Jonathan Pollard: 30 years

An exclusive, behind-the-scenes look at the struggle for freedom for the jailed Israeli spy.
Today, Israeli agent Jonathan Pollard enters the 30th year of his life sentence for the crime of passing classified information to an ally. As he does so, he is aware that yet another possible door to his long-awaited freedom has just slammed shut.

The first time such a door closed was November 21, 1985, when he was prevented from entering the Israeli Embassy in Washington and arrested outside. Today also marks another significant anniversary: 19 years since the day he became eligible for parole after 10 years in prison.

Since then, he has decided repeatedly not even to try and seek parole, because his release would be conditional, and his lawyers had told him that he had no chance in a parole hearing where the legal deck would be overwhelmingly stacked against him.

Many have questioned why Pollard never even tried the parole path and focused instead on seeking clemency – asking presidents of the United States to commute his life sentence to the time he had already served.

But after so many years of failure, that strategy was secretly reconsidered and replaced last year, according to documents and information revealed exclusively to The Jerusalem Post.

Pollard finally applied for parole in December 2013. The person who persuaded him to take that step was the man in whose hands his fate lies: US President Barack Obama.

Obama’s statements when he came to Israel in March 2013 left no doubt about what approach Pollard should take. The president ended hopes that he would announce clemency for Pollard during the visit as part of a so-called charm offensive. But he hinted that if Pollard were to apply for parole, he would be treated like any other prisoner.

“I have no plans for releasing Jonathan Pollard immediately, but what I am going to be doing is make sure that he – like every other American who has been sentenced – is accorded the same kinds of review and same examination of the equities that any other individual would be provided,” Obama told Channel 2 anchorwoman Yonit Levi in an interview.

Obama said his obligation as president was to uphold his country’s laws and make sure they were applied consistently, “to make sure that every individual is treated fairly and equally.”
Here was the opportunity that Pollard had been waiting for. He felt he had been treated unfairly and unequally for so many years, and now the president was hinting – in his view, even promising the Israeli people on record on the highly rated nightly news – that he would fix that. Pollard’s parole hearing was scheduled for April 1. But then a different opportunity came, the sort Pollard had always made a point of rejecting.

Obama was ready to commute Pollard’s sentence as a gesture to Israel for releasing Israeli Arab prisoners as part of an American-brokered diplomatic process with the Palestinians. That process nearly brought Pollard home in time for the Passover Seder, but it ultimately failed.

Pollard withdrew his parole application so it would not be connected to a trade for terrorists. Only when the trade talk died down did he reapply for a parole hearing, which was scheduled for July 1.

He and the team working for his release then had a limited time to make efforts to ensure the parole hearing would go well. To that end, they enlisted the man who is arguably the most respected Israeli in America – possibly the only Israeli who enjoys a close relationship with Obama: then-president Shimon Peres.

PERES’S ROLE in bringing about Pollard’s release was more than symbolic. He was the prime minister at the time of Pollard’s arrest.

At the time, he did not alert the embassy staff about Pollard to ensure he would be let in, and he gave the US documents with Pollard’s fingerprints that incriminated him. Many Israelis saw Pollard’s continued incarceration as a lingering stain on Peres’s decades of public service that neither of the medals he recently received in Washington could remove.

The two presidents were due to meet in the US capital during Peres’s final tour in office on June 25, six days before the parole hearing. Peres vowed to the people of Israel to take action for Pollard, and the Israeli agent’s pro-bono lawyers prepared him meticulously.

Respected New York attorneys Elliot Lauer and Jacques Semmelman, who have represented Pollard for free for 15 years, met with Peres’s aides extensively to explain how the US parole process worked. Lauer reviewed the information with Peres himself at Washington’s Willard Hotel immediately before he met with Obama.

Peres’s message to Obama was to be the following: You don’t have to grant clemency. In fact, you can distance yourself from the matter completely. Just privately let the US Justice Department know that you don’t oppose paroling Pollard and letting him leave for Israel.

