

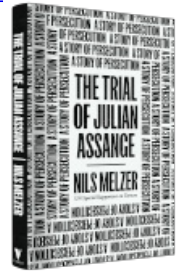
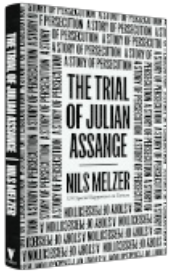
JULIAN ASSANGE: WHY WE SHOULD CARE ¹

A SUMMARY OF ANSWERS FROM THE BOOK

"THE TRIAL OF JULIAN ASSANGE"

By NILS MELZER

FORMER UN SPECIAL RAPPORTEUR ON TORTURE



Julian Assange is an Australian citizen on the precipice of being locked up for 175 years in a US prison, for being nothing other than the medium that revealed war crimes and atrocities committed by the US in Iraq and Afghanistan.

Former United Nations Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Chair of theÂ Geneva Academy of International Humanitarian Law and Human Rights, Professor Nils Melzer, has penned a book exposing the abuses of power sought to frame Julian Assange by the US in its pursuit to prosecute him.

"It is the story of a man scapegoated by all of us for our own societal failure to address government corruption and state sanctioned crimes." ²

¹ This document, prepared by the [Australian Assange Campaign legal team](#), summarises key points from Nils Melzer's book, 'The Trial of Julian Assange'.

² Page 3

1. Why did Professor Nils Melzer write a book about Julian Assange?

Whilst initially declining a request to investigate Julian Assange's treatment, Nils Melzer later read a report by the United Nations Working Group on Arbitrary Detention, which confirmed to him that Julian Assange's stay in the Ecuadorian Embassy was a valid response for his substantiated fears of being extradited to the United States of America, where he would most likely be subjected to inhumane conditions in detention, and politically based persecution.

For two years Nils Melzer had tried unsuccessfully to get the responsible states to co-operate and engage in constructive dialogue with him.

"I have repeatedly expressed my concerns to all four states involved - The United States, the United Kingdom, Sweden, Ecuador through the official channels available to me". ³

Instead Nils Melzer was stone walled, shut down and confronted with what he describes as diplomatic platitudes or sweeping rhetorical attacks. At the same time the onslaught on Julian Assange continued, and only intensified. This sort of lambasting motivated Nils Melzer, who has likened himself to that of a whistleblower of sorts but by writing this book. He says

"I therefore write this book not as a lawyer for Julian Assange, but for an advocate for humanity, truth and the rule of law". ⁴

³ Page 2

⁴ Page 6

2. Why should we care about Julian Assange?

As Nils Melzer says:

"The persecution of Julian Assange establishes a precedent that will not only allow the powerful to keep their crimes secret but will even make the revelation of such claims punishable by law. Let us not fool ourselves ... Once telling the truth has become a crime we will all be living in a tyranny." ⁵

He concluded,

"Assange is not prosecuted for his own crimes, but for the crimes of the powerful. Their impunity is what the trial of Assange is really about. It is the powerful - whether governments, corporations, or organisations - who undermine our democratic institutions and the rule of law; who refuse to prosecute torture, war crimes and corruption; who betray our legal systems and shared values for self-serving purposes." ⁶

Failure to care about Julian Assange, a brave Australian, is failure to care about the rule of law and the right to a 'fair go'.

⁵ Page 330

⁶ Page 330

3. Did the publication of confidential United States documents put lives at risk?

No! At the trial of Chelsea Manning in 2013, the US State Department explicitly acknowledged (under oath in Court), that the department had "no concrete examples of any individuals having suffered harm or being exposed to serious threats as a consequence of the publications." ⁷

The 'Cable Gate' documents (mainly cables from US embassies), were released by the German magazine Der Freitag and Cryptome.org enabled by two Guardian newspaper journalists, who published the secret pass phrase to the Cable Gate cache. ⁸

Prior to the release, Julian Assange contacted the US State Department informing them of the security leak, urging that they undertake any measures considered necessary. ⁹ In the 'Afghan War Diary' document release (which detailed previously unreported civilian deaths on a major scale and other illegal acts), WikiLeaks withheld 15,000 documents, giving the US International Security Assistance Force time to identify sensitive data.

