted down and grabbed"; what he is doing constitutes warfare and "information terrorism"; he "ought to be assassinated"; under Assange's leadership, WikiLeaks has carried out "an attack on the international community"; etc.

It is evident that these powerful individuals — among them former foreign minister and expectant presidental candidate Hillary Clinton — understand that they can spew out any sort of idiocy and unpleasantness without having to worry about negative consequences.

That is how it is with power, and I am far from alone in discerning the same tendency — albeit not so violent — in the Swedish justice system's treatment of Julian Assange.

If one considers your ruling concerning the arrest warrant and your evasive response to my questions on the meaning of the word "rape" in Swedish law, one question of particular interest suggests itself: Do you really believe that people do not realize that such texts lack credibility, and may even be perceived a false and misleading?

I have pondered over possible explanations of how and why someone could expose him- or herself in such a manner, and have arrived at the following alternatives:

The stupidifying effect of power
I have no doubt that you possess the degree of intelligence necessary to formulate a rational and well-founded judicial ruling or response to my questions about the word "rape". The question thus becomes: Why did they turn out like they did? One possible explanation is that power often has a stupidifying effect on those who exercise it. When one does not need to consider the views and perspectives of others, it can easily happen that one develops a habit of ignoring them, without investing very much thought in what one does and why. One may even believe in one's own propaganda.

One may be expected or obliged to explain behaviour and decisions; but the greater the power, the less the demands on the quality of the explanation. People have to accept it no matter what. That reality is painfully evident in relation to Mariann Ny's handling of the Assange case.

Groupthink
Those who administer the justice system — police, prosecutors, judges — comprise relatively small occupational groups with substantial power in society. That there is a tendency for such a group to develop an intellectually limiting *esprit de corps* is well known. It can give rise to subsconscious patterns of thought and behaviour which constitute another form of stupidity. People outside the group may criticize and complain; but they may easily be dismissed — politely and sympathetically, if one likes — as long as one gets confirmation from the group and its culture. Also, one must to the fullest extent possible shield colleagues from criticism and other inconveniences.

Dishonourable intent
As is well known, conscious attempts to obscure and mislead also occur. There can be many reasons. The Assange case has aroused suspicions that pressure from the United States lies behind the remarkable behaviour of the prosecutor and courts. The longer the "circus" continues, the stronger such suspicions become. "Circus" is, by the way, a designation applied to this case by a number of legal experts, including the secretary-general of the Swedish Bar Association.

Careerism
It is hardly a secret that the Assange case is a political minefield for all public officials that have to deal with it, and the government need not directly interfere in the judicial process in order to influence it. It is therefore far from unthinkable that ambition and/or anxiety for careers has played a significant role in the handling of the case.

These are suggestions for possible explanations for both your shoddy decision in the Assange case and your dodging of my questions. Whether some, none or all apply, I cannot know for certain. But that all four explanations are plausible is fairly evident—at least for anyone who does not belong to some occupational group within the justice system.

Therein lie serious problems relating to public trust in the justice system and democracy. Please think about those problems and what would be required to solve them.

Yours sincerely,

Al Burke

[Note: There has been no further response from Judge Egelin as of 12 Sept. 2014. According to the Swedish Courts' website, she is no longer in the Media Group.]

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Bilaga: Brevväxling med chefsrådman Lena Egelin om bl.a. betydelsen av ordet "våldtäkt" i svensk lag

12 augusti 2014

Ämne: Ordet "våldtäkt"

Bästa Lena Egelin,

Jag har läst på Stockholms Tingsrätts webbplats att du ingår i Mediegruppen som "består av domare som särskilt åtagit sig att vara tillgängliga för kontakter med media".

