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Ax-Grinding Politics Leads To Unequal Justice

The National Law Journal

April 27, 1998 - Kenneth Lasson

Jonathan Pollard, the former Navy intelligence analyst who was convicted of passing classified information to Israel, has been behind bars for over twelve years now. His life sentence by far

[the harshest ever meted out](#)

for a similar offense, continues to make equal justice under law seem little more than a palsied proverb.

Mr. 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 under which it would seek 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 entertained a secret memorandum from then-Secretary of Defense Caspar Weinberger which offered all sorts of speculative evidence - none of which Mr. Pollard or his lawyers ever had the opportunity to challenge. Mr. Weinberg conjured up specters of unprecedented treachery; the judge sentenced Mr. Pollard to life in prison; the same prosecutor who agreed not to seek a harsh penalty recommended that he never be paroled.

And indeed he has not been. The injustice of it all was devastatingly articulated by Judge Steven Williams in Pollard's failed 1992 appeal to the D.C. Circuit. In a long, analytical and [sharply worded dissent](#) (the two other appellate judges affirmed the conviction on narrow procedural grounds), Williams concluded that "the government's breach of the plea agreement [as] a fundamental miscarriage of justice."

Even in the unforgiving world of international espionage, Pollard's punishment should be considered excessive when compared to other cases of similar or greater magnitude.

- From 1992 to 1994, U.S. Navy Lt. Commander [Michael Schwartz](#) delivered secret American defense information to Saudi Arabia. Indicted for violating various federal statutes as well as the Uniform Code of Military Justice, Schwartz pled guilty. His punishment: an "other than honorable" discharge from the Navy. No fine, no prison.
- In 1995 [Clayton Lonetree](#) was the first marine convicted of espionage. He disclosed U.S. documents to a Soviet spy. He was released after serving just 8 years of a 30 year sentence.
- From 1994 to 1996, Harold Nicholson received some \$300,000 for selling secrets to Russia, in the process blowing the cover of a number of American agents abroad. The highest-ranking CIA officer ever to be caught spying against his own country, Nicholson was sentenced to 23 years in prison
- Just a month ago (March 26, 1998), [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 3000 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.

More ironic are the mirror-image cases. In the past ten years Israel has caught at least two Americans and one Mossad agent spying for the U.S. The Americans were quietly expelled, the Israeli pardoned.

The actual damage done by Pollard appears paltry in comparison to that of others given lesser sentences. In fact, after thirteen years not one instance has surfaced (or been documented in the Victim Impact Statement authored by his prosecutors) of any real harm that Pollard caused.

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

With the Saudis, it's clearly petro-politics: Oil among allies is a powerful balm for soothing slights that violate the rules of international espionage. With the Russians, it's probably self-interested revisionist propaganda: no longer need we fear what a few short 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 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 whiff anti-Semitism in the American intelligence community.

For Pollard, currently wasting away at the federal penitentiary in Butner, North Carolina, equal justice under law does not appear to apply, nor does the damage matter where there are greater political "causes" to pursue.

Kenneth Lasson is a law professor at the University of Baltimore.

See also:

- [Excerpts from Judge Steven Williams Dissenting Opinion](#)
- [🔍These Juggling Fiends'](#)
- [Comparative Sentences Chart](#)