Julian Assange did release a video entitled "Collateral Murder", showing two war crimes (the murder of civilians picking up the bodies of wounded civilians and eleven other people, including two Reuters journalists, who were all killed by gunfire from a US helicopter). No one has been prosecuted for these crimes. [10](#)

The documents released through WikiLeaks caused considerable embarrassment to the US Government by exposing war crimes. There was also evidence that the US was tapping the phones of political leaders such as the Chancellor of Germany, Angela Merkel. [11](#)

Initially EL PAIS, in collaboration with British newspaper The Guardian, and French newspaper Le Monde, accessed and an agreement was made to simultaneously reveal these cables.

Thanks to The Guardian newspaper, The New York Times accessed the trove as well as German newspaper Der Spiegel. Many other news consortiums would go on to publish some of the cables.

The allegation that Julian Assange put people's lives at risk is yet another misconception. This attack on the character of Julian Assange was purposely orchestrated to undermine his credibility in the eyes of the public.

Julian Assange obtained the material from a whistleblower and was merely the publisher and not the source. He has been made the scapegoat of revealed war crimes when in fact others initially published the content of the cables.

Nils Melzer said

"I do not intend to leave our children a world where governments can disregard the rule of law with impunity and where telling the truth has become a crime." [12](#)

Not only did Julian Assange expose the malevolence of war, in doing so he was smeared by the same media who would also publish and bring to light the diabolic acts that took place.

⁷ Page 308

⁸ Page 171

⁹ Page 308

¹⁰ www.youtube.com/watch?v=HfvFpT-iyjpw

¹¹ Page 308

¹² Page 5

4. What happened in Sweden and what are the allegations that surround Julian Assange?

Julian Assange was never charged with any offence in Sweden, and the allegations of rape that have surrounded him have absolutely no foundation. The police entered a criminal report of rape into their system, minutes after two women came into the police station seeking advice on how to get an HIV test from Julian Assange. [13](#) Police never formally interviewed the two women, but instead leaked the allegations to the media. Twenty four hours later, Chief Prosecutor for Stockholm, Eva Finne, after reviewing the case, cancelled the arrest warrant and issued a press statement. She said

"I don't believe there is any reason to suspect him of rape." [14](#)

The Swedish police interviewed Julian Assange on August 30th in 2010. He answered all of their questions. Three days later, police released the full interview to Swedish newspaper Expressen, which published it with the headline 'WikiLeaks Julian Assange Hounded on Suspicion of Rape in Sweden'. [15](#) Police breached their obligation of confidentiality to Julian Assange.

Subsequently, the investigation was re-opened twice more then abandoned without any charges being laid. When the case was reopened, Julian Assange agreed to an interview with the Swedish Police. [16](#) He remained in Sweden for a month after the initial report to police, then obtained permission from Prosecutor Nye to leave Sweden.

When Swedish authorities wanted to drop the case against Julian Assange in 2012, the British Crown Prosecution Service sent an email to their Swedish colleagues telling them,

"Don't you dare get cold feet." [17](#)

¹³ Page 117

¹⁴ Page 133

¹⁵ Page 128

¹⁶ Page 150

¹⁷ Page 186

5. Why didn't Julian Assange go to Sweden when the case was opened for the third time?

Julian Assange offered to be interviewed in either England or Sweden if the Swedish Government assured him they would not deport him to the United States of America. The Swedish Secret Police (the SAPO), had previously removed two Egyptians [18](#) who had sought asylum from Egypt in Sweden. Both men were taken back to Egypt by a CIA aircraft where they were abused and tortured extensively. The Swedish Government would later compensate the Egyptians for breaching their rights under Swedish law, as well as a breach of their human rights.

Julian Assange had good reason to be concerned, as he understood this may well happen to him if imprisoned in the US for 175 years. What good would a compensation claim be?

¹⁸ Page 160

6. Will Julian Assange get a fair trial if he is to go to the United States and face the charges?

No, he will not! A jury trial consultant on another espionage case (of former CIA agent, John Kiriakou) said of that Court, "you don't stand a chance" - and advised to "take a deal ... [because] ... your jury is going to be made up of people with friends [and] relatives at the CIA, the Pentagon, [and] National Security intelligence contractors." [19](#) John Kiriakou did just that - he took a deal.

Nils Melzer agrees Julian Assange will not get a fair trial, and stated, "even the boldest idealist would probably rule out the possibility of Assange being found innocent in the US Espionage Court."²⁰ He is likely to be tried in the US Espionage Court of Alexandria in the eastern district of Virginia, near Washington.

