

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

FEB 13 1987

CLERK U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

JONATHAN JAY POLLARD,

CRIMINAL NO. 86-0207

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT JONATHAN J. POLLARD'S MOTION FOR PRODUCTION
OF EVIDENCE FAVORABLE TO THE ACCUSED

Defendant has pled guilty to a single violation of 18 U.S.C. § 793 and currently awaits sentencing by the Court on March 4, 1987.

The United States Government has submitted sentencing memoranda to the Court in aid of sentencing. These memoranda contain arguments which the Government contends justify the imposition of a substantial period of incarceration. The Government devotes one memorandum, which is highly classified, to a lengthy discussion of the damage to the national security allegedly caused by defendant's conduct.

Defendant currently is preparing a memorandum, which addresses the issues raised by the Government's memoranda. The Government, recognizing the need for defendant and counsel to have access to certain documents in order to prepare an effective defense, has permitted defendant and counsel to examine selected classified documents given by defendant to

representatives of the Israeli Government. Furthermore, counsel and the Government have negotiated and reached agreements concerning access to other documents relevant to the sentencing in this case. The Government has refused counsel's request,¹ however, to produce the following documents:

1. The classified sentencing memorandum submitted to the court in the case of United States v. Pelton; and

2. Documents relating to the detention and disposition of persons suspected of conducting espionage activities on behalf of the Government of Israel.

The Government has produced the unclassified sentencing memorandum filed by it in the Pelton case. Orally, the prosecutor has stated that the classified sentencing memorandum is irrelevant to this proceeding; that it should not be subjected to the burden of accumulating and producing information concerning the apprehension of other persons conducting espionage on behalf of Israel, when such cases are distinguishable from the present case by the amount of material passed to the Israeli Government. The Government's position has been further refined in its letter to counsel dated February 9, 1987 (Exhibit B).

¹ See letter of Richard A. Hibey, Esq. to Assistant United States Attorney, Charles Leeper, dated February 5, 1987, attached hereto as Exhibit A and Mr. Leeper's response thereto dated February 9, 1987, attached as Exhibit B.

Under the principles of Brady v. Maryland, 373 U.S. 83 (1963), the constitutional right to due process entitles defendant to all evidence favorable to him. In addition, this right to favorable evidence applies to evidence material to punishment as well as guilt. Id. Indeed, the need for favorable evidence is imperative in a case such as this, in which the defendant has pled guilty. See United States v. Fatico, 458 F. Supp. 368 (E.D.N.Y. 1978) (sentencing is the only critical stage of criminal proceedings for a defendant who has pled guilty).

The Classified Sentencing Memorandum in the Pelton Case

In its sentencing memorandum, the Government has stated the resultant damage from Mr. Pollard's conduct was no less egregious than that caused by a person conducting espionage on behalf of the Soviet Union. In the pre-sentencing report of the probation office, the victim impact statement quotes, inter alia, the view of the prosecutors that the damage to the national security is in the impairment of the ability of the United States to negotiate meaningful intelligence exchanges with Israel. The sentencing memorandum in the Pelton case will enable us to assess how it is that Mr. Pollard's conduct, albeit criminal, can be equated with the conduct, and more importantly, the degree of criminality assessed in the Pelton case. Counsel has no interest in learning the particulars of what Mr. Pelton turned over to the Soviet Union. Indeed, counsel are content

not to share that information at all with Mr. Pollard. What we are interested in is the manner in which the Government concluded in Pelton that his was a crime of such heinousness as to justify the sentence which he received. Presently, we can merely intuit that the analysis of the damage assessors in that case identified the documents and information compromised, analyzed the significance of that information, determined its importance to national security, described how that security was compromised, and projected the effects of that loss over a relevant period of time.

Here, we have seen none of that in the Government's analysis. Indeed, the bottom line of the victim impact statement in the pre-sentence investigation of the probation office is that the United States lost its negotiating ability with the Israelis, morale in Mr. Pollard's workplace suffered and, indeed, the workplace itself had to be closed for two weeks in order for an inventory of the loss to be conducted.² There is no denial that these are relevant factors for the Court to consider on the issue of Mr. Pollard's sentence. By the same token, their context, relative to espionage cases such as the Pelton case, must be properly placed before a just sentence can

² The Government also postulates a threat to our relations with our Middle East allies, but that is mere speculation with no verification of this as a fact, although 16 months has elapsed since the espionage was made public.

be imposed. Accordingly, we wish to review this information in order to present an appropriate argument in advance of the Court's sentencing. Because further elaboration of our position may result in the discussion of classified information, a closed hearing on this motion is respectfully requested.

