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Jonathan Pollard: Background and Considerations for Presidential Clemency

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Summary

Jonathan Jay Pollard and his wife, Anne Henderson Pollard, were arrested in 1985 on charges of spying for Israel. Pollard pleaded guilty and received a life sentence, and remains in prison. Anne Henderson Pollard received a five-year sentence, and was released early in 1989. At first, the Israeli government claimed Pollard's activities were not sanctioned by the Israeli government and were part of a rogue operation, but the Israeli government granted citizenship to Pollard in 1996, and admitted that Pollard was spying for the government of Israel in 1998. Israeli Prime Ministers on several occasions requested that President Clinton grant clemency to Pollard, but the Clinton Administration ended without a reprieve. It is likely that the Israeli government will raise the issue again and some U.S. groups continue to advocate Pollard's release. At issue is the question: should the President grant clemency to Jonathan Pollard? Those supporting clemency argue that Pollard has served long enough, that he spied for a friendly nation, not an enemy, that his release will help the peace process, and that the United States reneged on the plea agreement. Those who oppose clemency argue that Pollard's spying exposed U.S. intelligence methods and personnel, that the Pollard case is not related to the peace process, that who he spied for is irrelevant, and that the judges' sentence was justified by the magnitude of the crime. The report will not be updated.

Introduction

The case of Jonathan Jay Pollard (b. 1954), convicted of espionage on behalf of Israel in 1986 and given a life sentence as a result, has been raised repeatedly by the Israeli government in an effort to obtain his release. The Clinton Administration rebuffed three efforts to secure Pollard's release, one during the final hours of the October 1998 Wye River conference when Israeli Prime Minister Binyamin Netanyahu repeated his plea for clemency. President Clinton agreed to review the case by January 1999 after the views of

agency heads had been received.¹ In the light of continued opposition to a pardon by law enforcement agencies and senior congressional leaders, no action was taken at that time. Subsequently Netanyahu's successor, Ehud Barak, renewed Israeli requests that Pollard be freed. Some observers suggested that Pollard would be included among those pardoned during the last weeks of the Clinton Administration, but that did not occur. Although the President has authority to grant pardons, the role of congressional opinion may become an important factor in the review of Pollard's case. The background information provided below is based on material available in the media but not on court documents; this CRS report does not purport to be a legal analysis of the case.

Background

According to a "Factual Proffer" submitted by U.S. Attorney Joseph E. diGenova to the District Court in Washington on June 4, 1986,² Pollard, a U.S. citizen, worked as a civil servant for intelligence offices of the U.S. Navy from September 1979 until November 21, 1985, during which period he had access to classified information. In the early summer of 1984, Pollard contacted Israeli intelligence officials and began providing classified documents to an Israeli officer (who was not working in the Israeli embassy). Subsequently, his primary contact became the then-science consul at the Israeli embassy in Washington who asked him to obtain specific classified documents. Pollard met with Israeli contacts to provide documents on a biweekly basis and received regular payments estimated to have totaled over \$45,000. According to government sources, he provided access to classified documents that would fill a space ten feet by six feet by six feet. Some former government officials claim he also offered classified information to countries other than Israel. He and his then-wife, Anne Henderson Pollard, twice traveled to Europe and to Israel with Israeli assistance. On the basis of a report by a co-worker, Pollard was interviewed in November 1985 by Federal Bureau of Investigation (FBI) and Naval Investigative Service officials regarding his removal of classified documents from his office. A few days later, on November 21, 1985, Pollard and his wife attempted to enter the Israeli Embassy, but were rebuffed by the Israelis and arrested by FBI agents.

After some hesitation, Pollard cooperated with Justice Department officials who promised to inform the court of his cooperation and to seek a "substantial" prison term, but not a life sentence. He was promised that the prosecution would seek a lesser prison term for his wife. Subsequently, the Secretary of Defense, Caspar Weinberger, submitted a damage-assessment memorandum (which remains classified) to the court arguing that Pollard had committed an exceptionally grave offense against the national security, including the compromise of intelligence sources and methods. Pollard pleaded guilty to espionage, and the Court sentenced him to life imprisonment; his wife was sentenced to a five-year prison term.

The sentence was appealed because Pollard's cooperation had been encouraged with a promise of leniency which was not granted by the court. (Judges are not obligated to follow recommendations of prosecutors.) In 1992, the U.S. Court of Appeals (on a 2-1 vote) upheld the sentence. Anne Henderson Pollard was released in 1989 after serving

¹ See Walter Pincus, "White House Canvassing on Release of Pollard," *Washington Post*, December 3, 1998, p. A37.

² Reprinted in the *New York Times*, June 5, 1986, p. B11.

two years and eight months. She and Jonathan were later divorced; Jonathan Pollard subsequently remarried while in prison. Pollard is incarcerated in the Federal Correctional Institution in Butner, N.C.

