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**Jonathan Pollard: Now serving his 17th year in North Carolina prison.** Photo illustration by Mark Hovavilberg

**SPECIAL REPORT**

**Why Pollard Is Still In Prison**

Legal technicalities and his own provocative conduct appear to be why freedom eludes Jewish spy.

**Edwin Black**

*Special To The Jewish Week*

On Jan. 7, former Israeli Prime Minister Benjamin Netanyahu arrived without fanfare at the Federal Correction Center in Butner, N.C., to visit America's most controversial Jewish prisoner. Now serving his 17th year of incarceration Jonathan Jay Pollard, prisoner 09185-016, pleaded guilty in 1986 to spying for Israel. He was sentenced to life imprisonment despite a binding

plea bargain that would have guaranteed his eventual freedom.

For several hours, within earshot of a National Security Agency monitor, Netanyahu and Pollard spoke about the anguish of Pollard's imprisonment and practical ideas to set him free. "Contrary to perfidious rumors about his manner," remembers Netanyahu in a telephone interview, "Pollard was absolutely clear

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*Edwin Black is the author of the international best-seller "IBM and the Holocaust" (Crown Books 2001 and Three Rivers Press 2002). This article was made possible by a grant from the Jewish Investigative Journalism Fund.*

**Interim Statehood Plan Rapped**

As Bush eyes new vision, Israel shifts terror-fighting policy.

**Stewart Ain**  
*Staff Writer*

With events in Israel moving at a rapid pace this week — a Jerusalem bus bombing that killed 19, followed by Israel's decision to seize Palestinian land after each new terrorist attack and to accelerate the construction of a fence around the West Bank — questions arose over the wisdom of a new U.S. peace initiative even before it was announced.

"I don't see how it can be made palatable or what contribution it is if both sides are that unhappy [with it]," said Richard Murphy, a former ambassador to Syria and now a senior fellow at the Council on Foreign Relations.

The proposal, in which President George W. Bush was reportedly set



**Esther Nagari grieves at the funeral of her daughter Shiri, 22, killed in Tuesday's suicide bus bombing.** *Gene Images*

to announce his desire to see an interim Palestinian state as early as September, was rejected at the beginning of the week by both Pales-

tinian and Israeli leaders. The Israeli insist there can be no thought of a Palestinian state while terrorist at-

*Continued on page 30*

**Women Detail Abuse By Lanner**

Former students testify rabbi molested them in school.

**Eric J. Greenberg**  
*Staff Writer*

Freehold, N.J. — She was 14 and an incoming freshman at a yeshiva high school in New Jersey. He was 45, a married rabbi with three children, and the principal of the yeshiva at the shore. He was also one of the most prominent Orthodox Jewish youth leaders in America.

Yet once a week, the rabbi would call the 14-year-old student at home, proclaiming his love and promising she would be his wife someday.

At school he would summon the teenager to his office, where he

would grope her private parts while she sat powerless and disgusted.

That was the testimony from a New Jersey college student on Tuesday, as the trial of Rabbi Baruch Lanner, the former principal of the



**Rabbi Baruch Lanner: Faces sexual charges in New Jersey.**

Hillel Yeshiva in Deal, N.J., entered its second week in Superior Court in Monmouth County.

The student, now 21, graphically detailed how her principal and religious mentor — she was affiliated at the time with the Orthodox youth group Rabbi Lanner helped lead — repeatedly molested her. She said the abuse took place in his office in 1995 for nearly the entire school year before she finally challenged him and was expelled.

The woman was the second of three witnesses — including her mother and a second female former Hillel student — who testified

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**SPECIAL REPORT**

# Why Pollard Is Still In Prison

*Continued from page 1*

and in control, both intellectually and emotionally."

"A great injustice has been perpetrated by keeping Pollard endlessly in jail," Netanyahu asserted, summarizing a key point among those advocating that he be freed.

