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ARGUMENT

I.

THE LOWER COURT ERRED IN REFUSING TO VACATE AN INHERENTLY SUSPECT WIRED PLEA WITHOUT HAVING APPLIED THE REQUISITE SPECIAL CARE TO DETERMINE WHETHER THE PLEA WAS TRULY VOLUNTARY -- FAILING EVEN TO CONDUCT AN EVIDENTIARY HEARING ON THE QUESTION.

At the time when they were both subject to pre-trial imprisonment, Pollard understood that his wife -- afflicted with a rare disease called biliary dyskinesia -- was suffering greatly from her incarceration, and that her medical problems would be exacerbated by a trial and the possibility of a lengthy sentence. The prosecutors, however, refused to allow her to plead guilty unless her husband did the same. Moreover, they threatened to bring new charges against her if Petitioner did not plead guilty.

All guilty pleas must be entirely voluntary.

A court may not accept a guilty plea without determining that it "represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." [North Carolina v. Alford, 400 U.S. 25, 31 (1970); see also Brady v. United States, 397 U.S. 742, 755 (1970).]

In determining whether a plea was voluntary, a court must examine the totality of events and circumstances -- which in turn "involves an evaluation of psychological and other factors that may reasonably be calculated to influence the human mind." [United States v. Colson, 230 F. Supp. 953, 955 (S.D. N.Y. 1964).] As the Supreme Court has emphasized, it is incumbent upon the trial court to conduct a probing, on-the-record inquiry to determine

voluntariness:

> To the extent that the district judge . . . exposes the defendant's state of mind on the record through personal interrogation, he not only facilitates his own determination of a guilty plea's voluntariness but he also facilitates that determination in any subsequent post-conviction proceeding based upon a claim that the plea was involuntary. Both of these goals are undermined to the degree the district judge resorts to 'assumptions' not based upon recorded responses to his inquiries. [McCarthy v. United States, 394 U.S. 459, 467 (1969); see also [United States v. Cody, 438 F.2d 287, 289 (9th Cir. 1971), and the Bench Book for U.S. District Judges (Federal Judicial Center).]

This requirement is embodied in Rule 11(d) of the Federal Rules of Criminal Procedure. As the Second Circuit recently noted, "Rule 11 is not satisfied unless the district court determines the voluntariness of the guilty plea based upon the record responses to its questions." [United States v. Rossillo, 853, F.2d 1062, 1065 (2d Cir. 1988).] The burden is on the court to satisfy Rule 11, and adherence to the rule must be "scrupulous." [Id. at 1067.] Similarly, it is important for the court to "flush out any discussions that have occurred regarding the possible sentence a defendant may receive." [United States v. Gonzalez, 820 F.2d 575, 579 (2d Cir. 1987).]

A guilty plea induced by promises or threats which deprives it of the character of a voluntary act violates the constitutional guarantee of due process. [cite to record?] A conviction based upon such a plea is open to collateral attack, regardless of when it occurs. [See Machibroda v. United States, 368 U.S. 487, 493 (1962), in which a hearing was ordered even though the defendant filed his habeas corpus petition three years after he had pleaded

guilty.]

No determination of voluntariness was ever attempted in the court below. Rather than conducting a careful inquiry, the court below asked merely if the defendant understood "the consequences" of his plea and contented itself with a rote response in the affirmative. "Whatever the exact nature of the colloquy it is essential that it be meaningful. . . . [T]he trial court should question the defendant in a manner that requires the accused to provide narrative responses" rather than "responses which merely mimic the indictment or the plea agreement." [United States v. Fountain, 777 F.2d 351, 356 (7th Cir. 1985).]

"Wired" pleas must be examined with special care.

If every plea agreement requires such scrutiny to determine voluntariness, a "wired" plea -- one induced by the promise of lenient treatment toward a third party if the defendant pleads guilty -- should merit an even more thorough probing by the trial court. The overwhelming weight of authority supports the common-sense proposition that "guilty pleas made in consideration of lenient treatment as against third persons pose a greater danger of coercion than purely bilateral plea bargaining, and that, accordingly, 'special care must be taken to ascertain the voluntariness' of guilty pleas entered in such circumstances." [United States v. Nuckols, 606 F.2d 566, 569 (5th Cir. 1979) (quoting United States v. Tursi, 576 F.2d 396, 398 (1st Cir. 1978). See also Crow v. United States, 397 F.2d 284, 285 (10th Cir. 1968); and Cortez v. United States, 337 F.2d 699, 701-702 (9th Cir.

1964).]

In Bordenkircher v. Hayes, 434 U.S. 357 (1978), the Supreme Court left unresolved "the constitutional implications of a prosecutor's offer during plea bargaining of adverse or lenient treatment for some person other than the accused. . ., which might pose a greater danger of inducing a false guilty plea by skewing the assessment of the risks a defendant must consider." [434 U.S. at 364 n.8 (Emphasis in original).] But the Court did take pains to note that the "'give and take' of plea bargaining [will be permitted only] so long as the accused is free to accept or reject the prosecution's offer." [Id. at 363, emphasis added.]

No such leeway was permitted Jonathan Pollard. He was not free to reject the prosecution's offer, lest he permanently endanger his wife's health.

In United States v. Cammisano, 599 F.2d 851 (8th Cir. 1979), a guilty plea was ordered vacated when the defendant claimed that "he [had been] pressured into pleading guilty because of threats that, unless he did so, his brother . . . might go to trial and receive a long sentence." [Id. at 852.] Both brothers had pleaded guilty. The district court had ruled that defendant's statements adopting his attorney's remarks were sufficient to show compliance with Rule 11(d). [Id. at 855.] But the Court of Appeals found nothing in the record contained a "specific inquiry . . . into the plea's voluntariness or whether it was the product of 'force, threats or promises,'" and held that "this procedure falls short of the spirit and letter of Rule 11(d). . . . The essential

purpose behind Rule 11 is to seek judicial assurance that the plea is voluntary and not wrongfully induced by force, threats or promises." [Id. at 855-856.]

In Johnson v. Wilson, 371 F.2d 911, 912 (9th Cir. 1967), the Ninth Circuit held erroneous the trial court's dismissal of the appellant's claim that his "wired" guilty plea had been coerced: "Whether appellant's guilty plea was the voluntary choice of a free and unrestrained will [citations omitted] or was the product of a coerced confession, or was itself improperly induced or coerced, were questions of fact which could only be determined after an evidentiary hearing." The coercion worked on Jonathan Pollard was even greater than that involved in Johnson v. Wilson, where the police had merely threatened to proceed against defendant's wife and daughter. With Pollard's wife alarmingly ill and already having been in jail, he reasonably perceived the threats of additional charges as virtual threats against her life.

In United States v. Daniels, 821 F.2d 76 (1st Cir. 1987), the appellant was again allowed to withdraw his guilty plea where the government failed to tell the court at the Rule 11 hearing that it had made clear to the defendant that it would not accept guilty pleas from his two codefendants (his brother and brother-in-law) unless he also pleaded guilty." [Id. at 78-79.] In the case at bar, although the district court should have been aware of the statements made by the prosecution to Jonathan Pollard connecting his wife's plea to his own, it made no meaningful inquiry about them.

A case similarly germane is United States v. Nuckols, supra, where the appellant was held entitled to a hearing on his claim "that the prosecuting attorney induced his guilty plea by threatening 'to prosecute appellant's wife if he fought the case.'" Even though the prosecutors in Nuckols did not in fact bring charges against the appellant's wife, and [there was no evidence indicating that the appellant's wife had been involved in criminal conduct that would have justified her prosecution,] the Fifth Circuit nevertheless recognized the coercive element inherent in the mere threat to charge the wife. Here, the element of coercion was even stronger; Anne Pollard had already been charged with several offenses, and this lent credibilty to the government's spectre of additional charges.

The lower court failed completely to determine that Petitioner's wired plea was voluntary.

Far from conducting the careful inquiry specifically needed to determine whether a "wired" plea is truly voluntary, the lower court exercised no scrutiny at all -- apparently satisfying itself with the idea that the plea agreement itself negated the possibility that it had been coerced. Instead of undertaking a meaningfully thorough inquiry, the court relied on a pro forma statement by Pollard's attorney asking that the guilty plea be accepted. [Plea Transcript at 7-8.]

Likewise, the court failed to make any meaningful evaluation of the psychological factors involved that suggested the plea had been vitiated by coercion. Although Pollard admitted his guilt,

the judge asked him nothing even generally about whether he had been threatened by his wife's prosecution -- much less specifically about the connection between her plea and that of his own. Although she was scheduled to plead moments later, and though each plea agreement referred specifically to the other's, the judge made no effort to weigh the possibility that they were mutually coercive.

Pollard's acknowledgment that he understood the consequences of his plea was no evidence of its voluntariness. In Martin v. Kemp, 760 F.2d 1244 (11th Cir. 1985), the Eleventh Circuit, relying on Nuckols, ordered an evidentiary hearing to determine whether a guilty plea allegedly induced by threats to prosecute a spouse "were founded in good faith upon probable cause." [Id. at 1249.] The defendant's prior attestation of voluntariness," said the court in Martin, is insufficient to preclude his "subsequent claim that he pleaded guilty only to protect the third party." [Id. at 1248.]

> Rule 11's plea bargaining rules serve not simply to benefit parties to an agreement, but also to allow the district court to assure that the agreement is just. . . . Thus, the court has an interest independent of that of the parties in knowing the terms of a plea agreement. . . . Because Rule 11 protects not only the parties but also the 'fairness, integrity [and] public reputation of judicial proceedings," other appellate courts have applied the requirement of raising questions below less strictly in the Rule 11 violations sua sponte. [Id. at 81.]

Even the cases that ultimately rejected the defendant's claim that his guilty plea had been involuntarily (and therefore improperly) linked to that of a third party recognize that a hearing is imperative: whether a guilty plea was involuntary is a

question of fact which must be determined from the totality of circumstances in each case. [See, e.g., United States v. Usher, 703 F.2d 956, 958 (6th Cir. 1983), in which the defendant claimed that linkage to his wife's plea was in itself sufficient coercion to vitiate his own.] Here Pollard invokes the appropriate standard under which the court must examine all the surrounding circumstances to determine whether the government-inspired linkage between his plea and that of his wife was coercive and therefore constitutionally impermissible.

Given the severity of the charges facing him, and the fact that his plea and the plea of his wife were known to be "wired," at a minimum the lower court should have conducted more than a cursory inquiry into Petitioner's decision to plead guilty, specifically to ensure that it was truly voluntary and not coerced. The judge's failure to do so was not merely a technical violation of Rule 11, but amounted to reversible error.

It is likewise important to note that neither the defendant nor his counsel is obliged affirmatively to raise the issue of the coercive circumstances surrounding the plea at the time it was made. Rule 11 directs the court to determine that the plea is voluntary. "The rule places no such burden on the defendant." [United States v. Rossillo, 853 F.2d 1062, 1067 (2d Cir. 1988).]

The careful inquiry by the court contemplated by Rule 11 would have probed the circumstances under which Petitioner pled guilty, and would have discovered that Pollard was motivated to forego his right to a trial not only to minimize his chances of receiving a

life sentence, but clearly (and perhaps primarily) for the well-being of his wife. It would have also made clear that the very coercion that vitiated Pollard's guilty plea constrained him to be silent unless required to speak in answer to the court's questions. Pleading guilty was the only way he could protect his wife from what he reasonably regarded as a serious threat to her life; but disclosure of the coercion that generated the plea would render it null, and in the absence of an effective guilty plea by Jonathan none would be available to Anne.

Thus Pollard could not be expected to speak spontaneously, and his silence cannot be reasonably interpreted as a genuinely voluntary and valid waiver of his right to a jury trial. He did not waive his right to a trial by delaying his claim that the guilty plea had been involuntary: he could not safely renounce his plea until his wife was out on parole and subject to a lesser risk of retaliation by a potentially vindictive prosecution. Even had he wanted to waive his rights, he could not have done so without jeopardizing his wife. He was truly trapped.

Indeed this is the dilemma presented by many "wired" plea agreements, and precisely why they must be scrutinized so carefully. Clearly the judge below was bound to make those inquiries; his failure to do so rendered the plea unconstitutionally defective, and should be reason enough to vacate it and remand the case. The only remedy now is to allow Petitioner to withdraw his plea of guilty and stand trial.

II.

THE LOWER COURT ERRED IN NOT NULLIFYING THE PLEA AGREEMENT, WHICH PROSECUTORS HAD BREACHED (A) BY FAILING TO LIMIT THEIR ALLOCUTION OF THE FACTS AS AGREED UPON; (B) BY PROMISING TO DISCLOSE PETITIONER'S "VALUABLE" COOPERATION, BUT THEN CASTING ASPERSIONS UPON IT; AND (C) BY SEEKING TO INFLUENCE THE COURT TO IMPOSE THE HARSHEST POSSIBLE SENTENCE.

The essence of a plea agreement is the assurance in good faith that both sides will receive something of value. In the nature of a contract, specific promises are exchanged between prosecutor and defendant. Interpretation of the terms of a plea agreement is subject to the same objective standards applied to other contracts. [United States v. Pomazi, 851 F.2d 244, 250 (9th Cir. 1988); United States v. Harvey, 848 F.2d 1547, 1552 (11th Cir. 1988); United States v. Packwood, 848 F.2d 1009, 1011 (9th Cir. 1988).] When a contract is materially breached, the aggrieved party has the right to seek its nullification. [Santobello v. New York, 404 U.S. 257 (1971); Brunelle v. United States, 864 F.2d 64, 65 (8th Cir. 1988).]

Even where a breach is inadvertent or where the trial judge declines the prosecutor's recommendation, the interests of justice require that a defendant receive "what is reasonably due in the circumstances." [Santobello, 444 U.S. at 262.] A long and clear line of cases holds the government to high standards of promise and performance; breaches of either explicit or implicit promises are enough to invalidate a plea agreement. [United States v. Moscahlaidis, 868 F.2d 1357, 1361 (3rd Cir. 1989); United States v. Bowler, 585 F.2d 851, 853-55 (7th Cir. 1978); United States v.

Grandinetti, 564 F.2d 723 (5th Cir. 1977); United States v. Brown, 500 F.2d 375 (4th Cir. 1974); Correale v. United States, 479 F.2d 944, 947 (1st Cir. 1973).]

Here, in return for Petitioner's guilty plea, the government promised that it would limit its allocution to the facts and circumstances of the offenses committed; that it would make Pollard's cooperation known to the court; and that it would ask for a "substantial" -- not "maximum," but "substantial" -- sentence. The government breached each of these promises in its sentencing recommendations to the court. Petitioner had bargained away his right to trial in return for empty promises and illusory statements. He gave, but he did not receive.

The government breached both the substance and spirit of the agreement in every particular.

Instead of limiting its allocution to "the facts and circumstances of the offenses committed by Mr. Pollard" [Plea Agreement at ¶ 4(b)], the government (after stating that the facts and circumstances it had presented in detail justified a "substantial period of incarceration") went on to malign Pollard's motives and character -- concluding that it was greed, not altruism, which had caused him to pass classified information to Israel. [Government's Memorandum in Aid of Sentencing at 39-43.] In a subsequent memorandum, the government variously called Petitioner a "recidivist," "unworthy of trust," and "traitorous." [Reply to the Defendant's Sentencing Memorandum at 12 and 22.] At the sentencing itself, the government called Pollard deceptive,

arrogant, vengeful, and "not a man of his word." [Transcript at 44.] None of these statements could fairly be described as either "fact" or "circumstance" of the offense committed -- certainly not within any reasonably literal or figurative meaning of the plea agreement.

A case directly on point is United States v. Moscahlaidis, 868 F.2d 1357 (3rd Cir. 1989), in which the plea agreement permitted the government to inform the sentencing judge and probation office of "the full nature and extent" of the defendant's activities relevant to the facts. [Id. at 1359.] But the court found that the government had breached the agreement by using such phrases as "the depth of [the defendant's] greed and moral bankruptcy" and his "utter contempt for the welfare of his fellow man." [Id.] Such prosecutorial opinions, said the court, amounted to "nothing less than a 'transparent effort to influence the severity' of [the defendant's] sentence." [Id. at 1362.]

In our case, the trial court's assertions that the prosecutors' opinions as to Pollard's character could somehow be construed as "facts and circumstances" seem to swallow whole the government's strained interpretation of its commitment under the plea agreement. At best such a "strict and narrow interpretation of it commitment is untenable." [United States v. Crusco, 536 F.2d 21, 26 (3rd Cir. 1976).] At worst it renders all such language meaningless.

The trial court also held that the government fulfilled its promise to tell of Pollard's cooperation. But whatever the

prosecutors did say on that subject was unalterably diminished by gratuitous speculation about Petitioner's motives, doubts about his remorse, and belittling comments about its timeliness. [citation to record?] The government agreed to inform the court of Pollard's cooperation -- only in the next breath to belittle its value. The defendant certainly cannot be understood to have bargained for that kind of duplicity. [See United States v. Greenwood, 812 F.2d 632, 635 (9th Cir. 1987), and United States v. Fisch, 863 F.2d 690 (9th Cir. 1988).]

The government encouraged the trial to mete out the maximum sentence.

The government likewise violated its clearly-implied promise to seek something less than the maximum sentence, when it submitted two declarations from then-Secretary of Defense Caspar Weinberger; in them he called for "severe punishment" of Pollard's "treason," which he found "difficult . . . to conceive [causing] a greater harm to national security." [Weinberger Declaration at 45; Supplemental Declaration at 1-2.] There may be yet additional inflammatory and prejudicial allegations in the classified portions of the Weinberger Declarations -- to which Petitioner's current counsel has been denied access. However, even the non-classified portions of the declarations plainly expose the government's attempt to circumvent its commitment to recommend something less than the maximum sentence.

The prosecutors cannot avoid their explicit obligation under the plea agreement by using the statements of a public official not

part of the trial record. The government and Weinberger are one and the same. It was the government which submitted the declarations whose tone and content flew directly in the face of the plea agreement. [See United States v. Cook, 668 F.2d 317 (7th Cir. 1982).]

Moreover, in its attempt to have Pollard sentenced to life in prison, the government may well have engaged in ex parte communications with the sentencing judge. As alleged in the Dershowitz Affidavit, former Supreme Court Justice Arthur Goldberg related to Professor Dershowitz that Judge Robinson had told him that one of the things that had "weighed heavily" in his sentencing decision was information the government had revealed to him concerning Pollard's alleged disclosure to Israel of classified information regarding Israeli missile programs in South Africa. We return to this point in Argument III infra, but note for now that if the allegation -- on which the court below refused to hold a hearing -- is accurate, it provides yet further evidence of the government's breach of its promise not to seek a life sentence.

Here the government has been permitted to interpret "substantial" as "maximum" -- thereby rendering the plea agreement of little or no value to Petitioner (except for the leniency promised his wife, which gave rise to the coercive element noted in Argument I).

The government prompted and facilitated what it claimed to be a breach by Petitioner.

The government claims that Petitioner himself violated the

plea agreement by granting unauthorized interviews.

Much to the contrary, there is ample evidence that the government knowingly allowed Pollard to engage in the interviews, only then to assert that he had breached the agreement. Pollard was incarcerated both times he met with Wolf Blitzer, the reporter to whom he spoke. On each occasion he carefully followed the procedures imposed by federal prison regulations, including written notice to the Department of Justice. In fact the government not only acquiesced to but facilitated both the first interview -- upon which was based an article it could not fail to have noticed in the internationally-circulated Jerusalem Post -- and the second. In short, the interviews and the articles they generated were anything but clandestine.

The trial court found nothing whatever to substantiate the government's claim that Pollard had disclosed classified information to Blitzer -- perhaps because the court held no evidentiary hearing at all to resolve that factual dispute. Nor did it ever determine as a matter of fact or law that the procedure Pollard followed in granting the interviews was a violation of the plea agreement.

Likewise, the lower court made no mention of Petitioner's argument that the government itself had attempted to prompt a breach by the Petitioner so that (in abrogation of the plea agreement) it could subsequently argue for a harsh sentence. It would be easy for an outside observer to conclude that the government had "used Blitzer, hoping to obtain a long prison

sentence for Pollard." [See, e.g., Friedman, The Secret Agent, N.Y. Rev. Books 10 (Oct. 29, 1989).]

The lower court permitted to go unchallenged the government's assertion that though Petitioner had breached the plea agreement he should still be held to it. But it is for the court, not the government unilaterally, to decide if the defendant has breached. [United States v. Calabrese, 645 F.2d 1379, 1390 (10th Cir. 1981), cert. denied, 451 U.S. 1018 (1982); see also United States v. Reardon, 787 F.2d 512 (10th Cir. 1986) and United States v. Simmons, 537 F.2d 1260, 1261 (4th Cir. 1976).]

In determining whether a plea agreement has been broken, the court must look to what was reasonably understood by the defendant when he entered his plea. [United States v. Casamento, 887 F.2d 1141, cert. denied, 110 S.Ct. 1138 (1989); United States v. Read, 778 F.2d 1437 (2nd Cir. 1985), cert. denied, 479 U.S. 835 (1985); United States v. Travis, 735 F. 2d 1129 (9th Cir. 1984).]

Furthermore, if the court finds that the defendant has breached, the government's remedy is to be allowed to proceed to trial [Innes v. Dalsheim, 864 F.2d 974, 978 (2d Cir. 1988), cert. denied, 110 S.Ct. 50 (1989)] -- not to abrogate its own promises.

In short, in this case it is the government which violated its duty of good faith and fair dealing -- and the Petitioner who is entitled to be discharged from the plea agreement.

III.

THE COURT BELOW ERRED WHEN THE SENTENCING JUDGE, HAVING IMPOSED UPON PETITIONER A DISPROPORTIONATELY HARSH SENTENCE, REFUSED HIS APPELLATE COUNSEL ACCESS TO VARIOUS EX PARTE DECLARATIONS AND DECLINED TO RECUSE HIMSELF WHEN HAVING TO RULE UPON A CHALLENGE TO HIS IMPARTIALITY.

Petitioner has been denied the right to challenge the Weinberger Declarations.

As part of its pre-sentence recommendations to the court, the government submitted two declarations from then-Secretary of Defense Caspar Weinberger, both of which offered Weinberger's personal assessment of the damage Pollard had done to national security. Although Petitioner had never been charged with anything more than having given classified information to a friendly nation, the Secretary wrote that "no crime is more deserving of severe punishment than conducting espionage activities against one's own country." [Weinberger Declaration at 45 (emphasis added).] Weinberger also declared that Pollard "should not be treated merely as a common criminal" and that the punishment should fit defendant's "treason." [Supplemental Declaration at 2.]

This hyperbolic language in the non-classified portions of the Weinberger Declarations suggests strongly that the classified portions may include allegations that go beyond the charges that formed the basis of Petitioner's indictment -- allegations which may be entirely false or grossly exaggerated, and which may have contributed to the trial judge's decision to sentence Petitioner to a life term. To pursue this line of inquiry, Petitioner's new counsel obtained security clearance, and sought access to the

classified portions of the Weinberger Declarations. When the government refused his request, he asked the court for relief.

The court below denied this motion. It reasoned that it was within its discretion to deny presentence materials to new counsel; that prior counsel as well as Pollard himself were given sufficient opportunity to comment on the classified documents; that prior counsel was competent; and that current counsel can examine the files of prior counsel. [United States v. Pollard, 747 F.Supp. 797, 807 (1990).]

In so ruling the lower court ignored the well-established requirement that presentence reports should be available to counsel at every level, even where the information they contain is already known. [United States v. Foss, 501 F.2d 522, 530 (1st Cir. 1974).] Also ignored was the fact that security regulations required counsel below to leave his notes about classified materials in the government's custody. [cite?]

To support the proposition that presentence reports need be shown to appellate counsel only where a "gross abuse of discretion" was manifest, the lower court cited United States v. Lewis, 743 F.2d 1127 (5th Cir. 1984), and United States v. Bernstein, 546 F.2d 109 (5th Cir. 1977). In both cases, however, the facts were substantially different: in both the defendants fully accepted the presentence report, and made no allegations as to improper

performance under their plea agreements. *** Pollard, in contrast, has consistently claimed that the presentence memoranda were "speculative, seriously flawed and exaggerated." [747 F.2d at 803.] The district court's opinion fails to explain why the circumstances of this case justify keeping these materials from appellate counsel.