Obama would not need to get his hands dirty, just keep the commitment he had made to Israelis 15 months earlier to treat Pollard fairly, like any other prisoner, and let his parole be assessed naturally on the merits of his case.
Following the meeting, Peres’s diplomatic adviser Nadav Tamir reported back to the lawyers with good news: The message had indeed been delivered. Peres’s office leaked to the press that Obama had personally referred the matter to his attorney-general and close confidant Eric Holder - the head of the American Justice Department and the chief law-enforcement officer of the US government.

“The entire nation is interested in releasing Pollard, and I am the emissary of the nation,” Peres told reporters after the meeting. “I don’t think of myself as Shimon. I am the representative of the State of Israel, and I speak in the name of its people.”

But he added a realistic yet disheartening caveat when he vowed to “continue to work for Pollard’s release after I finish my term.”

Pollard and his lawyers hoped against hope that his salvation was finally coming, that the Peres-push for parole strategy had worked.

The day after the Obama-Peres meeting, Lauer and Semmelman filed a supplemental submission to the US parole commission. The document stressed that Pollard was a model prisoner who had the best possible salient factor score – a measure the US Parole Commission uses to assess a federal prisoner’s likelihood of returning to crime after release, which is the main factor for parole.

The document revealed for the first time that an analyst at an investment firm.

Further incarceration would serve no purpose, as he has been severely punished,” the lawyers wrote. “The commission should set an effective date of parole so that Mr. Pollard can be released as promptly as possible.”

LAUER FLEW to Pollard’s prison in Butner, North Carolina, for the hearing. The deputy chief of the National Security Section of the United States Attorney’s Office Jay Bratt participated in the hearing from Washington by video conference.

Pollard entered the room skeptical but cautiously optimistic, ready to see what his first parole hearing would be like.

But all hopes that the hearing would be fair were dashed immediately. The government’s representatives spoke menacingly, treated Pollard with contempt, prevented Lauer from making his case, and made it clear that the Israeli agent would not see the Jewish state any time soon, if ever. Those present described the hearing as a “kangaroo court” and even “a lynching.”

The rejection letter that the parole commission sent Pollard in August, which the Post exclusively obtained, was also harsh in tone.

“The breadth and scope of the classified information that you sold to the Israelis was the greatest compromise of US security to that date,” the letter said. “You passed thousands of Top Secret documents to Israeli agents, threatening US relations in the Middle East among the Arab countries.”

The parole commission complained that it had not been for Pollard, the US could have received intelligence from Israel in return for the information he had provided.

“Given all this information, paroling you at this time would depreciate the seriousness of the offense and promote disrespect for the law,” the letter concluded.

The commission wrote that ahead of the 30th anniversary of Pollard’s incarceration, it would conduct another review of the case in February 2015 and another parole hearing five months later.

But when asked whether the government would once again oppose Pollard’s parole next July, a commission official replied, “Absolutely, vigorously” – indicating that it would be no different than the hearing that had just concluded.

The letter indicated that barring parole next year, Pollard would have to continue serving his life sentence, which, due to the laws when he was sentenced, will conclude only in 2030 after 45 years in prison. Pollard, 60, is suffering from multiple recurring health problems and has been hospitalized several times recently without word getting out to the media. Chances are he would be unlikely to live that long. His lawyers were very disturbed by how the hearing turned out. The team working for his release purposefully hid the entire parole process from the press and the public until now.

“I was disappointed because I thought that as a result of the Peres-Obama meeting, the government would take a more judicious and fair approach to the hearing,” says Lauer in an interview at his office on Manhattan’s Park Avenue. “There is no basis for the government’s inflammatory statement about the level of harm caused to the US by Pollard.”

Lauer and Semmelman filed an appeal last month, and as of press time they have yet to receive a response. But no one on Pollard’s team remains optimistic about the possibility of parole.

THE MAIN grounds for the appeal were that the commission had rejected parole on the basis of a 1987 classified memorandum written by then-US defense secretary Caspar Weinberger, which was false at the time and has proven grossly inaccurate in hindsight.

A federal grand jury indicted Weinberger in June 1992 on two counts of perjury and one count of obstruction of justice in the Iran-Contra Affair. But President George H.W. Bush pardoned him six months later, before the case went to trial.