For some time the Israeli government denied responsibility for the espionage effort, arguing that it was a “rogue” intelligence effort by misguided officials,³ but in 1998 the Netanyahu government acknowledged that Pollard had been an Israeli agent, handled by high-ranking Israeli officials of the Bureau for Scientific Relations.⁴ Pollard was granted Israeli citizenship in February 1996, and Netanyahu, Barak, and other senior officials have regularly pressed Washington for his release from prison to enable him to live in Israel as an Israeli citizen.

Pollard could be released from prison through parole or presidential pardon. Reportedly, he has not applied for parole out of fear that it would not be granted and that he would not be eligible to reapply for several years.⁵ His supporters in the United States and in Israel have instead sought a presidential pardon. Under Article II, Section 2, Clause 1 of the Constitution, the President has the power to grant reprieves and pardons for federal offenses, except in cases of impeachment. The President’s pardon power is not subject to legislative control, nor may a court overrule or circumscribe a President’s decision. Further, no reason has to be given for granting a pardon.⁶ From 1980 through 1999, some 804 pardons have been granted and 51 sentences have been commuted, while a much larger number have been denied. Although Pollard’s supporters continued to lobby for clemency, Pollard was not included among those who were pardoned in the final days of the Clinton Administration. Media accounts do indicate that a planned mid-2000 move of Pollard from one section of the Butner facility to another that was perceived as more dangerous was cancelled at the request of the White House after protests by Jewish leaders in New York.⁷

Public Support and Opposition

After an intensive campaign by Pollard’s family, some American groups sympathetic to Israel have urged that his sentence be commuted. Reportedly, 1.5 million persons, mostly Americans and Israelis, have signed petitions urging his release and some 40 Members of the 105th Congress support clemency.⁸ Pollard’s supporters contend that the sentence was excessive and that he worked on behalf of an ally. The effort has at times been hindered by changing statements by Pollard and by shifting lawyers and spokesmen.

³ See Wolf Blitzer, *Territory of Lies: the Exclusive Story of Jonathan Jay Pollard: the American Who Spied on His Country for Israel and How He Was Betrayed* (New York: Harper & Row, 1989), pp. 198-200.

⁴ “Israel Now Admits Pollard Was Its Agent,” *New York Times*, May 12, 1998, p. A8.

⁵ Peter Perl, “The Spy Who’s Been Left in the Cold,” *Washington Post Magazine*, July 5, 1998, p. 27.

⁶ See P.L. Morgan, *Pardoning Power of the President*, CRS Report 95-1049A, October 19, 1995.

⁷ Elisabeth Bumiller, “Mrs. Clinton Intervenes on Spy’s Behalf,” *New York Times*, September 2, 2000, p. B5.

⁸ Perl, “The Spy Who’s Been Left in the Cold,” p. 24.

Opposition to Pollard’s release continues to be expressed by senior defense and Intelligence Community officials and by congressional leadership. According to a *New York Times* report,⁹ Director of Central Intelligence (DCI) George Tenet said he would resign should Pollard be released in response to Israeli pressure at the 1998 Wye Conference. Seven former Secretaries of Defense subsequently opposed a pardon as did senior congressional leaders. Four former Directors of Naval Intelligence – Pollard’s one-time superiors – argued in December 1998 that Pollard’s sentence was based fairly on his illegal activities, including offers to provide information to three countries other than Israel, and that a pardon of Pollard “would send a most damaging message to the loyal U.S. citizens who are entrusted with our national secrets, many of whom have emotional ties to other nations, but who, nonetheless, have taken seriously their oath to keep our national security information secret.”¹⁰

Middle East Consequences of Clemency

No Israeli political party has made clemency for Pollard a key issue in its political program. A majority of the Knesset members and many other Israelis support Pollard’s release, but, overall, clemency for Jonathan Pollard is not a high profile issue in Israel. If a President were to grant clemency to Pollard, it is possible that Arab commentators would seize upon the release as further evidence of a U.S. double standard that treats Israel more favorably than the Arabs. But it is unlikely that Pollard’s release would affect Arab relations with the United States or have a negative impact on the peace process.

A Pro-Con Discussion of Presidential Clemency

Following are arguments in favor of and opposed to presidential clemency for Jonathan Pollard. The arguments appear as they would be presented by advocates of the positions. The arguments are not presented in any particular order of importance.

In Favor of Clemency	Opposed to Clemency
<p>1. Releasing Jonathan Pollard will contribute to the peace process, because Israel requested that Pollard be released as a demonstration of U.S. intentions to meet its commitments as a peace process sponsor. In turn, the United States will ensure that the Palestinians meet their commitments. Only with such assurances will Israel be able to take the risks necessary to make peace a reality. Releasing Pollard will act to guarantee the success of the peace.</p>	<p>1. Pollard has nothing to do with the current Israeli-Palestinian peace process. Israeli Prime Minister Netanyahu introduced the Pollard issue at the last minute in the Wye discussions, perhaps in the belief that President Clinton would agree to the Pollard release to clinch the Wye agreement. U.S. efforts to maintain the integrity of its intelligence should not be compromised by such diplomatic extortion.</p>

⁹ James Risen and Steven Erlanger, “C.I.A. Chief Vowed to Quit If Clinton Freed Israeli Spy,” *New York Times*, November 11, 1998, p. A1. A Clinton Administration official subsequently indicated that Tenet had not actually threatened to resign; Knut Royce, “CIA Chief Didn’t Say He’d Quit, Official Says,” *Newsday*, November 12, 1998, p. A16.

