

The Drumbeats for Clemency for Jonathan Jay Pollard Reverberate Again

M. E. "Spike" Bowman

Every few years there is an orchestrated attempt to forge popular opinion towards the release of convicted spy Jonathan Jay Pollard. There are several arguments for his release. Taken in the aggregate, and without analysis, they seem logical; however, if one looks behind the sound bites, the issues are far from simple and explain why clemency continues to be ill-advised.

There have been few rebuttals of this escalation of calls for Pollard's release. Mainly because so few were cognizant of the scope of Pollard's disclosures, or the misuses of those disclosures, and the damage they did to our own operations and sources; and even fewer, of the policy implications of these unauthorized releases to a foreign power. Finally, when a plea agreement was reached, it was no longer necessary to litigate issues that could have exposed the scope of Pollard's treachery – and the exposure of classified systems.

The Arguments for Release and Why They Are Wrong

1 Weinberger falsely accused Pollard of severely damaging U.S. national security because the information he gave Israel also found its way into the hands of the KGB.¹

Whether Secretary Weinberger held this view or not, it is disingenuous to suggest that Pollard's sentencing was affected by any such belief on the part of the Secretary. Weinberger communicated with the

court at arm's length through two declarations. One was (and remains) highly classified. That declaration was divided into three parts. In PART ONE he detailed the categories of information compromised, with specific examples. In PART TWO he explained the harm of the compromise – again with specific examples. In PART THREE he encapsulated the overall significance of Pollard's activities.



The second was a short unclassified declaration noting Pollard's breach of agreement in giving an interview to the media prior to sentencing. In neither of these declarations was the alleged suggestion communicated to the sentencing judge. It is true, that subsequent to the proceedings of the case, it was widely speculated

in media reports that the information passed to the Israelis might become a bargaining chip with the USSR to secure the immigration of Russian Jews to Israel, but that was never a part of the case or of any information imparted to the sentencing judge.

It has been alleged by high level officers that the Russians got some of the data Pollard turned over to the Israelis, but it is unclear how it came into Russian hands.² What Secretary Weinberger did point out was that once the classified material got out of controlled channels it no longer could be protected nor tracked. With reference to a specific disclosure (which was redacted) Secretary Weinberger opined that "U.S. combat forces, wherever they are deployed in the world, could be unacceptably endangered through successful exploitation of this data."³

2 The typical sentence for Pollard's offense—spying for an ally—is just a few years.⁴

This position is asserted repeatedly by 'Pollard apologists' and recently echoed by Lawrence Korb, Assistant Secretary of Defense at the time of the Pollard arrest. Korb also asserts that, under current guidelines, the maximum sentence would be ten years. Yet this argument fails to provide examples of

1. See, e.g., "Former Head of KGB Refutes Weinberger Lies About Pollard," posted December 9, 2000 on <http://www.jonathanpollard.org/2000/120900.htm>; See also, "The Conspiracy Against Pollard" March 18, 1994 - Chezi Carmel - Maariv Weekend Supplement: pp. 8-9, posted at <http://www.jonathanpollard.org/1994/031894.htm>.

2. See, Seymour Hersh, "Why Pollard Should Never Be Released (The Traitor)," *The New Yorker*, January 18, 1999, pp. 26-33.

3. Declaration of the Secretary of Defense, Caspar Weinberger (classified/redacted) dated 3 March 1987.

4. Id.; See also, Vita Bekker, "Moves to free convicted spy Pollard pick up in U.S. and Israel," *Los Angeles Times*, October 21, 2010.

similar spying resulting in only a few years. Simply put, the argument, including that by Mr. Korb, is unsubstantiated.

Moreover, Pollard pled guilty to violation of 18 U.S. Code §794. That code section provides that a person convicted of that section “shall be punished by death or by imprisonment for any term of years or for life.”⁵ This code section is different from other parts of the espionage codes which do limit sentencing to ten years. What is different about §794 is that it is restricted to espionage offenses of a particularly serious nature – i.e., disclosure of information that results in the death of an agent of the United States or which “directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information.”⁶

Pollard claimed that “At no time did I ever compromise the names of any U.S. agents operating overseas, nor did I ever reveal any U.S. ciphers, codes, encipherment devices, classified military technology, the disposition and orders of U.S. forces...or communications security procedures,”⁷ a claim completely refuted by the facts.

3 Release of Pollard and immigration to Israel would aid in the Gaza peace process.

It has been reported that before Prime Minister Yitzhak Rabin was assassinated, he had asserted it would help him gain support for the peace process with his public, if he could be seen having secured the release of Pollard. After Rabin was assassinated in 1995, the latest twist in the “Free Pollard” campaign was a suggestion made to President Clinton that it would be a signal honor to memory of Rabin, if Pollard were released.