His paternal great-grandparents left Judaism because of a dispute at a Czech synagogue, and Weinberger and his parents were devoted Christians. Lawrence Korb, who was deputy defense secretary under Weinberger, said his former boss was not anti-Semitic, but he had “almost a visceral dislike” of Israel’s impact on US policy.

The defense secretary and other top US officials at the time were angry at Israel for the June 1981 bombing of Saddam Hussein’s Osirak nuclear reactor. Boston University international relations professor emeritus Angelo Codevilla, who had access to intelligence information as a staff member of the Senate’s Select Committee on Intelligence, told the Post in a phone interview that the officials were upset because they were building up Hussein as an ally and a counterweight to Iran.

That was why the US was not giving Israel information it had agreed to give the Jewish state. Pollard supplied Is-
railed with some of the most vital information to its security – which was being withheld – further angering the US.

Despite his many years in prison, Pollard never had an actual trial. At the request of both the US and Israeli governments, he entered into a plea bargain, which spared both governments a long, difficult, expensive and potentially embarrassing trial.

Pollard fulfilled his end of the bargain, cooperating with the prosecution. Nevertheless, he received a life sentence and a recommendation that he never receive parole – in complete violation of the plea agreement he reached with the government.

Weinberger wrote in the memo. “I respectfully submit to sentencing judge Aubrey Robinson. Except for briefly at first, neither Pollard nor any of his cleared attorneys have ever been allowed to access the memorandum to challenge its false charges.

The day before sentencing, Weinberger delivered a four-page supplemental memorandum to Robinson in which he falsely accused Pollard of treason.

“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 in the view of the breach, the critical importance to the US, and the high sensitivity of the information he sold to Israel,” Weinberger wrote in the memo. “I respectfully submit that any US citizen, and in particular a trusted government official, who sells US secrets to any foreign nation should not be punished merely as a common criminal. Rather the punishment imposed should reflect the peril of the individual’s actions, the magnitude of the treason committed, and the needs of national security.”

Pollard was shown the supplemental Weinberger memorandum only once, just moments before sentencing. Since then, his lawyers’ efforts to see the documents that were used to prosecute him have failed.

HIS LAWYERS renewed those efforts in court with Pollard’s parole application, knowing the government would refer to the Weinberger memo at the hearing. The court denied access, saying that the lawyers lacked a need to know and the court lacked jurisdiction to declassify it.

But Semmelman says what is known of the documents is that Weinberger wrote not about facts, but about predictions and projections of damage Pollard had caused that have proven wrong over time.

In a 2002 interview, journalist Edwin Black asked Weinberger why he had left the Pollard case out of his autobiography. He replied, “Because it was, in a sense, a very minor matter, but made very important.” Asked why, he said, “I don’t know why, it just was.”

Another possible reason for Pollard’s life sentence may have been that Robinson, who had requested the memo from Weinberger, was irritated by an (incorrect) report that Pollard had provided Israel with information about US satellite monitoring of joint Israeli-South African missile tests.

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“Robinson doesn’t like Israel very much, though he’s no anti-Semite, but this South Africa thing really got his dander up,” Goldberg told Dershowitz. Pollard denied ever having given such information to Israel, and the prosecution did not accuse him of such.

A form in Pollard’s parole file that the prosecution compiled in 1987 says it was the Weinberger memo that persuaded the judge to seek a life sentence. Pollard’s lawyers say that if a memo to which they cannot receive access is being used to deny their client parole, Pollard is not receiving fair or equitable treatment as Obama promised Israelis he would.

That was the premise of a letter to Obama this week from former senior US officials with firsthand knowledge of the classified files in the Pollard case. In the letter, they renewed their past calls for Obama to commute Pollard’s sentence, due to the parole process failing.

“We write to protest the unjust parole process,” they wrote. “Our review of the parole commission decision compels our strongest objections to the conclusions of the commission and our dismay with the deeply flawed process.”

The officials said the commission had written falsely that Pollard’s espionage “was the greatest compromise of US security to that date,” a charge they said was not supported by any evidence in the public record or the classified file.

