

## The First Word: The case for house arrest

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Eric Sherby, THE JERUSALEM POST

Oct. 5, 2006

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The case of Jonathan Pollard - the American Jew convicted in 1986 of spying on the United States for Israel - has been on the agenda of Jewish activists for two decades. Frustrated both by the failure of successive Israeli governments to do enough to obtain Pollard's release from federal prison and by the lack of priority given to the case by most major American Jewish organizations, Pollard's wife, friends and other supporters have enlisted an army of volunteer lawyers (in the US and in Israel) to petition the courts, successive American administrations and members of Congress for his release.

The conventional wisdom in the Free Pollard movement has been that, in the absence of favorable action by the courts, the focus of efforts should be on getting the president of the United States to pardon Pollard so that he can make aliya.

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Pollard's lawyers have made salient efforts to convince courts and politicians that there were procedural and substantive defects in Pollard's sentencing, and that these defects warrant his release from prison.

Despite the tremendous efforts expended by these pro-bono lawyers, they have two decades of failure to show for their efforts.

Why? Perhaps because they - and their client - are not aware of the lesson that lawyers sometimes have to learn from baseball - when you swing for a home run, you are more likely to strike out than when you swing for a single or a double.

In the Pollard case, the single or double would be getting his life imprisonment sentence reduced to house arrest.

House arrest is just what it sounds like. The prisoner is confined to his or her residence. If Pollard were to be placed under house arrest, he would presumably be allowed to have visitors, yet his telephonic communications would probably be constantly monitored. But he would be allowed to live with his wife, and to lead a far more normal life than anyone can in prison.

BECAUSE OF the alleged concern that Pollard still possesses classified information that could compromise the security of the United States, visitors to Pollard's arrest home would probably be searched and required to register each visit. But no one can question that house arrest would be a significant improvement over the conditions in which Pollard has been forced to live for years.

Many Pollard supporters would oppose house arrest. They would argue that it would be unjust for Pollard not to be freed unconditionally, and that agreeing to house arrest would be throwing in the towel on Pollard's hope of living as a free man in Israel.

Neither objection is justified.

JUSTICE IS not black and white, and "justice" need not even be a goal of the Free Pollard movement. Most of Pollard's supporters recognize that he violated US law - even though he believed that he was doing the right thing by giving Israel secret information regarding the military capabilities and plans of its enemies. Yet dispassionate Pollard supporters recognize that, even though the Israeli government made a terrible mistake by enlisting an American Jew to spy on its best friend, that error in judgment does not negate the fact that Pollard violated US law.

Recognition of the fact that US law was broken should make it easier to accept the notion that the "solution" to the Pollard problem need not include - and will not include - a mea culpa by the US government or judiciary. The US government will never acknowledge that the information Pollard gave to Israel should have been given to it directly by the US. It just won't happen.

In other words, in the quest to help Pollard, justice should take a back seat to an efficient and prompt end to his imprisonment.

House arrest would not necessarily be the end of Pollard's battle for permission to move to Israel. The primary reason that all of Pollard's legal battles have failed is that the American judiciary is relatively deferential toward the Defense Department and the intelligence community on issues of national security. With the passage of time, it should become increasingly clear that the secrets Pollard obtained in the mid-1980s are either no longer secret or are obsolete.

EVERY STUDENT of the Pollard case knows that his most respected enemy was Casper Weinberger, who served as secretary of defense under Ronald Reagan and was in office when Pollard was arrested and convicted. Weinberger submitted an infamous "damage assessment" memorandum to the sentencing judge which allegedly had a great impact on the court's decision to sentence Pollard to life imprisonment.

Weinberger died in March of this year. His death will not keep others from crying that Pollard must be kept in prison. However, the most "respected" member of the keep-Pollard-in-prison camp is no longer able to preach about the dangers of his being released.

But more important is the fact that none of Pollard's opponents would be able to make a convincing argument that house arrest would either compromise American interests or "send the wrong signal" to others who might consider committing espionage.

Another reason that now is the time to push for house arrest is the US presidential elections in 2008. It is important to bear in mind that the closest that any US president came to pardoning Pollard was Bill Clinton, near the end of his second term. Putting aside the reasons why Clinton did not actually pardon Pollard, it should be evident that no first-term president would have the political guts to pardon a convicted spy whom four prior presidents decided not to pardon. In less than two years, the United States will be deep in a presidential campaign with two non-incumbent candidates - which means that the next US president will be a first-term president. If history is any guideline, the first-term president elected in 2008 will not have the backbone to pardon Pollard. In other words, from a US presidential political perspective, if action is not taken on the Pollard case over the next two years, it is unlikely that action will be taken until after 2012.

JONATHAN POLLARD should not have to wait that long. What will it take to get him released from prison on house arrest? Three key ingredients: A change in tactics of the Free Pollard movement; pressure on the Bush administration; money to build and staff a facility for Pollard that would accommodate the security concerns of the US defense establishment.

It will not be easy to convince the Free Pollard movement to change its strategy. But if two decades of failure is not enough to demonstrate the need for change, then it is hard to imagine what is.

Several US congressmen and senators have gone on record calling for Pollard's release (whether through a pardon or otherwise). It is likely that the number of American politicians speaking out on Pollard's behalf would increase if the campaign were not one for executive clemency but one for reducing his sentence to house arrest.

If enough senators and congressmen support the house-arrest option, it is hard to imagine that the Bush administration would not be able to withstand pressure from the defense and security establishments. The fact that Bush is considered one of Weinberger's greatest admirers would make it difficult for anyone in the keep-Pollard-in-prison camp to argue that Bush is being soft on espionage by placing Pollard under house arrest.

Obviously it is impossible to gauge the ability to "sell" the idea of house arrest until and unless the Free Pollard movement decides to adopt that strategy. However, here is where the baseball analogy ends. In baseball, you know that the errors of the early innings might be remediable later in the game. But Jonathan Pollard is not getting any younger; no one knows how long he can survive in prison.

That fact - more than anything else - should motivate his supporters to change their legal and political strategy.

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