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It's Time to be Fair to Jonathan Pollard

Kenneth Lasson - Israel Insider - October 29, 2003

[Written in response to *Let Pollard stay in jail* by Mitchell G. Bard.]

As the sad saga of Jonathan Pollard slides into his [nineteenth year of imprisonment](#), the resolve of his supporters - who include most of the American and Israeli Jewish populations - continues.

Most, but not all.

Mitchell Bard, a foreign policy analyst and frequent writer on Israeli affairs, recently penned a particularly mean-spirited piece on the case. "Forgive me for not jumping on the bandwagon," he writes, "but if it were up to me Pollard would never see the light of day again."

Unfortunately for Bard's own credibility as an objective observer, the few facts he presents are poisoned by speculative hearsay and ill-supported conclusions.

Pollard is the former U.S. Navy intelligence analyst who was charged with passing classified information to Israel and was given a life sentence. "Mostly we hear the same mantra," Bard writes, "about how Pollard was helping a U.S. ally, not an enemy; how his punishment is more severe than that given to Soviet spies; how the United States shouldn't be keeping intelligence from Israel, and how the government made a plea bargain promising he wouldn't get life imprisonment."

Bard is right on all those counts - but then he goes on to cast Pollard as a selfish traitor who did untold damage to both America and Israel.

For starters, Bard claims that Pollard violated the terms of the agreement by speaking to the press. In fact it was the government which trashed the agreement, under which the accused promised to cooperate fully in the

investigation in return for a reduced sentence. Even according to the Justice Department, Pollard fulfilled his end of the bargain. Moreover, he sought and received complete clearances before talking to anyone in the press.

"Pollard is a traitor," cries the headline on Bard's piece, which was also carried in various Jewish papers around the world. "Prison is where he belongs."

Bard charges that we don't know how much damage Pollard caused to U.S. security by giving Israel sensitive material and compromising important sources and methods of U.S. intelligence gathering. "The advocates on Pollard's behalf don't have any idea what he stole or who ultimately saw it. The only people who know what was taken - or have a good idea of the impact - oppose his release."

The reason that Pollard's supporters don't know the damage he allegedly caused is that the government has denied them access to documents it claims are incriminating. That's precisely why a number of people in the Pollard camp - including many non-Jewish law professors, laymen, and elected officials - continue to press his case: as a matter of both constitutional law and basic fairness the American system of justice demands that the accused be confronted by the evidence against him.

The fact is that when confessed spy Aldrich Ames was convicted, government prosecutors discovered that he had pinned on Pollard much of his own criminal activity. Journalist John Loftus, a former attorney for the Justice Department, claims that Pollard was wrongly accused of acts that were later found to be the responsibility of Aldrich Ames and Robert Hanssen. Loftus reports that Ames, at the time thought to be a reliable CIA officer, was given the task of preparing the damage assessment in the Pollard matter, and used the opportunity to deflect culpability away from himself.

Thus the suspicion remains strong that the intelligence community has nothing on Pollard - except perhaps its own embarrassment at a botched

investigation, personal animus - or anti-Semitic bias.

Bard claims that "Pollard is worse than other spies he is compared to who received more lenient sentences. He was not only a traitor to his country; he betrayed Israel and the American Jewish community."

If the government thought Pollard was a traitor, it would have charged him with treason (clearly defined as aiding an enemy during wartime). It didn't. If the government had evidence that Pollard caused extensive damage, it would have used that information against him. It didn't.

Even Caspar Weinberger, the former Secretary of Defense who originally vilified Pollard as one of the worst traitors in American history, now concedes that the case was overblown. In an interview last year, Weinberger said that the Pollard case was "a very minor matter, but made very important." Indeed Weinberger's recent memoir says nothing at all about his pivotal involvement with the Pollard case.

Bard's diatribe suggests that Pollard's worst crime was embarrassing both the American and Israeli Jewish communities. He could well add the embarrassment it has caused to American justice. Judge Steven Williams, who dissented in the appellate decision that kept Pollard in jail, called his life sentence "a complete and gross miscarriage of justice."

Senator Joseph Lieberman said recently that, if elected president, he would not support a pardon for Pollard, who "did get an unfair sentence when compared to others - but that's sometimes how the system works." Shame on Mr. Lieberman. When the system doesn't work, it's the obligation of all Americans - especially those elected to high office - to fix it.

Israelis feel the same way. This past summer there were mass demonstrations on Pollard's behalf throughout the country. A virtually unanimous Knesset signed a [petition](#) to President Bush calling upon him to release Jonathan Pollard.

If Bard thinks that American Jews are indifferent or embarrassed about

Pollard, he should have been in federal court in early September, when Pollard's lawyers once again argued their case for fairness. The courtroom was packed with lay and rabbinic leaders representing a broad spectrum of the Jewish community.

Publicizing Pollard's plight, writes Bard, only compounds the problem. "Rather than reopen his case and crusade for a pardon, it is time to throw away the key to Pollard's cell and focus on repairing the damage he caused."

What pardon? What damage?

The court was told that between 1993 and 2001 there were at least twenty-five instances when the government had obtained access to the sealed materials that neither Pollard nor his lawyers have ever been allowed to see. Their hands have thus been tied, preventing them from arguing their case that their was no measurable damage their client caused the United States, or that Pollard deserves clemency.

Just after Rosh Hashanah, a group of American rabbis, invited to meet with President Bush in the White House, pointedly asked him to consider clemency for Pollard.

Neither the lawyers nor the rabbis said anything about a pardon*. Only about fairness and compassion.

*

Justice4JP Note

: Being granted executive clemency does not always consist of obtaining a pardon. Legally, a pardon wipes the slate clean as if the offense had never occurred. In his repeated requests for executive clemency, Jonathan Pollard has never sought a pardon, only commutation of his sentence to time served.

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

See Also:

- [Caspar's Ghost - Weinberger memoir omits key involvement](#) - Edwin Black
- [The Truth About Jonathan Pollard - John Loftus](#)
- ["The Appropriate Sentence Would Be Time Served" \(Interview of Atty Eliot Lauer\)](#) - The Jerusalem Post
- [Lieberman: Pollard Sentence Unfair, But That's the Way It Goes](#) - JTA
- [Agudath Letter to President Bush Calls for Clemency](#)
- [Executive Summary of Legal Initiatives](#) - Attorneys Eliot Lauer & Jacques Semmelman

[Home](#)