Netanyahu's crusading tone is now a common feature of the Jonathan Pollard saga. Since the tumultuous afternoon of March 4, 1987, when federal Judge Aubrey Robinson stunned his courtroom by imposing a life sentence, Pollard has been the cause celebre of an international movement to free him. The roster of those advocating for Pollard's release, or the overturn of his sentence, includes Israeli prime ministers; Nobel laureate Elie Wiesel, who has visited Pollard twice in prison; numerous members of Congress; and an armada of America's most celebrated defense attorneys, including Harvard's flamboyant Alan Dershowitz and Theodore Olsen, now the U.S. Solicitor General. Legions of grassroots supporters both within America's Jewish community and the Israeli electorate call for Pollard's immediate release.

But an equally impressive group insists on his continued incarceration. Virtually the entire U.S. intelligence and defense establishment, with CIA director George Tenet acting as point man, want Pollard to remain in jail forever. Few are as adamant about that as senior intelligence officers who happen to be Jewish. Numerous ranking members of Congress, including Sen.

**NEXT WEEK:**  
*The Pollard case and what it says about Jews in America.*  
A special report by Washington correspondent James D. Besser

Joseph Lieberman, and a large number of American Jewry's top communal leaders do not object to Pollard remaining behind bars. What's more, some top Jewish professional leaders privately express revulsion at efforts to win Pollard's freedom.

Endless articles and several books have been written about this complex and mysterious case, but one haunting question towers above all others: Why has Jonathan Pollard been imprisoned so long?

He was convicted of a single count of disclosing documents to an ally foreign government, in violation of Title 18, section 794c. The far more serious crime of selling classified information to an enemy nation, such as Iraq or the Soviet Union, violates section 794b and generally fetches a life sentence. But in contrast, those who divulge the nation's secrets to allies, as Pollard did, always receive lesser sentences.

His life term rivals only those handed down to America's greatest traitors, such as Aldrich Ames, whose treachery killed American agents, and John Walker, who revealed our nuclear submarine positions to the Soviets.



*Photo illustration by Mark Harrisberger*

So why is Pollard still in prison with no end in sight to his life sentence?

Pro-Pollard groups suggest anti-Semitism, but numerous Jewish organizations insist that is not the case. Some pundits maintain the spy's knowledge of America's secrets are so sensitive, his enemies so powerful, the politics so volatile, his crime so severe, that he can never be released.

But after an intense review of thousands of pages of Pollard-related documents, and dozens of interviews with prosecutors, senior intelligence officers, current and former Israeli and American government officials, the defense attorneys and an exclusive prison interview with Pollard himself, it seems clear the reason Pollard remains in prison has more to do with legal technicalities and foolhardy bravura than political intrigue.

The focus now comes down to just two men. The first is Pollard's original defense attorney, Richard A. Hibey, who is accused in court papers of having irrevocably mishandled the case 15 years ago in ways that may never be undone. The other is Pollard himself, whose provocative conduct while in

federal custody sealed his fate. Pollard's only hope for freedom now is a habeas corpus action launched by his new pro bono attorneys.

## The Crime

No one has ever been able to identify reliably what secrets Pollard sold to Israel. Jewish leaders who have been briefed by trustworthy sources constantly have been told the same refrain: "If you only knew how severe the damage was." Despite reams of guesswork and Washington's porous nature, the details are still undisclosed.

But those details are clearly enumerated in a 46-page sworn declaration to the sentencing judge by then-Secretary of Defense Caspar Weinberger, most of which has been classified top secret. The secret affidavit includes a classified analysis of 20 illegally disclosed documents.

"The judge requested — the court asked — for a confidential, highly classified summary to report the damage done," Weinberger told me in an interview. Although the declaration was signed by Weinberger and submitted as his personal affidavit, the damning document was in fact assembled piecemeal by an interagency group of intelligence officials independently assessing Pollard's damage to their own operations.

A redacted copy of that declaration, obtained by this reporter, together with information and analysis reported by several of the actual contributors, indicates that Pollard indeed compromised the most sensitive aspect of American intelligence, providing Israel with the highest level of secret information.

"More than 1,000 unredacted messages and cables," of which a significant number were not just top secret but "code-word sensitive," were delivered to Pollard's Israeli handlers, according to the Weinberger declaration.

