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## Justice and Jonathan Pollard

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## JUSTICE AND JONATHAN POLLARD

By Angelo Codevilla; Irwin Cotler; Alan Dershowitz; Kenneth Lasson January 2, 1999

In the wake of the Wye River negotiations has come a barrage of new attacks against Jonathan Pollard, the former U.S. naval intelligence analyst convicted in 1985 of passing classified information to Israel and sentenced to life in prison. A Dec. 12 Post op-ed by four past directors of naval intelligence called Pollard a "traitor," whose release "would be totally irresponsible from a national security standpoint." Such allegations are totally irresponsible from the standpoint of American justice, if not intentionally misleading about matters of security. Though the admirals claim they "feel obligated to go on record with the facts regarding Pollard," they offer nothing but innuendo and deceptive half-truths. Pollard's most staunch defenders make no apology for his actions, nor do we. He clearly committed a punishable wrong. He is not a hero but a victim of a monumental miscarriage of justice. The facts are as follows: First, Pollard was never charged with nor convicted of the crime of treason. Nor was there anything in his indictment to suggest he intended harm to America -- or that he compromised the nation's intelligence-gathering capabilities or caused injury to any of its agents. Second, in lieu of a trial, the government entered into a plea agreement under which it promised not to seek life imprisonment in return for Pollard's cooperation. The Justice Department acknowledged in court that he had cooperated fully. Nevertheless, chief prosecutor Joseph DiGenova said immediately after sentencing he hoped Pollard "never sees the light of day." Third, Pollard was sentenced on the basis of private statements to the judge that, for all anyone knows, may be lies. The secretary of defense (then Caspar Weinberger) presented the court with a secret memorandum that has never been subject to cross examination. Later he told the press that Pollard was one of the worst traitors in American history. But where's the evidence? Our system of law requires that an accused be confronted by, and given an opportunity to challenge, his accusers. That's what Pollard was denied. What did Jonathan Pollard do to deserve this mockery of American law? Nowhere does his indictment allege, as the admirals falsely claim, that he gave "classified information to three other countries before working for the Israelis," or that he "betrayed worldwide intelligence data." Moreover, the former directors intentionally mislead when they write that Pollard's life sentence "was subsequently upheld by the appellate court" -- camouflaging the fact that the 2 to 1 decision turned on narrow procedural grounds, not on the merits. The dissenting judge, Steven Williams, concluded that the government's breach of the plea agreement was "a complete and gross miscarriage of justice." The admirals suggest that Pollard did dirty deeds for money, that Israel has stashed away for him "an impressive nest egg currently in foreign banks." This too is unproven. They say that "in his arrogance" Pollard has refused to apply for parole. Arrogance? The Justice Department, already on record as strongly opposing parole, refuses to debate the real basis of the sentence (the Weinberger memorandum) before the parole board or any other impartial body. Pollard's suspicion that a parole hearing would be a charade may regrettably be confirmed by the president's current review of the case. Mr. Clinton has received one-sided "recommendations" in the past, all predictably negative, and he has adhered to them. More sympathetic opinions, even from the Justice Department, seem never to reach the Oval Office. There is ample evidence that Pollard is

being punished for a crime he didn't commit and is being disproportionately punished for the one he did. Nowhere in their briefings to the Senate Intelligence Committee did U.S. officials claim Pollard gave Israel sources and methods. But he did pass on satellite pictures and reports that showed U.S.-built missile and chemical factories in Iraq. American foreign-policy architects are as embarrassed today as they were angered then that their support of Saddam Hussein had been disclosed to Israel. The president should correct this longstanding miscarriage of justice. Dozens of Americans have been convicted of the same crime as Pollard and have served an average of four years. Many more perfidious spies have received lesser or no punishment, about which the admirals are utterly mute. And at least two Americans this decade have been caught spying by Israel and noiselessly returned. Just as the law should not be bent to release Pollard, neither should it be bent to keep him behind bars. Whatever the CIA's motives in characterizing Pollard as a bete noire, they are arrogantly undeclared, anachronistic and irresponsibly vindictive. The fair, moral and principled thing for the president to do is show Pollard clemency. Mr. Cotler, Mr. Dershowitz and Mr. Lasson are professors of law at (respectively) McGill, Harvard and the University of Baltimore. Mr. Dershowitz represented Jonathan Pollard in the early 1990s. Mr. Codevilla is a professor of international relations at Boston University and served on the staff of the Senate Intelligence Committee between 1977 and 1985.