Dessutom har jag läst en artikel i Dagens juridik där det bl.a. står: "Lena Egelin berättar att Domstolsverket arbetar målmedvetet med frågan om en förståelse av det juridiska språket.… Själv undviker hon medvetet ord som kan skapa språkförvirring, eller om hon använder dem är hon noga med att förklara vad de innebär." ("Därför blir det fel i medierna." Dagens juridik, 2011-10-04)

Detta är en lovvärd inställning och jag vill gärna få veta din åsikt om det juridiska språket i Brottsbalkens 6 kap. Om sexualbrott. Jag har diskuterat detta kapitel med flera juridiska sakkunniga, som alla varit överens om att texten är svårtolkad.

Det gäller inte minst tredje stycket: "Är ett brott som avses i första eller andra stycket med hänsyn till omständigheterna vid brottet att anse som mindre grovt, döms för våldtäkt till fängelse i högst fyra år."

Frågan är hur man skall skilja mellan "våldtäkt" och "våldtäkt, mindre grovt". Det gör oftast inte nyhetsmedierna i sin rapportering om t.ex. Assange-fallet, som du i Tingsrätten behandlade den 16 juli. Det misstänkta brott som åklagare Ny har rubricerat som "våldtäkt, mindre grov" refereras nästan alltid i medier som helt enkelt "våldtäkt". Allmänheten kan därmed förlåtas om den uppfattar det så som att Julian Assange är misstänkt för att enligt Brottsbalken "med våld eller genom hot om brottslig gärning" ha utfört samlag mot målsägandenas vilja.

Det stämmer knappast med din rapporterade ambition att undvika språkförvirring, samtidigt som den misstänktes namn förknippas med ett brott som är avsevärt grövre än det som egentligen gäller.

Jag vore således tacksam att få dina svar på följande frågor:

1. Anser du att 6 kap. i Brottsbalken främjar "förståelse av det juridiska språket" när det gäller ordet "våldtäkt"?

2. Anser du att det är problematiskt att massmedierna oftast inte gör någon skillnad mellan rubriceringarna "våldtäkt" och "våldtäkt, mindre grov"?

3. I så fall har du och dina kolleger inom Domstolsverket antagit några åtgärder för att råda bot på denna språkförvirring, som bl.a. kan få allvarliga konsekvenser för den som är misstänkt och/eller dömd för "våldtäkt, mindre grov"?

4. Har det över huvud taget inom Domstolsverket funnits någon diskussion om problemet med den språkförvirring som uppenbarligen råder kring ordet "våldtäkt" så som det används i Brottsbalkens 6 kap., och i så fall vilka slutsatser har ni kommit fram till?

Jag ser fram emot dina svar på dessa frågor.

Tack på förhand,

Al Burke, redaktör
Nordic News Network

* * * * *

Subject: Språket i lagtext
Date: 13 Aug 2014
From: Egelin Lena - TSM <Lena.Egelin@dom.se>
To: editor@nnn.se <editor@nnn.se>

Tack för dina intressanta frågor. Jag arbetar som du förstått med att försöka förenkla det språk som används i domar och beslut. Det är ett mödosamt arbete men förstås mycket angeläget eftersom domar som inte den som får dem förstår är ju inte mycket värda. Mitt arbete kretsar främst kring utformningen av motiveringen till olika domar och beslut.

Du berör valet av hur ett brott namngetts i lagtexten och detta är ingenting som jag förfogar över. Det är riksdagen som stiftar lagen och bestämmer hur lagen ska utformas. Detta sker genom en lång process där domstolarna och andra organ får lämna synpunkter innan det slutligen bestäms hur lagen ska utformas. Domstolarna är sedan bundna att följa det som anges i brottsbalken.

När det gäller sexualbrottslagstiftningen är den ständigt omdiskuterad och den har under senare år genomgått olika förändringar. En av dessa är den nuvarande gradindelningen av brottet våldtäkt som du nämner. Det innebär att det finns tre olika svårighetsgrader av våldtäkt, alla tre fallen är dock att anse som brottet våldtäkt men de har olika beteckningar och olika straffskalor. Det är förstås viktigt att media är medveten om de olika svårighetsgraderna och läser domar och beslut noga när det skrivs olika referat. Vi domare ska förstås också var så tydliga som möjligt när vi skriver våra domar och beslut så det klart framgår vilket fall av våldtäkt det rört sig om.

