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The Demonization of Jonathan Pollard

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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](#). Much of it seems to be part of an orchestrated campaign by the intelligence community to persuade the President against granting clemency in any form. For all any average American knows, the fresh charges from the government could have been completely fabricated. None of them have ever been alleged or proven in a court of law.

But the outcry against Pollard has also come from the media, the Congress, and perhaps most surprising and disappointing, some high-profile Jewish sources who should know better – like former Admiral Sumner Shapiro, Pulitzer Prize - winning journalist Seymour Hersh, and United States Senator Joseph Lieberman.

The demonization of Jonathan Pollard thus continues apace – mostly by people who appear to have political axes to grind. In so doing they ignore, either negligently or intelligently, the harsh but profound reality: that the failure of due process in this case is an outrageous affront to American principles of fair play and equality under the law.

The Intelligence & Justice Communities

A recent op-ed piece in the Washington Post (12/12 /98), by four past directors of naval intelligence, called Pollard a "traitor" whose release "would be totally irresponsible from a national security standpoint." Similar charges have been made in recent months by Shapiro (The Jewish Veteran, Summer 1998), Hersh (The New Yorker, 1/18/99), and Lieberman (Letter to the President, Congressional Press Releases, 1/13/99). But their allegations, based almost wholly on innuendo and unsubstantiated inferences, are unfairly, if not intentionally misleading about matters of security.

The short question in regard to the harm Pollard is said to have caused: Where is the evidence? Pollard's staunchest defenders make no apologies for his actions – he clearly committed a punishable wrong – but recognize a monumental miscarriage of justice when they see it.

The uncontroverted facts are as follows:

First, Pollard was found guilty on a single count of passing classified information. He was neither indicted nor convicted of treason – a crime often, but mistakenly, attributed to him by his antagonists. Treason is specifically defined by the Constitution as "levying war against" the United States, or "giving aid and comfort" to "their enemies" – a fact

underscored by the appellate court in this case, which admonished the government not to use such inaccurate and inflammatory terms.

Moreover, just as there was nothing in his indictment to suggest that Pollard ever intended harm to America – a charge particularly available in the law under which he was convicted - nor was there anything in the government's official damage assessment about either the loss of security codes or agents. Yet such charges have persisted over the years, and have been reiterated in recent months by anonymous government sources who strenuously advocate the appropriateness of the life sentence.

Second, before any trial took place federal prosecutors entered into a plea agreement under which, in return for Pollard's cooperation, they promised not to seek life imprisonment. Those who now claim that Pollard "blatantly and contemptuously" refused to assist in the damage assessment are once again strikingly wrong on their facts: The Justice Department acknowledged in court that he had cooperated completely on that task. But it then - at the last moment before sentencing - introduced a secret memorandum from then-Secretary of Defense Caspar Weinberger which alleged Pollard had caused great harm to the United States and which advocated the harshest possible penalty. Weinberger was later widely quoted as claiming (falsely) that Pollard was one of the worst traitors in American history and should be shot for his crimes. For his part, the government's chief prosecutor, Joseph DiGenova, said on the courthouse steps that he hoped Pollard "never sees the light of day."

Third, the sentencing judge chose to ignore the plea agreement on the basis of the Weinberger memorandum. The only time Pollard or his attorney ever saw the charges it contained was for a few minutes just prior to sentencing. They were not given a chance to respond then – nor since. Even the attorney's notes were confiscated.

Pollard's life sentence was upheld by an appellate court in a still-controversial 2 -1 decision that turned on narrow procedural grounds, and not on the merits. The dissenting judge, Steven Williams, recognizing that no one would bargain for life in prison in a non-capital case, concluded that the government's breach of the plea agreement was "a complete and gross miscarriage of justice."

Forget the fact that Weinberger was subsequently indicted on five counts of perjury for his role in the Iran- Contra scandal. Our system of law requires that an accused be confronted by, and be given an opportunity to challenge, accusations made against him. That's what Weinberger would have done – had he not been pardoned before trial by President George Bush. That's what Americans think they have a right to expect under the Constitution. That's what lawyers and law professors look for. That's what Pollard was denied.

Although, as Harvard law professor Alan Dershowitz argues, all of the government's ex parte statements then and since – including the Weinberger memorandum – themselves constitute material breaches of the plea agreement, they have often come to be accompanied by blatant falsehoods. DiGenova and others persist in charging that

Pollard "put at risk lives of [military] personnel of the United States all over world," and that "he continues to leak classified material while in prison." This claim is particularly irresponsible, in view of the fact that whatever Pollard may know is more than a decade old – clearly obsolete in the intelligence community – and that his phone calls, letters, and visits are monitored by national security personnel. What information could he now disclose, and to whom? If the allegations were provable, why didn't the government include them in Pollard's indictment and charge him, as the law provides, with intending to harm the United States?