Other Cases of Espionage for Israel

The Government's handling of other cases in which persons were suspected of conducting espionage activities on behalf of Israel are also germane to this action. According to an article in the New York Times dated July 11, 1986, attached hereto as Exhibit C, the Government had detained other individuals accused of spying for Israel prior to defendant's arrest, but chose not to prosecute those individuals for their crimes. On the basis of this article, counsel requested details of the incidents described in the article from the Government. The Government initially declined to conduct what it characterized as a "wide-ranging search of records which would be required to comply with [defendant's] request." The Government further responded that "its officers are unaware of any instances in which prosecution has been declined wherein reliable and admissible evidence had been obtained by law enforcement officers of the systematic, clandestine provision of U.S. classified information by an American citizen to Israel. Even

more significantly, these officials are unaware of any prior instance of espionage committed by a U.S. citizen on behalf of Israel in exchange for money."

Counsel since has discovered an additional article by the New York Times, dated December 22, 1985 and attached hereto as Exhibit D, which states that "the F.B.I. knew of at least a dozen incidents in which American officials transferred classified information to the Israelis," yet the Justice Department did not prosecute any of the officials. The article, if true, would strongly suggest that it was the established policy of the Department of Justice not to prosecute U.S. citizens for espionage activities on behalf of Israel, even though, according to the same article, the Israeli intelligence service was the most active in the United States, second only to the Soviets. See Exhibit D at p.7. Specifically, the decision by the Government to forego prosecution of such individuals necessarily is based upon factors which may well have relevance to the case of Mr. Pollard. Indeed, in the absence of knowing specifically what those factors are, one can only speculate that they might include the very basic presumption that the damage from providing the classified information to Israel is far less severe than if the information were passed to the Soviets.

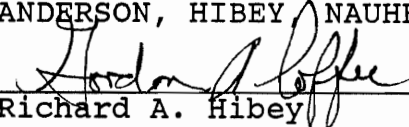
A heavy cloak of secrecy surrounds every aspect of the classified information in this case. That is as it should be. Counsel enjoy clearances that will entitle them to review classified information at very high levels. We are prepared to

undertake further obligations and instructions relative to our use of any information which comes under this discovery request. Our only purpose is to evaluate it for whatever possible use can be made of it with this Court. Therefore, defendant reiterates his request for a closed oral hearing to present further arguments to support this motion which may involve the disclosure of classified information. Given the pending sentencing date of March 4, 1987, the hearing is requested on an expedited basis (but in no event on February 16 or 18, 1987).

Respectfully Submitted,

ANDERSON, HIBEY, NAUHEIM & BLAIR

By:


Richard A. Hibey
Gordon A. Coffee
Anderson, Hibey, Nauheim & Blair
1708 New Hampshire Avenue, NW
Washington, DC 20009

Attorneys for defendant Jonathan J. Pollard

Dated: February 13, 1987

ANDERSON, HIBEY, NAUHEIM & BLAIR

1708 NEW HAMPSHIRE AVENUE, N. W.

WASHINGTON, D. C. 20009

(202) 483-1900

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
ATTORNEY'S DIRECT DIAL NUMBER

TELEX: 248929
AHNB UR
TELECOPIER: (202) 483-7462

February 5, 1987

BY HAND

Charles Leeper, Esquire
United States Attorney's Office
Judiciary Center
555 4th Street, NW
Room 5800
Washington, DC 20001

Re: United States v. Pollard, Criminal No. 86-0207

Dear Mr. Leeper:

This letter is to request the following information which, if it exists, should be produced under the Brady Doctrine:

1. The damage assessment in the Pelton case.
2. Any cases of American citizens illegally providing classified information to Israel and their disposition.

