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# Jonathan Pollard: 30 years

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for freedom  
for the jailed  
Israeli spy

Welcome  
Mr. President!  
Please,  
Free Pollard.

הנשיא  
פולארד  
בית  
הלבן





# Pollard's parole plastering

**'The Jerusalem Post' reveals the drama behind the failure of Israeli agent Jonathan Pollard's long-awaited parole hearing, which has been kept secret until now**

• GIL HOFFMAN

**T**oday, 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.

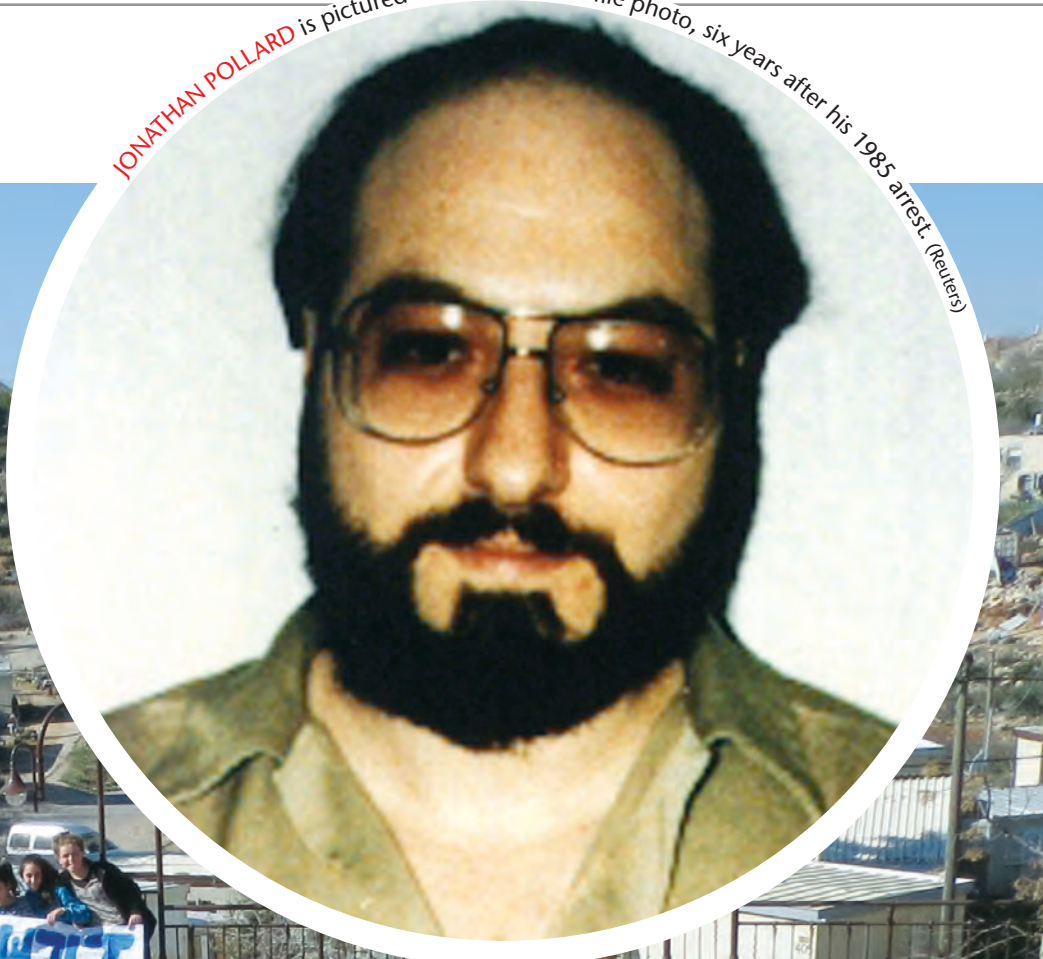
Obama said his obligation as president was to uphold his country's laws and make sure they were applied consistently, "to make sure that every individual is treated fairly and equally."



**STUDENTS PARTICIPATE** in a 'live body' protest, forming the number '29,' to symbolize Jonathan Pollard's 29 years behind bars. (Courtesy)



JONATHAN POLLARD is pictured in this May 1991 file photo, six years after his 1985 arrest. (Reuters)



ESTHER POLLARD, seen here on November 21, 2010, holds open her locket with her and Jonathan's wedding photo inside. (Marc Israel Sellem)

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 Eliot 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. ➤➤





**THEN-PRESIDENT** Shimon Peres meets with US President Barack Obama at the White House on June 25, 2013. It was reported that at this meeting Peres advocated for Pollard's release. (Reuters)

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-pushing-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 apartment had been rented for Pollard in the New York area and employment had been obtained for him as 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 had it 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 purposely 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-





**US SECRETARY** of State John Kerry speaks with Prime Minister Benjamin Netanyahu in Jerusalem on May 23, 2013. (Marc Israel Sellem)



**US PRESIDENT** Barack Obama and US Secretary of State John Kerry confer during the United Nations Security Council summit in New York on September 24, 2014. Pollard withdrew his appeal for parole to prevent being traded in a prisoner swap with the Palestinian Authority. (Reuters)

rael 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 had reached with the government.