What in fact did Jonathan Pollard do to deserve this feverish reaction that has turned into a mockery of American law? Where is the evidence that he gave "classified information to three other countries before working for the Israelis" or that he "betrayed worldwide intelligence data"?

There is ample reason to believe, however, that Pollard is being punished for a crime he did not commit, and is being disproportionately punished for the one he did. According to Angelo Codevilla, a professor of international relations at Boston University who served on the Senate's Select Intelligence Committee for ten years, "betrayal of worldwide intelligence data" is a "made-to-order catch-phrase to impress people who don't know the intelligence business." Codevilla points out that in their original briefings to the Senate Select Committee on Intelligence, U.S. officials did not claim Pollard gave Israel the all-important "sources and methods." But he did pass on satellite pictures and reports that showed U.S. built and approved missile and chemical factories in Iraq. "American foreign-policy architects are as embarrassed today as they were angered back then," says Codevilla, "that their support of Saddam Hussein was disclosed to Israel."

That may be why so many government officials want to keep Pollard in prison.

Otherwise, one might reasonably ask, why would policy-makers be so singularly opposed to a presidential grant of clemency for Pollard? Why do they argue so strenuously that such a gesture would send a terrible message to other spies? Why, in fact, have the same advocates of life imprisonment for Pollard – the first and only person ever to be sentenced to life in prison for the offense with which he was charged, when the average time served for the same charge is four years – been so utterly mute about the leniency shown similar or worse offenders?

A few of the more notable examples:

- Clayton Lonetree, a Marine convicted in 1987 of spying for the Soviet Union, was quietly released after serving eight years.
- [Albert Sombolay](#), convicted in 1991 of giving US military secrets to Iraq during the Gulf War - a clear act of treason- was sentenced to 35 years in prison. That term has since been reduced to 19 years [Appeals for further reductions were filed.]

- [Michael Schwartz](#), a non-Jewish Navy commander caught selling secrets to Saudi Arabia from 1992 to 1994, received an "other-than-honorable" discharge from the military. No fine, no prison – and no comment from the intelligence community.
- [Steven Lalas](#), an employee of the U.S. embassy in Athens, was convicted of selling classified military documents (some of them identifying CIA agents) to the Greek government. He entered into a plea agreement -which he subsequently violated- and was sentenced to 14 years in federal prison, instead of life, which he was facing.
- Former CIA agent Harold Nicholson, who revealed the identities of new agency recruits, was sentenced in 1997 to 23 years.
- [Peter Lee](#), convicted in 1998 of having passed highly classified nuclear information to China, was fined \$20,000 and sentenced to twelve months in a halfway house.
- [David Boone](#), a U.S. Army code-breaker who plead guilty to selling the Soviets highly sensitive documents – including data about U.S. nuclear targets – for \$60,000 in the late '80's and early '90's, was sentenced just last month to 24 years.

There are [many others](#).

On the other hand, leniency exercised toward other spies convicted of the same or worse offenses has not seemed especially to have upset George Tenet, the current director of the Central Intelligence Agency who threatened to resign if President Clinton acquiesces to Israel's strong requests for clemency. (In 1948, a similar threat of resignation by then-Secretary of State George Marshall if then-President Harry Truman recognized Israel did not deter the President.)

Similarly unmentioned have been the mirror-image cases that make Pollard's plight all the more sadly ironic: in the past ten years Israel has caught at least two Americans and one Israeli Defense Force Officer spying for the U.S. The Americans were noiselessly expelled, the Israeli pardoned.

Neither, of course, is any reference made of the lengths to which the United States goes to retrieve its own agents who have been caught committing espionage abroad, such as when it traded the notorious Soviet spy Rudolph Abel for captured U-2 pilot Gary Francis Powers. Even if we assume that the government did not breach the plea agreement, that the Weinberger memorandum was properly admitted, that the length of other sentences is irrelevant - even if we believe that Pollard is indeed a knave and a scoundrel – the fact remains that none of the latter-day allegations against him have ever been uttered in court nor subjected to challenge by the defendant.

Fairness and the Media

The case now being so passionately hyped for perpetuating Pollard's lifetime imprisonment has developed into a media feeding frenzy, fueled largely by anonymous

leaks of heretofore classified material. It is difficult if not impossible to rebut the widespread reports of "facts" negative to Pollard's case. Though they are largely unattributed, uncorroborated, and published grossly out of context, they were never submitted for rebuttal (probably because it's precisely the kind of data that would likely be declared inadmissible). But even a modicum of honest scrutiny would reveal that those who seek to demonize Pollard are often hoist on their own canards.

For example, the following have been published as matters of fact but are clearly not:

That Pollard was a traitor.