Petitioner was denied a fair and impartial hearing on the Dershowitz Affidavit.

The allegations contained in the Dershowitz Affidavit lend further support to the argument that the judge below was negatively influenced by ex parte communications and that he should have recused himself -- or at the very least held an evidentiary hearing. The affidavit suggests that the judge relied heavily upon the government's ex parte allegations that Pollard had supplied information to Israel about South Africa, a charge Petitioner would have strongly controverted -- had he only been able to do so.

The court below denied Petitioner's request for a hearing because the judge's "recollection of events is in stark contradiction to that claim." [747 F.Supp. at 801.] The judge "knew" that the allegations in the Dershowitz Affidavit were

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*** The appellant in Lewis "alleged no facts to show that the sentence was a gross abuse of discretion [and] made only the wholly conclusionary allegation that his background and record were not properly presented at sentencing." [743 F.2d at 1129.] In Bernstein, the defendant informed the court that the presentencing report was correct and was subsequently sentenced to sixty days in jail, well below the maximum he could have received. [596 F.2d at 109.]

"false." [Id. at n.4.] But the trial court's opinion implies that a conversation did in fact take place -- a central allegation in the Dershowitz Affidavit that is never categorically denied. Petitioner, on the other hand, was rendered totally incapable of challenging the judge's conclusory characterization. He could not, for example, ask if the judge had received any information relating to South Africa and if so whether it affected his sentence, or if there ever was a conversation with Justice Goldberg and if so whether Professor Dershowitz's recounting of that conversation was accurate.

Petitioner was clearly entitled to a hearing on the affidavit. A trial judge cannot deny a hearing simply because he "knows" what happened outside of court and because he "believed the facts untrue as alleged." [Mack v. United States, 635 F.2d 20, 27 (1st Cir. 1980); see also Machibroda v. United States, 368 U.S. 487 (1962); Walker v. Johnston, 312 U.S. 275, 287 (1941) and Sanders v. United States, 373 U.S. 1, 20 (1963).]

Not only should there have been a hearing on the affidavit, but at that hearing the judge below should have recused himself. The law on this subject is clear and unambiguous: a federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned," or where "he has personal . . . knowledge of disputed evidentiary facts concerning the proceeding," or where he is "likely to be a material witness in the proceeding." [Title 28, U.S.Code, Section 455.] The standard is an objective one, "designed to promote public

confidence in the impartiality of the judicial process." [H.R. No. 93-1453, P.L. 93-512 at pp. 6355 (1974).]

Fundamental fairness is violated when a judge rules upon the credibility of his own testimony; a judge has no particular competence in factual recollection of unrecorded events. [Tyler v. Swenson, 427 F.2d 412 at 415.] Were the analysis of the court below to be accepted, judges would always be insulated against challenges to their ex parte actions because they could always find an absence of bias simply by relying upon their "personal knowledge."

The obvious problem of a court ruling on its own impartiality is the difficulty of removing the appearance of partiality. Such an appearance was not at all obviated -- indeed, it was encouraged -- by the judge's analysis here: "the [c]ourt knows that it did not receive information, as is in fact the case, because and only because of its participation in this criminal action." [747 F.Supp. at 800.] The court's reasoning is tautological: it bypasses the question of its impartiality by deciding that in its own view the charge is baseless, and that therefore there could have been no partiality. The court thus eschews any objective standard to determine impartiality, concluding baldly that the allegation "is simply not credible." [747 F.Supp. at 801.]

If the charge of partiality had been viewed objectively, the possibility that the judge below could become a material witness in a future proceeding would have been clear. For that reason alone he should have disqualified himself.

This very Court has held that a judge should recuse himself whenever there has been even "an appearance of bias or prejudice sufficient to permit the average citizen reasonably to question [his] impartiality." [United States v. Heldt, 668 F.2d 1238, 1271 (D.C. Cir. 1981), cert. denied, 456 U.S. 926 (1982), emphasis in original.] Under Sec. 455(a), "recusal is required even when a judge lacks actual knowledge of the facts indicating his interest or bias in the case if a reasonable person, knowing all the circumstances, would expect that [he] would have actual knowledge." [Liljeberg v. Health Services Acquisition Corp., 108 S. Ct. 2194, 2202 (1988).]

The Sentence Imposed Upon Petitioner Was Grossly Disproportionate.

It is likewise evident that the classified portions of the Weinberger Declarations and the ex parte communications were extremely prejudicial to Petitioner. The penalty imposed -- life imprisonment with a recommendation against parole [???] -- is so grossly disproportionate to the gravity of Pollard's offense, as well as to other sentences received by those convicted of similar crimes, that the only logical conclusion is that the trial judge must have been influenced by government charges which the Petitioner never had a legitimate opportunity to contravene.

Jonathan Pollard's activities consisted solely of passing information to Israel, an American ally, regarding the production, location, and performance of Arab military hardware and capabilities. His conduct was motivated by a desire to uphold an

Executive Agreement between the United States and Israel, which he understood to require the disclosure of the particular information he provided to the Israelis. [cite to record?] He did not compromise the internal security of the United States. Indeed -- as subsequent events in the Persian Gulf indicate -- far from damaging United States interests, Pollard's actions enhanced them. Intelligence maps he gave to Israel enabled that country to develop an improved defensive capability and to refrain from a potentially divisive active improve in the Persian Gulf War. [See, e.g., U.S. News & World Rep., Sept. 24, 1990, at 40.]

The degree of disparity between Pollard's crime and his punishment is magnified by a comparison of Pollard's sentence with those given to offenders convicted of similar crimes. For example, an Egyptian-born American citizen named Abdelkader Helmy was sentenced to forty-six months in prison for illegally exporting material used in Stealth missiles to Egypt, which planned to share the material with Iraq. [N.Y. Times, 12/7/89 at A12, col.3.] Navy Ensign Steven Baba received a two-year prison term for illicitly transmitting codes to South Africa. [N.Y. Times, 1/21/82 at B9, col.6.] And Samuel Morison, an analyst at the ultra-secret Naval Intelligence Support Center, hid in his apartment over 3500 confidential documents and 4000 classified photographs, some of which he sold to Jane's Defence Weekly (a British magazine). Unlike Pollard, Morison neither cooperated with prosecutors nor pleaded guilty. Nevertheless, he was sentenced to but two years in prison (and was released after eight months). [Weiss, "The Quiet

Coup," Harper's, September 1989 at p.54; N.Y. Times, 12/8/85 at D4, col.1.]

Even more serious crimes of espionage -- and even those committed on behalf of non-friendly countries -- are punished less severely. For example, Richard Miller received a sentence of twenty years for passing a counter-intelligence manual to a Soviet Agent; he is eligible for parole in seven years. [N.Y. Times, 2/5/91, at B6, col.2.] Army Warrant Officer James Hall was convicted of accepting $100,000 to give classified information (including documents revealing intelligence communications and war plans) to East Germany and the Soviet Union; he was sentenced to forty years and fined $50,000. [N.Y. Times, 3/11/89, at A9, col.2.] Marine Sergeant Clayton Lonetree was convicted on thirteen counts of espionage for conspiring with the KGB; he received thirty years. [N.Y. Times, 8/25/87, at A1, col.1.] David Barnett sold intelligence data to Russia (including the identity of thirty U.S. agents) while working for the CIA; he was sentenced to eighteen years. [N.Y. Times, 1/9/81, at A1, col.1.] William Bell gave anti-tank missile radar technology to a Polish agent; he received eight years. [N.Y. Times, 12/17/81, at A20, col.6.] Ernst Forbrich, who purchased U.S. defense secrets for East Germany, was sentenced to fifteen years. [N.Y. Times, 8/4/84, at A5, col.6.]

The most telling indication of the relative harmlessness of Jonathan Pollard's offense may be the government's own response towards him: he was never charged with causing injury or intending to cause injury to the United States, but merely with intending to

give information to the advantage of a foreign country. Thus the government charged Pollard under the least egregious prong of 18 U.S.C. Section 794(a). If Pollard's actions were truly as harmful as insinuated in the Weinberger memoranda, or in ex parte communications with the trial judge, it is difficult to believe that the government would have charged him under this provision of the law.

In short, Jonathan Pollard was not a traitor to his country. He never sought to give aid or comfort to an enemy. While his loyalty and partiotism may have been misguided, and while what he perceived to be a benign purpose does not excuse his violation of the law, the gravity of Pollard's crime must be considered relatively minimal.

By contrast, the sentence which Pollard received was extremely severe. Only a sentence of death would have been a more drastic punishment. No one in this country has ever been executed for peacetime espionage, however. (Not since the Rosenberg case during the Korean War has anyone been executed for wartime espionage.) Thus for all practical purposes Pollard received "the most severe punishment that . . . could have [been] imposed." [Solem, 463 U.S. at 297.]

When a particular statute proscribes a broad range of activities, the trial court must not only refrain from exceeding the statutory maximum but also from meting out a punishment which exceeds what the legislature thought to be proportionate. [See Thacker v. Garrison, 445 F.Supp. 376 (W.D.N.C. 1978); People v.

Wango, 534 P.2d 1001 (1975); and State v. Evans, 245 P.2d 788 (1972).] In Pollard's case, just as the trial court gave little heed to the plea agreement, it paid no attention to the range of punishments intended by Congress for the peacetime communication of classified documents.

The legislative history of 18 U.S.C. Sec.794(a) independently demonstrates that Jonathan Pollard's sentence goes well beyond the range of sentences contemplated by Congress for the peacetime communication of classified documents. The War and National Defense Act of 1917 limited the maximum penalty for the communication of such material during peacetime to twenty years. The substantive penalties remained unaltered when the Act was overhauled in 1948. Six years later Congress amended the statute once again with the understanding that, except under the most rare circumstances, the range of punishments for peacetime espionage would remain what it was before. [See 1954 Cong. Rec. at 10,105; 10,115; 14,598; and 14,600.]

Indeed, in the light of clear precedent, a strong case could be made that his sentence should be invalidated as cruel and unusual punishment under the Eighth Amendment. In Solem v. Helm, 463 U.S. 277 (1982), the Supreme Court stated that proportionality analysis under the Eighth Amendment should be guided by three objective factors. These factors include (a) the gravity of the offense and the harshness of the penalty; (b) the sentences imposed on other criminals in the same jurisdiction; and (c) the sentences imposed for commission of the same crime in other jurisdictions.

[Id. at 290-92.] Thus courts must ask whether or not the sentence bears any rational relation to the nature of the offense, and they must compare the sentence of those received by other persons convicted of similar or more severe crimes.[See Note, Disproportionality in Sentences of Imprisonment, 79 Colum. L. Rev. 1119, 1131 (1979).] As the Court noted in Solem, if the sentence is found to be disproportionate on either of these grounds, there is a violation of the Eighth Amendment. (An Eighth Amendment violation may also be found from the combined effect of these two inquiries. [Solem v. Helm, 463 U.S. at 277 n.17.])

Pollard passed classified data to a friendly nation during peacetime. What he did was clearly wrong, but it was not treason. Much worse offenders have receive much lighter punishment. By sentencing him to life in prison, the court below was disproportionately harsh and substantially exceeded well-established sentencing standards. At a minimum, this disproportionality of sentence strongly suggests that the trial judge may well have been unduly influenced by prejudicial and inflammatory material in the Weinberger Declarations, as well as by ex parte communications as alleged in the Dershowitz Affidavit.

This Court should accordingly grant Petitioner's counsel access to the unexpurgated Weinberger Declarations, order a hearing on the allegations of the Dershowitz Affidavit, and require the trial judge to recuse himself so that he may be called as a material witness.

CONCLUSION

For the reasons stated above, the District Court's order denying Petitioner's Motion to Withdraw his Guilty Plea, his Motion for Access to Classified Sentencing Materials, and his Motion to Disqualify the Court, should be reversed.

Respectfully submitted,

Kenneth Lasson, Esq.
University of Baltimore
School of Law
Maryland at Mount Royal
Baltimore, Maryland 21215
(301) 625-3088

Attorney for Amici Curiae
LAW PROFESSORS ET AL

RELIGIOUS ACTION CENTER
OF REFORM JUDAISM

Pollard

Alex -
Please get me
original material
Call DS 11/2

November 1, 1990

To: Alex Schindler
From: David Saperstein

I was fascinated by the material which you sent to me regarding the Pollard matter. In particular, where did you get it from and for what purpose.

For the record, I concur strongly with your own view of the case i.e he was guilty and should be punished; but the sentence (whether or not as result of improper government interference) was grossly out of proportion to the sentences given to others engaged in similar activities -- particularly under the circumstances that motivated him.

Much of this memorandum is carelessly written so I am not certain of several key facts. First, is this memorandum a public document or is under the protective order of the court (and "leaked" to you)? Second, regarding the sentence at the end of page one and the top of page two: is it Israel or Pollard who was accused of giving nuclear technology to South Africa? The sentence, albeit ambiguous, indicates it was Israel. Later the memorandum implies it was Pollard.

If this gets out to the Black community it would be a disaster.

As to the legal consequences of the memorandum itself, they are apparently not appealing the sentence itself but using the cumulative impact of all of this information as a means to withdraw the plea and have a new trial. Interesting approach.

Other than the general interest of the document, is there any question before us? They weren't, for example, asking for groups to join in an amicus on this matter, were they? I certainly would agree to do so on the sentence issue. This approach is more problematic, and while I would probably end up supporting it, I would need to see the more detailed memo.

Let me know.

The Religious Action Center pursues social justice and religious liberty by mobilizing the American Jewish Community and serving as its advocate in the nation's capital

2027 Massachusetts Ave NW Washington, DC 20036 (202) 387-2800

Harris Gilbert, Chairman Commission on Social Action of Reform Judaism

Albert Vorspan Co-Director

Rabbi David Saperstein Co-Director and Counsel

The Religious Action Center is under the auspices of the Commission on Social Action of Reform Judaism, a joint instrumentality of the Central Conference of American Rabbis and the Union of American Hebrew Congregations with its affiliates: American Conference of Cantors, Association of Reform Zionists of America, National Federation of Temple Brotherhoods, National Federation of Temple Sisterhoods, North American Federation of Temple Youth.

MEMORANDUM

COPY

DATE: October 9, 1990

FROM: Rabbi Alexander M. Schindler

TO: Rabbi David Saperstein

COPY:

The enclosed was sent to me by Jonathan Pollard. Please let me have your reaction to it.

While I have not changed my mind about his guilt and my revulsion with it, I have been troubled by the severity of the sentence. Is this something we should get involved with?

Thanks much.

MEMORANDUM

COPY

February 12, 1991

FROM: Edith J. Miller

TO: David Foster
Religious Action Center

Thanks so much for returning the correspondence which we sent down to you from Morris Pollard. That is what I was looking for. In addition, I am grateful for the other materials which we will keep in our file on Jonathan Pollard.

By the way, you are not Steve Foster's son, he is your father! He should be very proud of you - - your report to our Executive Committee was wonderful. I am only sorry that your visit to 838 was such a brief one. Maybe next time you will let me know in advance and come on a day when we can do lunch together.

It was nice seeing some of your R.A.C. colleagues at the NFTY Convention, I am sorry you were not there, it was such a terrific gathering. I enjoyed it immensely.

All the best.

P.S.: It will not be necessary to send me all the materials you receive from David Kirshenbaum, Esq. Should I ever need it, I will holler and get it from you.

To: Edie
From: Steve Foster's son
Re: Jonathon Pollard

Hello. I am sending you copies of everything we have in our Pollard file. Additionally, I have contacted David Kirshenbaum, Esq., he has been very involved with organizing general support for Pollard. He is sending me a great deal more info. which I will send on to all of you. If I can be of further assistance please just scream.

On a personal note, it was great seeing you on Monday, I definately have to come by 838 more often.

Take care. David.

Tel: (714) 676-6879

SOUTHERN CALIFORNIA COALITION
CITIZENS FOR JUSTICE, INC.
Justice for the Pollards
38800 Via de Oro
Temecula, CA. 92390
March 28, 1990

Dear Friends:

While the rescue of Soviet Jewry from dangers that threaten their lives is uppermost in our minds, we must not ignore the grave injustice and cruel treatment inflicted, by our own government, on Jonathan and Anne Pollard. Both should be of deep concern to Jews everywhere and, indeed, to all fair-minded men and women.

We are enclosing a Summary of Arguments set forth by Jonathan's attorney, Hamilton P. Fox, III, in a Motion, to withdraw the Guilty Plea of Jonathan Pollard, submitted to the United States District Court for the District of Columbia on March 12, 1990.

A Newsletter, reviewing the events preceding the sentencing, the sentencing itself and the subsequent treatment, or rather mistreatment, of the Pollards in prison, is also included so that a clear understanding may be gained of the imperative need for an open trial.

Friends, we urge you to inform your family, colleagues, friends and organizations, of this important development. Funds are urgently needed to enable us to continue with the work we are doing. We thank you for whatever contributions you are able to make.

Shalom

Haim Daniel Tabakman Beatrice Tabakman

Prof.Haim Daniel Tabakman Beatrice Tabakman

SOUTHERN CALIFORNIA COALITION - CITIZENS FOR JUSTICE, INC.

38800 Via de Oro - Temecula - California - 92390

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America	)	
	)	
v.	)	Criminal No. 86-0207 (AER)
	)	
Jonathan Jay Pollard	)	
	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO WITHDRAW GUILTY PLEA OF JONATHAN JAY POLLARD

Defendant Jonathan Pollard moves the Court to allow him to withdraw his plea of guilty, entered June 4, 1986, to a one count indictment alleging a violation of 18 U.S.C. § 794(c).

SUMMARY OF ARGUMENT

A motion to set aside a guilty plea must be granted if the government fails to keep the promises that it made to the defendant in order to induce the plea. In this case the government made three promises and broke all three. First, it promised not to seek a life sentence. But the entire tenor of its written and oral submissions at sentencing was a request for just such a sentence. Particularly egregious were declarations from former Secretary of Defense Weinberger, submitted by the government, which, among other things, falsely accused Pollard of having committed treason and requested a sentence consistent with an offense that Weinberger claimed was more deserving of severe punishment than any other crime.

The government also promised Pollard that it would limit the statements it made to the court about the sentence to the facts and circumstances of the offenses committed by Pollard. Despite this promise, and after filing 35 pages of information about the offenses, the government discussed many other subjects. It accused Pollard of being motivated by greed, described his alleged "high lifestyle," claimed that he was without remorse for his crimes, and claimed that he was being deceitful, vengeful, and arrogant. In so arguing to the court, the government exceeded the limits it had promised to impose on itself in order to induce Pollard to plead guilty. It also reinforced its efforts to seek a life sentence.

The third promise that the government broke was its promise to inform the court of Pollard's cooperation and of the considerable value of that cooperation. The government did make the appropriate statements about Pollard's cooperation, but it then undermined them completely by arguing that his cooperation was motivated solely by self-interest and, more importantly, by claiming that his cooperation came too late to apprehend his Israeli co-conspirators who had fled the country. This conduct constituted nothing less than an attempt to "sandbag" a defendant, to minimize the importance of his cooperation, and to enhance the chances of a life sentence.

In addition to violating the plea agreement itself, the government improperly accused Pollard of violating the same agreement by giving two interviews to a journalist without first

obtaining proper permission. Both interviews occurred while Pollard was incarcerated prior to sentencing. Before giving the first interview, Pollard, in accordance with federal regulations, informed the Department of Justice, in writing, of his intent to do so. The Department gave its permission and facilitated the interview. No other procedures existed to notify the government. After the first interview, the government made no effort to revise or supplement its procedures with respect to Pollard's contact with the press. Accordingly, before giving a second interview, Pollard again followed the regulations, notified the Department of Justice in writing, and received the Department's permission to give the interview.

Despite Pollard's adherence to the letter of the only procedures that existed for press contact, the government accused Pollard of violating the plea agreement in its sentencing submissions. Given the government's own failure to devise alternative procedures, it was unfair and improper for the government to allege Pollard's violation of non-existent procedures as a reason for the court to impose a longer sentence. This was but another effort to circumvent its promise not to ask for life.

If the government alleges a violation of a plea agreement, the defendant is entitled to a hearing at which the government has the burden of proof. Here the government asserted and the Court found a violation without a hearing, and relied on that alleged violation, in part, to justify a life sentence.

If Pollard had violated the plea agreement, the appropriate remedy would have been for the agreement to be set aside and for the government to prosecute and try Pollard for all his alleged crimes. Instead the government took advantage of Pollard's part of the bargain by continuing to benefit from his cooperation but failed to live up to its side of the bargain, i.e., limiting its sentencing recommendation to less than life, commenting only on the offenses committed, and informing the court that Pollard's cooperation was of considerable value to the government.

These various violations of the plea agreement and unfair claims that Pollard had violated the agreement had a substantial effect on the sentence. In other instances where espionage convictions have been obtained, the length of the sentence has varied substantially, depending on the country on whose behalf the espionage was committed. When the country has been hostile, the sentences have frequently been life sentences. When the espionage has benefited an ally, and particularly where the defendant has cooperated with the government, much lesser sentences have been imposed. Pollard stands as the exception to this rule. He committed espionage to aid one of the United States' closest allies, entered a guilty plea, and cooperated completely. Yet he still received a life sentence.

Alternatively, Pollard's guilty plea should be set aside because it was coerced. When Pollard entered his plea, his wife, who was ill, had suffered greatly as a result of her pre-trial incarceration. Pollard believed that further incarceration might

severely damage her health and perhaps threaten her life. Yet despite his wife's substantially lesser culpability, the government threatened to prosecute her for multiple offenses unless she pled guilty. Pollard was aware that if, after a trial, his wife was convicted of multiple offenses, she would almost certainly be imprisoned. On the other hand, if she pled guilty, it seemed likely to him that she would receive a sentence of probation. But the government refused to accept a guilty plea from Mrs. Pollard unless Mr. Pollard also entered a guilty plea. The pleas were "wired." Pollard's plea was therefore not voluntary, but was coerced by the threat to his wife.

Finally, the court erred at the guilty plea hearing by not inquiring of Pollard personally about the voluntariness of the plea and specifically about the "wiring" of the plea.

For all these reasons, Pollard requests that he be allowed to withdraw his plea of guilty and to stand trial.

Sent to me in unmarked envelope

The United States of America v. Jonathan Pollard - Time for a Reassessment ?

— Steve F.

There is a growing awareness across all political spectrums in this country that our government failed to properly assess the grave dangers posed by Iraq to the United States and to the security of the world community at large. Our intelligence community did its job in gathering the necessary information about Iraq, but our political leadership blundered abysmally in failing to draw the obvious conclusions from Iraq's military activities.

Jonathan Pollard, a former United States Naval Intelligence Officer, is now serving a prison sentence for providing Israel with classified United States documents about Arab weapons systems and military capabilities, including the information, now so frightening to the world community, of Iraq's efforts to produce chemical, biological and nuclear weapons. Like Oliver North, who acted on his belief that the United States had an obligation to aid the Contras in Nicaragua, notwithstanding congressional prohibitions against such activity, Pollard strongly believed that information critically important to Israel's security ought to be furnished to Israel. Pollard could not understand why the political decision had been made not to share with Israel such information as Iraqi production on a grand scale of chemical weapons and the efforts Iraq was making to deliver to Israeli population centers such terrible weapons of destruction.

In Pollard's mind, furnishing such information to Israel, far from harming the United States, served American interests by deterring aggression against our most loyal ally in the Middle East. As only one example among many of the degree to which the United States can rely upon Israel, year in and year out, the country that heads the list of those countries that vote most often with the United States at the United Nations, is Israel. Last year, Israel supported the United States position at the U.N. 88% of the time. Second on the list was Great Britain, which supported the U.S. position 77% of the time. By contrast, Egypt, which is supposed to be America's strongest supporter in the Arab world and Saudi Arabia, the country we are defending with our troops, each supported the American position only 11% of the time, just slightly better than Syria and Iraq's 8%.

Thus, while Pollard was charged under, and plead guilty to, one count of conspiracy to violate a Federal statute that prohibits a person from communicating to a foreign government information relating to national defense either "with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation", the specific charge brought against Pollard was limited to "having intent and reason to believe that the [information] would be used to the advantage of Israel..." Quite significantly, he was never charged with intending to harm or injure the United States.