“The unreliability of the 1987 Weinberger document was known to and ignored by the parole commission,” the officials wrote. “Worse, the parole commission ignored all other documentary evidence that mitigates in favor of Mr. Pollard’s immediate release.”

The officials wrote that Pollard had adequately expressed remorse and served a sentence far more severe than others in the US convicted of spying for an ally, a charge that normally bears a sentence of just two to four years.

“We are deeply troubled that his grossly disproportionate sentence is now continuing into a 30th year of incarceration with no end in sight,” they wrote. “Denying a man his freedom based on a claim of damage that is patently false while ignoring exculpatory documentary evidence and hiding behind a veil of secret evidence is neither fair nor just, and it simply is not the American way.”

Korb, who is one of the signatories to the letter, says in a phone interview that the parole commission should have taken into account not just Weinberger’s opinion, but also the views of former CIA and FBI heads and the former chairmen of congressional intelligence committees who do not oppose parole.

For instance, former FBI head William Webster, who headed the bureau at the time of Pollard’s arrest and later directed the CIA, told the Post in an exclusive interview last year that he no longer opposed Obama commuting his life sentence to time served.

“My reason is that there are circumstances where compassion is in order,” he said. “That can be tested against sentences that have been meted out to others with as serious offenses. All those are matters of judgment that can be made on their own indi-
vidual facts, but there is nothing there that would lead me to oppose the exercise of commutation.”

Former CIA head James Woolsey even blamed Pol-
lard’s continued incarceration on anti-Semitism, in an
interview with the Post’s Caroline Glick.

“My view is that he should be treated like other intel-
ligence assets of allies,” he said. “We spy on some allies, and
they have spied on us. Because they’re allies, usual-
ly they have only been in prison for a few years. What I
said is that people like Pollard should be hung up on him being
Jewish or Israeli. Pretend he’s Greek and release him.”

Korb says it bothered him that Webster’s and Wool-
sey’s statements were ignored at the parole hearing.

“They broke their plea agreement, for heaven’s sake.”

Korb notes that while he has never seen any concrete
damage Pollard caused the US, there were spies like
John Walker, who gave the Soviets the information to
help track American submarines, and Robert Hansen,
who gave the Soviets teams of American dou-
ble agents and told them about an FBI tunnel beneath
the Soviet embassy in Washington.

Over the years, Pollard was falsely accused of com-
promising American agents in Eastern Europe, when it
was actually the work of the CIA’s Soviet/Eastern
Europe Division, Aldrich Ames, who had committed
the crime and then blamed Pollard. Information Ames
gave the USSR is estimated to have led to compromis-
ing at least 100 US intelligence operations and to the
execution of at least 10 American sources.

Codelvilla says it should have been obvious that Pol-
lard could not have relayed such information, because
his access was limited.

“There were many secrets at the time, but Pollard
didn’t have access to any of them,” he says.

THE TEAM working for Pollard’s release has ques-
tioned why Obama was willing to release him in April
in a swap for Israeli Arab prisoners if the US parole
commission really equates Pollard with the likes of
Amen, Hansen and Walker.

An extensive article published in The New Republic
in July about how Israeli-Palestinian diplomatic talks
broke down revealed that US Secretary of State John
Kerry had first proposed to Obama that he use Pollard
as a bargaining chip near the start of the nine-month
peace process, and then again when the negotiations
were breaking down.

“Obama wasn’t going to touch the option unless it
facilitated a true breakthrough,” Ben Birnbaum and
Amir Tibon wrote. “Kerry was becoming desperate,
though. At the Ritz, he explained to Obama and [na-
tional security adviser Susan] Rice that, without Pol-
lard, the talks were days away from collapse (in part
because of his initial miscommunication with [Prime
Minister Benjamin] Netanyahu). Obama wasn’t
pleased. But late at night, after hours of talking, he
gave Kerry the go-ahead. ‘I’m not doing this because
I want to, John,’ Obama said. ‘I’m doing this for you.’”