Washington feared that Israel could have traded the secret materials with other intelligence services. The information even could have ended up in Moscow, perhaps as a bargaining chip at a time when Israel was trying to free Soviet Jews. Numerous intelligence reports about Soviet missile systems, delivered by Pollard, exposed the way America analyzed Soviet weapons. He transmitted regional surveillance data from the VQ-2 reconnaissance squadron in Spain, thereby enabling Israel to virtually track America's own intelligence capability in the Mediterranean and even over Israel itself. This was crucial in Israel's 1985 bombing of the PLO headquarters in Tunis, which depended upon Israeli F-15s evading both American and Arab listening posts over North Africa.

But all of this was dwarfed, according to a principal author of the Weinberger declaration, by photocopying for Israel the



**CIA Director George Tenet: Point man in case against Pollard.**



**Former Defense Secretary Caspar Weinberger: Admitted in interview that Pollard matter "was made far bigger than its actual importance."**



**Former Prime Minister Bibi Netanyahu: "A great injustice has been perpetrated by keeping Pollard endlessly in jail."**



**Harvard's flamboyant attorney Alan Dershowitz has visited Pollard in prison and advocated for his release.**

## SPECIAL REPORT

massive 10-volume RASIN Manual. An acronym for Radio and Signal Intelligence, the precious manual is known as "the Bible," according to the intelligence officer. It details America's global listening profile, frequency by frequency, source by source, geographic slice by geographic slice. RASIN was, in effect, a complete roadmap to American signal intelligence.

Informed sources say Pollard's RASIN disclosure was the crux of a secret exchange in Robinson's courtroom just moments before the outraged judge finally pronounced a life sentence. Some estimate the loss of the RASIN Manual cost America billions of dollars and many years in completely restructuring the country's worldwide eavesdropping operation.

Though Pollard has sought to downplay the consequences to the U.S. of his actions, his crime was lasting and devastating to the intelligence community.

## The Media Campaign

To avoid a public trial, the government negotiated a binding, written plea agreement with Pollard and his wife at the time, Anne. By way of background, plea agreements govern conduct of prosecutors and defendants in the time leading up to sentencing.

"A plea agreement is exactly what the two words suggest," explains distinguished former federal Judge George Leighton, who has studied the Pollard case. "It is an agreement between defendant and government governing the guilty plea and the length of sentence the government will insist upon. This is done to induce the defendant to relinquish the important right of trial. The government must live up to the agreement, and the plea agreement can be enforced against the government."

Pollard's binding plea agreement required him to cooperate fully with numerous polygraph examiners and intelligence investigators. This he did. In return, prosecutors promised that while they would indeed request substantial jail time, they would not ask for the maximum life. Toward that end, prosecutors promised to stress to the judge the spy's post-arrest cooperation with investigators and polygraphers, and limit their allocation of facts to the circumstances of his espionage.

Prosecutors agreed to omit aggravating details of Pollard's high Israeli-paid lifestyle, suggestions of cooperation with South Africa, and other aggravating factors that could easily inflame the sentencing judge to mete out a longer term. As part of the overall deal, Anne, who assisted Pollard's espionage, would be shown leniency with a minimal term, and her bid while awaiting sentence would not be opposed. The two agreements were "wired," that is, both Pollards had to comply with all provisions.

Both agreements also routinely required the Pollards to obtain specific approval from the director of Naval Intelligence for any media interviews or publication. Clearly, the government's intent was to restrict further classified disclosures, including inadvertent ones, and basically deprive the Pollards of any notoriety, prestige, income or other benefit that interviews, books or movies might bring. Such conditions are standard in many plea agree-

ments, especially those involving espionage. Keeping one's mouth shut and displaying remorse is the first priority when seeking the mercy of the court.

But the Pollards tried to outsmart mercy. They decided to rally the American Jewish community and massage public opinion, hoping to create outside pressure on the judge and prosecutors to dispense a reduced sentence. Without the knowledge of his attorney, Pollard granted two exclusive prison interviews to Wolf Blitzer, the CNN journalist who was then Washington correspondent for the Jerusalem Post. In these interviews, Pollard presented himself as a highly motivated Jew determined to help Israel in the face of an intransigent American intelligence community that was endangering the Jewish state.