Surely, one would be hard pressed to find many Americans today who would support a policy that made light of, if not ignored, the acquisition by countries such as Iraq of arsenals of mass destruction. It was precisely our unbridled willingness to draw closer to Iraq at all costs, regardless of the terrible evils perpetrated by Iraq (such as the use of poison gas against Kurdish villages), that was behind the refusal to share with Israel information about Iraq's military projects and objectives. How many Americans can honestly say, given what they now know about Iraq, that they would not be absolutely thrilled had Israel acted on the type of information supplied to them by Pollard and eliminated Iraq's chemical arsenals?

Nevertheless, the prosecution of an intelligence officer who acts on his own determination as to what is in the national interest and who, in so doing, breaks the laws of this country, is not in and of itself troublesome. What is however deeply shocking and disturbing is that while Oliver North served no time in prison, and other individuals who provided United States allies with classified information received, if at all, very lenient prison sentences, Pollard was sentenced to life imprisonment.

Earlier this year, Pollard's counsel, Hamilton Fox III, submitted to District Court Judge Aubrey Robinson, who sentenced Pollard, motions to withdraw Pollard's guilty plea. The motions cite various grounds in support of the withdrawal of the plea, asserting, inter alia, that the government prosecutors committed multiple breaches of its plea agreement with Pollard, that Pollard's guilty plea was coerced and that Judge Robinson failed to adequately inquire, especially given the particular circumstances of the case and the proceedings, into the possibility that Pollard's plea agreement was not entered into voluntarily. There is also a suggestion that the government provided Judge Robinson with false ex parte information about Pollard which the government knew to be false and which Robinson allegedly admitted had a decisive impact on his sentencing. (An ex parte communication is a communication between a judge and only one party to an adversarial judicial proceeding where no notice of, or the opportunity to contest the substance of, the communication is given to a person with an adverse interest.) If true, this would constitute not only an uncontrovertible ground for withdrawal of Pollard's plea, but would also require Robinson to withdraw from any further judicial proceedings in Pollard's case. In September, Judge Robinson rejected each of Pollard's motions and Pollard is now appealing that decision.

Pollard has been imprisoned nearly five years and the disturbing questions that most people were too squeamish and uneasy about asking when Pollard was first sentenced have yet to be answered in any manner whatsoever. What was it about the Pollard affair that resulted in a sentence that was not only grossly deviant from sentences meted out to other individuals who passed

classified information to American allies, but even more harsh than the punishments imposed on Americans who spied for adversaries of the United States?

For example in 1981, Steven Baba, a U.S. Navy ensign who provided South Africa with classified information, received a prison sentence of only two years. Similarly, in 1986, Sharon Scrange, a CIA employee who divulged classified information, including the names of CIA operatives in Ghana to a Ghanian agent, was also sentenced to only two years in prison. With respect to Americans who have spied for Soviet bloc countries, William Bell, who provided a Polish agent with information on United States antitank missile and nuclear technology was sentenced to a prison term of eight years. Ernest Forbrick, who purchased U.S. secrets in order to pass them on to East Germany, received a 15 year prison sentence.

As Professor Alan Dershowitz of Harvard Law School, who has served as counsel to Pollard has argued with respect to the Pollard sentence, "History provides at least some relevant parameters which allow one to conclude, with reasonable confidence, that if comparable information had been provided by a French-American to France or a Swedish-American to Sweden, it is unlikely that the sentence would have been as severe."

One must also ask what benefit Pollard received by pleading guilty to the charges against him, fully cooperating with the government in its investigation and saving the government the expense of a trial. Given these lingering questions, and especially in light of recent events, a public reconsideration of the Pollard affair and the manner in which our government prosecuted Pollard is long overdue.

The United States Supreme Court has held that, "When a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." (Santobello v. New York, 1971). When a breach of such a promise takes place, the sentence must be vacated and the case remanded to the court which sentenced the defendant. Following remand, the court which initially sentenced the defendant must either allow the defendant to withdraw his plea or grant the defendant specific performance of the agreement on the plea, in which case the defendant should be resentenced by a different judge. This remedy, the Supreme Court held in Santobello, must be granted a defendant even if the breach was inadvertent and even if the sentencing judge stated that a prosecutor's recommendation did not influence him.

Pollard's motion to withdraw his guilty plea presented evidence of the breach by the government of at least three undertakings it made in its plea agreement with Pollard. The most important of these promises was that the government would not ask for a life

sentence, but rather, would limit its recommendation to asking for a "substantial" sentence. Notwithstanding this promise, Secretary of Defense Caspar Weinberger submitted two declarations to the sentencing court (the first being classified and detailing the nature and extent of the purported harm Pollard may have caused to national security) that could plainly be interpreted as advocating a life sentence. Weinberger, for example, wrote in his declaration to the court the day before sentencing, "It is difficult for me, even in the so-called 'year of the spy' to conceive of greater harm to national security than that caused by the defendant..." In a separate statement to the court Weinberger declared, "Punishment, of course, must be appropriate to the crime, and in my opinion, no crime is more deserving of severe punishment than conducting espionage activities against one's own country."

The "year of the spy" referred to by Weinberger included the arrest and conviction of a number of Americans, such as John Walker and Jerry Whitworth who, for years, spied for the Soviet Union, causing massive damage, including the compromising of American military and technologic secrets, the disclosing of American operatives in Communist countries and the death of U.S. military personnel. Walker's espionage activities on behalf of the Russians spanned a period of seventeen years. Pollard's motion argued that, in stating to the court his opinion that Pollard caused greater harm to national security than the likes of a John Walker, Weinberger was sending a very clear message to the sentencing judge. If Walker got life and Pollard caused as much or greater damage to national security, Pollard too should receive a life sentence. The government was clearly and improperly using the Weinberger memoranda to circumvent the most important promise of the plea agreement. The Weinberger memoranda, in fact, probably had more persuasive value than had the same arguments been made by the prosecuting attorney.

Judge Robinson dismissed as "utterly without basis" the claim that the submission of the Weinberger memoranda was an attempt by the government to circumvent its promise not to ask for a life sentence. It is astounding to read the Weinberger memoranda, including the statements cited above, and then read the flippant and imprecise one sentence summary by Robinson of the gist of Weinberger's submissions. Thus, Robinson writes in his decision, "The opinion [expressed by Weinberger] that a 'severe sentence' is warranted in no way means that <u>the</u> (emphasis in the original) most severe sentence should be imposed." Thus, Weinberger's submission that the punishment imposed on Pollard should fit the crime of espionage activities that caused as much or greater harm to this country as the activities of spies for the Soviet Union who received life sentences, is converted into simply an opinion that a severe sentence is warranted. Only by completely ignoring the very words in Weinberger's submission to the court could Robinson have failed to have recognized that Weinberger's

statements constituted an obvious violation of the government's plea agreement. Inexplicably, that is exactly what Robinson seems to have done.

One further example of Robinson's obfuscation of the plain meaning of Weinberger's words is equally incredible. After writing the court that in the "year of the spy" he could conceive of no "greater harm to national security than that caused by" Pollard, Weinberger wrote that, "The punishment imposed [on Pollard] should reflect the perfidy of the individual's actions, the magnitude of the treason committed and the needs of national security." As Pollard's motion points out, "Pollard did not commit treason and it was outrageous for the government to claim that he did...the Constitution of the United States provides, 'Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort...' As Weinberger was well aware, Israel and the United States were not and never have been in a state of war and are not enemies. There is absolutely no justification for the Secretary of Defense to state that Pollard's punishment should reflect the magnitude of the treason committed. Such a statement is inaccurate and highly inflammatory and is nothing less than a demand to the court that it sentence Pollard to life imprisonment."

As Robinson would have it, Weinberger's only point was that Pollard had caused "severe damage" and Weinberger's "off-hand use of the word 'treason'... does not change this fact..." Raising a charge of treason cannot so facilely be dismissed as simply an "off-hand use of the word." Obviously, using the word "treason" does not "change the fact" that, in Weinberger's view, Pollard had caused severe damage. But what it does do, far more importantly, is grossly magnify and supplement that fact with a patently false charge. Would Robinson accept the use of the term "murderer" for someone who committed assault and battery on the grounds that the "murderer" label "does not change the fact" that the aggressor caused "severe damage" to the victim? Quoting again from Pollard's motion, "It seems unlikely that Caspar Weinberger, a lawyer, Secretary of Defense in the 'year of the spy,' was unfamiliar with the legal definition of treason. It also strains the imagination to conceive that Weinberger was not fully aware of the implications of using the term 'treason' to describe Pollard's actions...[or] that no other lawyer reviewed (if not drafted) Weinberger's Declaration and thus was not fully cognizant that Pollard was described as committing an act that he did not commit."

The second promise the government made to Pollard was that it would limit its allocution - its arguments and declarations before the court at sentencing - to the facts and circumstances of the case. Pollard's motion submits that the government breached this second promise as well by dedicating a significant

portion of two memoranda submitted to the court at sentencing to a character assassination of Pollard, characterizing him as a "recidivist", "unworthy of trust", being "contemptuous of the court's activities", and describing his conduct "traitorous". Caspar Weinberger's memoranda to the court and the government's oral statement at sentencing each contained more of the same vituperatives.

Pollard's argument was supported by a Third Circuit Court of Appeals case (U.S. v. Moscahlaidis, 1989) that dealt with a plea agreement containing virtually the same limitation on allocution by the prosecution. The court found in that case that the prosecution went beyond the scope of its agreement by attacking the character of the defendant. Accordingly, the Third Circuit vacated the sentence and remanded the case to the district court to determine whether the appropriate remedy would be to require specific performance or permit the defendant to withdraw his guilty plea.

Judge Robinson never suggested, nor could he have, that the substance of the government's agreement in the Pollard case was different than the government's agreement in the Moscahlaidis case cited by Pollard, nor does he attempt to rebut the assertion that the government did in fact breach this portion of the agreement with Pollard. Rather, Judge Robinson focuses on the fact that in the Moscahlaidis case, unlike in Pollard's case, the government agreed not to take any position on sentencing, while in Pollard's case, the government's agreement was that it would not ask for a life sentence. This distinction, one would think, ought to be irrelevant unless Judge Robinson is suggesting that whenever the government does not agree that it will not take a position on sentencing, it is free to flagrantly violate a promise to limit allocution. Such a suggestion is ludicrous and clearly contrary to the opinion of the Supreme Court in Santobello cited above.

Thirdly, the government had promised to advise the court of Pollard's cooperation and the value of the information he provided to the government's investigation. The government, however, after telling the court of Pollard's cooperation and its importance, went on to cast aspersions on Pollard's motives for cooperating, stressing his lack of remorse and elaborating on the fact that some of Pollard's alleged co-conspirators had fled the country. This, Pollard contended, effectively discounted the value to him of the government's third promise.

Judge Robinson's response to this argument is especially transparent since it is clearly rebutted by the language in the plea agreement between Pollard and the government, language which Robinson himself cites in his decision. Thus, on page 17 of his decision, Robinson writes, "It was no violation of the plea agreement for the Government to explain the positive value of the

cooperation in one sense (damage assessment) while also noting that the defendant had frustrated government efforts in another sense (law enforcement). The record in this case does not support the contention that the Government failed in its obligation." Had Judge Robinson read the words that appear in his own decision five pages before drawing this conclusion, he would have realized that there is no basis for a two tier analysis separating damage assessment from law enforcement.

On page 12 of his decision, Judge Robinson quotes from the plea agreement the government's promise to "bring to the Court's attention the nature, extent and value of [defendant's] cooperation and testimony...the government has agreed to represent that the information Mr. Pollard has provided is of considerable value to the Government's damage assessment analysis, its investigation of its criminal case, and the enforcement of the espionage laws" (emphasis added). Thus, it clearly was a violation on the government's part to, paraphrasing Judge Robinson's words, note that Pollard had frustrated the government's law enforcement efforts. The representation the government was to make as to the importance of the information supplied by Pollard was plainly meant to include not only damage assessment but also law enforcement. The separation of these concepts is Judge Robinson's creation and is clearly contradicted by the terms of the plea agreement.

Pollard further argued that at sentencing, the government not only breached its side of the plea agreement, but also wrongly asserted to the court that Pollard, in giving two interviews to Wolf Blitzer of The Jerusalem Post, breached his side of the plea agreement. Pollard had agreed to submit any books or writings he authored or information he provided for the purposes of publication, to the Director of Naval Intelligence for pre-publication review and deletion of information which, in the Director's sole discretion, is or should be classified. The plea agreement contained no procedures that Pollard was to follow.

It must initially be asked whether this restriction imposed on Pollard was meant to apply to the granting of an interview to a reporter with the full knowledge of prison and government officials. One can understand the purpose behind the screening of written materials to determine whether classified information is being disseminated. Written information could be disseminated publicly by a prisoner without the knowledge of prison officials. Books and articles also by their nature lend themselves to pre-publication screenings. Pollard could readily comply with a requirement for the screening of written information by sending such writings by mail to the Director of Naval Intelligence.

In marked contrast, the interviews given by Pollard to Blitzer were not, nor could they realistically have been, given without the government's full knowledge and consent. Wolf Blitzer

contacted, both orally and in writing, the warden of the prison where Pollard was imprisoned requesting to interview Pollard. Before granting the interview, Pollard executed, as he was required to do, a Department of Justice form that was filed with and processed by the Justice Department. Blitzer interviewed Pollard on November 30, 1986 and published an article based on the first interview. In January of 1987, Blitzer requested a second interview. Pollard completed the appropriate Department of Justice forms and consent was again granted Blitzer. Thus, even though the Department of Justice had prior notice of both interviews and imposed no restrictions on them, the government later claimed that Pollard had violated the plea agreement by not liaising with the Director of Naval Intelligence.

Pollard's motion points to information that suggests that the government deliberately set up a restriction that Pollard could not technically comply with in order to claim that Pollard had violated the plea agreement. In a review of Wolf Blitzer's book about the Pollard affair, Robert Friedman reports that he asked the prosecuting attorney in the Pollard case, Joseph E. DiGenova, why the government allowed Blitzer to interview Pollard. Friedman states that DiGenova "indicated that the government was fairly certain that if he were given the opportunity [the defendant] would violate one of the provisions of his plea agreement and talk to a journalist without first receiving permission." Although Pollard could reasonably believe that by filling out a Department of Justice form he was complying with his undertaking in the plea agreement, the government seized upon what appears to be at worst a technical violation, in order to claim a breach by Pollard and to argue before the court that Pollard breached his undertaking.

Only in March of 1987, after Pollard was sentenced, did the Department of Justice set up procedures for Pollard's contact with members of the media and the public and only then did it specifically require that interviews with news media representatives be conducted only in writing. No similar restriction existed at the time of the Blitzer interview. Pollard complied with the only rules that existed at the time.

Judge Robinson, again in a very perfunctory answer, finds nothing improper with the government's assertion that Pollard breached the agreement. Pollard gave the interview without submitting to naval intelligence the contents of his discussions with Blitzer and that, in Robinson's mind, is the end of the story. Judge Robinson completely ignores the defendant's argument that he fully complied with all prison procedures for the conduct of interviews that existed at the time of the Blitzer interviews. In fact, four out of the twelve sentences in Robinson's decision that are addressed to the issue of the Jerusalem Post interviews focus on an argument that was not even raised by Pollard on appeal. At sentencing, Pollard's original counsel, Richard

Hibey, suggested that even if there was a technical breach by Pollard of the plea agreement, the information was in any event not classified. Robinson stressed in his decision that it was of no import whether the information Pollard disclosed to Blitzer was classified. But this line of argument, i.e., that non-classified information was not subject to the pre-screening procedure, does not appear in the ten pages of the motions submitted to the court by Pollard's counsel, Hamilton Fox, that relate to the Jerusalem Post interviews.

Perhaps Robinson focused on arguments not made to hide the fact that he was failing to address the arguments that Pollard's motions did make. Thus, Pollard's motion further points out that the Blitzer interviews were given four months before sentencing. If the government believed that Pollard had breached the plea agreement, it could have petitioned the court for a hearing to determine whether in fact the agreement had been breached. If it was found that Pollard had, in fact, breached the agreement, the remedy would have been to release the government from its promises under the plea agreement, and allow it to fully prosecute Pollard. The government, however, did no such thing, but continued to obtain the benefits of the plea agreement, securing Pollard's continuing cooperation and the forfeiture by Pollard of his constitutional right to a trial. The government then sought (quite successfully, it turns out) to deprive Pollard of his benefits of the plea agreement by belatedly asserting just at the time of the government's promised performance, the alleged breach by Pollard four months before. Robinson does not address this argument with even one word.

Pollard's brief on appeal also argues that the circumstances under which the government linked Pollard's guilty plea with his wife's plea undermined his free will and rendered his plea involuntary. It is further argued that Judge Robinson failed to properly inquire into the voluntary nature of Pollard's plea agreement, as required by Rule 11 of the Federal Rules of Criminal Procedure. The Supreme Court has held that a defendant whose plea has been accepted in violation of Rule 11 should be afforded the opportunity to plead anew. (McCarthy v. United States, 1969).

In his decision, Robinson cites the statement of Mr. Hibey at sentencing that Pollard came before the Court "knowingly, and voluntarily enters his plea." Robinson also refers to the following exchange he had with Pollard at sentencing:

Robinson: "Do you know of any reason why I shouldn't accept your plea?"

Pollard: "No sir, I don't."

Yet, Rule 11 provides that a Court "shall not accept a plea of guilty...without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or of threats or of promises apart from the plea agreement."

Robinson's failure to inquire of Pollard directly whether his plea was voluntary, as opposed to giving him the opportunity to raise the issue on his own, is not merely a technical defect. Federal law provides that when a defendant's plea is made in consideration of a third party receiving a lenient sentence, special care must be taken and a higher standard must be applied to assure the voluntariness of the guilty plea. During the time when Pollard was negotiating his plea with the government, his wife was extremely ill with a debilitating gastrointestinal disorder that required continuous medical attention. Upon her arrest, in November 1985, she was held without bail in a rat and roach infested prison cell. So bad was the treatment that she lost approximately 55 pounds during the three months she was in prison. Mrs. Pollard was released on bail in February 1986 and visited her husband (who remained incarcerated at all times following his arrest) while the government was negotiating the plea agreement with Mr. Pollard. During these visits, Mr. Pollard became painfully aware of the terrible conditions in the cell where his wife was imprisoned, the physical threats she was subject to and the devastating physical deterioration she suffered while in prison.

The government threatened to bring additional charges against Mrs. Pollard (she was charged with being an accessory after the fact to her husband's possession of national defense documents and with conspiracy to receive embezzled government property) if she did not plead guilty. Mr. Pollard feared the effects of a prison sentence on his wife and felt the safest way to avoid a jail sentence for his wife would be for her to plead guilty to the initial charges brought against her. The government, however, linked the guilty pleas, forcing Mr. Pollard to plead guilty to the charges brought against him in order to insure that his wife's life would not be endangered.

Thus, even though Federal rules required that inquiry be made into the voluntariness of Pollard's plea and the facts surrounding Pollard's plea agreement screamed out for a serious examination of the possibility of coercion, the court never asked Pollard himself whether he was entering his plea voluntarily or whether the plea was the product of force, threats, or promises.

Hamilton Fox contends in his motion that he has information that the classified memorandum submitted by Caspar Weinberger contained false or exaggerated claims about the damage done by Pollard. If this were the case, it would provide still further grounds for withdrawal of Pollard's guilty plea. Accordingly,

Fox made a supplementary motion that he be granted access to the classified portion of Weinberger's memoranda.

In rejecting this motion as well, Judge Robinson relied on a 1984 Fifth Circuit case, United States v. Lewis, in which the circuit court upheld the district court's refusal to allow a defendant's newly retained counsel access to a pre-sentence report. The court cited the following factors in its refusal to allow access. (1) The defendant "alleged no facts to show that the sentence was a gross abuse of discretion". (2) Lack of access did not prevent defendant's counsel from presenting the information contained in the pre-sentence report - defendant's background and record. (3) The defendant himself had read the report and there was no allegation that he did not remember or understand the report.

Robinson argues that, "Each of the factors identified in Lewis apply with some force here." In fact, none of the factors cited by the court in Lewis are applicable in Pollard's case. Robinson declares that, "The sentence here was well within the court's discretion." The standard set forth by the court in Lewis however, is not whether the court has discretion to issue the particular sentence, but whether the sentence was a "gross abuse of discretion." The statute under which Pollard was sentenced does in fact provide for punishment by "imprisonment for any term of years or for life." But one must recall that the statute includes within its net, on the one hand, individuals whose espionage activities are designed to injure the United States, and on the other hand, individuals whose espionage activities are geared to providing only an advantage to a foreign nation. Individuals who commit espionage on behalf of adversaries of the United States cannot help but also have reason to believe that it is to be used to the injury of this country. The same cannot be said of individuals who commit espionage on behalf of American allies. It is, therefore, not surprising that before Jonathan Pollard, nobody convicted under this statute who passed classified information to an ally of the United States ever received a sentence even remotely close to life imprisonment. And, one must again remember, of those individuals convicted of espionage for American adversaries, only the most notorious received life sentences. Sentencing Pollard to life was in fact, a "gross abuse of discretion."

As to the second factor, unlike in Lewis, where lack of access to the pre-sentence report clearly did not prevent defendant's counsel from presenting information about which the defendant had first-hand knowledge - his own background and record, in the Pollard case, the information was classified communications between Weinberger and Robinson that were seen only by Pollard's first counsel. And in total contrast with the third factor mentioned in Lewis, Jonathan Pollard never saw the classified memorandum submitted by Weinberger.

Whether or not Judge Robinson had the discretionary authority to deny Pollard's counsel access to the Weinberger memorandum, one must wonder why, in light of allegations that the classified memorandum contained exaggerated or false information, Judge Robinson would choose to exercise that discretionary authority to deny a defendant who has been sentenced to serve the rest of his life in jail the opportunity to examine and rebut damning testimony presented to the sentencing judge.

Hamilton Fox suggests in a supplemental memorandum that the government may have deliberately provided Judge Robinson with ex parte information the government knew to be false in order to prejudice Judge Robinson against Mr. Pollard. Pollard presented to the court a sworn affidavit from Professor Alan Dershowitz that relates the substance of a conversation Dershowitz had with former Supreme Court Justice Arthur Goldberg. Dershowitz declares that Goldberg reportedly told Dershowitz that in a discussion Goldberg had with Judge Robinson about the Pollard affair, Judge Robinson stated that he had been provided by the government with evidence that Pollard had given Israel, American satellite photographs that proved that Israel had tested Jericho missiles in South Africa and had provided South Africa with missile and nuclear technology. Dershowitz further declared that Goldberg told him that Robinson admitted to Goldberg that the alleged Israel-South African connection had weighed heavily in Robinson's decision to impose a life sentence.

After being assured by Hamilton Fox that there was no truth whatsoever in the claim that Pollard had provided Israel with any documents evidencing a purported Israel-South African connection (Pollard himself adamantly denied having provided Israel with such information and Pollard and Richard Hibey, Pollard's first counsel, each stated that no reference to any such documents was made in any of the materials shown to them by the government), Dershowitz wrote a letter to Goldberg (which Dershowitz attached to his affidavit) to advise him of this fact. (In his letter, Dershowitz referred to the substance of his previous conversation with Goldberg.) A few days later, Dershowitz phoned Goldberg to discuss the letter. In relating the substance of Goldberg's remarks, Dershowitz declared in his affidavit, "He told me that if my facts were correct, then the Justice Department had improperly 'pandered' [that was his precise word] to Judge Robinson's racial sensitivities as a Black judge by providing him with false, inflammatory, ex parte information." Justice Goldberg told Dershowitz that he would pursue with Attorney General Thornburgh this alleged misconduct by the government prosecutors. Goldberg however, died four days later.

A defendant has the constitutional right not to be sentenced on the basis of false information and, prior to sentencing, must be given the opportunity to rebut any challenged information. If a defendant can show that information before the sentencing Court

was false and that the Court relied on the false information in passing sentence, the sentence must be set aside. Thus, if the substance of Dershowitz's affidavit is accurate, Pollard's sentence must be set aside. Moreover, again assuming the accuracy of the Dershowitz affidavit, Judge Robinson should have, as Pollard argued, withdrawn from any role in the Pollard case since he was rendered partial by false ex parte information.

Robinson denied that the ex parte communication described in the Dershowitz affidavit actually occurred. Accordingly, Robinson denied the defendant's motion that Robinson disqualify himself from the case and also denied Pollard's motion that the defendant be allowed to withdraw his plea on the basis of the facts alleged in the Dershowitz affidavit.