Although an appellate court admonished prosecutors against using such inflammatory terms in this case, the press is under no such constraint. Even William Safire , the noted word maven, has misused the word in reference to Pollard. One might not expect him to be familiar with Constitutional requirements, but any standard dictionary offers similar definitions.

That Pollard was a mercenary who acted out of greed.

Many papers have reported that Israel has stashed away "an impressive nest egg [for Pollard] currently in foreign banks." In truth, the amount of money that he is alleged to have taken has been grossly inflated over the years, from \$40,000 to \$300,000. Pollard himself says he received something around \$20,000 for operational expenses. The government has never proven otherwise – probably because it can't.

Moreover, Israel has acknowledged that Pollard was indeed one of its agents (not a mercenary for hire), that he originally volunteered his services for ideological reasons and that it insisted he be paid for his work. No one believes he would have done the same spying for another country, even if paid millions. Indeed Pollard was not fined by the court for his offense, as convicted mercenaries normally are. (One might also reasonably ask, why the emphasis on money in Pollard's case, and not with others similarly convicted?)

That Pollard "arrogantly" refuses to apply for parole.

Arrogance? The Justice Department refuses to debate the real basis of the sentence (the Weinberger secret memorandum) before the parole board or any other impartial body. Pollard's suspicion that a parole hearing would be a charade – the Justice Department is already on record as strongly opposing parole, and no parole board is going to countermand such a negative submission - may regrettably be replicated by the President's current review of the case. Mr. Clinton has received one-sided "recommendations" in the past, all of which were predictably negative, and has adhered to them. More sympathetic opinions, though they exist, never seem to reach the Oval Office.

That Pollard compromised critical intelligence data, as well as agents' lives.

In their zeal to condemn Pollard, the media choose to ignore the fact that prosecutors never charged him with intending to harm the United States (as they could have) – nor that there was anything in the official damage assessment about the loss of either security codes or agents. No newspaper has corroborated reported suggestions that the data he supplied ever ended up in Soviet hands – an allegation the Israelis say they thoroughly investigated and found baseless. No newspaper has reported that Pollard cooperated fully with prosecutors, as the government conceded in open court.

That Pollard was an alcoholic and a drug addict.

Although it should be Pollard's deeds and not his character that are on trial, more important is that these irrelevant but incendiary allegations have never been proven. Would either of the best intelligence agencies in the world (American or Israeli) hire anyone with clearly self-destructive tendencies?

Editorialists all over the country, however, seem to have swallowed the government's revisionist version of events hook, line, and sinker with no apparent concern for two fundamental principles of journalistic integrity: skepticism and corroboration. The Washington Post brands Pollard "a contemptible and duplicitous mercenary." The Wall Street Journal, calling for "No Capitulation on Pollard," casts scurrilous implications about "well-heeled...hired guns" who advocate on his behalf, and repeats the unsubstantiated (and often denied) allegation that "Israel still refuses to come clean on everything they got and what was done with it." CBS News broadcasts "new evidence" of the damage Pollard has done – despite the fact that all of the charges have been aired (and denied) before, and none of them have ever been made in a court of law.

And the vaunted New York Times, offering "All the News that's Fit to Print," has never published a pro-Pollard piece in either its news or editorial pages – despite having been approached to do so on numerous occasions by both staff correspondents - like Ari Goldman, now a professor of journalism at Columbia University, who says his "editors never questioned my news judgment on other stories" - and outside contributors.

Seldom if ever reported are statements by a broad cross-section of other notable Americans calling for clemency – including Nobel Laureate Elie Wiesel; Theodore Hesburgh, President of Notre Dame University; Jerome Shestack, President of the American Bar Association; and Irwin Cotler, an internationally recognized human-rights lawyer, to name but a few of the many others, both Jewish and non-Jewish.

Whatever happened to journalistic standards? If the papers don't want to name the sources for the exaggerated charges, as is their right, why won't they permit Pollard equal space – as should be their responsibility?

The most blunderbuss assault to date has come from Seymour Hersh in the New Yorker magazine. An article in any major newspaper or magazine – much less the storied pages of the sophisticated weekly which has always traded on the thoroughgoing accuracy of its articles – gains a certain credibility merely by virtue of its

publication. That's why Hersh's piece (entitled "The Traitor") is all the more damaging a hatchet-job.

He spends paragraphs talking about allegations of drug use, but fails to mention that these allegations came from a convicted felon, nor that Israel's intelligence agency satisfied itself that they were untrue (as apparently did U.S. Naval Intelligence).

He quotes anonymous government antagonists but ignores equally-believable statements in contradiction, thereby rendering unattributed and speculative his implications that Pollard compromised codes and manuals. He neglects to report that Pollard originally volunteered his services to Israel – a story that if true would mitigate the charge of mercenary motivation, but one which the Israeli government will readily corroborate.

