EXPERT REPORT OF BRITA SUNDBERG-WEITMAN

1. I have been asked by lawyers for Mr. Julian Assange to clarify a number of matters of Swedish law and procedure for the purposes of the extradition proceedings.

2. I am a Swedish lawyer and former judge. Having qualified in 1958, I practised as a trainee judge in the field of private law and criminal law. I became an ordinary judge (*hovrättsråd*) in 1976, serving on the Svea Court of Appeal between 1981-1989. By the end of 1989 I was appointed president (*lagman*) of the Solna District Court, where I was serving as judge and chief administrator until 2001 when I retired at the age of 67. I have also had an academic career. Between 1971-1973 I completed a thesis on the non-discrimination principle enshrined in the Treaty of Rome and served the rest of that decade as Associate Professor in private law and public international law at Stockholm University. I have published several books in Swedish about matters of civil rights and the rule of law, one of them about the principle of objectivity in jurisdiction and public administration (Saklighet och godtycke i rättskipning och förvaltning, Norstedts 1981) My latest book is a critical examination of the Justice Ombudsman's dealing with 169 complaints about social authorities' decisions on matters concerning children. I have published one book in English, Discrimination on Grounds of Nationality, North Holland Publishing Company 1977.

3. For the purposes of this statement, I have been provided with and analysed, the European Arrest Warrant dated 2 December 2010 ("the EAW"), the Opening Note of the Prosecution and the Provisional Skeleton Argument filed by the Defence. I have also been provided the portions of the police file that have been disclosed to Mr Assange's lawyer in Sweden, Mr Hurtig. I am aware of the procedure and chronology in relation to the criminal investigation of Mr Julian Assange in Sweden. I have been asked my opinion as an experienced former Judge as to how the investigation has been conducted in Sweden.

4. I am of the opinion that proper procedures, according to Swedish law and stated policy in the National Prosecution Manual and other official guidance, have not been followed and that the use of the EAW in this case is disproportionate under European law. The handling of this case has been, in my view, improper in a number of respects.

Preliminary Criminal Investigation and Arrest Warrant: Procedural Concerns

5. There have been a number of clear breaches in the procedure in the handling of Mr Assange's case. First, the initial Prosecutor, Maria Kjellstrand, confirmed Mr Assange's identity and the nature of the allegations against him to the tabloid newspaper, Expressen, on the same day that the complaint was made. Under Swedish law, preliminary criminal investigations are to remain confidential both in the interest of an effective investigation (Chapter 18 Section 1) and in the interest of individuals concerned (Chapter 35 Section 1): see Offentlighets- och sekretesslag 2009:400.

6. Eva Finne, the Chief Prosecutor in Stockholm and a well-respected prosecutor, overruled Ms Kjellstrand's decision to initiate the rape investigation, although damage from the unfair publicity had already been done.

7. It is important to note here that an appeal was made on behalf of the complainants by Mr Claes Borgstrom, a well known politician, lawyer, and ultra radical feminist and activist, to Marianne Ny, Senior Prosecutor in charge of the 'Development Centre' for sex offence cases in Gothenberg. Concerns had been raised by Mr Assange's lawyers in London regarding the fact that this appeal process was undertaken without notifying Mr Assange or his Swedish lawyer or giving him the opportunity to participate or make submissions. However, I confirm that this is permitted as a matter of Swedish law and that no complaint can be raised that this procedure is an abuse of process, no matter how oppressive to the defendant. This appeal procedure is informal and is based on the seniority of the prosecutor: more senior prosecutors can always reconsider the decisions of subordinate prosecutors and the suspect in question is not provided participation in this process. The prosecutor is not obliged to inform the suspect or allow their participation. Nor can any complaint be made that Ms Ny took the decision to revive the charge and then took over the prosecution herself.

8. Mr Borgström can be described as an ultra radical feminist. He is also a politician whose platform is associated with radical feminist activism and he has developed a legal practice around acting for complainants in rape cases. Mr Borgström has appeared on numerous occasions in the Swedish and international media condemning Mr Assange. Like Mr Borgström, Ms Ny is a well-known radical feminist. For example, she is known to have said that when a woman says she has been assaulted by a man, the man ought to be detained because it is not until he is in prison that the woman may have the peace to consider whether or not she has been mistreated. Ms Ny has stated that she believes

imprisoning the man has a positive effect, "even in cases where the perpetrator is prosecuted but not convicted" (Exhibit B/S-W-1). It is also informative, in regards to the presumption of innocence, that she uses the term 'perpetrator' rather than 'defendant' or 'suspect' in discussing criminal investigation in rape cases.

9. Second, despite Ms Ny's stated policy that men should be detained after the event and that interrogation of the suspect must take place as soon as possible, there was undue delay in questioning Mr Assange while he was in Sweden. I am instructed that he remained in Sweden for more than a month after the initial allegations were made, but Ms Ny did not arrest him or even interview him about the allegations under investigation in this period and she gave her permission for him to leave the country. She took over the investigation on 1 September, knowing he was willing to be interrogated (he had already been interviewed by police on 30 August 2010) but made no effort to interview him before he left with her permission and knowledge on 27 September 2010.

10. In the context of the undue delay in interviewing him while he was in Sweden for the purposes of her investigation and her subsequent attempts to have him arrested and extradited for questioning by using the EAW procedure, it is important to note Chapter 23, Section 4 of the Code of Judicial Procedure, which provides:

> At the preliminary investigation, not only circumstances that are not in favour of the suspect but also circumstances in his favour shall be considered, and any evidence favourable to the suspect shall be preserved. The investigation should be conducted so that no person is unnecessarily exposed to suspicion, or put to unnecessary cost or inconvenience. The preliminary investigation shall be conducted as expeditiously as possible. When there is no longer reason for pursuing the investigation, it shall be discontinued.