It is interesting to note that while Robinson denied that the ex parte communication described in Dershowitz's affidavit actually occurred, he does not confirm or deny the substance of his alleged discussion with Justice Goldberg. One would be especially surprised to learn that Alan Dershowitz, one of the most respected law professors in the country, would perjure himself as to his recollection of his conversation with Justice Goldberg, or that Dershowitz would have fabricated the letter he wrote to Goldberg that refers to the Robinson-Goldberg and Goldberg-Dershowitz conversations. One would also be surprised to learn that Justice Goldberg, who had not previously taken a position in support of Pollard, would knowingly misrepresent to Dershowitz his discussions with Robinson.

While there could have been some misunderstanding or miscommunication, there is certainly a strong possibility that the facts stated in Dershowitz's affidavit are totally accurate and the false and prejudicial ex parte communication between the government and Robinson did in fact take place. It is therefore most disappointing that Judge Robinson also denied Pollard's motion for a hearing and discovery as to whether the ex parte contact between the government and Robinson described in Dershowitz's affidavit did in fact take place.

The life sentence imposed on Jonathan Pollard was the product of Secretary of Defense Weinberger's antagonism towards Israel, a government prosecution team that was not merely overzealous but that also carried out its duties in bad faith and a judge who failed to protect the defendant against prosecutorial abuses. Whether or not Judge Robinson was improperly influenced by the alleged ex parte information referred to in the Dershowitz affidavit, the facts strongly suggest that Robinson failed to protect the constitutional rights of Jonathan Pollard and grossly abused the court's discretion in imposing a life sentence.

The Court of Appeals will be reviewing the manner in which the government prosecuted Pollard and will determine whether Judge Robinson erred in denying Pollard's motion to withdraw his guilty plea. But, if one wants to cut through all the legalese, all the motions, memoranda, answers and decisions, and still be able to determine for himself whether a serious miscarriage of justice has been committed in the Pollard case, one need only compare the manner in which our Defense and Justice Departments dealt with Jonathan Pollard and how it dealt with Abdelkader Helmy.

Helmy, an Egyptian born American citizen was cleared for secret work at a weapons plant in California. Last year he was arrested for illegally exporting to Egypt 420 pounds of a material used in stealth aircrafts, missiles and rockets. The materials exported to Egypt were meant to be used as part of a joint weapons production by Egypt and, of all countries, Iraq. Although Helmy could have been charged with espionage, he was eventually indicted on a single count of smuggling due to the State Department's desire to maintain cordial relations with Egypt.

If Israel had acted on the kind of classified information provided Israel by Pollard about Iraq, the United States and the world community would not now be living in fear of the use by Saddam Hussein of his chemical weapons. In marked contrast, had Helmy's plan succeeded, Iraqi missiles, enhanced with American technology provided by Helmy, would now be aimed at the American troops in Saudi Arabia. Helmy received a sentence of under five years; Pollard received life. Has justice been served?

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1-28-90 Philadelphia Inquirer

Demolishing 6 Middle East myths

By DANIEL PIPES

Why did Saddam Hussein invade Iran back in September 1980? After many years of discussion, informed opinion had finally agreed that his motives were defensive — to pre-empt an Iranian effort to overthrow his regime.

Well, that argument may have sounded convincing before the invasion of Kuwait, but the "Four-Hour War" revealed Hussein's ambitious drive to dominate the Persian Gulf. It is now clear that

A lot of minds were changed after Saddam Hussein invaded Kuwait.

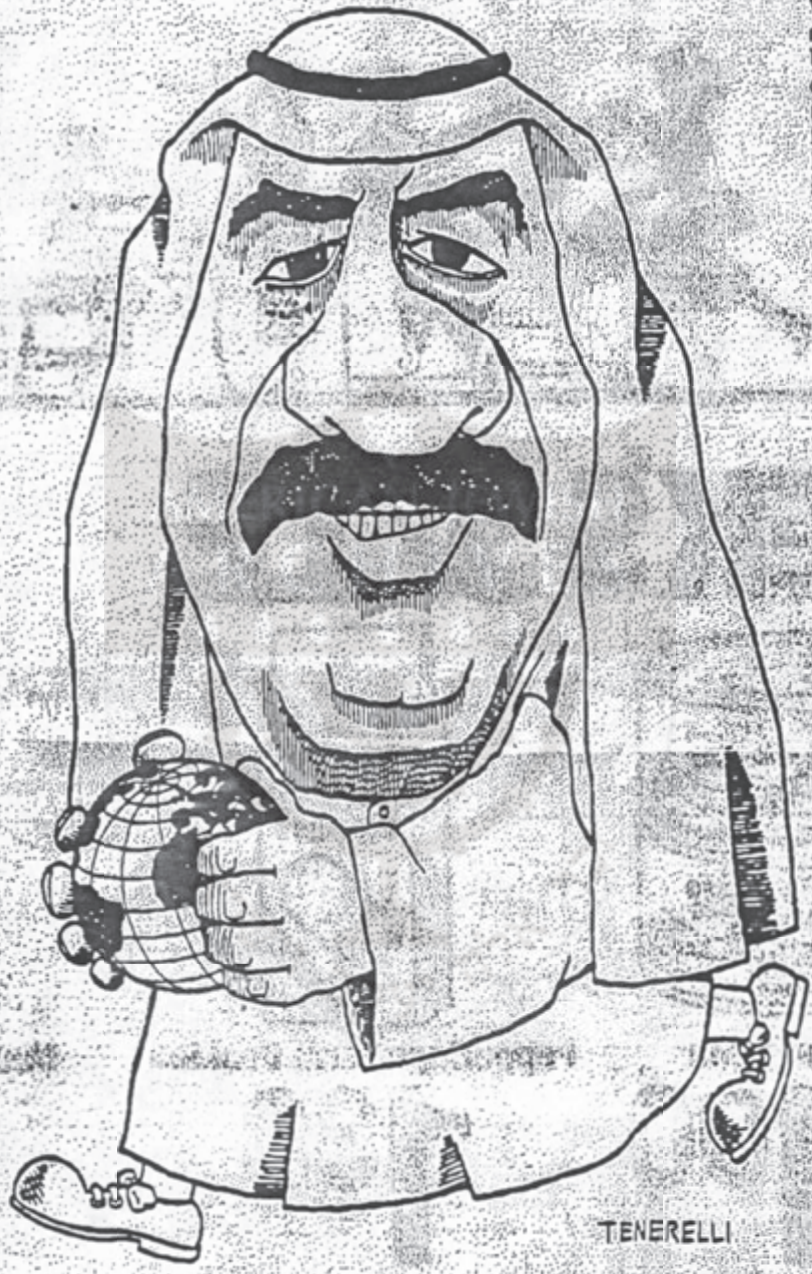
his attack on Iran was an attempt to grab oil and territory at a moment of apparent Iranian weakness — and there's nothing defensive about that.

This is not the only piece of conventional wisdom overturned by the Aug. 2 Iraqi attack. Middle East politics has been revamped by this crisis. Here are six more widely held opinions that Saddam Hussein blasted away early that morning.

• *Israel was wrong to destroy Iraqi nuclear facilities.*

Remember the worldwide outrage against Israel back in June 1981 after the Israelis bombed the plant at Osirak? The U.N. Security Council unanimously pronounced its condemnation; Washington ostentatiously held up its delivery of armaments to Israel. A decade later, however, the Israel strike looks awfully good. Had Saddam Hussein been armed with nuclear weapons during the war with Iran, much of Tehran would by now be obliterated and large sections of Iran annexed to Iraq. More Iraqi forces might have rolled straight from Kuwait into Saudi Arabia — long before American forces could have arrived. By now, Hussein could already control five of the oil-rich countries and thereby over half the world's oil reserves. Economic disaster would be one result; and American troops would have no good place to land.

• *Saddam Hussein had learned a lesson.*



TENERELLI

Special to The Inquirer / JOE TENERELLI

Then there were those (including me) who thought Hussein had been humbled after his blitzkrieg against Iran turned into eight years of terrible war, all of which ended in stalemate. The soothing statements from Baghdad along with a seemingly improved domestic scene made it appear that Hussein had shed his wild ambitions. Now it is clear he was dissembling, but those of us fooled once won't be fooled again.

• *The United States should arm the (friendly) Arabs.*

It's now obvious that the problem was not that the arms might end up in unfriendly hands, for this is just what happened with much of the Kuwaiti arsenal. They were also right to argue that the Saudis could not, on their own, withstand an external military threat. Of course, American forces have benefited greatly from finding fully equipped bases on the ground in Saudi Arabia. The lesson is clear: Sell the Saudis all the military infrastructure they want and lease them the planes and tanks.

• *Convicted spy Jonathan Pollard did terrible damage to U.S. interests.*

Secretary of Defense Caspar W. Weinberger thought that "Pollard should have been shot" for passing U.S. secrets to Israel. There is no defending a spy, of course, but it should be noted that much of the information Pollard gave the Israelis concerned Iraq, specifically Hussein's chemical warfare capabilities. That no longer looks like quite the crime Weinberger perceived.

• *Yasir Arafat accepted Israel's existence.*

In December 1988, Secretary of State George P. Shultz and many others (including much of the Israeli left) accepted Arafat's renunciation of terrorism and recognition of Israel's existence. This led to the opening of a dialogue between the United States and the Palestine Liberation Organization. But Arafat's ardent support for Iraqi threats to "devour one half of Israel" made it clear that he always hoped to destroy the Jewish state. Moreover, after his endorsement of the invasion and annexation of Kuwait — a country that long supported his cause — how can any Israelis believe that the PLO will live in peace with their country?

• *The Palestinian issue drives Middle East politics.*

Since the *intifadah* began in December 1987, conventional wisdom held that the Palestinian issue was the central problem in the Middle East. But stone-throwing and bone-breaking in Nablus lost urgency the moment hundreds of thousands of Iraqi and American troops faced off in the sands of Arabia. That 2½ years of *intifadah* could be so thoroughly sidelined points to its relative unimportance to the regional politics.

It is now clear that armed conflict, civil strife and disrupted oil supplies exist independently of the Arab conflict with Israel and would remain even if that conflict were resolved. The real issue is the behavior of many Arab states — their lack of democratic legitimacy, the brutal treatment of their own citizens, their relentless hostility toward Israel and their reluctance to respect international borders.

No longer can Israel be portrayed as the great threat to the Arab. The events of August show that the problem facing Arabs is not the United States or Israel but their own rulers.

Daniel Pipes is director of Philadelphia's Foreign Policy Research Institute. He is the author of "The Rushdie Affair" and "Greater Syria."

THE UNIVERSITY OF NOTRE DAME

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Comite International sur les Animaux de Laboratoire
Virus Reference Centre
Centre de Reference sur les Virus

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November 13, 1990

Rabbi Alexander M. Schindler
Union of American Hebrew Congregations
838 Fifth Avenue
New York, New York 10021

Dear Rabbi Schindler,

Our son Jonathan has expressed his great pleasure on your correspondence with him. His outgoing mail is uncertain in that much of it goes through censors in Washington.

We are much concerned for him after 5 years in a solitary environment, earlier for 10½ months in a mental hospital in Springfield, Missouri, in which Prison Director stated that he was not there as a patient; and more recently in Marion, Illinois.

You may know that a Motion For Withdrawal of The Guilty Plea was denied by Judge Aubrey Robinson; and now it is being prepared for appeal. The Motion was based on legal violations which were found in the court record. The specifics are defined in the enclosed essay by David Kirshenbaum, Esq. More recently, Dr. Lawrence Korb published a statement on Caspar Weinberger which was highly uncomplimentary. In response to my query on Weinberger, Dr. Korb made a very succinct statement (enclosed), which confirms our suspicions that the sentence was "unfair." Judge Robinson admitted that while Weinberger was biased, his Memorandum to the Court was instrumental in determining a life sentence for Jonathan. This Memorandum was denied to our attorneys which was disturbing to Lee Hamilton.

I have enclosed a set of documents relative to the above references.

We are concerned that Jonathan was "sandbagged," in the words of his attorney. He was assured of leniency if he cooperated in effecting damage control. Having done so the Government admitted that he revealed much information previously unknown, which was then used to assess the life sentence. We hope that the exercise of true justice will prevail.

This is not a Jewish problem. It concerns a miscarriage of justice, as guaranteed by our Constitution. Constitutional guarantees of due process were abandoned. While one person is in prison under such circumstances, no one is secure. If Jonathan is in prison for having "made Israel too strong," what should happen to those in the U.S. Government who contributed to the brutish strength of Iraq?

We are blessed with help from many quarters, by individuals exemplified by Fr. Theodore Hesburgh and Philip Klutznick who recognized defects in the prosecution of this case from its onset.

Thank you again for your kind communication with our son.

Sincerely yours,

Morris Pollard
Coleman Professor
and Director

MP:cr
enclosure(s)

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

FEB 15 1989

Honorable Lee H. Hamilton
House of Representatives
Washington, D.C.

Dear Congressman Hamilton:

Thank you for your letter of January 23, 1989, with the attached correspondence from your constituent, Mrs. Pollard, whose son, Jonathan Pollard, is currently incarcerated at the United States Penitentiary, Marion, Illinois.

In her letter, Mrs. Pollard requests statistical data regarding the types and numbers of bed space available at the United States Medical Center for Federal Prisoners, Springfield, Missouri. Mrs. Pollard's purpose for requesting the information is to "determine if [the] facility could have provided a place for [their] son other than the psychiatry ward." The information could certainly be provided, however, it would serve little purpose in answering Mrs. Pollard's question. Jonathan Pollard was admitted to Springfield shortly after his commitment to the Bureau of Prisons. Mr. Pollard was housed in an area of the institution that provided the appropriate level of security and protection. This same area of the institution also provides the security level required for some psychiatric evaluation cases. Mr. Pollard, however, was never classified or managed as a psychiatric patient.

If you have additional questions, please do not hesitate contacting us.

Sincerely,

J. Michael Quinlan
Director

One Hundred First Congress

Congress of the United States

Committee on Foreign Affairs

House of Representatives

Washington, DC 20515

September 24, 1990

Dr. Morris Pollard
Lobund Laboratory
University of Notre Dame
Notre Dame, IN 46556

Dear Dr. Pollard,

Thank you for your letter of September 16th to which you attached a copy of the Korb article from the Washington Monthly. I look forward to perusing it.

I agree with you that the Weinberger statement was a key document and that your lawyers should have had access to the document, especially when they had obtained the appropriate clearances. That would appear to be an extraordinary denial.

I appreciate your keeping me informed. I know that the legal process continues and I hope you will stay in touch. I would like to be helpful if I can.

With best regards.

Sincerely,

Lee H. Hamilton
Chairman
Subcommittee on Europe
and the Middle East

The Brookings Institution

1775 MASSACHUSETTS AVENUE N.W. / WASHINGTON D.C. 20036-2188 / TELEPHONE: (202) 797-6000

Center for Public Policy Education

October 19, 1990

Mr. Morris Pollard
Coleman Professor and Director
Lobund Laboratory
University of Notre Dame
Notre Dame, Indiana 46556

Dear Professor Pollard:

It was with great sadness and empathy that I read your letter of September 24, 1990. It must be so very difficult for you to deal with your son's situation.

I am not aware of exactly what Weinberger told the Court about the impact of the information Jonathan passed to Israel. I do know that Weinberger had an almost visceral dislike of Israel and the special place it occupies in our foreign policy. In my opinion, the severity of the sentence that Jonathan received was out of proportion to his alleged offense.

I wish there were something I could do to help you, but I am afraid all I can offer you are my prayers and empathy.

Sincerely,

Larry Korb

Lawrence J. Korb
Director

CABLES: BROOKINST / FAX TELEPHONE: (202) 797-6004

Cap the Knave

Reagan's longtime secretary of defense is out to rewrite history

by Lawrence J. Korb

The appointment of Caspar Weinberger, Cap the Knife, as secretary of defense in early 1981 was hailed by both supporters and critics of the incoming Reagan administration. The conventional wisdom was that Weinberger, who had served with apparent distinction in such key jobs as director of the OMB and secretary of HEW in the Nixon-Ford years, was the right choice to manage the defense buildup begun by Carter and certain to be continued by the hard-line Reagan administration. Moreover, unlike some of Reagan's other appointees, Weinberger was believed to be a moderate and a pragmatist rather than a zealot—that is, a man who would work well with other members of the national security team and Congress. Indeed, this reputation was the reason I eagerly accepted Weinberger's offer to become his assistant secretary of defense for manpower, reserve affairs, and logistics, a post I held until September 1985.

When Weinberger left office in November 1987, after serving longer than all but one (Robert McNamara) of his 14 predecessors, his reputation was in tatters. The defense buildup proceeded without any clearly defined sense of strategy or purpose; the Pentagon was racked by some of the most severe procurement scandals in its history; and the defense budget and programs that he bequeathed to his successor, Frank Carlucci, were so far out of balance that his five-year plan had a shortfall of $500 billion. (In his first month in office, Carlucci had to make some $200 billion in reductions.)

Weinberger proved himself so narrow-minded, obdurate, and rigid that he lost the confidence of Congress and ultimately of the president himself. Congress slashed Weinberger's proposed budgets and passed—over his objections, but with the support of the president—the most sweeping reorganization of the Department of Defense in history, the Goldwater-Nichols Act of 1986. President Reagan, Weinberger's long-time mentor, was forced to appoint the Scowcroft Commission to straighten out the mess Weinberger had made of the strategic modernization program and the Packard Commission to straighten out the mess Weinberger had made of the procurement system.

I found Weinberger exceedingly difficult to work for. He seemed to have fixed ideas on every issue, and those who did not accept his interpretation of the facts were branded as disloyal. His staff meetings, like his press conferences and congressional appearances, rarely involved two-way conversation. Weinberger seemed to feel that if he repeated an opinion often enough, repetition alone would make it come true.

Weinberger's memoir* takes Manichaeism and hyperbole to an extreme. Individuals who support his world view are described in such glowing terms that it is almost sickening. His hero, Ronald Reagan, is magnificent, warm, decent, selfless, patient and politically courageous, easy to brief, extraordinarily firm, and possessed of phenomenal memory. Even Ed Meese is described as well-informed and effective in argument. On the other hand, members of Congress or the administration who opposed Weinberger or the president represent narrow parochial interests or special interest groups, and are ultimately disloyal.

Weinberger's Manichaeism and hyperbole also extend to nations, their leaders, and international events. The Soviet Union is and always will be the evil em-

Lawrence J. Korb is director of the Center for Public Policy Education and a senior fellow for Foreign Policy Studies at the Brookings Institution.

**Fighting for Peace: Seven Critical Years in the Pentagon.* Caspar Weinberger. *Warner Books, $24.95.*

pire, whose military power is still increasing despite the collapse of the Warsaw Pact. The Shah of Iran's fall resulted from U.S. harassment and demands that he release his political prisoners. On the other hand, Weinberger holds the Ayatollah responsible for the war with Iraq, even though Iraq attacked first. Moreover, he asserts that Iran was able to hold its own in the war only because Iraq had decided it did not want to commit the substantial resources required for a military victory. The former secretary conveniently forgets that Iraq resorted even to chemical weapons.

Most memoirs are somewhat self-serving, but Weinberger carries his to the extreme. In the opening chapter, he portrays himself as reluctantly taking up Reagan's offer to become secretary of defense, when in fact he campaigned vigorously for a high-level post with the president-elect. Throughout the book, he simply dismisses the problems that plagued his tenure in office and undermined support for national defense.

Weinberger is at his disingenuous best in his Iran-contra discussion. He blames the whole affair on the incompetence of McFarlane, conveniently overlooking the fact that he joined Clark, Meese, and Casey to block Jim Baker's appointment as national security adviser, making McFarlane's appointment possible. More seriously, he ignores the implications of the fact that—unbeknown to the president and the other members of the national security establishment—Weinberger had contemporaneous intelligence reports about the secret November 1985 arms shipment to Iran, as these memoirs reveal.

Why did Weinberger not act upon this knowledge, given his adamant opposition to sending arms to Iran? Why did he tell the Senate Select Committee on Intelligence that he did not learn about the CIA shipment of arms to Iran until early 1986?

The answer to both questions is that Weinberger basically is not the person he appears to be. Had he acted upon his knowledge of the November 1985 shipment, he would have jeopardized his place in the administration or jeopardized the Reagan administration itself. Given his zealous devotion to Reagan and his agenda, he could do neither. Just as he ignored the inconvenient facts that undermined the case for his defense buildup and the weaknesses of his management style in the Pentagon, he ignored the intelligence reports and may even have perjured himself before Congress. Ironically, a book he wrote to vindicate himself confirms our worst fears about him and makes me wonder how so many (including me) could have been so mistaken about his appointment in 1981. □

The Motion To Withdraw Pollard's Guilty Plea

By David Kirshenbaum, Esq.

Earlier this year, Jonathan Pollard's defense counsel, Hamilton P. Fox, III, submitted to the District Court in Washington, D.C. a motion to withdraw Pollard's guilty plea. I received a copy of the motion from Jonathan's father, Dr. Morris Pollard, who suggested that the readers of THE JEWISH PRESS would be interested in learning the contents of this motion.

As a brief background, Jonathan Pollard pled guilty to one count of conspiracy to violate a Federal statute that prohibits a person from communicating to a foreign government information relating to the national defense, either with intent or reason to believe that the information will be used to the injury of the United States or to the advantage of a foreign nation.

Pollard was never charged with intent to injure the United States. He was charged with "having intent and reason to believe that the [information] would be used to the advantage of Israel..."

In March, 1987, Pollard was sentenced to life imprisonment, with the sentencing judge adding a recommendation that Pollard never be paroled.

This sentence was a travesty and perversion of justice that raises numerous unavoidable and troubling questions.

What was it about the Pollard affair that resulted in a sentence that was not only grossly deviant from sentences meted out to other individuals who passed classified information to American allies, but even more harsh than the punishments imposed on Americans who spied for American adversaries, causing massive damage, including the compromising of American operatives in Communist countries and the death of Americans.

As Allen Dershowitz has argued over the past few months, "History provides, at least, some relevant parameters which allow one to conclude, with reasonable confidence, that if comparable information had been provided by a French-American to France or a Swedish-American to Sweden, it is unlikely that the sentence would have been as severe."

One must also ask what benefit Pollard received by pleading guilty to the charges against him, fully cooperating with the government in its investigation and saving the government the expense of a trial.

Not since the Rosenbergs passed to the Soviet Union, during the Korean War and the height of the Cold War, classified information about America's atomic weapons program, has anyone been executed in this country for espionage activities.

The execution of the Rosenbergs, of course, remains highly controversial even today and none of the Americans who spied for the Russians since have received death sentences. It is therefore safe to assume that a death sentence was not a real option in the Pollard case.

Thus, in the world of real possibilities, what could have been a worse result than a life sentence with a recommendation against parole?

The motion submitted by Pollard's counsel persuasively argues that one reason Pollard did not receive any benefit from the plea agreement was because the government violated the plea agreement in three ways.

The government promised that it would not ask for a life sentence but rather would limit its recommendation to asking for a "substantial" sentence.

Notwithstanding this promise, Secretary of Defense Caspar Weinberger submitted two declarations to the sentencing court (the first being classified and detailing the nature and extent of the purported harm Pollard may have caused to national security) that could plainly be interpreted as advocating a life sentence.

(Continued on page 4

The Jewish Press August 1990

Pollard

Continued from page 4)

Weinberger, for example, wrote in his declaration o the court the day before sentencing, "It is difficult for ne, even in the so-called 'year of the spy' to conceive of greater harm to national security than that caused by the lefendant..."

The "year of the spy" referred to by Weinberger ncluded the conviction of John Walker who sold secrets o the Soviet Union for 17 years and received a life entence.

As Pollard's motion argues, in stating to the court is opinion that Pollard caused greater harm to national ecurity than the likes of a John Walker, Weinberger vas sending a very clear message to the sentencing idge. If Walker got life and Pollard caused as much or greater damage to national security, Pollard too should eceive a life sentence.

The government was clearly and improperly using he Weinberger memoranda to circumvent perhaps the nost important promise of the plea agreement. The Veinberger memoranda, in fact, probably had more ersuasive value than had the same arguments been nade by the prosecuting attorney.