In 2010, the then Vice President Biden described Julian Assange as a "high tech terrorist".²¹

¹⁹ Page 221

²⁰ Page 219

²¹ Page 328

7. What would being in a Supermax prison mean for Julian Assange?

Julian Assange is right to be fearful of being incarcerated in a US Supermax prison and what he would be subjected to. In this type of prison he would be at risk of 'Special Administrative Measures' (SAMs). SAMs include solitary confinement 24 hours a day.²² Communication would not be permitted with other inmates or staff, recreation limited to 1 hour daily confined in a small cage, no newspaper, television, radio, and only two short phone calls per month. Visits from family would be limited, with no physical contact allowed, whilst being in shackles behind thick glass barriers.²³

While the US Government may have excluded the application of SAMs, that assurance remains extremely narrow and can easily be circumvented according to Nils Melzer. Besides most federal and state prisons in the US have solitary confinement units where prisoners are isolated for a range of punitive or administrative measures, instead of special administrative measures - the name slightly differs, however it is still the same sort of punishment.

Nils Melzer said,

*"As always when governments give diplomatic assurances, these undertakings look good on paper but play out completely different in practice"*²⁴

²² [cell layout](#)

²³ Page 228

²⁴ Page 324

8. Are the charges Julian Assange is facing serious?

Yes! They are and could see him jailed for up to 175 years.

There are 18 charges²⁵ alleging he aided and abetted, or conspired, with Chelsea Manning to obtain documents; or that he had unauthorised access to documents that Manning had delivered to him.

Daniel Ellsberg, (who was charged with espionage over the Pentagon Papers), was one of the many witnesses who gave evidence during the extradition hearing before Judge Baraitser. Mr Ellsberg said that it was part of a journalist's job to solicit sources for information, even if it is classified²⁶.

If Julian Assange is guilty of possessing classified information, then so is the New York Times, The Guardian and other newspapers.

Nils Melzer believes that Julian Assange's actions are protected under the US First Amendment of the Constitution. He says, *"if Assange were to be prosecuted nonetheless, it would send a terrible precedent for investigative journalism. It would mean that from then on, any publication based on leaked material would become a crime. The resulting danger for press freedom could not be overstated."*²⁷

²⁵ www.justice.gov/opa/press-release/file/1289641/download

²⁶ Page 306

²⁷ Page 36

9. Why did Julian Assange stay the Ecuadorian Embassy for so long?

A detailed report was given by the UN Working Group on Arbitrary Detention (WGAD).²⁸ It looked at Julian Assange's confinement in the Embassy and concluded:

"The current detention of Julian Assange staying within the confines of the Embassy of the Republic of Ecuador in London, United Kingdom, has become a state of arbitrary deprivation of liberty."

The WGAD report also confirmed that:

*"Assange's embassy asylum was his only option to avoid extradition to the United States and the related risk of political persecution and inhumane conditions of detention. Like any other human being, Assange could not reasonably be expected to give up his safety and expose himself to the risk of serious human rights violations."*²⁹

The conclusion was based on many factors such as:

- An absence of any kind of effective review of his situation, with both the United Kingdom and Sweden not recognising his asylum;
- Sweden's ongoing procrastination by the prosecution authorities;
- The fact that Julian Assange had been denied access to exculpatory evidence; and
- He could not contest the allegations aimed at him.

Julian Assange's UK High Court challenge to the Swedish arrest warrant exposed an abuse of process. The United Kingdom changed the law to correct the defect but refused to apply the new law to Julian Assange.

Nils Melzer agreed with the report and that seeking asylum was justified. Fear of a politically motivated prosecution for being a whistleblower has been evidenced in how the US put pressure that resulted in Julian Assange's expulsion from the Ecuadorian Embassy.³⁰

²⁸ www.ohchr.org/sites/default/files/Documents/Issues/Detention/A.HRC.WGAD.2015.docx

²⁹ Page 34

10. Was Julian Assange a serial pest at the Ecuadorian Embassy?

No! He was not.

There are many false unsubstantiated allegations. He had close and friendly relations with Ecuadorians in the Embassy. That is until there was a change of government in Ecuador. Under this new government, and with financial pressure from the United States, Ecuador agreed to expel him.³¹

There is no evidence he smeared any excrement on the walls, despite vast surveillance whilst in the Embassy, all of which is in the hands of the United States.³² Images of Julian Assange looking dishevelled, when expelled from the Embassy, was due to him not being given access to any razor blades to shave himself. He had not been able to for three months prior to his removal from the Embassy.