"No Bumbler But Israel's Master Spy," the headline declared. Moreover, a letter from Pollard ran on the front page of the Jerusalem Post decrying his "judicial crucifixion" and assuring "the gains to Israel's long-term security were worth the risks" he took. The letter even lamented the fact that "no one has summoned the [Jewish] community to put a stop to this ordeal."

The result of the interview was a disaster for Pollard, who infuriated the government with his defiant stance.

After learning of one of the interviews, Pollard's defense attorney, Richard Hibey, is said to have shrieked so loudly into the phone, a partner rushed in to see if he was hurt. As damaging as the Jerusalem Post interview was, Anne Pollard's interview with "60 Minutes" a few days before the scheduled sentencing did far more damage. In that interview, Anne told the nation, "I feel my husband and I did what we were expected to do, and what our moral obligation was as Jews, what our moral obligation was as human beings, and I have no regrets about that."

Remorse now seemed a moot point.

Prosecutors Joseph DiGenova and Charles Leeper were outraged, as was Judge Robinson. So was Pollard's now humiliated defense attorney Hibey, who was expected to keep his client in line.

"I assure you, Judge Robinson got a videotape of the '60 Minutes' interview the very next day," recalls Hamilton "Phil" Fox III, one of Pollard's subsequent defense attorneys.

"It was a classic case of how not to believe," a senior member of the prosecution team told this reporter.

Jewish officers throughout the American intelligence community were equally incensed that the Pollards might make all American Jews seem disloyal. "There are more than a few Jews loyally and quite properly serving their country in intelligence," explained one highly placed Jewish intelligence analyst. "None of us wants to be looked at cross-eyed when we walk into a room, people wondering if we are the next Pollard. He had no right."

Pollard's antagonistic media gamble sealed his fate. He was now doomed.

## Retaliation

Angry prosecutors would now manifest their rage and exact revenge. The govern-

## Face To Face With Pollard

The Federal Correctional Institution at Butner, N.C., nestled within a woodland and meadow perimeter, appears trim and proper. Its housing units and yard are spotless, groomed, and in many ways resemble a YMCA locker room. There are no bars on the cells, only steel doors with small windows. Prison officials understand they are holding a high-profile convict. Visitors are treated with extreme courtesy and professionalism within the confines of a medium security facility.

But make no mistake, this is highly regimented prison. Hell can also be an antiseptic place.

Jonathan Pollard, wearing a yarmulke, appeared in the interview room with all the verve of a dinner host. His mental faculties are razor sharp. Subscriptions to numerous Jewish newspapers and magazines, as well as constant attention to National Public Radio and CNN, keep Pollard informed about world events up to the minute. He devours books on a multiplicity of topics.

Why have you alienated so many who try to help you, I asked?

"It's a sore subject," he replies. "For the first 10 years of this case, I worked quietly and behind the scenes to advance basically a political agenda to get myself out of this jam, ... hopefully, some kind of deal between the Israeli government and the American government to secure my release."

"During the course of this initiative we got to know an awful lot of Jewish leaders here in the United States ... and they seem to fall into one of several groups in their response to me. Some ran away from it. ... Others promised to do things but basically didn't ... and others did harm. ... I didn't really know how to react to these guys because I never had anything to do with these people before. I was naive."

Asked if he would continue attacking those who tried to help, he replied, "I'm looking for help wherever I can get it. I am thankful for anybody who can do anything constructive to help me."

He explained, "I've only tried to correct the record when people say things that are not correct or allege that I've done things that I haven't done, or misstate my case, misrepresented my intentions and my agenda. I want help and I need help."

When people say we're going to help you, they come here and they look at me ... I'm in the pit and they look over and they say, 'Jonathan, we're going to get help for you.' That sets off [in me] ... you can't imagine -- I hope you're never in a situation like this, where all you're doing is staring up through a pit, an opening, praying that the person who just made you a promise, looking down at you, was sincere."