The Pollard motion gives examples of a number of nflammatory inaccuracies in Weinberger's memoranda nd Pollard's counsel contends in the motion that he has nformation that the classified memorandum contained alse or exaggerated claims about the damage done by Pollard.

Were this true, it would provide further grounds for withdrawing the guilty plea.

The government however, has been dragging its eet in providing Pollard's counsel with access to the full ext of Weinberger's classified declaration.

The government also argued that it would limit its rguments before the court to the facts and circumstan- es of the case. It did not do so, but rather dedicated a significant portion of two memoranda submitted to the court at sentencing to a character assassination of Pollard, characterizing him as a "recidivist," "unworthy of trust," being "contemptuous of the court's activities," and calling his conduct "traitorous."

Caspar Weiberger's memoranda to the court and the government's oral statement at sentencing each contained more of the same vituperatives.

Thirdly, the government had promised to advise the court of Pollard's cooperation and the value of the information he provided to the government's investigation.

The government, however, after telling the court of Pollard's cooperation and its importance, went on to cast aspersions on Pollard's motives for cooperating, stressing his lack of remorse and elaborating on the fact that some of Pollard's alleged co-conspirators had fled the country.

This effectively discounted the value to Pollard of the government's third promise.

At sentencing, the government not only breached its side of the plea agreement, but argued that Pollard broke his undertaking by giving two interviews to Wolf Blitzer of **The Jerusalem Post**.

But as Pollard's motion clearly establishes, "Not only did the Department of Justice know of the interview, it approved and facilitated it."

Furthermore, the Blitzer interviews were given four months before sentencing. If the government believed that Pollard had breached the plea agreement, its remedy at that point should have been to petition the court for a hearing to determine whether in fact the agreement had been breached.

If it was found that Pollard had, in fact, breached the agreement, the remedy would have been to release the government from its promises under the plea agreement, and allow it to fully prosecute Pollard.

The government, however, did no such thing in November, but continued to obtain the benefits of the plea agreement, securing Pollard's continuing cooperation and the forfeiture by Pollard of his constitutional right to a trial.

The government then sought (quite successfully, it turns out) to deprive Pollard of his benefits of the plea agreement by belatedly asserting just at the time of the government's promised performance, the alleged breach by Pollard four months before.

Finally, Pollard's motion points out that Federal rules of criminal procedure require that a judicial inquiry be made into the voluntariness of a guilty plea.

Moreover, when pleas are linked or when the defendant's guilty plea is made in consideration of a third party receiving a lenient sentence, special care must be taken and a higher standard must be applied to assure the voluntariness of a guilty plea.

Anyone familiar with the Pollard case is well aware of the terrible conditions in the cell where Jonathan's wife, Anne, was imprisoned following her arrest, the physical threats she was subject to and the devastating physical deterioration she suffered while in prison.

The government threatened to bring additional charges against her (she was charged with being an accessory after the fact to her husband's possession of national defense documents and with conspiracy to receive embezzled government property) if she did not plead guilty.

Jonathan feared the effects of a prison sentence on his wife and felt the safest way to avoid a jail sentence for Anne would be for her to plead guilty to the initial charges brought against her.

The government, however, linked the guilty pleas, forcing Jonathan to plead guilty to the charges brought against him in order to insure that his wife's life would not be endangered.

Thus, even though Federal rules required that inquiry be made into the voluntariness of Pollard's plea and the facts surrounding Pollard's plea agreement screamed out for a serious examination of the possibility of coercion, the court relied solely on the statement of Pollard's counsel at the time of sentencing, and never asked Pollard himself whether he was entering his plea voluntarily or whether the plea was the product of force, threats, or promises.

Pollard's petition to the court makes a powerful case, and it can only be hoped that justice will finally be done and that the court will grant Pollard's motion and permit him to withdraw his guilty plea.

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ASSOCIATION OF REFORM ZIONISTS OF AMERICA

An Affiliate of the Union of American Hebrew Congregations

Chuck RAS
Deborah

TO: HARRIS GILBERT

FROM: DEBORAH SIEGEL DS

CC: DAVID SAPERSTEIN ✓

Just prior to the ARZA Executive Committee meeting on Sunday, January 27, Norman Schwartz received the enclosed letter from Jonathan Pollard requesting ARZA to file an amicus brief on his behalf. After discussion by the Executive Committee, it was decided that the proper UAHC body to consider this issue is the Social Action Commission and therefore we are forwarding the request to you. In your committee's deliberations, we would appreciate your consideration of the attached Resolution which was passed by the ARZA National Board in November, 1988.

DS/jkl

Enc.

3-02

December 27, 1990
Marion, IL

Dear Mr. Schwartz,

As you undoubtedly know, my case will shortly be presented to the Appellate Court in Washington. According to Alan Dershowitz, this may represent my last legal means of securing a more appropriate sentence. In light of this fact, would your organization consider submitting an amicus brief on my behalf? If you are amenable to this, I would appreciate your contacting my sister, Carol, who can put you in touch with my lawyers. Her address is as follows: Citizens for Justice, Inc., P.O. Box 3257, New Haven, CT, 06515 (203) 389-1119.

As I have said time and time again, Mr. Schwartz, I am not seeking exoneration, only a measure of justice. I can only hope that you'll be willing to help me obtain this. After all, the issues involved with my case effect not only me, but also the entire American Jewish community, as well.

Sincerely,

Jonathan

Enclosures

RESOLUTION
ANNE & JONATHAN POLLARD

WHEREAS, serious questions have been raised regarding the sentencing procedure and conditions of incarceration of Jonathan Pollard-- for life without parole, and

WHEREAS, we are seriously concerned about the treatment being received by Anne Henderson Pollard, during her incarceration, especially in view of her serious medical condition, therefore

BE IT RESOLVED, that the Executive Board of ARZA urges the UAHC Board and other affiliated Reform organizations to become fully acquainted with the sentencing and incarceration conditions of the Pollards and, if warranted, to use its good offices to encourage the United States government to reevaluate the Pollard sentencing, and to insure that they be treated with fairness and equity during their incarceration.

passed by ARZA National Board
November 7, 1988

RABBI ALEXANDER M. SCHINDLER • UNION OF AMERICAN HEBREW CONGREGATIONS
PRESIDENT 838 FIFTH AVENUE NEW YORK, N.Y. 10021 (212) 249-0100

September 17, 1990
27 Elul 5750

Mr. Jonathan Pollard/09185-016
P.O. Box 1000
Marian, IL 62959

Dear Mr. Pollard:

Just a note to advise that your letter of August 16th to Rabbi Schindler was received this morning.

He is out of the office today, and will not return until next week. Thus, I write merely to acknowledge receipt of your letter and to extend warm good wishes for a good New Year.

Needless to note your letter will be brought to Rabbi Schindler's attention on his return.

Sincerely,

Edith J. Miller
Assistant to the President

August 16, 1990
Marion, IL

Dear Rabbi Schindler,

Many thanks for your letter of August 2nd. With regard to my decision to divorce Anne, I think it's important for me to stress how complex the situation was that lead up to this development. As you may have already heard, once Anne was released from prison our marriage totally fell apart. Statements made by Anne in which she tried to blame my family for this unfortunate turn of events are wholely without foundation. In point of fact, Rabbi, it was my wife who, on 3 separate occasions, threatened to divorce me if I did not agree with her legal and political agendas. The last such ultimatum I received, which was communicated to me through Anne's lawyer, was the final straw as far as I was concerned. Obviously, no marriage could have survived for very long within that kind of corrosive setting. The fact that Anne refused to come out and see me just added insult to injury.

Need less to say, Anne's decision to sensationalize our divorce has absolutely infuriated me. What did she possibly hope to gain by indulging in such behavior? Indeed, all she seems to have accomplished by publicizing our separation has been to momentarily divert the Jewish community's attention away from my campaign to secure a fair sentence. Clearly, if Anne really loved me as much as she's claimed in the press, then she would have handled our divorce as discretely as possible. That my wife has done just the opposite merely confirms my worst assumptions about her ulterior motives. Certainly, Anne's blatant distortion of what actually occurred when she was served tends to reinforce this rather uncomplimentary assessment of my wife.

Rabbi, you simply couldn't even begin to imagine what Anne has been doing to me over the past 6-7 months. To say that both Anne and her father made my life a living hell during this period of time would be an understatement of monumental proportions. My parents and sister, in particular, were subjected to a level of verbal abuse, Rabbi, which was simply intolerable. As for myself, Anne's calls were so traumatic that the prison felt compelled to have a chaplain visit me to make sure that I was holding up emotionally under the strain. As I'm sure you can appreciate, Rabbi, living in isolation for 23 hours a day is rather difficult for me. However, I am trying to cope with this intolerable situation as best I can. What I assuredly don't need, though, is for someone like my wife to yell and scream at me on a daily basis - all that does is just make my imprisonment worse than it already is. Given the fact that Anne was once a prisoner herself, she should have known this. Yet virtually every time I talked to her, she would lay on a dose of "guilt" so thick that afterwards I could barely stand to look at myself in the mirror. Believe me, Rabbi, I'm well aware of what Anne went through on account of my activities. And G-d only knows how deeply I regret having involved her with the operation. But it must be said in all fairness, Rabbi, that other members of my family have also suffered as a result of this affair. No one, though, has a right to use their sacrifice as a psychological weapon against me. Unfortunately, Anne didn't quite see things

that way. You see, whenever Anne couldn't get her way, she would promptly remind me of how much pain and misery I'd caused her over the past 5 years. Frankly, Rabbi, that routine got old rather fast, particularly when I realized that Anne was going to use this kind of emotional blackmail on me for the rest of our married life. Just out of curiosity, Rabbi, how would you like to be constantly reminded of what a "slime" you were for destroying someone's career? Mind you, I'm the one in prison, not Anne. I also tried, by the way, to convince my wife to see a marriage counselor, but that suggestion was like pouring gasoline on a raging fire.

As you know, Rabbi, I opted to delay my legal "counterattack" until Anne was out of harm's way. Once that occurred, I immediately submitted a motion to withdraw my guilty plea and prepared for a lengthy, drawn out battle to reopen the case. But that didn't sit very well with my wife, who wanted a disproportionate share of our legal efforts devoted, instead, to reversing her conviction. It was the opinion of every lawyer consulted, though, that that objective was not only impossible to achieve, but that it was also totally irrelevant as far as the central issue of my freedom was concerned. Needless to say, I took an extremely dim view of Anne's legal priorities. Moreover, given the rather precarious state of our financial resources, we simply couldn't afford to wage a "two front war" as it were, which was something that Anne absolutely refused to accept. It got so bad at one point, Rabbi, that my wife threatened to publicly denounce my withdrawal motion as a "fraud" unless we capitulated to her demands. Although my lawyers were able to dissuade Anne from carrying out this threat, none of us enjoyed living under what amounted to a sword of Damocles. For obvious reasons, Rabbi, I tried to keep this growing rift as quiet as possible, but Anne eventually forced my hand by engaging in some activities that were totally beyond the pale. Suffice it to say, our Israeli friends were absolutely appalled by Anne's conduct, which they feared would derail the campaign we've put together to secure my patriation to Eretz. At that point, Rabbi, I had to act before it was too late.

I guess when you come right down to it, Rabbi, my wife no longer respected me. To her, I was just a piece of clay that she wanted to mold according to her needs. The arguments we had over a possible movie bear this out, Rabbi. You see, while I wanted to use this project as a vehicle for exposing Caspar Weinberger's undeclared intelligence embargo against Israel, Anne, in contrast, wanted the movie to concentrate almost exclusively on me. This absolutely enraged me, Rabbi, since I saw this movie as an opportunity to help Israel, not [redacted] ourselves per se. From my perspective, then, Anne's ego was more important to her than was the cause for which I risked everything. This is a terrible admission to make, Rabbi, but there is no point in avoiding the truth. Oh, sure, she's put on quite an act in public regarding her concern for

my welfare. But behind the scenes, Rabbi, I don't think you could have stomached what was going on. When I asked Anne one time, for example, not to contradict what my lawyers were saying about the case, she responded by threatening to implicate my parents (!) in the operation unless I withdrew my objections to her statements. On another occasion when I literally begged her not to appear on a certain TV show, she let me know rather bluntly that she had her own agenda that she intended to pursue irregardless as to its effect on me. Of course, Anne would probably swear that she never said such things, but the prison tape recordings of our conversations, Rabbi, tell another story.

It's a fact of life, I suppose, that no divorce is ever pleasant. And Lord Knows I didn't want to precipitate such a controversial action at a time when I was finally beginning to make some real headway within the Jewish community. But it came to a point, Rabbi, where I just couldn't take any more of my wife's irrational behavior. Believe me, my friend, I feel absolutely awful about the divorce, but Anne never really gave me much of a choice in the matter.

As you can well imagine, Rabbi, I've been paying very close attention to developments in the Gulf since it was the previous administration's calculated refusal to warn Israel about Iraq's then-secret poison gas manufacturing program which compelled me to pass information pertaining to this threat on to Jerusalem. Well, it may have taken 5 years, but it now seems that an increasing number of people within our community are finally coming to the realization that what I've been saying about this whole gas related issue is true. Namely, that elements within the Reagan administration deliberately mislead Israel as to the status of Iraq's growing chemical arsenal. As you can imagine, this shift in public support for me has not gone unnoticed by the White House. Just last week one of my attorneys was told that several members of the President's inner circle are extremely concerned that if my case is reopened my testimony regarding the government's cover up of Iraq's chemical weapons program could be politically devastating at this point in time. After all, the same Iraqi gas which I tried to warn Israel about 5 years ago is now being used to threaten the American expeditionary forces in Saudi Arabia. Then again, it could also be very embarrassing for the administration to try to explain why it was that Abdel Kader Helmy, the Egyptian-American engineer who was responsible for extending the range of Iraq's gas armed [redacted] SCUD-B ballistic missile, received such a lenient sentence in comparison to what I was handed. Well, I guess I'll just have to wait and see whether these issues find their way into the press. Believe me, I'm not going to hold my breath. You see, for some strange reason, Rabbi, such commentators as Abe Rosenthal, Bill Safire, and Charles Krauthammer have been extremely reluctant to touch this subject. I suspect it's true, then, what they say about "expediency" being the better part of valor!

In any event, let me take this opportunity to wish both you and your family a healthy,

Happy New Year. As it is said in Tehillim:

יְבָרֵךְ יְיָ אֶת עַמּוֹ בַּשָּׁלוֹם׃ יְיָ יִתֵּן עֹז לְעַמּוֹ יְיָ יְבָרֵךְ אֶת עַמּוֹ בַּשָּׁלוֹם׃

Best wishes,

Jonathan

The Motion To Withdraw Pollard's Guilty Plea

By David Kirshenbaum, Esq.

Earlier this year, Jonathan Pollard's defense counsel, Hamilton P. Fox, III, submitted to the District Court in Washington, D.C. a motion to withdraw Pollard's guilty plea. I received a copy of the motion from Jonathan's father, Dr. Morris Pollard, who suggested that the readers of THE JEWISH PRESS would be interested in learning the contents of this motion.

As a brief background, Jonathan Pollard pled guilty to one count of conspiracy to violate a Federal statute that prohibits a person from communicating to a foreign government information relating to the national defense, either with intent or reason to believe that the information will be used to the injury of the United States or to the advantage of a foreign nation.

Pollard was never charged with intent to injure the United States. He was charged with "having intent and reason to believe that the [information] would be used to the advantage of Israel..."

In March, 1987, Pollard was sentenced to life imprisonment, with the sentencing judge adding a recommendation that Pollard never be paroled.

This sentence was a travesty and perversion of justice that raises numerous unavoidable and troubling questions.

What was it about the Pollard affair that resulted in a sentence that was not only grossly deviant from sentences meted out to other individuals who passed classified information to American allies, but even more harsh than the punishments imposed on Americans who spied for American adversaries, causing massive damage, including the compromising of American operatives in Communist countries and the death of Americans.

As Allen Dershowitz has argued over the past few months, "History provides, at least, some relevant parameters which allow one to conclude, with reasonable confidence, that if comparable information had been provided by a French-American to France or a Swedish-American to Sweden, it is unlikely that the sentence would have been as severe."

One must also ask what benefit Pollard received by pleading guilty to the charges against him, fully cooperating with the government in its investigation and saving the government the expense of a trial.

Not since the Rosenbergs passed to the Soviet Union, during the Korean War and the height of the Cold War, classified information about America's atomic weapons program, has anyone been executed in this country for espionage activities.

The execution of the Rosenbergs, of course, remains highly controversial even today and none of the Americans who spied for the Russians since have received death sentences. It is therefore safe to assume that a death sentence was not a real option in the Pollard case.

Thus, in the world of real possibilities, what could have been a worse result than a life sentence with a recommendation against parole?

The motion submitted by Pollard's counsel persuasively argues that one reason Pollard did not receive any benefit from the plea agreement was because the government violated the plea agreement in three ways.

The government promised that it would not ask for a life sentence but rather would limit its recommendation to asking for a "substantial" sentence.

Notwithstanding this promise, Secretary of Defense Caspar Weinberger submitted two declarations to the sentencing court (the first being classified and detailing the nature and extent of the purported harm Pollard may have caused to national security) that could plainly be interpreted as advocating a life sentence.

(Continued on page 45)

Pollard

(Continued from page 4)

Weinberger, for example, wrote in his declaration to the court the day before sentencing, "It is difficult for me, even in the so-called 'year of the spy' to conceive of greater harm to national security than that caused by the defendant..."

The "year of the spy" referred to by Weinberger included the conviction of John Walker who sold secrets to the Soviet Union for 17 years and received a life sentence.

As Pollard's motion argues, in stating to the court his opinion that Pollard caused greater harm to national security than the likes of a John Walker, Weinberger was sending a very clear message to the sentencing judge. If Walker got life and Pollard caused as much or greater damage to national security, Pollard too should receive a life sentence.

The government was clearly and improperly using the Weinberger memoranda to circumvent perhaps the most important promise of the plea agreement. The Weinberger memoranda, in fact, probably had more persuasive value than had the same arguments been made by the prosecuting attorney.

The Pollard motion gives examples of a number of inflammatory inaccuracies in Weinberger's memoranda and Pollard's counsel contends in the motion that he has information that the classified memorandum contained false or exaggerated claims about the damage done by Pollard.

Were this true, it would provide further grounds for withdrawing the guilty plea.

The government however, has been dragging its feet in providing Pollard's counsel with access to the full text of Weinberger's classified declaration.

The government also argued that it would limit its arguments before the court to the facts and circumstances of the case. It did not do so, but rather dedicated a significant portion of two memoranda submitted to the court at sentencing to a character assassination of Pollard, characterizing him as a "recidivist," "unworthy of trust," being "contemptuous of the court's activities," and calling his conduct "traitorous."

Caspar Weiberger's memoranda to the court and the government's oral statement at sentencing each contained more of the same vituperatives.

Thirdly, the government had promised to advise the court of Pollard's cooperation and the value of the information he provided to the government's investigation.

The government, however, after telling the court of Pollard's cooperation and its importance, went on to cast aspersions on Pollard's motives for cooperating, stressing his lack of remorse and elaborating on the fact that some of Pollard's alleged co-conspirators had fled the country.

This effectively discounted the value to Pollard of the government's third promise.

At sentencing, the government not only breached its side of the plea agreement, but argued that Pollard broke his undertaking by giving two interviews to Wolf Blitzer of **The Jerusalem Post**.

But as Pollard's motion clearly establishes, "Not only did the Department of Justice know of the interview, it approved and facilitated it."

Furthermore, the Blitzer interviews were given four months before sentencing. If the government believed that Pollard had breached the plea agreement, its remedy at that point should have been to petition the court for a hearing to determine whether in fact the agreement had been breached.

If it was found that Pollard had, in fact, breached the agreement, the remedy would have been to release the government from its promises under the plea agreement, and allow it to fully prosecute Pollard.

The government, however, did no such thing in November, but continued to obtain the benefits of the plea agreement, securing Pollard's continuing cooperation and the forfeiture by Pollard of his constitutional right to a trial.

The government then sought (quite successfully, it turns out) to deprive Pollard of his benefits of the plea agreement by belatedly asserting just at the time of the government's promised performance, the alleged breach by Pollard four months before.

Finally, Pollard's motion points out that Federal rules of criminal procedure require that a judicial inquiry be made into the voluntariness of a guilty plea.

Moreover, when pleas are linked or when the defendant's guilty plea is made in consideration of a third party receiving a lenient sentence, special care must be taken and a higher standard must be applied to assure the voluntariness of a guilty plea.

Anyone familiar with the Pollard case is well aware of the terrible conditions in the cell where Jonathan's wife, Anne, was imprisoned following her arrest, the physical threats she was subject to and the devastating physical deterioration she suffered while in prison.

The government threatened to bring additional charges against her (she was charged with being an accessory after the fact to her husband's possession of national defense documents and with conspiracy to receive embezzled government property) if she did not plead guilty.

Jonathan feared the effects of a prison sentence on his wife and felt the safest way to avoid a jail sentence for Anne would be for her to plead guilty to the initial charges brought against her.

The government, however, linked the guilty pleas, forcing Jonathan to plead guilty to the charges brought against him in order to insure that his wife's life would not be endangered.

Thus, even though Federal rules required that inquiry be made into the voluntariness of Pollard's plea and the facts surrounding Pollard's plea agreement screamed out for a serious examination of the possibility of coercion, the court relied solely on the statement of Pollard's counsel at the time of sentencing, and never asked Pollard himself whether he was entering his plea voluntarily or whether the plea was the product of force, threats, or promises.

Pollard's petition to the court makes a powerful case, and it can only be hoped that justice will finally be done and that the court will grant Pollard's motion and permit him to withdraw his guilty plea.

VIA TELEFACSIMILE

June 21, 1990

Mr. Phil Baum
American Jewish Congress
Stephen Wise Congress House
15 E. 84th Street
New York, NY 10028

Dear Phil:

The following is a summary of the major points I presented at yesterday's meeting.

Jonathan Pollard pleaded guilty to spying for Israel. He cooperated extensively in the Defense Department's damage assessment and provided the Justice Department with valuable information about his co-conspirators. In exchange for waiving his right to a trial -- a long and expensive trial that would have required the Government to disclose potentially damaging information -- and in consideration of his valuable cooperation, the Government agreed to ask for a sentence of less than life imprisonment.

In light of the unbroken history of lenient sentences for defendants who have pleaded guilty to spying for American allies, Pollard had every reason to expect that his

sentences would fall within the range of prior sentences in cases involving allies.[1]

This was especially so, since Israel is more than a mere passive ally; it shares the most sensitive National Security information with the United States on an ongoing and mutual basis, and was lawfully entitled under various exchange agreements to much of the information provided to it by Pollard.

Prior to sentencing, however, Secretary of Defense, Casper Weinberger submitted a sworn declaration specifically addressed to "defendant's self-serving contentions that his espionage activities were intended only to aid Israel..." In his declaration, Weinberger made the following assertions:

A) "It is difficult for me, even in the so-called 'year of the spy,' to conceive of a greater harm to national security than that caused by the defendant..."

B) He then demanded a sentence that reflects "the perfidy of the individual's actions, the magnitude of the <u>treason</u> committed, and the needs of national security." [emphasis added]

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[1]No person who pleaded guilty to spying for a trusted ally during peacetime had ever, to our knowledge, recieved a sentence in excess of ten years. Typically the sentences are less than five years.

C) He said that Pollard's "loyalty to Israel transcends his loyalty to the United States," pointing to the fact that Pollard hopes to emigrate to Israel.

D) Weinberger then predicted that Pollard "will continue" to disclose United State's secrets to Israel and demanded "a period of incarceration commensurate with the enduring quality of the national defense information he can yet impart."

The statements clearly communicated Weinberger's view that Pollard should be sentenced to life imprisonment, notwithstanding the government's promise to ask for a less severe sentence. Life is the only sentence that would indeed be commensurate with the greatest possible harm to national security (if Pollard's crimes were truly in that category) and the only sentence that could assure that Pollard would never be let out while he could "yet impart" valuable information.