Det finns ju flera andra brott, tex misshandel och bedrägeri, där det finns olika svårighetsgrader och beteckningar så svårigheterna kring tydligheten är inte begränsad till sexualbrotten.

Med vänlig hälsning
Lena Egelin
Chefsrådman
Stockholms tingsrätt, avd 1

* * * * *

Subject: Re: Språket i lagtext
Date: 20 Aug 2014
From: Al Burke <editor@nnn.se>
To: Egelin Lena - TSM <Lena.Egelin@dom.se>

Bästa Lena Egelin,

Tack för ditt svar daterat 13 augusti 2014 på mina frågor kring betydelsen av ordet "våldtäkt" i svensk lag. Tyvärr måste det konstateras att det inte ger svar på de frågor som jag ställde.

Du skriver till exempel att "Det är riksdagen som stiftar lagen och bestämmer hur lagen ska utformas". Det kände jag faktiskt till. Men det är rättsväsendet som tillämpar lagen, och för att det skall gå rätt till måste man ha en tydlig uppfattning om vad den betyder.

Dessutom har du uttryckt en personlig ambition att i detta sammanhang främja klarspråk — både i den artikel i Dagens juridik som jag hänvisade till, och nu när du skriver: "Jag arbetar som du förstått med att försöka förenkla det språk som används i domar och beslut. Det är ett mödosamt arbete men förstås mycket angeläget eftersom domar som inte den som får dem förstår är ju inte mycket värda."

Då får man fråga varför du inte tog tillfället i akt att lämna tydliga svar på de fyra specifika frågor som jag ställde. I stället blev det några allmänna iakttagelser kring brottsrubriceringen "våldtäkt", som i stort sett bara upprepar vad jag själv hade skrivit. Dessutom får man veta att "svårigheterna kring tydligheten är inte begränsad till sexualbrotten" — en upplysning som inte heller har mycket att göra med de frågor som ställdes.

Tillvägagångssättet har vissa likheter med ditt beslut i Stockholms Tingsrätt den 16 juli beträffande omprövningen av häktningsordern mot Julian Assange. Vid denna förhandling ägnade Assanges advokater närmare 90 minuter åt att presentera ett antal detaljerade argument för att upphäva häktningsordern. Åklagaren Marianne Nys replik varade i mindre än tre minuter och var allt annat än ett sakligt bemötande av deras argument.

När man läser ditt beslut får man dock intrycket att förhållandet var det motsatta. Försvarsadvokaternas argument avfärdas utan någon vidare förklaring, medan åklagarsidans jämförelsevis kortfattade argument accepteras utan någon vidare förklaring. Det står bara att "Tingsrätten finner inte att" åklagaren har fel.

Av detta kan man rimligen dra slutsatsen att åklagaren förstod att hon inte behövde anstränga sig. Utgången var förutbestämd, och varken hon eller du behövde ta någon vidare hänsyn till försvarsadvokaternas argument. Beslutet är således en tydlig uppvisning i maktspråk.

Enligt min uppfattning finns det en parallell mellan er behandling av Julian Assange och innehållet i det videoklipp som försvarsadvokat Per Samuelsson spelade upp vid förhandlingen. Videon var ett axplock på de allvarliga hot som från USA har riktats mot Julian Assange, med den ena absurditeten efter den andra som till exempel: Assange är "a high-tech terorrist"; han är en brottsling "who ought to be hunted down and grabbed"; det som han håller på med är krigföring och "information terrorism"; han "ought to be assassinated"; under Assanges ledning har WikiLeaks utfört "an attack on the international community"; o.s.v.

Av allt att döma förstår dessa makthavare — däribland f.d. utrikesminister och blivande presidentkandidat Hillary Clinton — att de får vräka ur sig vilka dumheter och hemskheter som helst utan att oroa sig för några negativa följder.