It would be difficult to add to the statement made in a written communication to Attorney General Janet Reno, by then Director of the FBI, Louis Freeh, who opined that it begged logic to understand how freeing a traitor would pay homage to the memory of an honorable man. Recently, several members of Congress have made a similar argument, but no one has ever explained how releasing Pollard would bring the Gaza

antagonists together. Nor has a viable argument been advanced to explain how his release would somehow have a quieting effect on Israeli hardliners.

4 There could have been no harm to the U.S. by Pollard's disclosures because Israel was “entitled” to the information he stole.

The U.S. provides considerable classified information to Israel, as it does to other allies. However, all such disclosures are done on a policy basis – policies developed with specificity for each nation – not decided by a GS14 employee, sitting in a cubicle, filching secrets. Secretary Weinberger probably did not anticipate that this argument would one day be an argument for Pollard clemency, nor that it would be constantly repeated. Nevertheless, he addressed the issue in his unclassified declaration to the Court:

“That information was intentionally reserved by the United States for its own use, because to disclose it, to anyone or any nation, would cause the greatest harm to our national security. Our decisions to withhold and preserve certain intelligence information, and the sources and methods of its acquisition, either in total or in part, are taken with great care, as part of a plan for national defense and foreign policy which has been consistently applied throughout many administrations.”⁸

In an unredacted portion of his classified declaration, Secretary Weinberger also explained the reason for policy determinations on what kind of classified information could be released to other powers.⁹

Additionally, as related by Pollard, his initial handler told him that they already receive “SECRET” level material from the United States. What they needed was the TOP SECRET data they were not yet receiving.¹⁰

Other information he turned over included the daily report from the Navy's Sixth Fleet Ocean Surveillance Information Facility (FOSIF) in Rota, Spain, a top-secret document filed every morning reporting all that had occurred in the Middle East during the previous twenty-four hours, as recorded by the N.S.A.'s most sophisticated monitoring devices. These were so important that, when Pollard missed stealing some of them, his Israeli handlers quickly complained of

5. At the time of the Pollard case the death penalty was not available in federal courts.

6. For examples of the type of material disclosed to Israel by Pollard, see, Edwin Black, “Why Jonathan Pollard is Still in Prison,” *JewishJournal.com*, July 4, 2002. See, also, Seymour Hersh, *supra* n. 2.

7. Hersh, *supra*, n. 4.

8. Supplemental Affidavit of Caspar Weinberger, Secretary of Defense, dated 3 March 1987 (unclassified).

9. Declaration of the Secretary of Defense, Caspar Weinberger (classified/redacted) dated 3 March 1987.

10. Colonel Aviem Sella was later promoted to general rank and was indicted in the United States for his role in the Pollard affair.

the loss.¹¹

There was also data provided from a rather primitive information system called the Defense Intelligence Agency's Community On-Line Intelligence System (COINS). Information contained in that system was full of human intelligence (HUMINT) data. During the period from 1984-1985 Pollard was one of the heaviest users of that system.¹²

A career intelligence officer apparently told Seymour Hersh that "Pollard gave them every message for a whole year."¹³

Probably the most serious disclosure (of those of which we are aware) was the TOP SECRET NSA RAISIN manual which lists the physical parameters of every known signal, notes how we collect signals around the world, and lists all the known communications links then used by the Soviet Union. It is certainly the thing that stood out in the mind of the sentencing judge; particularly when Pollard alleged at sentencing that there really was no harm done. The judge interrupted and brought him up short, pointing specifically to disclosure of the RAISIN manual.

One additional disclosure is of merit. Pollard disclosed information to the Israelis that could prevent the U.S. from monitoring Israeli activities in the Middle East – clearly a foreign policy nightmare.

5 The documents disclosed were returned by Israel and show that nothing Pollard released caused any harm.

It has been consistently reported that Pollard disclosed in the neighborhood of 1,000 documents to the Israelis. The source of that number is unclear – certainly it is more than was returned to the U.S. by Israel. However, we know from Pollard that the Israelis rented an apartment in which they installed high speed copy machines to copy voluminous the material he brought them. Pollard boasts that he provided information sufficient to occupy a space six feet by six feet by ten feet.¹⁴

6 Some of the activities originally attributed to Pollard were later discovered to have

been the work of Russian Mole Aldrich Ames.¹⁵

A classic straw-man argument. When Secretary Weinberger provided his classified declaration to the Court, he considered only a handful of documents, all of which were known to have been provided to the Israelis by Pollard. Each document was selected as representative of the type and/or source of the information disclosed. The declaration was focused precisely on the information that Pollard turned over, and what effect disclosure of that information would have on the national security. It contained no speculation on what additional information Pollard might have disclosed. It did indicate that there is no way to assess the potential damage from all the other unregulated disclosures.