These statements also strongly suggested that spying for Israel was the equivalent -- in terms of damage to the United States -- of spying for the Soviet Union and other "enemies" of the United States during the cold war. It is clearly untrue that no other spy case had caused "greater harm" than the Pollard case, since other recent cases in-

volving long term spy rings for our enemies had caused massive damage -- including the death of Americans. Indeed, Weinberger's explicit characterization of Pollard's crime as "treason" plainly suggests that it was carried out on behalf of an enemy, since our Constitution declares that "treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." [emphasis added]

In its sentencing memorandum, the Government suggested that a moderate sentence imposed on a defendant who spied for an ally Israel might well "invite similar unlawful conduct by others." In subsequent public statements the United States Attorney stated that Americans who spy for Israel must receive even harsher sentences than those who spy for other countries since many Americans strongly support Israel, whereas few Americans support other foreign countries. These comments have been widely perceived as thinly veiled references to the old canard of "dual loyalty." They suggest that American Jews need greater deterrence against spying for Israel than do other Americans in relation to other countries.

These unusual elements in this case, especially when evaluated against the background of the unprecedented life sentence in this case of spying for a trusted ally, raise important questions of concern to the Jewish community. Foremost among them is the unsettling question whether the

sentence in this case would have been as harshly disparate for other comparable defendants if Pollard had not been Jewish and had the nation he spied for not been Israel? This is a complex and difficult question to answer. It certainly cannot be answered by inappropriately advertising the Jewish backgrounds of several of the prosecutors, as the Government has done here (and as it did in the Rosenberg case.) History provides, at least, some relevant parameters which allow one to conclude, with reasonable confidence, that if comparable information had been provided by a French-American to France or a Swedish-American to Sweden, it is unlikely that the sentence would have been as severe.

At the very least, these facts shift the burden of persuasion to the government to justify why there has been so great a deviation in this case from the prior history of sentences imposed on defendants who have pleaded guilty to spying for allies. The facts also demand that the government justify the unprecedented sentence imposed on Anne Pollard and the designation of Jonathan Pollard to a supermaximum security prison designed primarily for violent recidivist.

The Pollard case raises serious questions of concern to the Jewish Community. Thus far, few satisfactory answers have been provided. Part of the reason is that the major Jewish organizations have not raised these questions.

Indeed, efforts by grass-root Jews to engage in a dialogue with government officials about the Pollard case have been hindered because such officials have noted the apparent lack of concern by the major Jewish organizations. This plays right into the hands of those Government officials who tried to keep me out of the case because I am active in the Jewish community, and who told Pollard that the Jewish organizations did not care about him.

For all of the above reasons, the American Jewish Congress should support the demand for full and open hearings in appropriate governmental forums of the serious questions raised about the Pollard case.

Alan Dershowitz

Forward July 27, 1990

Pollard, Wife Part

By JEFFREY S. BENKOE
FORWARD STAFF

NEW YORK — Confessed spy Jonathan Pollard filed for divorce from his wife Anne Henderson Pollard after their estrangement deteriorated into a bitter dispute over control of strategy to win his freedom, according to relatives, friends and lawyers.

Mr. Pollard released a statement through his rabbi, Avraham Weiss, last weekend, seeking to deflect reports that his relatives and lawyers had influenced his decision.

Mr. Pollard purportedly filed for divorce after his estranged wife herself threatened divorce on three occasions unless she and her father were allowed "to take charge of the case," Morris Pollard, Jonathan's father, charged. Bernard Henderson, Anne Pollard's father, vehemently denied the assertion.

The divorce decision comes as a grass-roots effort is mounting to enlist support for Mr. Pollard in the organized American-Jewish community. There has been considerable debate over the life sentence given to the former U.S. Navy intelligence analyst, who pleaded guilty in 1985 to spying for Israel.

Mr. Pollard's strategy to "maintain a low profile" while the judge considers the motion may backfire, according to a family friend. Ms. Pollard was served with divorce papers while a patient in Mt. Sinai Medical Center in New York, where she is being treated for a serious stomach ailment. She was "shocked," her lawyer, Mark Baker, said. "She had no idea it was coming."

Love And Respect

Mr. Pollard was concerned over interviews his wife would give in Israel, where she is scheduled to go later this month for more treatment. "Jay was afraid (the interviews) would hurt his chances for a lessened term," Morris Pollard said. Neither Jonathan nor Anne Pollard were available for interviews.

Mr. Pollard's lawyer, Alan Dershowitz, filed a motion on March 12 before U.S. District Judge Aubrey Robinson to have his guilty plea withdrawn.

There are different versions on her intentions in Israel. Morris

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Spy Pollard Sues Wife for Divorce

Continued from Page 1

Pollard's version goes this way: "When Jonathan learned that Anne was going to Israel, without consulting with him as to what her agenda was, he decided that was enough. His statement was, 'If there's no respect, there's no love, and if there's no love, there's no marriage.' That was the end of it."

Her lawyer, Mr. Baker, offered this account: Mr. Pollard sought a written agreement from his wife that "whatever she said in Israel had to be cleared first." Mr. Henderson said, "No one can decide what Anne is going to do . . . no one else decides."

Ms. Pollard, who is suffering from pancreatitis or another form of stomach dysfunctioning, has been in Mt. Sinai for four weeks as doctors try to diagnose her condition, Mr. Baker said. She has been experiencing "excruciating abdominal pain," he added. She is scheduled to fly to Israel on July 31 for tests at one of the Hadassah hospitals. An Israeli insurance company has agreed to cover her medical expenses, up to $25,000. The amount of the Mt. Sinai bills was not known.

The U.S. Parole Commission, which released her on probation on March 31 after serving two and a half years in federal prison, gave her permission to stay in Israel for ten weeks.

The couple has been estranged since she was released; she has not visited him in prison. Ms. Pollard claims that his family wanted a lawyer present for the visit. His side claims she insisted on the same condition.

The domestic situation has deteriorated even further into charges and countercharges. Morris Pollard asserted that Ms. Pollard and her father have pressured Jonathan to follow their course. "When Anne got out of prison in March, she called Jay (Mr. Pollard's middle name) on three or four occasions and told him she and her father wanted to take charge of this case and wanted to be responsible for the whole thing," Morris Pollard said. "If he didn't comply, she said she would divorce him. Her father sent a letter which said if Jay did not comply, there would be dire consequences." He declined to release the letter.

Mr. Henderson angrily denied the letter's existence. "There is no such letter," he said. "It is an outrageous and absolute, total lie."

Difficult Reflection

Morris Pollard said he told his daughter-in-law "her performance on some of the talk shows was not good and caused her to lose credibility." He asserted that at sentencing time five years ago, Judge Robinson was "very incensed. There was a lot of media coverage, and it antagonized the judge."

Ms. Pollard feels her husband "is not thinking soundly," according to Mr. Baker. "He's reflecting the thinking around him."

That thinking apparently includes the view that "his best option is now to maintain as low a profile as possible," said the family friend. Ms. Pollard, the friend added, is considered "far more public-minded than Jonathan...All he wants to be right now is quiet."

In the statement released by Rabbi Weiss, spiritual leader of Hebrew Institute of Riverdale in the Bronx, Mr. Pollard said: "The decision to seek a divorce is mine and mine alone. It was reached after long and agonizing reflection. I was not influenced by any party, be it my parents, my sister, or my lawyers . . . My decision was based on long, meticulous and difficult reflection. I have concluded that unfortunately our agendas and directions no longer converge."

He added: "There are many other issues of a private nature which I pray that people will accept on face value."

Mr. Pollard remains in solitary confinement all but two hours of the day. His basement cell at the federal penitentiary in Marion, Ill. has reached 110 degrees over the last few weeks, according to family members. "All the rumors and innuendoes about him being unbalanced are absolutely false," said Rabbi Weiss, who visited him several weeks ago."

Meanwhile, in recent weeks there has been increased formal recognition among several national American-Jewish groups. The American Jewish Congress has recommended a reexamination of the sentence. On July 4 a regional convention of B'nai B'rith International in California passed a resolution declaring unequivocally that Mr. Pollard's treatment "was unduly harsh and excessive in that his sentence was unprecedented and far more severe than those historically meted out to most persons convicted of espionage." The local group voted to present a resolution to the International convention next month. And the International Association of Jewish Lawyers and Jurists has passed a resolution urging that the case be reopened.

Talk About Being Prepared!

Something is radically wrong at the Pentagon! We were warned about Iraq's use of poison gas on Iran and their chemical warfare potential early last year, yet, preparations for such an attack in this country have been nil.

We have been told that the equipment American military forces will have to use against a chemical attack are heavy and so confining our troops would not be able to operate effectively.

For the past two years, the Defense Department has asked for a tremendous increase — for what? They claimed more planes and sophisticated stealth bombers were needed. But they, of all people should know that no war has ever been won with airpower alone. It is still the ground forces that assert control over a given area.

The irony of all this is that years ago Jonathan Pollard, who was convicted of spying for Israel, was the one who first blew the whistle and alerted the entire world that Arab nations were arming themselves with chemical weapons. So there is no question about Pentagon officials having sufficient warning. It was at that time, they should have sought allocations and begun preparations for protective gear for soldiers fighting in desert climates. So what did the army purchase? Protective gear for cold weather areas!

Something is radically wrong with President Bush's advisors.

If there is a chemical attack on American soldiers, the President has promised retaliation. Will he really use atomic weapons? We doubt it very much! Thousands of innocent people will become victims and the entire world will be united against this country for using

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EDITORIALS

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such a weapon just as the world came down on President Truman when an atomic bomb was used against Japan. True, that bomb took thousands of lives and is still claiming lives to this very day, but it did save thousands of American G.I.'s who might have died because of the Japanese.

We pray the President is not forced to use the "doomsday weapon" — just as we pray Iraq and the other Arab nations contain their chemical weapon warfare.

Once the genie is out of the bottle, it'll be hard to recap it.

The Jewish Western Bulletin 8/2/90

Rabbis of northern London ask Thatcher to help Pollard

LONDON — Rabbis representing three branches of Judaism in Britain are asking Prime Minister Margaret Thatcher to intervene with United States president George Bush on behalf of convicted spy Jonathan Pollard.

The rabbis, all residents of Finchley, northern London, planned to hand the prime minister a letter asking that she convey to Bush the "deep concern" felt by "Jewish people everywhere" about the life sentence imposed on Pollard in 1985 and the way he has been treated ever since.

Pollard has been imprisoned in solitary confinement and strictly limited in who may visit him and in corresponding with people outside the prison.

Four of the eight signatories are Orthodox rabbis, three are Reform and one is from the Progressive branch.

They charge that Pollard, a former civilian intelligence analyst employed by the U.S. Navy, was the victim of harsh and vindictive treatment when he was sentenced to life imprisonment for spying for Israel.

Their letter states, "We appreciate that the United Kingdom government cannot intervene in the United States' internal affairs, but human rights are an international matter," and "we therefore respectfully ask you" to raise with the U.S. administration "the concern which is felt by your constituents about the plight of Jonathan Pollard."

The rabbis acknowledge that Pollard was convicted for passing classified information to Israel, but "at no time was it alleged, or was he convicted, of passing United States' secrets," they wrote.

They claim that "all the information was specifically about the Arab front line states" and was intended to help Israel defend itself against chemical weapons such as are manufactured by Syria and Iraq.

The rabbis note that after more than five years in prison, Pollard is still in solitary confinement and, they say, suffers "mistreatment more befitting the KGB Gulags of pre-Gorbachev Russia."

London Jewish Chronicle/JTA

WAS HE POISONED AGAINST ME?

from Yediot Achronot
by Zadok Yeheskely
July 17, 1990

Anne Pollard lies like a baby in Mount Sinai Hospital, still thin after many months outside jail, her face pale and lifeless. A red balloon and some large, joyful greeting cards mock her. "What's left for me now?" She quietly says. "You ask whether I cried? Sure I did. What would anybody else do if she received something like that from a man with whom she had lived for five years, for whom she had spent 40 months in jail? I am still shocked."

Indeed, this scene invites only sympathy for the 30 year old woman, who blindly followed her husband, was sentenced to jail in dreadful conditions, went to jail, is in poor physical condition, fought like a lion for his liberation, -- and finally faced a divorice claim.

But as you will find out, the story is much more complex. It includes mutual accusations and criticism relating to Anne Pollard's personality, her unstable behavior, her possible madness. It includes long months of struggles, sometimes rude and loud, between the two camps around Anne and Jonathan Pollard.

It is not a beautiful story. We prefer the former one: the story of their brave love, still loving after so many years in prison. We prefer the young broken wife stating she won't rest until her husband is free and they can make Aliyah and live in the country for which Jonathan dared to do everything.

But something went wrong. Both parties tried to hide it, hoping it would be satisfactory, until Jonathan made a final step, applying for divorce. Still he tries to be discrete and to not expose the background, but this seems to be in vain.

Last Passover, Jonathan spent the "seder" with his family, having a 30 minute telephone call to his sister's home. Anne was alone that time, in her father's tiny apartment. Jonathan says that he tried to talk to Anne, but he couldn't. Then, in April, their relationship was worse. But even before Anne left jail, something went

wrong, especially between Anne's father, Bernard Henderson, on one hand, and Jonathan's sister, parents and Amnon Dror, the chairman of the committee for Jonathan in Israel, on the other hand. Bernard accused them of not financing his work and his lawyers. In fact, say the Pollards, Bernard wanted to control the public campaign and take it from Amnon Dror.

"His declarations of not being financed are not true," says Dror, and this is a moderate espression. Among the complaints against Anne's father are: wasting money, over drinking, and inciting Anne against the Pollards.

Henderson loses his patience upon hearing it: "I never told my daughter what to do. When she said she loved Jonathan, I went with her. I love her and I do what she asks, but the Pollards and Amnon Dror have done the last two months whatever they could to hurt her."

Anne and her father are sometimes violent. During one of the meetings, Bernard tried to hit Amnon Dror. Pollard's family suspect that Anne's fights in jail were derived from her impatience and her temper. "It's true that I am aggressive," says Anne, "I am not as shy as Jonathan. I am like the Israelis. I immediately say what I think, but Jonathan liked it." The Pollards could live with it when she was in jail, but afterwards the road to disputes was short.

The first explosion was between Anne and Carol Pollard, Jonathan's sister. Caorl was the dominant figure in the struggle for the couple. She visited Anne many times in prison. Due to Anne's behavior, Carol suggested she should get mental treatment. Anne "exploded" upon hearing it, and stopped speaking to Carol, calling her a "witch", and once even a "C.I.A. agent." Bernard Henderson claims: "The Pollards tried to get rid of my daughter by getting a psychiatric report without my daughter's knowledge. They invited a psychiatrist to dinner with Anne, so she could see her and make the report." The Pollards deny this.

Shortly afterwards Anne stopped talking to Morris Pollard, Jonathan's pleasant father. This time it was due to the same background that caused Jonathan's decision concerning the divorce. Soon after she left jail, Anne took control of the public campaign in favor of her husband. She was interviewed for "A Current Affair," and the Larry King show on CNN. Anne, as usual, attacked the administration. Jonathan and family, especially his lawyers, were raging, and tried to convince Anne to keep a "low profile" in order to enable diplomatic efforts to release Jonathan, and steps aimed at the vacating or

cancelling the verdict against him. Anne refused. She also did not always tell the truth in the interviews. For example, she said that Weinberger's prosecution of Jonathan was derived from his being a Jew. Weinberger, it was found out, is not a Jew. "You are harmful," said Jonathan to his wife in one of their talks on the telephone, but she insisted on continuing. "Your way is not my way," he said, but she still insisted, "This is my way."

When Morris Pollard asked her to "go off the television" she refused, and stopped talking to him. When he sent her flowers for her birthday, she threw them away. The family says that Anne threatened she would divorce Jonathan if they did not accept her management of the campaign. Anne denies this: "This is the last thing that I want."

[A section with description of their background, when and where they met, their excellent relationship, etc.]

Even when they were arrested, Jonathan and Anne were fully loyal to each other. "I sacrificed everything for him, these 40 months in jail. If I had cooperated, they would not have arrested me. The case against me is based on our relationship having been so close."

Nobody denies this description, but Jonathan's family and friends claim that during the years they were apart, it went wrong, and this accelerated after she was freed.

By then, five months ago, Jonathan began to consider the divorce. "He was depressed by her behavior, especially by her not visiting him," says Morris Pollard. "I think that if she had visited him, this divorce would not have occurred," says Carol Pollard.

YA: Anne, could you really not find the time to see your husband?

AP: There is nothing I wanted more than that. But after I finally got permission, the problems began, I was hospitalized three times. I could not have visited him. How can one claim that I neglected him? Every day I acted to make him free.

The relatives disagree. Morris Pollard says she had airline tickets and reservations, but she refused to use them. For 4 months, they say, she didn't accept his calls. Jonathan was especially insulted when he tried twice to call her on her birthday, unsuccessfully. Anne: "His family, Amnon Dror, and the people in jail wanted to destroy our marriage. They saw that he doesn't call. The worst was that I tried to call and they laughed at me in jail."

In March, a new lawyer's office began to deal with Pollard's matters. This office, hired to deal with the public campaign to release Jonathan, was increasingly busy with the divorce. Anne, her father, and their lawyer say they accelerated the divorce. The quarrel became uglier everyday, until Baker warned Morris Pollard on behalf of Anne that he "will have to act if the Pollards don't stop chasing Anne." He accused the family, especially Carol, of being obsessive by telling lies and half-truths about her mental state and her relations with her family. He was especially angry because of a conversation between Carol and Anne's probation officer, in which she tried to convince the prison authority to prevent Anne from going to Israel. Carol acknowledges the existence of the conversation but claims that it was initiated by the officer, and she did not say anything against Anne.

Doubts were raised as to whether Anne is ill, as she claims. There were questions like how, after so many hospitalizations, do physicians not have one, common, diagnosis. "I think she is sick and needs treatment," says Morris Pollard, "but we don't know just what she is suffering from."

Bernard Henderson claims tha the Pollards tried to convince the doctors in the hospital that Anne is not sick. "This is a scandal," he says. "My daughter was dying when she was hospitalized on June 30."

But the greatest dispute concerned Anne's visit to Israel. Jonathan and family were afraid she would use it for an embarrassing campaign against the government of Israel. The demanded that she refrain from that. She refused. Baker claims that in order to force her to agree they had three conditions and if she disagreed her visit to Jonathan's prison on July 10 would not take place. Among the conditions: accepting Amnon Dror's instructions. Anne refused. Jonathan decided on July 5, the divorce was submitted, but by Jonathan's request, service would wait until Anne felt better. Almost two weeks afterwards, the papers were handed to Anne. Anne refuses to believe: "It isn't him," she repeatedly says, counting every detail in his short letter. "He never called me 'dear Anne.' He used to call me Annie. And he never signed 'Jonathan' but always 'J'. After five years, is that all he has to write as an explanation to the divorce?"

Jonathan indeed is short, dry, and strict, almost like in his divorce claim. "It is obvious to both of us, that the differences between us are too great to be bridged. After a long time and thought, and in spite of the warm feelings, it seems that our marriage has come to its end."

"Is that what we had," cries Anne, "warm feelings?"

YA: Are you angry with him?
AP: No, Maybe just a little, for letting others influence him, to poison him against me. But I cannot stop loving or understanding him. Others made him do that. This is his lawyers and family. Until 4 months ago everything was alright. It makes me want to see him.. I am dying to talk to him, to the Jonathan I knew and married. Not that from the letter. The man that I married admired me. Worshipped me. Begged me for years to get married.
YA: Maybe you hurt him. Your way wasn't his. He didn't agree with you.
AP: I want to hear it from him. What did I do? I said that the USA was not at war with Israel, and shouldn't withold the information that Jonathan was forced to deliver to Israel. He told me himself that he had thousands of letters in favor of my interviews.
YA: So what are you going to do?
AP: I'll go to Israel for sure, and soon afterwards I'll visit him, my husband. To get an explanation. Anyhow, I will go on fighting for him. He does not deserve being in prison. I don't believe we will divorce. Don't believe that he wants that. I still dream the same dreams: I want to go with him to Israel, to raise our children together. From my point of view, nothing has change.
YA: If he calls, what will you tell him?
AP: That I love him, and what can I do for him. That if there are differences, they are bridgable. That I don't mean to stay out of his life just like that. Believe me, that if I see him, and he sees me, love will bloom and things will be alright.

Nobody believes that story but Anne. Last week Jonathan's personal Rabbi Avi Weiss visited him. "It was very hot, 45 degrees and the prison was burning. He was very depressed," says Weiss, who stayed an extra-long time due to Jonathan's mood. Pollard explained his motives for the divorce. "He struggled for long months. It was a difficult decision, but it was his own." Weiss, whom Anne wouldn't see for months, went to see her in New York, to explain Jonathan's motives. She was not convinced.

During the weekend his parents visited him. "The decision was not mine," Jonathan explained, "It was, in fact, Anne's." For the first time he talked about what he defined as threats and being taken advantage of by his wife and her father. "They threatened me," explained Jonathan, and said that he had received some letters and phone calls from them, including divorce threats and "painful projections", if he didn't agree to their demands.

One of Henderson's demands, says Pollard, was to give him full control of the campaign in favor of Jonathan. One of Anne's demands was that he stop all communication with his parents. Another -- selling his rights for a film about his life and capture. "They wanted to get rich by means of this movie," Pollard accused his wife and her father. "I demanded that the income from this film, will be used for charity. They rejected that."

Jonathan says that the calls were so loud and extreme, and in some cases the authorities sent the prison chaplain to calm him down. "She lost any respect for me. Without respect there is no love, and there is no use in marriage." The Pollards heard his decision, they say, with deep sorrow. Carol: "I am very sorry for Anne. I know she blames us, but she needs to blame herself."

YA: Did you have anything to do concerning his decision?
CP: Not at all. Nobody can force Jonathan to do anything. It was his own decision. We didn't have any part in it.

Conciliation prospects, everybody agrees, are poor. The nice story has ended. What's left is the truly important: "My son out of jail -- that's what is now important," says Morris Pollard.

To that, everyone agrees.

A number of years ago, I found myself in the Jerusalem office of a travel agent trying to book a flight home to the States. The office was located in one of Jerusalem's indoor shopping malls--actually, it's the only indoor shopping mall--and while waiting for the agent to confirm the reservation, my eyes were drawn to the hustle and bustle of people going in and around the various stores.

In truth, I wasn't that engrossed in what the other people in the mall were doing until I spotted what I thought was an unbelievable and terrible sight. It was a man beating a child. For a brief second, I thought the man was some father just disciplining his son for some infraction or misbehavior. In Israel, people are a lot less hung up about giving their kids a zetz or two in public. But, the beating didn't stop with one or two slaps. As a matter of fact, not only was the man hitting the child, who was only 7 or 8 years old, but he started kicking him as well.

Well, I couldn't take it anymore, and I ran out of that office screaming at the top of my lungs in my broken Hebrew: Stop! What are you doing? You're hurting the kid. You can't do this!

Well, strangely enough, the man immediately stopped beating the child. Even stranger was the fact that he had no response to my outburst. He didn't lash out at me, either physically or verbally. Maybe, it was because he knew his actions were endangering the kid. Then again, maybe, after listening to my broken Hebrew, he thought I'd never understand any explanation he might offer.

Whatever the reason, I truly believed that this was the end of the matter. I certainly figured that this was the case when one of the security men in the building came running up to us. As far as I was concerned, let him take care of

things--let him make sure that the man wouldn't change his mind and start beating the kid again or me for that matter.

Yet, instead of addressing the parent, he turned to me and angrily asked, "What business is it of yours? Who do you think you are anyway? What are you so sensitive about?"

I was floored. I didn't expect to be thanked for my actions, but I certainly didn't expect to be castigated either. I also couldn't understand why no one came to my aid or offered support from the group of people that had gathered during the course of the whole scenario and now formed a rainbow arc around the four people involved. Surely, they knew of the injustice that had been and was now being carried out.

I left the scene totally bewildered. I couldn't make any sense of anyone's reaction until I walked back into the travel office and the agent greeted me with, "I never knew you were such a Pinchas."

Right then and there, I understood what had happened in the hall of the mall. I had been viewed as a zealot. I had been viewed as another Pinchas.

How is this possible?

You know the story of Pinchas--how confronted with the harlotry of B'nei Yisrael with Moabite women, when faced with the immorality and indecency of Zimri, prince of the tribe of Shimon, with Cozbi, a Midianite princess, Pinchas picks up a spear and kills them.

For his actions, Pinchas is rewarded by God, according to this week's Torah reading, with not only the High Priesthood, but also BRIT SHALOM - "My Covenant of Peace"--peace in the sense of peace of mind and body, so says the Midrash, from any thoughts or attempts at revenge on the part of Zimri's relatives.