11. Third, I have been instructed that throughout this period Ms Ny refused to provide Mr Assange or his lawyer, Mr Hurtig, with an explanation of the allegations against him or any of the evidence relating to the accusations. According to Article 23.18 of the Swedish Judicial Procedure Code, the suspect has the right to be informed of the charges against him in his own language and to be continuously informed of what has emerged from the investigations against him. This provision is subject to the proviso "to the extent that it will not affect the investigation", which in my view is interpreted too broadly by many prosecutors – including Ms Ny in this particular case – to the detriment of the due process rights of suspects.

12. Fourth, and most significantly, I consider it inappropriate and disproportionate that Ms Ny sought an Interpol arrest warrant and EAW for Mr Assange. It is not clear why she refused to interview him in London, since doing so would be in accordance with the rules set forth under the terms of Mutual Legal Assistance. Ms Ny is reported to have first stated that it was incompatible with Swedish law to interrogate Mr Assange in London. This is clearly not true. According to the International Judicial Assistance Act (2000:562), Chapter 4, Section 10, prosecutors may hold interviews by telephone during a preliminary investigation if the person in question is in another state, if that state allows. The Prosecutors' Manual (p 33-34) states that holding interviews by video conference is not prohibited under Swedish law and the prosecutor can apply for legal assistance from the foreign authority to conduct an interview by video conference during the preliminary investigation of a person who is in another state, provided it is agreed with that state. The Prosecutors' Manual further sets out that the prosecutor may simply contact the Department of Justice to contact the state from which such assistance is sought. On this basis, there were clearly other proper methods for obtaining his testimony from London that were mandated both by Swedish procedural rules and by a common sense approach. Her decision to issue an EAW in these circumstances amounts to an breach of European principles of proportionality.

13. The decision to issue an arrest warrant breaches the principle of proportionality established by European law: that in interfering with a person's liberty an authority must limit itself to what is necessary to achieve its objective. Ms Ny's clearly stated reason for the EAW was to question Mr Assange, yet she obviously could have achieved that by going to London to question him or by conducting the interview by videolink. Instead, she obtained an EAW that saw Mr Assange imprisoned in London without charge for nine days in December. I do not consider it proportionate, under Swedish law or European law, to use such a draconian device as an EAW merely to obtain answers from a suspect to prosecution questions when there are less invasive ways of obtaining these answers. I further consider this to breach Chapter 23 Section 4 of the Code of Judicial Procedure (set out above), in that Ms Ny's conduct of the investigation has "unnecessarily exposed [Mr Assange] to suspicion" and put him at "unnecessary cost [and] inconvenience".

The Arrest Warrant

14. I have been asked by Mr Assange's lawyers as to whether Ms Ny is the proper judicial authority to issue this EAW and whether this is a warrant for questioning or for prosecution.

15. According to Swedish notifications and statements in accordance with the Framework Decision (Exhibit B/S-W2), the Swedish Prosecutor is the proper issuing judicial authority where the EAW is a warrant for prosecution. For the enforcement of a custodial sentence or other form of detention the Swedish National Police Board are the proper issuing judicial authority. In this case, Ms Ny has stated repeatedly that she has obtained the warrant to question Mr Assange and that no decision has yet been taken to charge him. As late as 5 December 2010, she stated during an interview in the news on TV4 and Aktuellt that it was yet "too soon" for a decision whether or not to prosecute Mr Assange. Assuming the truth of Ms Ny's reported statements, then this is not a warrant for prosecution but a warrant for questioning. In my opinion, the EAW has not been issued for prosecution but, strictly speaking, been issued for the purposes of enforcing the order for detention in absentia referred to at box (b) of the EAW. Therefore, the Swedish National Police Board was the only authority which could issue the EAW.

Political Considerations

16. Outsiders will not be aware of the role the gender plays in politics in Sweden. In recent years, elements of the Social Democrat Party, including one of the complainants who is a well-known and aspiring Social Democrat politician and her lawyer, Mr Borgstrom, and some public officials like Ms Ny have taken the lead in amending Swedish law so as to try to make it more favourable to women. This has become an aspect of political debate, but at a legal level, although some reforms have been welcome, there is a concern that others are actually producing unfairness and discrimination against men.

17. It is a fact that people like Marianne Ny and Claes Borgstrom have worked in cooperation on different issues in efforts to produce our new, more stringent sexual offence laws. It is a fact that Marianne Ny was one of the experts on the recent law reform committee which published a report in 2010 recommending even more harsh sexual offence legislation. It is a fact that Marianne Ny agreed with and approved the contents of that report which concluded that, unlike the law of England and Wales, Swedish rape law is not based upon lack of consent and which specifically rejects any recommendation that Swedish law be amended to adopt the English law approach where rape is based on consent (see page 125 of SOU 2010:71, available at http://www.sweden.gov.se/sb/d/12634/a/154515 in Swedish). It is also a fact that

Marianne Ny, unlike other prosecutors, has made various statements referred to above in which she regards the prosecution of men, even without sufficient evidence, as in the public interest "*pour encourager les autres*". She is a high profile prosecutor who is also a crusader on gender issues and the international attention that this case has received may have made her intransigent and, in my view, over-harsh and disproportionate in attacking Mr Assange by way of this EAW rather than by using the Mutual Legal Assistance provisions to obtain his evidence and, indeed, accepting his proffer of evidence by way of video link or Scotland Yard interview suite or attendance at the Swedish embassy.

Swedish law on rape trials

18. Finally, I can confirm that rape and sexual offence trials are, in practice, invariably heard behind closed doors.

Signed: ...Brita Sundberg-Weitman.....

BRITA SUNDBERG-WEITMAN

Date: ...27...January...2011.....