Nor did Hersh ask Israel for its (markedly different) version of events on such matters as how much information it returned to the United States, or question how any one agent in one year could accomplish all the foul deeds attributed to him - including major drug trades, espionage for four different countries, and complicated arms deals.

The New Yorker is well-known for holding stories months, even years, until they are "ready" and "accurate." Why the rush to publication here? Why were equally talented writers like Edward Jay Epstein and others, when they approached the magazine to do a Pollard piece, rebuffed with the statement that the story was "not newsworthy"?

Given the one-sidedness of Pollard's treatment in the media, it is hardly surprising that Americans know so little about all the facts and arguments in his favor. Barely reported, for example, have been the cases noted above of American spies caught by Israel and quietly returned or pardoned, or of the efforts made by the United States to retrieve its agents arrested abroad.

Congress

With the possible exception of the Republicans' efforts to impeach and convict President Clinton, Congress has rarely if ever in its history come out so forcefully in condemnation of high crimes and misdemeanors as it has in the case of Jonathan Pollard.

Rep. Porter Goss (R-Fla.), a former CIA agent who is chairman of the House Select Committee on Intelligence, authored an unprecedented House Resolution urging that Pollard never be freed. "He is one of the worst traitors in our nation's history. There is absolutely no reason to let this guy out of jail. None."

The Resolution, however, was not based on inside information but, incredibly, on articles in the press: "Whereas press accounts have indicated that Jonathan Jay Pollard offered to provide classified information to countries in addition to Israel... "Whereas press accounts have indicated that the Secretary of State, the Director of Central Intelligence, and the Secretary of Defense each oppose leniency...

"Whereas four former Directors of Naval Intelligence have issued a statement [in a Washington Post op- ed] that a pardon for Jonathan Jay Pollard would send a most damaging message to the loyal U.S. citizens who are entrusted with our national secrets..."

The Resolution ends with a reiteration of the unsubstantiated polemic that Pollard is still dangerous: "Whereas any release of Jonathan Jay Pollard would represent a continuing security risk to the United States because Pollard, intelligence officials believe, continues to possess information the release of which could be harmful..."

Meanwhile, no fewer than 60 Senators have joined the chorus calling for Pollard's continued life imprisonment. In a letter to the President, they wrote about "the enormity of Pollard's offenses, his lack of remorse... and the continuing threat to national security that he poses." It went on to say that "a commutation of Mr. Pollard's sentence would imply a condonation of spying against the United States by an ally."

Whence comes the Congressmen's and Senators' information? There is no proof that Pollard's offenses were "enormous." He has expressed remorse many times and in numerous ways over the past fourteen years. We spy on allies at least as much as they spy on us.

Perhaps most surprising among the Senators who signed was Lieberman of Connecticut. Set aside his apparent ignorance of the halachic principle of pidyon shivuyim (redemption of captives), which has been invoked on Pollard's behalf by most of the world's leading rabbis (see NCYI Viewpoint, Summer 1998, page 81). Shouldn't a former prosecutor with Lieberman's experience have questioned the propriety of the government's behavior on the plea agreement? The judge's reliance on an ex parte sentencing memorandum? The gross disproportionality of the sentence?

Shouldn't he of all Senators countenance America's special relationship with Israel, which has repeatedly sought Pollard's release on humanitarian grounds?

Shouldn't he challenge the statement by the Secretary of State, Madeline Albright, who has said that keeping Pollard in prison would not make much of a difference to Israel. What could she have been thinking, when fervent appeals for clemency have come from the past four Israeli Prime Ministers, the past three Israeli Presidents, and the entire Israeli Knesset?

Or could it really be that Senator Lieberman is simply doing what is politically expedient for someone who may aspire to the Democratic nomination for Vice President? If so, that would certainly neither be testimony to the integrity for which he is widely praised – nor would it be "good for the Jews."

The Case for Clemency

Here are the most important reasons why the President should show clemency for Pollard now:

He'd be correcting a clear and long-standing miscarriage of justice.

The dozens of Americans who have been convicted of the same crime as Pollard have been sentenced to an average of twelve years in prison, and have served an average of four. There are many instances of more perfidious spies getting lesser or no punishment.

Clemency would send a message to the security agencies that they are as accountable to the rule of law as anyone else.

Just as the law should not be bent to release Pollard, neither should it be bent to keep him behind bars. Whatever the motivations of the CIA to characterize Pollard as a bete noir, they are arrogantly undeclared, thoroughly anachronistic, and irresponsibly vindictive.

Leniency toward Pollard would be consonant with traditional American values of fairness, compassion, and comity.

Pollard's 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.

But even if Jonathan Pollard were not Jewish and his espionage were not on behalf of our staunchest democratic ally in the Middle East, the failure of fundamental due process here remains an egregious affront to American notions of justice and fair play. That is why President Clinton should show clemency to Jonathan Pollard now. It is the principled, the moral, the right thing to do.

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