Asked if he thought he should be freed as a "Jewish patriot," or because he was denied due process, Pollard decisively replied, "Denied due process."

Pressed about the "Jewish patriot," he responds without hesitation, "That's irrelevant. ... It has absolutely nothing to do with it."

Pollard was then asked, "So those many organizations which rally for you and say you're a Jewish patriot, you wish them to stop?" Pollard replied, "I wish them to focus on the merit of our case. The legal merit."

What would he do if he was released?

"I've learned an awful lot over the past 17 years," says Pollard. "I've grown quite a bit. I've learned the whole notion of consequences. My only interest when and if I get out is to lead as productive a life as possible. ... I'd like to leave this behind me. This case and everything associated with it is the source of unmitigated, unqualified horror to me."

Pollard adds that he has zero intention of writing a book, granting interviews on intelligence matters or attacking those he senses failed to expedite his release.

"Upon my release," he says, "this whole case and everything associated with it is consigned, as far as I'm concerned, to the dustbin of history. ... My life has been utterly destroyed. People I love and care for have been destroyed. ... [To me] this is Kryptonite."

Finally, Pollard is asked point blank, "Do you really want to get out of here, or would you rather stay in prison as an international Jewish celebrity?"

With a voice riveted to determination, he replies, "I would rather eat the dust of Israel as a beggar and be with my wife than to continue this horrific existence that I'm currently suffering. ... I'm a very small person in the course of Jewish history, in the course of our people's existence; I'm a blip on the radar screen. I'm a footnote; a small footnote at that."

"I really screwed up and I can't -- if I get another chance, by the grace of God -- I can't screw up again. You only get one reprieve, and I'm not going to muck it up."

Edwin Black



"I would rather eat the dust of Israel as a beggar and be with my wife than to continue this horrific existence."

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ment could have thrown out the binding plea agreement, claiming the Pollards breached the spirit of the media strictures. But with no plea agreement, the government would have to start from scratch and prosecute the case in a public trial, a source of great embarrassment. So instead, prosecutors simply breached the plea agreement themselves to make sure Pollard was thrown in jail for life.

Prosecutors were obligated by the plea agreement to confine their arguments to the details of the crime and make no effort to provoke a life sentence. Instead, in a memorandum to the judge originally classified "secret," prosecutor diGenova castigated Pollard for "attempts to glorify his actions" and declared: "This pattern of public relations gambits undertaken by defendant ... has demonstrated that he is ... contemptuous of this Court's authority."

Such complaints were outside the four walls of the binding plea agreement. But prosecutors wanted the judge to grasp that Pollard was trying to go over the court's head to publicly or politically pressure a reduced sentence. Any judge would be incensed.

For reinforcement, diGenova presented an unprecedented last-minute four page affidavit from Secretary of Defense Weinberger, who essentially asked for "life imprisonment," even though the plea agreement expressly prohibited such a request. Life sentences had been dealt just months before to several notorious spies. Weinberger's affidavit made clear to the judge, "It is difficult for me, in the so-called 'year of the spy,' to conceive of a greater harm to national security." The message was clear: Give him life, regardless of the plea agreement.

At the sentencing on March 4, 1987, prosecutors again emphasized that Pollard was a deceitful and outrageous media manipulator, hammering at the Blitzer interviews.

Judge Robinson was "steamed, really steamed," recalls a senior member of the prosecution team. Pollard's attorneys thought he would receive 15 to 17 years in jail, perhaps as many as 25. But Robinson ignored the prosecution's clear violation of the binding plea agreement and agreed that Pollard deserved the worst punishment possible.

When he announced "life" for Pollard, Anne collapsed in hysteria, only to be lifted by guards to hear her own five-year sentence.

Pollard was taken away to begin his life sentence.

## The Defense Failure

Actually, what might have saved Pollard from a life term would have been several seemingly obvious moves by his attorney, Richard Hibey. He should have objected to the government's breach of its plea agreement and excessive sentencing by Judge Robinson, insist many legal authorities. Most damaging, in the wake of all the errors and breaches, Hibey never filed the simple one-page Notice of Appeal form within the requisite 10 days. The damage was as good as permanent. By not filing the appeal form, Hibey assured there would never be legal recourse to undo the grievances.