Yet, the Torah Temima, the commentary, indicates that it was not just Zimri's relatives that Pinchas needed protection from. Rather, it was the other leaders and authorities of B'nei Yisrael. They looked askance at Pinchas' actions. They had not necessarily witnessed what had transpired, so they were not convinced that his actions were motivated by genuine zeal for G-d or by the injustice or immorality that he saw. The covenant of peace, therefore, was peace between himself and the other leaders to convince them of the genuiness of his actions and motivation.

Certainly, the statements of the security guard, "What are you doing? What business is it of yours? Who do you think you are anyway?" can be seen as a reflection of disbelief in the genuiness of my actions. He had not witnessed what had taken place and probably thought I was just another mixed-up, misdirected American tourist. Why else would he ask: "What are you so sensitive about?"

Well, the security guard may not have observed what had transpired, which is why he mistrusted my actions, yet certainly some of the people in the mall had witnessed what happened, were knowledgeable of the facts, were aware of the original injustice and knew the unfair treatment I was receiving at the hands of the local authority. Why didn't they speak out - why weren't they willing to extend to me a BRIT SHALOM - a covenant of peace?

Why indeed?

There is another situation where BRIT SHALOM is not being offered, neither by the authorities nor by the people. The situation is the case of Jonathan Pollard. I am sure I need not make you aware of the fact that Jonathan Jay Pollard was charged with espionage for the government of Israel and passing on

classified information. As you probably also know, the information which Pollard passed on was data on Syrian and Iraqi chemical warfare capabilities, the location of Libyan radar installations, and warnings of planned PLO attacks on Israel.

What you may or may not know, however, is that when Pollard approached the American authorities with why this information vital to the security of an ally was being withheld--he was told, "Stay out of this. This is none of your business. You Jews are always so sensitive when it comes to gas."

What you may or may not know is that when Pollard decided he could no longer stand by and allow the injustice of such an attitude prevail, and after he was caught and convicted of the charges to which he himself plead guilty, he was sentenced to life imprisonment without possibility of parole--this despite the fact that he cooperated with government authorities, this despite the fact that he was promised leniency, this despite the fact that he was NOT charged with endangering U.S. operatives or endangering U.S. security.

What you may or may not know is that his wife, Anne, was cruelly denied adequate medical treatment during the period of her incarceration, a fact which has left her physically disabled--that for part of 4 1/2 years, Jonathan has spent in solitary confinement. Ten and one-half months of that time was spent in a mental institution, even though there was no medical justification.

Something is very, very wrong here, people. This doesn't sound like America. It sounds more like Russia. It doesn't sound like the CIA. It sounds more like the KGB. Whatever happened to due process under the law? Whatever happened to the prohibition of cruel and unusual punishment? Whatever happened

to the U.S. Constitution--the Covenant of Peace--under which all citizens of the Unites States are entitled to live?

Just moments earlier, I introduced the facts regarding the Pollard case with the phrase "you may or may not know". I did so, because although the case has been in the media for the past 4 1/2 years, most of the information I just related was not known. It certainly was not know by me until I heard it two weeks ago from Dr. Morris Pollard, Jonathan's father. Dr. Pollard has only recently taken to touring the Jewish communities of this country, like Atlanta, to try tp drum up support for his son's cause, because he is convinced that Jonathan has been denied the due process that the Covenant of Peace supposedly guarantees all citizens of this country.

For some strange reason, however, Dr. Pollard has not received the most enthusiastic reception from the Jewish communities he has visited. Instead, the reactions and responses to his presentation of his plea have run along the lines of "You do the crime, you do the time!" or "It's not high on the agenda of the Jewish community".

Well, why isn't justice for Jonathan Pollard high on the agenda of the Jewish community? Certainly, one reason has to be the troublesome notion of dual loyalty--a notion and an issue that has plagued Jews everywhere from the time the ghetto walls came tumbling down and emancipation was granted to us. We're proud Americans, and we claim to be loyal citizens of the country where we reside. Pollard's spying for Israel has embarrassed us, because it raises the fact that one of our own was not so loyal. We're uncomfortable that others might think that all American Jews are like Jonathan Pollard.

Yet, is it possible that our embarrassment and our uncomfortableness may be due to a different factor? The Midrash indicates that one of the reasons it was necessary that G-d grant Pinchas a BRIT SHALOM--a Covenant of Peace--was because the other Israelites, having witnessed the immorality that was taking place, nonetheless stood by idly until Pinchas acted. At that point, they were not only embarrassed but also somewhat resentful of Pinchas, because he alone acted even though they knew they should have.

Could it possibly be, then, that members of the American Jewish community are not rushing to Pollard's defense because in some way they're resentful of his having acted on something they should have--on something we have always known but not wanted to admit or confront--that when it comes to American foreign policy towards Israel, it is not always just nor is it necessarily moral.

The same Midrash I alluded to earlier goes on to state that G-d was not content to bestow upon Pinchas some abstract covenant of peace. Instead, at the moment Pinchas killed Zimri and Cozbi, the clouds which had hung over the Israelite camp disappeared and a rainbow appeared in the sky.

Why a rainbow? Why the symbol which G-d set in the sky following the flood? Well, the rainbow, which is it's own BRIT SHALOM and BRIT OLAM, its own eternal covenant, was not meant just to be a reminder that G-d will never again destroy the earth. Rather, our sages tell us, when mankind looks upon the rainbow, it is supposed to remember that G-d was prompted to bring the flood because injustice and immorality were so rampant.

As such, our existence on this earth is to try to not allow the injustices and immorality from ever becoming so all encompassing again, by not only

refraining from committing injustice but by preventing injustice and combatting immorality as it affects all of G-d's creatures.

Last Thursday, around 7-8 P.M. following the thunder storms that we so desperately needed to fill our reservoir and quench our parched lawns, there was a rainbow that appeared in the sky. I hope that most of you were able to catch it, because I cannot remember seeing a more beautiful rainbow. It was a complete arc, encompassing the entire sky, linking heaven and earth from one end to the other. As Maureen and I admired this phenomenon first from our car and later on when we stopped and got out to look, I couldn't help but think that we are all G-d's creatures under His heaven. I could not help but feel, therefore, the bond that unites all of us, that insists that we not permit injustice and immorality to be perpetrated on anyone.

I left the travel agency finally, with my ticket in hand but still very much confused at what had transpired. As I approached the arc-shaped exit about, which was painted a rainbow design, I spotted someone standing in the passage way who looked like one of those people who had been part of the crowd earlier. I had no idea whether the person wanted to speak to me or not, but the last thing I wanted was another confrontation. As I tried to quickly exit the building, however, the person grabbed my arm and proceeded to rattle off in Hebrew something the gist of which was that he had been waiting there hoping to catch me, wanting to tell me that he had seen what had taken place earlier. He saw the injustice that I acted against, and he saw the injustice that had been done to me. He apologized for not speaking up then, but he was too embarrassed. He hoped that his having waited for me would set my mind at ease, would make me feel more at peace with myself and what I had done.

Well, there is someone else waiting to have his mind set at ease, someone else who has been waiting for peace, a Covenant of Peace, to be extended for the injustices he tried to prevent and the injustice he has suffered. Isn't it time he stopped waiting?

Marvin Richardson
Sermon Delivered 21 Tammuz 5750 (7/14/90).
Atlanta, GA -

RABBI ALEXANDER M. SCHINDLER • UNION OF AMERICAN HEBREW CONGREGATIONS
PRESIDENT 838 FIFTH AVENUE NEW YORK, N.Y. 10021 (212) 249-0100

August 27, 1990
6 Elul 5750

Mr. Morris Pollard
The University of Notre Dame
Lobund Laboratory
Notre Dame, Ind. 46556

Dear Mr. Pollard:

Your letter of August 21st to Rabbi Schindler was received this morning. I write to advise that Rabbi Schindler is out of the city and not expected to return for two weeks.

Be assured that your letter will be brought to his attention when he is back at his desk.

With kindest greetings, I am

Sincerely,

Edith J. Miller
Assistant to the President

EJM/mb

RABBI ALEXANDER M. SCHINDLER • UNION OF AMERICAN HEBREW CONGREGATIONS
PRESIDENT 838 FIFTH AVENUE NEW YORK, N.Y. 10021 (212) 249-0100

August 2, 1990
11 Av 5750

Jonathan Pollard/09185-016
P.O. Box 1000
Marion, IL 62959

Dear Jonathan:

I have your letter of June 21st. As my assistant told you, I was out of the country - in Israel in fact - and on returning, I had to go on several domestic trips. Indeed, tomorrow morning I am off to Texas for another weekend jaunt.

Let me say at once that my reaction to Mr. Mandela is not unlike yours. To be sure, I left almost immediately after his arrival and only read what he had to say as it was printed in the Jerusalem Post and in the Herald Tribune; nor did I have a chance to see the Ted Koppel Show concerning which you wrote, although some of my associates were there and they gave me a full report.

I, too, "wanted to give him the benefit of a doubt" and I, too, am bitterly dissappointed.

Still in all, even with the benefit of hind sight, I would not have altered our approach precisely for those tactical reasons to which you alluded in your earlier letter. Concerning the future, your counsel is well taken.

I know that life cannot be easy for you, all the more so because of your recent decisions concerning your marriage. I hope you will have the strength that you must have. Certainly your mind has lost none of its mettle.

With kindest greetings, I am

Sincerely,

Alexander M. Schindler

April 11, 1990
Marion, IL

Dear Rabbi Schindler,

Many thanks for your letter of March 27/1 Nisan. I've taken the liberty of attaching two articles which I think you'll find rather interesting in light of our recent discussion concerning the need to establish some kind of dialogue with Mandela. While I'm in no position to comment on Mr. Schwartz's credentials, I do know quite a bit about Steve Davis having been a classmate of his at The Fletcher School of Law and Diplomacy. All I can tell you, Rabbi, is please treat him very, very carefully. His commitment to Israel is superficial at best and his awareness of the PLO-ANC military link is extremely limited, to say the least. For example, Davis' contention that the two groups had "almost nothing" to do with each other is discredited by the fact that when the Israeli army overran several Fatah training camps during Operation Peace for Galilee, scores of ANC guerrillas were captured. As it turned out, Rabbi, these individuals were high ranking ANC military cadres, some of whom had actually fought alongside Fatah against the Phalange. Moreover, when Davis claims that the ANC has never engaged in PLO-style terrorism I think he's forgetting the rather bloody urban bombing campaign the organization unleashed two years ago against "soft" targets in Pretoria, Johannesburg, and Durban. Lastly, speaking as someone who served with Davis on the Tufts University divestment committee, I have to say in all candor, Rabbi, that I found his need to grandstand with the press rather unseemly and counterproductive. This apparent character flaw of his is important to bear in mind, Rabbi, because it might ultimately compromise any meeting that is arranged with Mandela in this country. Indeed, when you came right down to it, I really think it might be preferable to conduct such a meeting in South Africa, where some degree of privacy could be assured. You see, Rabbi, if you do opt for a local venue, I have a terrible feeling that people like Davis - and others, will, at the very least, turn the event into a media circus. At worst, Rabbi, they could attempt to establish "common ground" with Mandela at the expense of Israel. And that would almost certainly prompt certain Jewish groups to organize a number of noisy demonstrations which would all but destroy whatever opportunity might have existed to positively influence Mandela. I don't want to even guess what such protests would do to our already strained relations with the black community in this country. All things considered, then, I think this is an instance where quiet diplomacy should be practiced behind closed doors - overseas. The alternative, Rabbi, would oblige you to conduct your meeting with Mandela under the glare of network TV cameras, which would be a recipe for disaster. Obviously, I don't know whether or not you agree with this assessment, but I thought you should at least be given the opportunity to consider it.

No doubt by now you've heard that my lawyers in Washington have submitted a motion to withdraw my guilty plea. While I don't know what will come of this initiative, I've

been assured by some rather well placed sources that the administration is absolutely bound and determined to prevent me from arguing this case in open court. It seems that the Pentagon is scared to death that if the truth were known about the extent to which it withheld intelligence from Israel, Congress would immediately step in and force the Department to honor its 1983 commitment to share such material with the Jewish state. Of course, the fact that a great deal of the information in question dealt with Iraq's secret poison gas manufacturing program could raise some potentially embarrassing questions as to why Israel was not warned about this threat. I've tried, by the way, to broach this matter with William Safire, who, as you know, has been quite vocal in his opposition to the administration's policy towards Iraq, but he will simply not respond to any of my letters. In any event, the motion itself is really first rate and emphasizes the fact that I never spied "on" or "against" the United States. Unfortunately, The Washington Post completely overlooked this critical piece of information in its coverage of the motion. But then what can you expect from a paper that routinely condemns Israel everytime she tries to defend herself? I suppose I should just be thankful, then, that my motion wasn't used as a club with which to beat Israel over the head. That will no doubt come later when and if my case is reopened.

Apart from all the legal maneuverings which have been going on over the past few months, our agenda in Israel seems to have suffered a momentary set back due to the "fear" of the now defunct National Unity government. To be sure, the Knesset, President Herzog, and the Chief Rabbis have been paragons of decency and support. But the cabinet, Rabbi, has been positively vile. In fact, just before we submitted the motion, Mr. Shamir torpedoed my request for honorary Israeli citizenship, which for reasons that I can't explain fully, is closely linked to our overall legal strategy. Although the Prime Minister was well aware of just how important the citizenship issue was to me, he nevertheless waited until the last moment to renege on what was essentially a "done deal." From what I've been told, most of the 71 Knesset members who had submitted the petition on my behalf were mortified by Shamir's duplicity. There was, however, a "positive" statement made at the time by one of the cabinet ministers, which I think you'll find rather illuminating. According to sources whose reliability can only be described as excellent, this official said - in all seriousness mind you - that the government would not oppose my burial in Israel since that would not anger the Bush administration. As I'm sure you'll agree, Rabbi, such spinelessness does not augur well for Israel's diplomatic future. No doubt if this august minister were aware of my desire to be buried in East Jerusalem he would have refrained from making his magnanimous offer.

Luckily, the people of Israel have not deserted me. In fact, I'm receiving so much mail

from Eretz that I'm literally running out of room in which to store it. Just a few weeks ago, though, I got a letter from some Ethiopian clinic that absolutely devastated me. Not knowing the nature of my confinement, these fellows implored me to speak out on behalf of their parents, who are evidently languishing in some malaria infested refugee camp on the shores of Lake Tana. How could I tell them that I can't even speak out on my own behalf, let alone make a public statement about their relatives? Well, I don't know whether or not it will do any good, but I've asked some of my friends in Zahal to see if a Jewish Legion could be formed within the Ethiopian Army. My logic was that if we can't get our Ethiopian brethren out of the country, then perhaps we should take steps to protect those who are currently being dragooned into the so-called "Peoples Militia". From what I've read, many of the Jewish men conscripted into these units are being singled out for suicide missions on the Eritrean front. As you can imagine, their casualties have been enormous. Of course, any of them who wind up being captured by the Muslim insurgents are given no quarter for obvious reasons. Well, assuming that the local Israeli military mission could organize an independent Jewish formation along the lines I've suggested, it just might be possible to locate the unit out of harm's way near a military airfield in Gondar. Not only would this provide a measure of security for the province's Jews, but it would also put the Israeli government in a position to fly food and other assistance directly to them. I realize that this is a long shot, Rabbi, but ideas are just about the only thing I have to offer our people at this point in time.

Well, I'm rambling on and I'm sure that you've got much more pressing business to take care of. Let me just take this opportunity to wish both you and your family a healthy, happy Pesach. May the coming year bring peace to the Land, blessings upon her people, and the liberation of all Zion's captives wherever they may be.

Kol Tov,

Jonathan Pollard

Heritage (Los Angeles) 3/30/90

AN OPEN LETTER FROM SOUTH AFRICA

By Harry Schwartz

There is a vast distance between the U.S.A. and South Africa, Yet the media — in particular television — have brought us right into your home.

You have not only seen scenes of South Africa and its people, but your Congress has passed laws which affect our country and judgment has been passed by Americans on laws and practices, behavior and occurrences pertaining to South Africa.

South Africa has become a domestic political issue in the U.S.A., perhaps not a very important one to Americans but an issue nevertheless.

The overwhelming majority of South Africa Jews has always been opposed to apartheid. This has been demonstrated by the words and actions of community leadership, the position of prominent individual Jews in the struggle against apartheid, and also by electoral voting patterns in areas predominantly Jewish.

South Africa has changed over the years and dramatically in the last few months. The country is now firmly on the path of dismantling an unacceptable system and creating a non-discriminatory society. There is still a long way to go, but at least an unequivocal start has been made.

The new president, F. W. de Klerk, has by a few firm and courageous decisions changed the course of South Africa. Apartheid, though not dead, is in the last throes before disappearing.

The sincerity of the president, his integrity and his intensions are accepted even by his opponents, both black and white, but of course it takes two to tango.

One is still awating reaction from the liberation movements not only to negotiation itself but to the participation by others in the process, and even more the end result sought to be obtained. We are looking for a non-racial multiparty democracy with equality of opportunity, protection of basic human rights and a just economic society.

We hear noises from people seeking nationalization of many private enterprises, of reviving socialist systems which have failed elsewhere and of one-party systems. We have not fought apartheid for most of our lives to find its successor to be contrary to what both we and western democratic states find acceptable both in politics and in economics.

> I have known Nelson Mandela for many years . . . and have visited him in prison.

The road ahead is not easy and there will be times of elation and of depression, but at least we are full of hope.

We have had the rod on our backs from many countries, including America — sanctions, refusals of foreign loans, restriction on trade, disinvestment by U.S. companies. It has affected the growth rate of the economy and has caused increased unemployment and other adverse social consequences.

We have had the stick. Is it not time, now that change is coming, and at a fast pace, for a little carrot? Improved economic conditions will make political change easier.

We ask for no handouts, only normal business and commercial relations. The country's credit record is good; it pays for what it buys and repays what it borrows, unlike many others. All we seek is normalization to assist a process that will create a true democratic society and an acceptable economic system.

As Jews, we in South Africa are a small section of the total population, but we have contributed more than our share to its culture, its well-being and to democratic politics.

We have drawn attack from right-wing organizations because of our opposition to apartheid. At meetings the Mogen David is spat upon, trampled and burnt, slogans attacking Jews are displayed, swastikas are flown and SS symbols displayed. But the community has stood firm.

We have problems from Arab money used in propaganda campaigns in our country, and more recently the embracing of Arafat and Mandela and seeking to equate the situations in Israel and South Africa, and the statement that if South African Jews don't like it, it is just too bad.

I have known Nelson Mandela for many years — at university, as one of the counsel in the Rivonia Trial, and have visited him in prison. I do not believe him to be anti-Semitic, but there was a link and identity of method between the PLO and the ANC, which one hopes will end with the legitimization of the ANC in South Africa.

It would be a tragedy if a community which is attacked by right-wing whites for its opposition to apartheid were to find itself rejected or worse by those whose cause it has supported. But all of this will not deter one from opposing apartheid and working for a free and democratic society. This I and others do because we believe it to be right, not to please anyone or to seek favor.

The Jewish community has other problems. It raises money for Israel, for Russian Jews, but it is short for its Jewish day schools, which are among the best in the world, and for its aged, which is increasing as a proportion of the total community.

But we have our plusses. We are a well-organized community. We have institutions of which we can be proud, we put our money where our mouths are in respect to our love for Israel, and we are not afraid.

We will continue to build our institutions, we will continue to maintain our love for Jerusalem, and we will work for a society in South Africa in which we as Jews can exist in peace with all other sectors of the community. We believe democracy is good for Jews because it is good for all others.

We do not ask for anything from our brethren in the Diaspora, including those in America, except that we remain brethren, that we maintain our contacts, that we together uphold Jewish values and culture and that we try to understand each other.

I greet you from a distant land, but as part of *Klal Yisrael.*

Yours sincerely,

Harry Schwartz

☐ *Harry Schwartz is chairman of the International Affairs Committee of the South Africa Jewish Board of Deputies and a Democratic Party member of Parliament.*

Mandela and the PLO

The recent embrace of Arafat could divide anti-apartheid ranks

By Stephen M. Davis

"NOT Mandela too!" exclaimed a friend recently after seeing the photographs – printed in newspapers across America – of the released African National Congress (ANC) leader embracing Palestine Liberation Organization (PLO) chief Yasser Arafat in Zambia. "I had been prepared to love Mandela, but that picture was like a stab in the heart."

Yet the Mandela-Arafat bear hug signifies much less than it appears. The ANC and PLO differ in such fundamental respects that it has been hard to view their relationship over the years as anything more than a reluctant kinship.

Unlike the PLO, the ANC never adopted terrorism. For nearly 50 years, the ANC countered race discrimination with nonviolent protest until the organization was banned in 1960. When finally the ANC took up armed resistance, its military wing shunned attacks on civilians. The ANC high command has never ordered aircraft hijacked or women and children killed, and it has condemned terror strikes when they have occurred.

The two movements have also held contrasting visions of their opponents. The PLO charter advocates the destruction of Israel and the expulsion of Jews. The ANC, on the other hand, has welcomed South African whites into its ranks and reassured them that they would be safe under an ANC government. Nelson Mandela himself spoke against both "black domination" and "white domination" first at his 1964 trial, and again at his freedom rally in Cape Town in February.

Worried about protecting its moral position, the ANC has taken pains to keep the PLO at arms length, and has done little more than pay lip service to the Palestinian cause. In any case, ANC leaders have spent sparse time on the problems of the Middle East, a region they view as peripheral to the anti-apartheid struggle.

Then why didn't Mandela dodge Arafat? Why did he hug the PLO leader, "wish him success in his struggle" and then say that "if the truth alienates the powerful Jewish community in South Africa, that's too bad"? When Mandela visits the United States later this year, he will doubtless face scores of questions on the PLO and Israel. Is the ANC heading into a painful conflict with Jews – one that could divide the anti-apartheid movement as well as aggravate black Jewish tensions in the US – or can the anxieties aroused by the Mandela-Arafat embrace be overcome?

To find answers, one must first dredge some facts from the murky ties between South Africa and the Middle East.

American Jews have been a key element in the anti-apartheid coalition. South African Jews, too, have a distinguished history of supporting antigovernment parties; many of the white South Africans most active in the ANC itself are Jewish.

But Israel long ago chose a different course. Targeted by an extensive Arab economic boycott and desperate for trade partners in a hostile world, Jerusalem joined with Pretoria in secret military cooperation agreements, in violation of a United Nations arms embargo. Some experts believe that Israel even helped South Africa develop and test an atomic bomb.

Israel is by no means the only, nor even the most important, country helping to sustain Pretoria. Arab oil, European capital, and Japanese trade have all played key roles. Indeed, many other countries have much greater volumes of commerce with South Africa than does Israel.

But by supplying weapons and military advisers, Israel gave itself a uniquely high profile reputation as an ally of Pretoria and, by extension, an enemy of the anti-apartheid resistance.

Now, as white rule crumbles, the costs of Israeli policy are coming due. Black resentment is one reason behind Nelson Mandela's recent embrace of Yasser Arafat in Zambia.

A second reason is that the ANC and PLO underwent similar experiences as exiled liberation movements. For many years the two organizations relied upon the same patrons – the Soviet Union and its allies – for arms, training, and political support. The ANC and PLO often crossed paths in the same diplomatic wilderness.

Yet the ANC has had almost nothing to do with the PLO. Ironically, the Mandela-Arafat embrace has knotted the ANC to the Palestinian-Israeli conflict to a degree it has always sought to avoid. Unless some urgent untangling measures are taken, a nasty rupture looms between South Africa's anti-apartheid movement and some of its strongest supporters in the West.

Now is the time for dialogue. The ANC leadership may not yet appreciate why and how deeply the Arafat encounter affected the Jewish community.

HERE AND ON PAGE 1, NEAL J. MENSCHEL – STAFF

NELSON MANDELA AND YASSER ARAFAT

Many Jews, on the other hand, seem to discount how resentful South African blacks feel about Israel's provision of military assistance to Pretoria. Delegations should be meeting to open communication and avoid a split that could only benefit supporters of apartheid.

Now is also a time for change in Israel's policy toward South Africa. Jerusalem should be making overtures to the ANC, which is about to negotiate a new constitution with Pretoria. Similarly, it is time for the ANC to exchange its heretofore unquestioned – if superficial – endorsement of the PLO for a more nuanced policy toward the Middle East.