7 Pollard was merely a well-meaning advocate for an ally.

Because the case never went to trial, it is difficult for outside observers to understand the potential impact and complexity of the Pollard betrayal. There is no doubt that Pollard was devoted to Israel. However, the extent of the theft and the damage was far broader

Espionage Does Pay...

Aldrich H. Ames



Life without parole

David S. Boone



24 Years

Jonathan J. Pollard



Life

Earl E. Pitts



27 Years

Roderick J. Ramsay



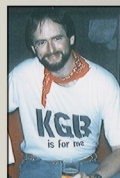
36 Years

Christopher J. Boyce



68 Years

Harold J. Nicholson



23 Years and 7 Months

Andrew D. Lee



Life

Jerry A. Whitworth



365 Years

William Kampiles



40 Years

Ronald W. Pelton



3 Life Sentences

**Don't
Be
Next**

...and Prison is the Bank.



National Counterintelligence Executive

For more information contact: www.ncix.gov

11. Hersh, supra n. 2.

12. Id.

13. Id.

14. Declaration of the Secretary of Defense, Caspar Weinberger (classified/redacted) dated 3 March 1987.

and more complex than evidenced by the single charge and sentence.

Far from being a selfless, 'volunteer' Israeli sympathizer, Pollard was well-compensated – demanded it – and enjoyed the money he received. When, at one point, he complained about the chances he was taking, he was asked what he wanted. More money, of course. Pollard immediately demanded an extra thousand dollars a month.

Pollard Gave or Sold Documents To Other Countries, Not Just Israel

Nor was Israel his only target. As noted extensively by Seymour Hersh in his 1999 article, prior to the plea agreement “the government had been preparing a multi-count criminal indictment that included – along with espionage, drug, and tax-fraud charges – allegations that before his arrest, Pollard had used classified documents in an unsuccessful attempt to persuade the governments of South Africa, Argentina, and Taiwan to participate in an arms deal for anti-Communist Afghan rebels.” To Pollard, classified documents were mere persuasive chits to be traded for a variety of different goals, with little regard for the impact such disclosures would have on highly sensitive U.S. policies, operations, or personnel. Additionally, a journalist named Kurt Lohbeck was prepared to testify as to Pollard’s heavy cocaine usage.¹⁶

Intelligence officials have unofficially detailed instances of additional disclosures to other nations. These officials said that Pollard had given classified documents to Pakistan, South Africa and two other countries they declined to identify. “He actually turned over the documents (but) never got any money,” said one of the officials. “Our speculation is that he was trying to establish bona fides” to nurture a lucrative espionage relationship with the countries.¹⁷

Pro-Israel Patriot... or Out-of-Control Egotist?

In the final analysis, Jay Pollard is not a sympathetic character when one is given the full picture of his activities against this country. He was neither a U.S. nor an Israeli patriot. He was a self-serving, gluttonous character seeking financial reward and personal gratification. Without doubt, he is intense and intelligent, but also arrogantly venal, unscrupu-

lous, and self-obsessed. The 1999 Hersh article details much, but not all, of the fanciful life Pollard sought to live. His self-aggrandizement became evident during his spying operations.

Not to be inconvenienced by arrest and conviction, or public excoriation, Pollard now fancies himself a brave pilot downed behind enemy lines, abandoned by his superiors.¹⁸ A convenient illusion he hopes will win supporters and his release to his newly adopted country: Israel. But Pollard is no hero, even to Israel. Israeli intelligence reportedly regards him with disdain.

His ultimate handler, spymaster Rafi Eitan, dismissed Pollard, saying “If I had been at the [Israeli] Embassy when Pollard came to seek asylum, I would have put a bullet through his head and there would have been no ‘Pollard affair’.”¹⁹

It shows that the Israelis learned another secret: Pollard was, and still is, concerned only about Jonathan Jay Pollard.

M. E. “Spike” Bowman, Esq., Capt., USN(Ret), a specialist in national security law and policy, was recently the Deputy, National Counterintelligence Executive, part of the Office of the Director of National Intelligence. He previously served as Senior Research Fellow, National Defense University. Before that he served in the Senior Executive Service, Federal Bureau of Investigation as Senior Counsel, National Security Law, and as Director, Intelligence Issues Group, National Security Branch. He retired from the FBI in 2006. Prior to the FBI he had an extensive Naval career which included assignments at the National Security Agency. Mr. Bowman has authored numerous articles on national security issues and is a frequent lecturer at conferences and universities both in the United States and abroad. He is a life member of AFIO and serves as Chairman of AFIO’s Board of Directors.

16. Hersh, *supra* n. 2.

17. “US Officials Close Ranks Behind Espionage Deal,” *Newsday*, January 12, 1999.

18. Supplemental Affidavit of Caspar Weinberger, Secretary of Defense, dated 3 March 1987 (unclassified).

19. Smith, Grant, “Jonathan Pollard’s First Freedom Gambit,” *Anti-War.com*, October 29, 2010.