"After a defendant has been sentenced in a federal case," explains Abraham Abramovsky,

a Fordham University professor of criminal law who has studied the Pollard case, "he has only 10 days to file a notice of appeal from the sentence. If he fails to do so, he can never again file for direct appellate review, no matter how outrageous the error."

At least three members of Congress are among the long list of eminent reviewers who agree. Reps. Anthony Weiner and Jerrold Nadler of New York and Janice Schakowsky of Illinois signed a November 2000 letter to then-President Bill Clinton complaining of a "very disturbing picture of serious misconduct that appears to have gone unchecked by Mr. Pollard's then-counsel."

"Perhaps most troubling, after Mr. Pollard had been sentenced to life in prison, his attorney failed to file a Notice of Appeal, a simple and straightforward task that a competent



Former President Bill Clinton, like his predecessors, declined to pardon Pollard.

attorney would routinely have done. By that failure, Mr. Pollard's then-counsel appears to have ... doomed Mr. Pollard to an unreviewed sentence of life in prison."

In addition, Hibey did not call for an evidentiary hearing on the last-minute affidavit by Weinberger using language essentially signaling a life sentence and justifying it with the assertion, "It is difficult for me, in the so-called 'year of the spy,' to conceive of a greater harm to national security."

During an interview last month with Caspar Weinberger regarding his recent published memoir, "In the Arena," this reporter asked why the Pollard incident was left out of the book. Weinberger casually replied, "Because it was, in a sense, a very minor matter, but made very important."

Asked to elaborate, Weinberger repeated, "As I say, the Pollard matter was comparatively minor. It was made far bigger than its actual importance." Pressed on why the case was made far bigger than its actual importance, Weinberger replied, "I don't know why, it just was."

Had Hibey called for an evidentiary hearing on Weinberger's damning affidavit, its veracity could have been assessed.

In response to Weinberger's startling admission some 15 years later, Malcolm Hoenlein, executive vice chairman of the Conference of Presidents of Major American Jewish Or-

ganizations, declared, "This raises serious questions about Weinberger's sworn comments at the time, which now seem contradictory. I wish he had made this clear years ago."

Moreover, Hibey failed to object to the repeated prosecution assertions that Blitzer's interviews with Pollard were unauthorized, a notion that seems impossible since they were conducted with the permission of the Department of Justice and Bureau of Prisons inside the prison itself. All journalists are subjected to rigorous bureaucratic and security screening before being granted access to prisoners.

In addition, a legal adviser to the director of Naval Intelligence confirmed to me, "If the DNI approves the request, the Bureau of Prisons [BOP] sends you written permission. ... that written authorization is all that you need — the DNI's permission is implicit in the BOP authorization."

More than failing to object to the characterization of Blitzer's interviews as unauthorized, a demure Hibey conceded to the judge in open court, just moments before the final sentence: "The action was ill advised, unauthorized, there is no question about that in my mind. ... Yes, your honor, you are correct, that it was done without the pre-clearance procedure."

Pollard's new pro bono attorneys, Eliot Lauer and Jacques Semmelman, filed a recent motion complaining that "Hibey did not protest, either in writing or orally at the sentencing, that by asking for life in prison in this manner, the government had violated the plea agreement."

Judge Leighton, who reviewed Pollard's case on the Hibey issue, was among those who filed a declaration with the court asserting Pollard was denied due process during his sentencing. "The evidence shows," wrote Leighton, "that the government engaged in serious misconduct that went unchecked by an ineffective defense counsel, Richard Hibey, and that these constitutional violations severely prejudiced Mr. Pollard and resulted in his sentence of life in prison."

## Clemency Denied

Added to Pollard's woes has been his conduct while seeking clemency. Every attempt to gain presidential clemency, spearheaded by Israeli prime ministers and American Jewish leadership, has been thwarted. Why?