Israeli diplomatic sources have revealed since then
that in exchange for Pollard, Netanyahu had been rea-
dy to carry out the fourth round of Palestinian prisoner re-
leases that included Israeli Arabs, before Palestinian Au-
thority President Mahmoud Abbas took steps that ended
the talks. Bayit Yehudi leader Naftali Bennett threatened
to quit the coalition if the Israeli Arabs were released, but
Netanyahu reportedly threatened to resign. US negotiator Den-
nis Ross revealed in his 2005 book The Missing Peace
that he had advised Clinton to keep Pollard in prison
to use as a bargaining chip for final-status peace talks.

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Clinton at the time said the deal had been so final that
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ing, it wouldn’t go too well,” he says.

Besides behavior in prison, the other grounds for
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curity risk. Pollard’s lawyers say that cannot possibly
apply to him anymore.

“The government knows exactly what Pollard knew at
the time of his arrest, because he was debriefed by US gov-
ernment experts [while] hooked up to a polygraph ma-
chine,” Lauer says. “What could he know that still matters?
Where Saddam’s troops were 30 years ago? Where [former
Palestinian leader Yasser] Arafat’s base was in Tunisia?”

“There is no basis whatsoever that if released he’d
commit any wrongdoing whatsoever,” Semmelman
adds. “It’s simply preposterous. He wants to enjoy the
rest of his life in freedom, peace and quiet.”

With the parole option tried and failed, Pollard is
free should ask themselves why he wasn’t freed. The
settler leaders who call on every stage for releasing Pol-
lard immediately must ask themselves what their con-
tribution was to him remaining in prison.”

The only other time Pollard’s release was so close also
came as part of a diplomatic process. Netanyahu asked
then-US president Bill Clinton to release him as part of
the 1998 Wye River Accords, in which Israel agreed to
withdraw from 15 percent of the West Bank and Gaza.

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With the parole option tried and failed, Pollard is
shifting back to the only option left: clemency from the
president of the US. To that end, US Jews will once
again be asked to make their voices heard.

Malcolm Hoenlein, who has headed the Conference
of Presidents of Major American Jewish Organizations
since shortly after Pollard’s arrest, tells the Post in a
phone interview that getting Pollard free means per-
suading not only Obama, but also five US government
agencies. Yet he is up to the task.

“It is an outrageous situation, a tragedy that has got
to end,” he says.

National Council of Young Israel president Farley Weiss,
whose organization has done much to help Pollard, says
the news about the failed parole hearing could inspire a
new effort to lobby Obama from a Jewish community that
wrongly thought Pollard would automatically be released
when he completed 30 years in prison.

“This is no way to treat an ally,” Weiss says in a
phone interview. “By not giving clemency or parole to
Pollard, America is hurting relations with Israel, and
it’s wrong. There has been an undecurrent in the Jew-
ish community that he will just get out on parole in a
year. This fierce and outrageous denial of parole now
will enrage the Jewish community.”

However, Chicago Pollard activist Jack Berger, who was
a close friend of Pollard’s parents, expresses doubt that
American Jews will do enough to bring about his freedom.

“The American Jewish community leadership should
be ashamed that they have totally abandoned Jonathan
Pollard,” Berger says in an interview in Jerusalem. “If the
Conference of Presidents had any real clout, they should
have demanded that Pollard be treated like anyone else
convicted of spying. AIPAC should have put pressure on
its elected representatives and encouraged Jews to refuse
to contribute to candidates until he was free.”

But an American Jewish leader who asks to not be
named says says over the phone that Pollard himself was
at least partially responsible for his own continued
incarceration and that the strategy to bring about his
release was wrong all along.

“He didn’t apply for parole for 19 years, and instead
tried to use political shenanigans and blackmail, so it
can be expected that when he finally got a parole hear-
ing, it wouldn’t go too well,” he says.

Yet Pollard’s lawyers remain convinced that al-
though it has so far been unsuccessful, their strategy
of seeking presidential commutation remains the only
way to get him out of prison. To that end, they hope
renewed pressure will begin soon, not only from US
Jews, but also from movements for civil liberties.

“The US Jewish leadership and civil liberties move-
ments have failed so far, and now they must take up
the Pollard issue and challenge it the right way,” Lauer
says. “They could be asking the US administration se-
rious, probing questions to at least obtain substantive
reasons to keep him in jail. They can do a lot more to
bring about Pollard’s release.”