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Pollard Case Is One for the Legal Books

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Pollard case is one for the legal books

May 06, 1998 | By Kenneth Lasson

JONATHAN Pollard, the former Navy intelligence analyst who was convicted of passing classified information to Israel, has been behind bars for more than 12 years now. His life sentence -- by far the harshest ever meted out for a similar offense -- continues to make "equal justice under law" seem like little more than a palsied proverb.

Pollard's actions were clearly misguided and rightly punishable, but should he languish for life in prison while others obviously more perfidious have been set free? Americans who expect fairness in their judicial system should be sorely disillusioned at how grossly disproportionate Pollard's treatment has been, not to mention how duplicitous his prosecution.

Consider these facts: Shortly after he was caught, the government entered into a standard plea agreement, seeking leniency in exchange for information. Once Pollard had fully cooperated, the prosecutor promptly reneged on his promise. The lower court judge not only ignored the plea agreement but also considered a secret memorandum from then-Secretary of Defense Caspar Weinberger that offered speculative evidence -- none of which Pollard or his lawyers have had a chance to challenge. Mr. Weinberger conjured up specters of unprecedented treachery. The judge sentenced Pollard to life in prison, and the prosecutor who agreed not to seek a harsh penalty recommended that he never be paroled.

And indeed he hasn't been.

The injustice was devastatingly articulated by Judge Steven Williams in Pollard's failed 1992 appeal to the Washington, D.C., Circuit Court. In a long, analytical and sharply worded dissent (the two other appellate judges affirmed the conviction on narrow procedural grounds), Judge Williams called "the government's breach of the plea agreement a fundamental miscarriage of justice."

Even in the unforgiving world of international espionage, Pollard's punishment should be considered excessive when compared with other cases.

Making a case

Here are some of the more recent ones:

From 1992 to 1994, U.S. Navy Lt. Commander Michael Schwartz delivered secret U.S. defense information to Saudi Arabia. Indicted for violating various federal statutes as well as the Uniform Code of Military Justice, Schwartz pleaded guilty. His punishment: an "other than honorable" discharge from the Navy. No fine, no prison and no comment. (In fact, the government has been remarkably mum about Schwartz. Neither the White House nor the Pentagon will comment on his case. Nor was any public protest ever lodged against the Saudis, as it was against the Israelis.

From 1994 to 1996, Harold Nicholson received some \$300,000 for selling secrets to Russia, and, in the process, blowing the covers of a number of U.S. agents abroad. Nicholson, the highest-ranking CIA officer ever caught spying against his own country, was sentenced to 23 years in prison. He was spared a life sentence after prosecutors said he had cooperated with them.

Just last month Peter Lee, a nuclear physicist who gave secret national defense information to Chinese scientists and then lied about it to U.S. investigators, was sentenced to one year in a halfway house and ordered to perform 3,000 hours of community service.

Over the years, the dozens of other Americans who have been convicted of the same crime as Pollard have been sentenced to an average of four years in prison.

All the more ironic are the mirror-image cases. In the past 10 years, Israel has caught at least two Americans and one Mossad agent spying for the United States. The Americans were quietly expelled; the Israeli was pardoned.

The actual damage done by Pollard appears paltry compared with that of others given lesser sentences. After 13 years, not one instance has surfaced (or been documented in the victim impact statement written by his prosecutors) of any real harm that Pollard caused.

Why are these cases different? Because, one might reasonably surmise, of the purposes being pursued.

Oil and politics

With the Saudis, it's clearly petro-politics. Oil among allies is a powerful balm for soothing slights that violates the rules of international espionage. With the Russians, it's probably self-interested revisionist propaganda: No longer do we need to fear what a few years ago was the evil empire.

No such face-saving gestures need be offered the Israelis, with whom a different dynamic may be at work: There is ample reason to believe that Mr. Weinberger and others exploited Pollard to put Israel in its place as a strategic but beholden ally, as well as to call into question the "dual loyalty" of American Jews. One need not sniff hard to smell anti-Semitism in the U.S. intelligence community.

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For Pollard, 43, wasting away at the federal penitentiary in Butner, N.C., equal justice under law does not appear to apply -- nor does the damage done matter when there are greater political causes to pursue.

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