Så är det med makten, och jag är knappast ensam om att skönja samma tendens — om än inte så våldsam — i det svenska rättsväsendets behandling av Julian Assange.

Om vi nu håller oss till ditt beslut i häktningsfrågan och ditt undvikande svar på mina frågor om betydelsen av ordet "våldtäkt" i svensk lag, så är det en fråga som är särskilt angelägen, nämligen: Tror du att folk inte inser att sådana texter saknar trovärdighet och kan till och med uppfattas som falska och vilseledande?

Jag har grubblat över möjliga förklaringar till hur och varför man kunde blotta sig på det viset och har kommit fram till följande alternativ:

Maktens fördummande effekt
Jag betvivlar inte att du äger den grad av intelligens som krävs för att formulera ett sakligt och välgrundat domstolsbeslut eller svar på de frågor som jag ställde om ordet "våldtäkt". Frågan är då varför det blev som det blev. En möjlig förklaring är att makten ofta har en fördummande effekt på den som utöver den. När man inte behöver ta hänsyn till andras perspektiv och synpunkter så är det lätt hänt att man utvecklar en vana att köra över dem utan att lägga ner särskilt mycket tankearbete på vad man gör och varför. Man kanske till och med tror på sin egen propaganda.

Det må vara att man är förväntad eller förpliktad att motivera ens beteende och beslut; men ju mer makt man äger, desto mindre krav på motiveringens kvalitet. Folk får finna sig i den i vilket fall som helst. Detta förhållande är pinsamt uppenbart när det gäller åklagare Mariann Nys hantering av Assange-fallet.

Grupptänkande
De som sköter rättsväsendet — polis, åklagare och domare — utgör relativt små yrkesgrupper med stor makt i samhället. Att det finns en tendens för en sådan grupp att utveckla en intellektuellt begränsande "kåranda" är välkänt. Den kan ge upphov till omedvetna beteende- och tankemönster som utgör ett annat slags dumhet. Människor utanför gruppen må klaga och komma med synpunkter; men dessa kan lätt avfärdas — gärna artigt och till synes medkännande — så länge man får bekräftelse av den egna gruppen och dess kultur. Dessutom skall man i möjligaste mån skydda sina kolleger mot kritik och andra obehagligheter.

Ohederligt uppsåt
Det förekommer som bekant även avsiktliga försök att fördunkla och vilseledda. Skälen kan vara många. Just Assange-fallet har väckt misstankar om att trycket från USA ligger bakom åklagarens och domstolarnas märkliga beteende. Ju längre "cirkusen" pågår, desto starkare blir sådana misstankar. "Cirkus" är för resten en beteckning som på detta fall har använts av ett antal juridiska experter, däribland Advokatsamfundets generalsekreterare.

Karriärism
Att Assange-fallet är ett politiskt minfält för de ämbetsmän som måste hantera det är knappast någon hemlighet, och regeringen behöver inte blanda sig direkt i rättsprocessen för att påverka den. Det är således långt ifrån otänkbart att ångest för och/eller omsorg om karriären har spelat en betydande roll i hanteringen av fallet.

Dessa är alltså förslag till möjliga förklaringar till såväl ditt undermåliga beslut i Assange-fallet som ditt bortdribblande svar på mina frågor. Huruvida det är några, inga eller alla som gäller vet jag förstås inte säkert. Men att samtliga förklaringar är plausibla är tämligen uppenbart — i alla fall för den som inte är med i någon yrkeskår inom rättsväsendet.

Däri ligger allvarliga problem när det gäller förtroendet för rättsväsendet och demokratin. Fundera gärna på dessa problem och vad som skulle krävas för att lösa dem.

Med vänlig hälsning,
Al Burke

[Obs! Vid 12 sept. 2014 hade chefsrådman Egelin inte lämnat något vidare svar. Enligt Domstolverkets webbplats finns hon inte längre med i Mediegruppen.]