Talks now, before positions harden, can avert potentially serious disunity within the West's anti-apartheid coalition. Nelson Mandela and Jewish leaders must make time to begin them.

■ *Stephen M. Davis, author of "Apartheid's Rebels: Inside South Africa's Hidden War," is a senior analyst at the Investor Responsibility Research Center in Washington. He recently moderated "American Jews and the ANC," a debate aired on C-Span.*

#4

July 3, 1990
10 Tammuz 5750

Jonathan Pollard/09185-016
P.O. Box 1000
Marion, IL 62959

Dear Mr. Pollard:

Just an note to acknowledge receipt of your letter of June 21 to Rabbi Schindler. He is out of the country and not expected to return to his desk for another two weeks. Be assured your letter and the materials shared will be brought to his attention on his return.

With kindest greetings, I am

Sincerely,

Edith J. Miller
Assistant to the President

June 21, 1990
Marion, IL

Dear Rabbi Schindler,

Having just watched Ted Koppel's "Town Meeting" with Nelson Mandela I have to admit that I was profoundly disappointed with Mr. Mandela's performance. In all honesty, Rabbi, he struck me as being autocratic, bombastic, inflexible, and unprincipled. Indeed, for a man who ostensibly claims to represent a "democratic" national liberation movement, Mandela's totalitarian predispositions were particularly disturbing. While I have no way of determining whether or not Mandela's mind set was a product of his lengthy imprisonment, what I can say is that he definitely has the potential of being an extremely dangerous man. And I say this, Rabbi, as one who really wanted to give him the benefit of the doubt.

His response to Henry Siegman was totally unacceptable. Mandela essentially said that he would deal with the devil if that would further his agenda. Rabbi, in an era which has been witness to such atrocities as Auschwitz, Biafra, the Killing fields of Cambodia, Halabja, and Tiananmen Square, how could Mandela say that it was not "proper" either for him or anyone else for that matter, to hold the Cubans and Libyans accountable for their long record of human rights abuses? By his logic, Rabbi, no one really has the right to object to Apartheid, since that would presumably constitute unwarranted interference in the internal affairs of South Africa. Moreover, if Mandela can take the position that the ANC is justified in working with anyone so long as they assist the anti-Apartheid struggle, then how can he possibly condemn Israel for her alleged military cooperation with the South African government? After all, for Israel such collaboration, however repugnant, may be as critical for her security as is the ANC's collaboration with Fidel Castro. Above all else, though, Mandela's fawning characterization of Yasir Arafat as a "comrade-in-arms" was outrageous coming as it did just weeks after an abortive attempt by PLO terrorists to slaughter Jewish civilians.

Rabbi, I really don't care at this point what Mr. Mandela said in Geneva about Israel's right to exist within her 1967 borders. In view of his statements tonight, I am absolutely convinced that Mandela's belated recognition of Israel's legitimacy was as disingenuous as Arafat's renunciation of terrorism. So forget Geneva. Mandela has left no doubt that he identifies with Mr. Arafat unconditionally. By implication, Rabbi, that also means that he endorses the PNC Covenant which, as you know, calls for the destruction of Israel. If Mandela had followed his own "non-interventionist" philosophy by simply stating that he favored Palestinian self-determination, then I would be able to advocate the continuation of talks with him. As it is, though, I really don't think that anything meaningful could flow from such a dialogue. Accordingly, I think we [redacted] would be entirely justified in insisting that Mandela abide by his own self-professed non-interventionist beliefs. In other words, Rabbi, if he honestly feels that people do not have the right to interfere in the internal affairs of other states then we should hold him to this principle with regard to Judea, Samaria,

and Gaza which, contrary to Mr. Mandela's opinion, were never legally part of any Arab state. Having said this, I want to go on record as endorsing Henry Siegman's statement that our opposition to Apartheid will continue irrespective of whether or not we happen to approve of such individuals as Mr. Mandela. I would only add that we should also cultivate a relationship with Chief Mangosuthu Buthelezi. By doing so, Rabbi, we would show Mr. Mandela that we, too, can play his game. After all, if he is going to inject himself into the Palestinian national movement by endorsing Mr. Arafat above all others, then it's only fair that we should attempt to open a dialogue with other leaders of the anti-Apartheid movement.

Stay well,

Jonathan

Enclosures

"In an Elegiac Mood" by Benno Weiser Varon. The Boston Jewish Times, March 8, 1990

Varon

From page 2

strife." Weeks ago, *Pamyat* announced a kind of national pogrom day for May 5. It took six weeks until the authorities reacted, saying that "rumors of Jewish pogroms in the mass media have no grounds whatsoever."

(The situation reminds me of a joke from Tsarist days: A Jew comes home, all excited, and tells his wife to start packing. "Why?" she demands. "There are posters on the walls. Fifty rubles for whomever shoots a bear." "What has this to do with us?" asks the wife. "Well," answers the man, "once they have shot us, how will we be able to prove we are not bears?")

I notice that even the generous space my editor allows me is almost used up, so I have to leave Eastern Europe - though I have only scratched the surface - to comment on another glorious event which is turning sour for us: the release of Nelson Mandela and all the hopes it has engendered.

Many Jews in South Africa are in the forefront of the whites who fight apartheid. Several cousins of my wife's are among them. One had to have a very callous soul not to be moved by the sight of the old man, who was robbed of one-third of his life, coming out of jail. One relative wrote us recently, jokingly, "No, I don't claim that I alone did it." But he sounded exuberant.

I wonder how he - and all the other Jewish anti-apartheid activists - must have felt when they saw last week Mandela embrace Yasir Arafat in Lusaka. Or when they heard him say, in a voice tinged with hatred, "You are fighting a unique form of colonialism. I wish you succeed."

Several years ago, I was the first columnist to label Bishop Tutu an anti-Semite after he insulted a crowd at the Jewish Theological Seminary in New York who had come to honor him for receiving the Nobel Peace Prize. The speech was downplayed by his embarrassed hosts and passed largely unnoticed. I published my article in New York's *Jewish Week*. Later events, (the latest during Tutu's visit in Israel, in which, i.a., he refused to meet with Ethiopian Jews) have corroborated my evaluation. Tutu is not only a *soneh-Israel*, an enemy of Israel, but a visceral and theological anti-Semite. This somewhat inocculated me against illusions about what a black-ruled South Africa would bode for Israel.

I grant that Mr. Mandela has no particular reasons to be a *chovev-tsiyon*, a lover of Zion. Israel was and is on good terms with Pretoria and the defense industries of both countries collaborated with each other. In this and other aspects Israel behaved like most Western powers. Had Mandela expressed dissatisfaction about this relationship it might have been understandable. But he used a term which in the Third World is *treif:* colonialism. Colonialism was the demon of which the nations of Africa and Asia managed to rid themselves and the implication is that if there still are vestiges of it, good riddance! Whatever business the U.S., Great Britain, France, etc. has been doing with Pretoria will be forgotten. But "colonialism" is the mark of Cain and this mark will stick. Seen from this angle, Mandela's wish expressed to Arafat to "succeed" is ominous. To succeed means to erase that "unique colonialism," to erase Israel.

Jails are not the best universities. Hitler wrote *Mein Kampf* while jailed. Mandela got a distorted view of the Israeli-Arab conflict while in jail. Absorbed by the sufferings of his own people, he lost sight of the unspeakable sufferings out of which Israel was born. The shirt is closer than the jacket. The other's pain is never as sharp as one's own. The Jews had their Holocaust? So what? In South Africa they share the privileges of the whites!

A few days after his Lusaka statement, Mandela was asked how he thought South Africa's Jews might feel about it. He answered that truth hurts, and if South Africa's Jews felt hurt, "it's just too bad."

I have no solution to offer. I just wanted to make the point that there may be a jinx in being Jewish. There remains one question mark: how intensely should we pay for a speedy assertion of black majority rule in South Africa, so that the emerging black colossus be able to add its basso voice to Israel's numerous detractors at the UN and in other conclaves?

VIEWPOINT

STEVE BERMAN
MICHAEL ROSENZWEIG

Atlanta Jewish Times
May 25, 1990

Pollard: A Case Of Misunderstanding

In his recent article on the Pollard case (*AJT*, April 20), Lewis G. Regenstein totally misconstrues both the case and the reasons a growing number of Jews support a sentence reduction for Jonathan Pollard.

First, nobody question's Pollard's guilt or contends that he should not be punished for his spying. What we do question are the severity of his sentence and the outrageous conduct of the United Sates government in connection with his sentencing.

Pollard's espionage activity was in aid of Israel, one of this country's closest allies. In other cases where espionage convictions have been obtained, the length of sentence has varied substantially, depending on the country on whose behalf the espionage was committed. When the espionage has benefitted an ally rather than an enemy, particularly where (as here) the defendant has cooperated with the government, lesser sentences are imposed. Pollard's sentence of life imprisonment is a glaring exception to this rule, and is simply unjustified.

Michael Rosenzweig is an Atlanta attorney. Steve Berman is in the commercial real estate business.

Particularly offensive, not only to Jews but to anyone who cherishes our Bill of Rights, is the government's conduct in the Pollard case. The government and Pollard entered into a plea agreement in connection with which the government made and broke three separate promises.

First, although the government promised not to seek a life sentence, the entire tenor of its written and oral submissions at sentencing amounted to a request for exactly such a sentence. Especially egregious (and inexplicable) were declarations by former Secretary of Defense Caspar Weinberger which, among other things, falsely accused Pollard of having committed treason and requested a sentence consistent with an offense that Weinberger claimed was more deserving of severe punishment than any other crime.

Pollard believed that further incarceration might severely damage his wife's health.

The government also promised that it would limit its sentencing statements to the court to the facts and circumstances of Pollard's offenses, but in those statements accused Pollard of greed, decried his "high lifestyle," claimed he was without remorse and asserted that he was being deceitful, vengeful and arrogant.

Finally, despite the government's promise to advise the court of Pollard's cooperation and the considerable value of that cooperation, the government told the court that that cooperation was motivated entirely by self interest and came too late to facilitate apprehension of Pollard's Israeli coconspirators, who has fled the country. The government, in short, "sandbagged" Pollard in order to ensure that he would receive a life sentence.

There is also good reason to believe that Pollard's plea was, in any event, coerced. When he entered his plea, his wife was gravely ill and had suffered greatly from her pre-trial incarceration. Pollard believed, justifiably, that further incarceration might severely damage his wife's health and perhaps threaten her life. Yet despite his wife's substantially lesser culpability, the government threatened to prosecute her for multiple offenses unless she pled guilty, *and refused to accept her guilty plea unless Pollard also entered such a plea.* Under the circumstances, Pollard's plea was hardly voluntary.

We are disturbed that any American Jew would feel it inappropriate to speak out against this sort of conduct. Is Mr. Regenstein really serious in suggesting that supporters of Pollard's attempt to withdraw his guilty plea are misguided and embarrassing? Frankly, we are more embarrassed by Jews who would loudly and publicly proclaim their support for so obvious a miscarriage of justice. □

"Shofar." Springfield MA.
3/9/90

Editorial

"Justice, Justice Shalt Thou Pursue": The Pollard Spy Case

As the Rabbi of the synagogue in South Bend, Indiana to which the Pollard Family belonged when Jonathan and Ann Pollard were apprehended for Jonathan's alleged involvement in espionage in Israel, I was understandably very interested in the development of the case from the outset. I must tell you that it was very hard for me to deal with the whole issue for quite some time, considering that I am a fiercely proud American. I often wear my patriotism on my sleeve.

At first, I was very angry at all that I had read of Jonathan's crime. As a Jew, I felt betrayed by Jonathan's apparent sellout. My only thought was to act out my role as Rabbi-comforter to a family besieged by a phalanx of media from all over the world. My job, as I saw it, was to help the family deal with a most grievous reality as its consoling pastor.

As I got more involved, though, I came to realize that all was not as it seemed. This was another contemptable example of media distortion and manipulation. While Jonathan's acts were unquestionably wrong, the picture painted in the press did not accurately portray the essence or magnitude of his crime. While Jonathan took the law into his own hands, as he now painfully regrets having done, he did not betray American security interests by his acts. This is clear and incontrovertible. In fact, when the prosecutor, Joseph DiGenova, brought the indictment against Jonathan, it did not even allege that his espionage in behalf of Israel caused any damage to United States security. This conspicuous omission makes Jonathan's crime different in kind from the gross violations of the Walkers and others whose treacherous acts against the state seriously threatened American primary security interests and even endangered the lives of American intelligence operatives behind the Iron Curtain.

I do not condone Jonathan's crime. He deserves to be punished. But, the severity of his sentence and the G-dawful conditions of his treatment behind bars for well nigh five years in solitary confinement demand our interest and our compassion. As Americans, we are, in the immortal words of Abraham Lincoln, "the last best hope on earth." We honor that image of ourselves only when we muster the courage to stand up against injustice even in the delicate or complicated situation. We are a government of laws and rights that apply even to the errant sons of our society. It is with the condemned that we see our system in its truest light.

I ask that we as Jews become more involved in the Pollard story: that we become better informed about it; that we express our willingness to advocate for a more humane treatment for Jonathan and for a reconsideration of what appears to be an unconscionably harsh sentence.

Ely J. Rosenzveig, Rabbi
Congregation Kodimoh

The Boston Herald, Monday, April 27, 1987

Cap cries wolf on Pollard case

ALAN DERSHOWITZ

LIKE the little boy who cried "wolf" too often, Secretary of Defense Caspar Weinberger has lost his credibility on the subject of the damage done to American security by the recent spate of spy scandals. In seeking the maximum punishment for Jonathan Pollard, who pleaded guilty to spying for our ally Israel, Weinberger grossly exaggerated the damage done by Pollard.

Here are Weinberger's own words: "It is difficult for me to conceive of a greater harm to national security than that caused by (Pollard)."

The secretary of defense cannot, of course, substantiate his hyperbole. When asked to become specific, he hides — quite understandably — behind the curtain of secrecy that must inevitably cover any public discussion of national security matters. His letter to the sentencing court, which imposed the maximum life sentence, is classified.

What we do know about the information sold to Israel by Pollard is that it was primarily regional and tactical, rather than global and strategic. It involved data used to assess and neutralize threats by the Palestine Liberation Organization, Syria, Pakistan and other sworn enemies of Israel.

The Israelis have denied claims that they bartered the Pollard information to the Soviet Union or its allies. Such claims, in any case, are preposterous on their face. It seems utterly irresponsible for the Defense Department to make these serious charges without backing them up with specific evidence. In a democracy, it is dirty pool for the government to make charges and then to hide behind the curtain of national security when asked to substantiate them. If charges cannot be substantiated publicly, then they should not be made publicly. The Defense Department cannot expect the American people to accept its gross exaggerations at face value, especially when they fly in the face of common sense.

Another charge leveled by American authorities is that Pollard caused us to be embarrassed in the eyes of our Arab allies because the Israelis used some of his information to bomb the PLO's hedquarters in Tunis. But it turns out that we brought the embarrassment upon ourselves, because we were the ones who leaked the fact that Israel obtained the PLO coordinates from Pollard.

The secretary of defense does not have "to conceive of" or speculate about greater harms than those caused by Pollard. All he has to do is read the cables from Moscow — or even the newspapers. The actual harm to our national interests caused by the breakdown of security at our most important embassy are incalculably greater than those caused by Pollard.

Defense Department sources have indicated that, as a result of the Marine sex-and-spy scandal, it is likely that the KGB has been able to decode messages between Washington and the Moscow embassy for a considerable time, including the period surrounding the October 1986 summit meetings in Iceland between President Reagan and General Secretary Mikhail Gorbachev. If this is true, then our negotiating positions would have been known in advance. It would be as if one poker player could see his opponent's cards.

Other diplomatic and strategic interests were also endangered by the Moscow scandal. It is believed that the KGB may have set a so called "trap door" that could have blacked out communications between the embassy and Washington in the event of a crisis. Such a blackout, even for a few hours, could prove catastrophic to world peace. By gaining access to the most secret areas of the embassy — the "bubble" and the vault — the KGB may have been able to intercept our most closely guarded secrets for a period of nearly two years.

The Marine Corps is also alleging that its guards provided the Soviets with names, addresses and telephone numbers of covert U.S. intelligence agents in the Soviet Union. A recent report from Moscow that several Soviet citizens, accused of spying for the United States have been executed may or may not relate to the most recent scandal. But it is clear that, if our spies in Moscow have been uncovered, they will be treated harshly indeed.

By crying wolf about the relatively benign and limited Pollard affair — for reasons that are still open to speculation — Secretary Weinberger has made it difficult to posit any credibility to his assessment, and those of other officials who also exaggerated Pollard's crimes, of the far more serious breaches in Moscow.

Not only do these spy scandals endanger our external national security, they also pose dangers to open and candid debate about our intelligence and counterintelligence apparatuses.

It is difficult to conduct a public debate with government officials who make public allegations that cannot be supported by published evidence.

The words "trust me" should not — in a democracy — mark the end of debate about important issues of public policy. They will not end the debate about the recent spying episodes, because many Americans simply do not trust their government officials to be frank with them about national security. Secretary Weinberger's exaggerated reaction to Jonathan Pollard's crimes feeds that distrust.

MEMORANDUM

DATE: August 2, 1990

FROM: Rabbi Alexander M. Schindler

TO: Allan B. Goldman

For some months now, I have been carrying on a correspondence with Jonathan Pollard. The enclosed is his most recent letter, and I thought it might interest you.

Certainly it reflects the sharpness of his mind. He would have made one hell of a lawyer. Perhaps I think so because I agree with him substantially.

MEMORANDUM

DATE: August 2, 1990

FROM: Rabbi Alexander M. Schindler

TO: Albert Vorspan

The enclosed letter from Jonathan Pollard may interest you.

What is your reaction?

May 3, 1990
8 Iyar 5750

Jonathan Pollard
09185-016
P.O. Box 1000
Marion, IL 62959

Dear Jonathan:

Thank you for your letter of April 11. Let me say that I fully agree with you concerning the Mandela problem. Unfortunately, the hot heads will have their way. There are already rumblings to that effect within our community but your analysis is sound.

I reciprocate your good wishes. Pesach has passed, of course, and your letter never made it to me before then but there are other holidays coming up. I hope they will be sweet, if not for you then at least for those you love.

Kindest greetings.

Sincerely,

Alexander M. Schindler

cc AE ✓ 3/29/90

3"OD
March 11, 1990
Marion, IL

Dear Rabbi Schindler,

After reading your response to Nelson Mandela's outrageous "Zionism-is-colonialism" declaration in Lusaka, I think that you should be commended for having upheld the honor not only of Israel, but also of all those Jewish South Africans who have fought so hard over the years to end the scourge of Apartheid. I realize, Rabbi Schindler, that you are regularly criticized from certain quarters due to your position on the Arab-Israeli peace process. I can only hope that your forthright condemnation of Mandela's anti-Zionist pronunciamento will serve to remind the more conservative elements within our community that Alexander Schindler is as much of a Jewish nationalist as they are.

My best wishes for a happy Purim.

Sincerely,
Jonathan Pollard
Jonathan Pollard

P.S. Just out of curiosity, Rabbi, have you considered leading an interdenominational delegation of Rabbis over to South Africa to correct Mr. Mandela's erroneous understanding of Zionism? I know this would be a long shot, but if we don't make the effort to counter Arafat's influence over the man we will ahve lost the "battle", so to speak, by default. It might even be useful to have the Histadrut offer a number of labor "scholarships" to COSATU just to make sure that the organization has someone who will be sympathetic to Israel. Stay well...

LOS ANGELES TIMES

Shamir 'Dangerous, Cruel,' Sharon Says

■ Israel: 'I will never forgive [him] for putting this nation to sleep,' resigned minister says of premier. He admits his own mistakes in Lebanon camps massacre.

From Reuters

JERUSALEM—Hard-line Israeli politician Ariel Sharon—who organized the 1982 invasion of Lebanon and admitted his mistake in allowing Christians to slaughter Palestinians in refugee camps—has called Prime Minister Yitzhak Shamir "dangerous."

In an interview with the daily newspaper Yedioth Ahronoth published Friday, the 61-year-old architect of Israel's 1982 Lebanon invasion admitted that his misjudgment led to the slaughter of Palestinians by Christians in Lebanon's Sabra and Chatilla refugee camps. Israeli troops had surrounded the camps at the time.

"Yitzhak Shamir is a dangerous man. I will never forgive Yitzhak Shamir for putting this nation to sleep," Sharon said in the interview published four days after he announced his resignation as trade minister.

"Yitzhak Shamir is definitely a cruel man," said Sharon, who has vowed to launch a campaign against a government proposal for Israeli-Palestinian negotiations after he formally resigns at a weekly Cabinet meeting Sunday.

The harsh adjectives to describe Shamir, 74, contrasted with Sharon's earlier pledge to focus on issues rather than personalities.

Claiming victory over Shamir at a chaotic meeting last Monday of their rightist Likud Party, Sharon told the newspaper: "I still believe I will be prime minister of Israel."

Sharon admitted his misjudgment in the Lebanon war while defending his criticism of what he called Defense Minister Yitzhak Rabin's failure to quash a 26-month-old Palestinian uprising in the occupied territories.

An Israeli judicial inquiry in 1983 found Sharon, then defense minister, indirectly responsible for the slaughter of hundreds of Palestinian men, women and children by Christian militiamen at the two Beirut area refugee camps surrounded by Israeli troops.

The inquiry forced him to resign the Defense Ministry.

"So I paid the heaviest price for not figuring the Christians would slaughter the Muslims. That was my indirect responsibility. But Rabin must pay for his direct responsibility for this big failure," Sharon told the newspaper.

To support his accusation that Shamir is cruel, Sharon cited the case of Jonathan Pollard, an American jailed for life by the United States for stealing U.S. secrets for Israel.

"Jonathan Pollard might have been saved from life imprisonment in the United States," Sharon said.

"Pollard performed a great service to Israel, and I thought something must be done to rescue him. But in a meeting of a group of ministers, Shamir said, without batting an eyelid, 'You need to know how to sacrifice the man for the greater goal.'"

FEB 17 - LA TIMES

Israel To Proceed With VOA Project

By Hugh Orgel

TEL AVIV (JTA) — Israeli leaders are determined to go ahead with construction of powerful Voice of America radio transmitters in the Arava region of the Negev, despite strong protests from environmentalists and evidence that the transmitters could pose a hazard to aircraft navigation.

Prime Minister Yitzhak Shamir assured Malcolm Forbes Jr., chairman of the U.S. Board of International Broadcasting, that despite the "problems," Israel would honor its 3-year-old agreement for construction of the station. The transmitters still require permits from the National Planning and Building Councils.

Shamir stressed that Israel wants to strengthen its relations with the United States.

Forbes and U.S. Ambassador William Brown got similar assurances from Finance Minister Shimon Peres

While some 200 environmentalists demonstrated outside the Finance Ministry in Jerusalem, Peres pledged that the government would do everything possible to speed up the start of the $400 million project.

At a news conference with Forbes and Brown, Communications Minister Gad Ya'acobi stressed that the transmitter complex would be an economic boon for Israel. He claimed it would provide 550 jobs over the three-and-a-half-year start-up period, and 200 professional positions on a permanent basis.

Environmentalists, led by the Society for the Protection of Nature in Israel, the Nature Preserves Authority and residents of the Arava region, are determined to block the project. They say the 2,000-acre area of the station, with its nearly 900-foot high antennas — almost as tall as the Eiffel Tower —would ruin one of the few remaining nature preserves in the Negev, blocking scenic hiking trails and destroying the landscape.

They say the electromagnetic radiation generated by the transmitters would endanger the health of residents of the region and disrupt the flight of migrating birds.

Moreover, the Israeli air force has acknowledged the radiation could affect the delicate electronic systems of advanced aircraft.

It has been learned here that high-frequency magnetic radiation from VOA broadcasting stations may have caused the recent crash of two of the West German air force's advanced Tornado jets. The United States reportedly withheld the information from the Israeli air force, which obtained the information from other sources.

Consequently, the Israeli air force plans to move its training base and firing ranges further south, thereby extending the environmental damage.

Israeli and American environmentalists have already urged President Bush to cancel the project. In a letter to the president on Feb. 6, they noted that apart from "serious environmental problems," the project's strategic value is "highly questionable" in view of dramatic events in Eastern Europe and the warming of relations with the Soviet Union.

This is the type of thing I use to see all the time, Rabbi...