This image of Julian Assange had been purposely manufactured in order to discredit him and have him seen in a certain light by the public. Footage seen in the media 'ad nauseum' portrayed this image in order to garner sensationalism.

The allegations that he hacked into the computers at the Ecuadorian Embassy are completely false,³³ as is the claim that he constituted a terrorist threat.³⁴

³¹ Page 212

³² Page 58 and page 208

³³ Page 209

³⁴ Page 210

11. What can we do?

1. Recognise we have all been misled by the continual and deliberate personal attacks on Julian Assange's character, none of which stand up to independent investigation and have been propelled to tar his character. Nils Melzer warns that Julian Assange's persecution is intended to deter any other whistleblowers from exposing the crimes of governments.³⁵
2. Encourage the Australian Government to work with their UK counterparts to ensure Julian Assange is urgently moved to a more proportionate and humane detention such as house arrest.³⁶
3. Press the Australian Government to work with the Biden Administration to withdraw the charges against Julian Assange and to discontinue the extradition proceedings in the United Kingdom immediately.

By making Julian Assange a scapegoat it is an attempt by governments to divert public attention from their war crimes, corruption and abuses. We need to all fight for a just system and for what is morally and ethically the right thing. Australia can and should make every effort for ensuring the release of one of its citizens.

There is great unity and support around the world and each of us can make a difference to ensure Julian Assange is held in the esteem he deserves, released immediately to his family.

³⁵ Page 332

³⁶ Page 276

12. Who is Professor Nils Melzer?



Nils Melzer (Switzerland) is the Human Rights Chair of the Geneva Academy of International Humanitarian Law and Human Rights. He is also Professor of International Law at the University of Glasgow. On 1st November 2016, he took up the function of UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.³⁷ On 1st July 2022, he took up the appointment of Director of International Law, Policy & Humanitarian Diplomacy at the International Committee of the Red Cross.³⁸

Nils Melzer has served for 12 years with the International Committee of the Red Cross as a Legal Adviser, Delegate and Deputy Head of Delegation in various zones of conflict and violence. After leaving the ICRC in 2011, he held academic positions as Research Director of the Swiss Competence Centre on Human Rights (University of Zurich), as Swiss Chair for International Humanitarian Law (Geneva Academy) and as Senior Fellow for Emerging Security Challenges (Geneva Centre for Security Policy), and has represented civil society in the Steering Committee of the International Code of Conduct for Private Security Service Providers.

In the course of his career, Nils Melzer has also served as Senior Security Policy Adviser to the Swiss Federal Department of Foreign Affairs, has carried out advisory mandates for influential institutions such as the United Nations, the European Union, the International Committee of the Red Cross and the Swiss Federal Department of

Defence, and has regularly been invited to provide expert testimonies, including to the UN First Committee, the UN CCW, the UNSG Advisory Board on Disarmament Matters, and various Parliamentary Commissions of the European Union, Germany and Switzerland.

Nils Melzer has authored award-winning and widely translated books, including: "Targeted Killing in International Law" (Oxford, 2008, Guggenheim Prize 2009), the ICRC's "Interpretive Guidance on the Notion of Direct Participation in Hostilities" (2009) and the ICRC's official handbook "International Humanitarian Law - a Comprehensive Introduction" (2016), as well as numerous other publications in the field of international law. In view of his expertise in new technologies, Nils Melzer has been mandated by the EU Parliament to author a legal and policy study on "Human Rights Implications of the Usage of Drones and Robots in Warfare" (2013) and has also co-authored the NATO CCDCOE "Tallinn Manual on the International Law applicable to Cyber Warfare" (Cambridge, 2013), and the NATO MCDC "Policy Guidance Autonomy in Defence Systems", (NATO ACT, 2014).

Throughout his career, Nils Melzer has fought to preserve human dignity and the rule of law through the relentless promotion, reaffirmation and clarification of international legal standards offering protection to those exposed to armed conflicts and other situations of violence.

³⁷ www.ohchr.org/en/special-procedures/sr-torture/nils-melzer

³⁸ www.icrc.org/en/document/new-icrc-executive-team-appointed

Document prepared by John Shipton, Greg Barns SC and Stephen Kenny

For further information or comment on these matters, please email: the_trial@assangecampaign.org.au

The book is sold at many Assange Campaign events or available online at [Dymocks Books and Gifts](#) (selected on price)