He was never indicted for harming the United States or for compromising codes, agents or war plans. He was never charged with treason, a charge that applies to spying for an enemy state in wartime.

But two months prior to Pollard's March 1987 sentencing, Weinberger delivered a 46-page classified memorandum 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 breadth, 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 perfidy 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 infuriated by an (incorrect) report that Pollard had provided Israel with information about US satellite monitoring of joint Israeli-South African missile tests.

Attorney Alan Dershowitz wrote in his 1991 book *Chutzpah* that former Supreme Court justice Arthur Goldberg had told him he'd heard from the African-American judge that he had taken Pollard's alleged link to the Israel-South African connection into consideration in sentencing him.

"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 Pollard’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 intelligence assets of allies,” he said. “We spy on some allies, and they have spied on us. Because they’re allies, usually they have only been in prison for a few years. What I said is that people shouldn’t 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 Woolsey’s statements were ignored at the parole hearing.

“Woolsey saw Pollard’s whole file, and Jim’s a tough guy,” Korb says. “You’ve got to hope that the parole board so overreacted that it will persuade people to say this is really a miscarriage of justice. It already was before. 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 Hanssen, who gave the Soviets a complete list of American double agents and told them about an FBI tunnel beneath the Soviet embassy in Washington.

Over the years, Pollard was falsely accused of compromising American agents in Eastern Europe, when it was actually the head 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 compromising at least 100 US intelligence operations and to the execution of at least 10 American sources.

Codevilla says it should have been obvious that Pollard 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 questioned 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 Ames, Hanssen 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 [national security adviser Susan] Rice that, without Pollard, 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 ready to carry out the fourth round of Palestinian prisoner releases that included Israeli Arabs, before Palestinian Authority 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 was willing to accept that for Pollard.

Nonetheless, in an interview with *Yediot Aharonot* last month, Justice Minister Tzipi Livni, who conducted the negotiations, appeared to blame Bennett and his allies for Pollard’s continued incarceration.

“We reached the point with the US that they were ready to free him,” Livni said. “Those who want him



**YOUNG WOMEN** in the Bnei Akiva youth movement wear mock prison outfits to protest the continued imprisonment of Jonathan Pollard, on July 4, 2011. (Marc Israel Sellem)

free should ask themselves why he wasn’t freed. The settler leaders who call on every stage for releasing Pollard immediately must ask themselves what their contribution 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 13 percent of the West Bank’s Area C.

A source who was updated on Netanyahu’s talks with Clinton at the time said the deal had been so final that Pollard’s parents had been told to get ready for his release, and there had been media packets prepared about him.

But Clinton reneged when CIA director George Tenet reportedly threatened to resign. US negotiator Dennis 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.

“Is it a big political issue in Israel and will it help Bibi [Netanyahu]?” Clinton asked Ross.

“Yes,” Ross replied, “because he is considered a soldier for Israel” and “there is an ethos in Israel that you never leave a soldier behind in the field. But if you want my advice, I would not release him now. It would be a huge payoff for Bibi; you don’t have many like this in your pocket. I would save it for permanent status. You will need it later, don’t use it now.”

SUCH ATTITUDES have convinced many that the reason Pollard remains in jail is that the government wants to keep him for a future Israeli-Palestinian peace process. The April round of prisoner releases that included Pollard is technically still on the table, even though there are currently no talks in sight and Netanyahu and Abbas did not meet when they were both in Amman with Kerry last Thursday.

“Pollard is still in prison because he was transformed from an American who committed a crime and was sentenced unjustly, into a tradeable item,” Lauer says. “Pollard became objectified because he served a purpose in the Arab-Israeli peace process. He’s an asset to be used and not given away.”

Besides behavior in prison, the other grounds for not granting parole are that a prisoner remains a security 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 government experts [while] hooked up to a polygraph machine,” 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

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 persuading 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 undercurrent in the Jewish 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 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 hearing, it wouldn’t go too well,” he says.

Yet Pollard’s lawyers remain convinced that although 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 movements 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 serious, 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.” ■