The same inexplicable behavior streak that caused him to alienate his prosecutors, judge and defense counsel has been visible during Pollard's 17 years of incarceration. Although most convicts seeking early release learn to conduct themselves passively and speak in a fashion that will play to parole boards, Pollard has gone on the offensive. Pollard's voluminous handwritten letters to supporters insult the integrity of prosecutor diGenova, and bitterly challenge the commitment of American Jewish and Israeli leaders petitioning for his release. For example, on May 24, 2001, Pollard wrote an open letter to Israeli President Moshe Katsav about a meeting with President George W. Bush.

"Even if you were to bring up the issue of my release with Bush yourself as you claim, your past record on my case leaves no room for doubt that you would not do so in a serious or effective manner," Pollard wrote. "Rather just so that you can return to Israel and claim that you brought it up but were unsuccessful."

When in late 1999, Israel Prime Minister Ehud Barak asked his minister of diaspora affairs to meet with Pollard's second wife, Esther, Pollard issued a statement: "I was shocked at the Government's sleazy attempt at deflecting public attention away from the fact that Prime Minister Ehud Barak will absolutely not take any responsibility for bringing this agent home. ... They are sending the lightest of the lightweights, which will be ... treated as a joke in Washington. ... The point is this: I am an Israeli agent who worked for the Ministry of Defense. As such, it is up to General Barak, who is now Prime Minister Barak, to get me home and nobody else."

Pollard's Israeli attorneys ultimately filed a lawsuit against Barak for non-responsiveness, seeking, among other things, to compel him to meet with Pollard's wife and issue weekly reports on efforts to obtain his early release.

Not a few in the Jewish community have been harassed by Pollard supporters for straying from the Pollard camp's line. For example, in 1993, David Luchins, a senior adviser to Sen. Daniel Moynihan, became embroiled in a tactical dispute over Pollard's seeking a parole, as well as a letter of remorse obtained by Rabbi Aaron Solovitchik of Chicago. The late Rabbi Solovitchik was considered one of American Judaism's most revered rabbinic authorities.

The letter was a congressional initiative to secure presidential clemency. But after Pollard signed, he reportedly expressed regret over a portion of the letter that apologized for violating Jewish law — to the utter dismay of those who had organized the letter. Luchins' life was threatened by Pollard supporters, who circulated a fiercer one press report dubbed a Salman Rushdie-style religious decree calling for Luchins' murder. A source close to Moynihan says federal marshals were summoned to protect Luchins.

Observers say it is understandable for an embittered Pollard to lash out, since he is facing a harsh life term. But legal experts consider it inadvisable for a man seeking clemency to offend those needed to champion his cause.

## Justice For Pollard

Despite the noisome and self-defeating tactics by Pollard and some supporters, it is entirely believable that the legal establishment ran roughshod over his constitutional rights — and in broad daylight, with the world watching.

In one of Pollard's early unsuccessful efforts, federal Judge Stephen F. Williams dissented, writing, "The government's breach of the plea agreement was a fundamental miscarriage of justice. ... Pollard's sentence should be vacated and the case remanded for re-sentencing. ... The fault here rests upon the prosecutor, not on the sentencing judge."

Yet attempts to obtain judicial justice for

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Pollard have faltered over the years. One of his early attorneys, Hamilton "Phil" Fox III, moved to withdraw Pollard's guilty plea in 1990. Fox, a former assistant U.S. Attorney himself, charged that the government breached its plea agreement. But the court refused his effort, citing the absence of any original objection by Hibey in 1987. The only way for Fox to get around that stumbling block was to assert that Pollard had been denied "effective assistance of counsel", in other words, claim Hibey deprived the spy of his Constitutional rights.

"Indeed, that was the first thing under consideration, ineffective assistance of counsel," recalled Fox in an interview. "When I interviewed Hibey, he did ask me if I would raise the question of ineffective assistance of counsel. I said if I did, I would let him know. Actually, at about that time, my assistant was working on a memo on that very topic. But we thought there was no chance under Supreme Court guidelines ... which sets an extremely high standard. So we never did it."