¹⁰ W.O. Studeman *et al.*, “Release Pollard at the Nation’s Peril,” *Washington Post*, December 12, 1998, p. A23.

In Favor of Clemency	Opposed to Clemency
<p>2. Sixteen years have passed since the incident. The information Pollard passed to Israel or may still possess is out of date by now. There is no harm to the country if Pollard is released.</p>	<p>2. It is reported that Pollard has a photographic memory, and still retains knowledge of intelligence systems, methods, procedures, and craftsmanship that would be useful to outsiders. His interpretations of the material, the great bulk of which was not returned to the United States, could be of great benefit to outsiders. He continues to pose a threat to the United States, particularly if the final destination of the information he still possesses is unknown.</p>
<p>3. Pollard was helping an ally, not an enemy. The information Pollard provided to Israel was vital for Israel's defense against the Arabs, and was being denied Israel by U.S. intelligence officials. Israel was entitled to the information under the 1983 letter of understanding on security information. Without that information, Israel would have been the target of Arab weapons of mass destruction. The Israeli attack on the Iraqi nuclear facility and the discoveries made by the U.N. inspection team in Iraq prove that Israel needed the information to defend itself.</p>	<p>3. Laws that prohibit providing classified information to unauthorized persons do not distinguish between allies and enemies. If Pollard was so concerned about Israel, why did he offer to sell information to other countries? The United States systematically makes available to Israel information that is deemed necessary for Israel's defense. The decision on what material is to be made available to Israel does not rest with individuals like Pollard, who presume to know more than the President, the Secretaries of State and Defense, the Director of Central Intelligence, or other U.S. government officials who do decide what information should be given to Israel. The press has reported that Pollard's Israeli handlers requested specific information that went well beyond Israel's defense against the Arabs. Information provided by Pollard may have left Israel, either stolen or as a commodity traded for other considerations.</p>
<p>4. Pollard could be traded. Nations often trade spies, exchanging one captured spy for another or for other considerations. There are several possible exchanges: the United States would release Pollard, Egypt would release Azam Azam, an Israeli Druze accused of spying for Israel, and Israel would release many of the 2,000 to 3,000 Palestinians being held in Israeli jails for various crimes. Or, Israel might trade Pollard for Samuel Sheinbein, the young man held in Israel accused of murder in Maryland.</p>	<p>4. Nations exchange foreign spies they have captured for one of their citizens captured and incarcerated in a foreign country. Nations do not trade their own citizens for non-citizens or for people accused of criminal activities. The United States sought legal extradition of Sheinbein.</p>

In Favor of Clemency	Opposed to Clemency
<p>5. Israel gave Pollard citizenship in January 1996, and admitted that he was an agent of the Israeli government in May 1998. Pollard has admitted that he broke U.S. laws and spied for Israel, and has stated that he is sorry for what he has done. After 13 years in prison, Israel's recognition of its role, and Pollard's statement of remorse, it is time to send Pollard home to Israel.</p>	<p>5. Pollard was a U.S. citizen when he broke the law and violated his nation's trust. Israel's belated granting of citizenship does not change the nature of the crime or the damage it inflicted.</p>
<p>6. Jonathan Pollard agreed in a plea bargain that he would plead guilty and would cooperate in the investigation, providing the United States government did not give him a life sentence. Jonathan Pollard kept his part of the bargain; he cooperated fully in the investigation and waived his right to a jury trial. The United States reneged on its agreement based on an exaggerated damage assessment by Secretary of Defense Caspar Weinberger.</p>	<p>6. The federal prosecutor agreed not to request life but only a substantial number of years in prison; no specific number of years was mentioned. The prosecutor kept his bargain with Pollard. The judge decided on the life sentence after hearing of the enormous amount of damage caused by Pollard from the statements of the Secretary of Defense, the Director of Central Intelligence, and U.S. government officials. The life sentence was upheld by an appellate court.</p>
<p>7. Pollard has served 16 years, more than enough time for the so-called crime of helping a friend. Others caught passing information to friendly governments and allies serve between two and four years, on average. Many who have spied for enemies of the United States have not served as long as Pollard.</p>	<p>7. Pollard was eligible for parole after ten years, but he has never applied for parole. His sentence was based on the severity of damage he inflicted, the intelligence methods he revealed, the agents he betrayed and endangered.</p>