But more than just not raising it, Fox went out of his way to praise Hibey. "We do not challenge the government's claim that Pollard's prior counsel skillfully negotiated a plea agreement and effectively allocated for his client," wrote Fox in his pleading. "Our criticism is not of prior counsel but of the government's failure to live up to its side of the bargain." This conspicuous praise for Hibey has caught the attention of more than one legal expert, who question how Fox could make such a unilateral concession.

Pleadings by Lauer and Semmelman assert that an old-boy network was at work. Judge Leighton's declaration on Pollard agrees, stating, "I doubt that the bar in the District of Columbia is any different from ... other cities. Certain lawyers will simply not attack or criticize another member of the bar, especially one who practices in the same specialty. ... Many such lawyers will not ... risk ostracism within their professional community by accusing a fellow lawyer of ineffective representation in any case — much less a high-profile case, as this one was."

Fox, aware of the insinuation, told this reporter, "I have never gotten a single referral from Hibey" and reminds, "Remember, we took a shot at a sitting judge." Asked why he wrote those words of unsolicited praise for Hibey, Fox replied, "I just don't know why I wrote those words." Asked to explain why Hibey did not file the all-important 10-day Notice of Appeal, Fox speculated, "It probably didn't occur to him."

A flabbergasted Semmelman commented, "How can a former assistant U.S. Attorney fail to immediately file a Notice of Appeal from a life sentence?" Indeed, one current assistant U.S. Attorney who years ago briefly worked on the Pollard case, said "Yikes" when informed that Hibey had not filed the form.

Hibey, called one of Washington's most effective lawyers, now practices with the megafirm Winston & Strawn. He has declined to reply to the legal and congressional challenges to his representation of Pollard. And Hibey did not reply to repeated requests for an interview. At one point, this reporter sat in the reception area outside his Washington office

for five hours waiting for a spare moment to posit questions. Hibey refused to meet.

Lauer said he was "eager to have the court conduct a hearing and put Hibey on the stand to explain his conduct."

But judicial justice for Pollard has been frustrated over the years because so many in the Department of Justice and cooperating intelligence establishments have become so hardened against the spy. Pollard advocates say he has never sought parole because he believes the system is stacked against him, though critics believe it is because he would have to express unequivocal remorse for his actions.

Lauer and Semmelman, the latest and best hopes for Pollard, have filed mountains of motions. Direct appeals are not possible, so they are seeking habeas corpus on the basis of ineffective assistance of counsel. In other words, they are asking that Pollard be re-sentenced in accordance with his plea agreement, which could theoretically result in yet another life sentence (although most scholars think that is doubtful after 17 years).

Lauer and Semmelman have been frustrated at every step by protracted delays, refusals and volumes of hair-splitting government legal arguments. Lauer and Semmelman can't even get an evidentiary hearing.

"If we could only get the court to give us a hearing," says Lauer, "we could subpoena documents and take testimony, and once and for all establish the facts."

## A Matter Of Law

Jonathan Pollard is grasping what may be that last straw now. In a wide-ranging 90-minute exclusive interview — his first in years — Pollard presented a jumble of emotions and mixed messages about his original motives.

But he was clear about his predicament. Asked if he regretted his espionage, Pollard focused hard and replied, "I don't think regret is strong enough a word to use. No one who has seen what has happened to me over the past 17 years could possibly say I feel good, to any degree, over what I did."

Did he regret his transgression or just being caught? "The transgression," he quickly answered.

His explanations for his crime wandered, but were summed up with the painful admission, "Whether this was done to Israel or that was done to Israel — you know what, that's not my responsibility anymore. ... I fought that battle with myself 17 years ago, and you know ... I lost that battle and I'm not going back to it. I've been destroyed and I destroyed a lot of people around me."

That statement is irrefutable. But the tragedy of Jonathan Pollard continues, in part self-inflicted, evidenced by his daring the prosecutorial establishment to put him away forever, even at the risk of bending or breaking due process. That is exactly what happened.

Over the years Pollard seems to have lost his faith in political paroles and magical commutations. No doubt he has come to realize his only hope is the rule of law, and whether or not he deserves public sympathy, it is clear he deserves his hearing on habeas corpus — because the American way of justice demands it. □

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