The Pelton damage assessment is relevant for us to analyze, on a comparative basis, the damage to the national security incurred in each case. We feel it is not fair for the judge to decide this case within parameters fixed by the Government. Espionage imports a traditional meaning of heinousness and the utmost severity. We do not believe that is an appropriate connotation for this case. A way to demonstrate this fundamental proposition is to have the Court compare "damage", allow us to analyze the methodology by which the respective injuries are assessed, and for us to argue a context of harm to the national security that is far different than what the Government has advanced in this case.

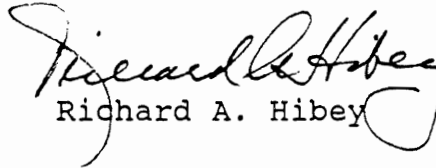
Charles Leeper, Esquire
February 5, 1987
Page 2

With respect to other cases of Americans providing information to Israel, your attention is directed to the enclosed article which appeared in the New York Times on July 10, 1986. This article states that, according to former Justice Department officials, other cases of espionage for the benefit of Israel by Americans have been treated differently than this. Information concerning these cases and their disposition contain evidence favorable to the accused if, indeed, episodes transpired as reported.

I would appreciate an immediate response to this letter so as to enable us to go to the Court in the event of the Government's refusal to grant our requests.

Thank you for your consideration in this matter.

Sincerely,


Richard A. Hibey

RAH/kom
Enclosure

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July 11, 1986, Friday, Late City Final Edition

SECTION: Section A; Page 12, Column 4; National Desk

LENGTH: 869 words

HEADLINE: New Tack on Cases Against Israel?

BYLINE: By STEPHEN ENGELBERG

DATELINE: WASHINGTON, July 10

BODY:

There was once a time when allegations that the Israeli Government had violated American law were handled with an eye to preserving the close relationship between the United States and Israel.

Suspicious of misconduct by Israel typically did not end up in front of grand juries but were resolved quietly through talks between diplomats.

Matters are somewhat different now. In the last year, the Israelis have been the subject of a series of well-publicized investigations involving allegations of espionage and illegal export of American technology.

At no time in the history of the state of Israel have the United States authorities been investigating more visibly embarrassing cases involving charges of crimes by the Israeli government or its representatives.

Senior Administration officials deny that this sudden spurt of cases reflects a change in policy toward Israel. Some observers contend, however, that the investigations are a sign that the White House has failed to maintain discipline over the Government's law-enforcement agencies. Pro-Israel lobbyists are privately asking whether mid-level officials in the Justice Department or United States Customs Service have been disclosing the investigations as part of an unauthorized vendetta against Israel.

Whatever the case, the relationship between Israel and the United States does appear to be moving in several different directions at once.

On Sunday, for instance, the chairman of the Joint Chiefs of Staff, Admiral William J. Crowe Jr., was at the Israeli Embassy for a ceremony honoring the departing military attache. Just a few days later, Administration officials disclosed that the Customs Service and the Justice Department were investigating a possible plan for illegally exporting equipment used in making cluster weapons.

In a statement that suggested a longing for the days when such cases were handled through diplomatic channels, the former Israeli chief of staff, Rafael Eitan, said, "If there was any substance to these allegations, the Americans could have approached us quietly and discreetly and clarified matters."

(c) 1986 The New York Times, July 11, 1986

The Israelis were particularly angry that the case had been disclosed to the news media by unnamed officials before they were notified of its existence.

Another case involving the possible illegal export of technology for tank cannon barrels broke last December, and in that instance camera crews from "The NBC Evening News" accompanied the Customs Service agents as they executed search warrants in upstate New York.

Steven Green, who has written critically of the Israeli-American military relationship, said that he was finding increasing numbers of middle-level officials in Washington who were willing to discuss what they believe is a pattern of Israeli misconduct. "I find that people are more and more frequently willing to be cooperative to find informal channels to get the word out," Mr. Green said. "It's from a feeling of frustration."

Supporters of Israel contend that this willingness to disclose information about investigations of the Israelis springs largely from lower-level officials. At the highest levels, they contend, the Reagan Administration remains a staunch supporter of Israel.

"There has never been a period with this much friendliness and trust," said Hymen Bookbinder, the Washington representative of the American Jewish Committee. "This is an unprecedented period of friendship and there are a few people who don't like this."

An official Israeli statement on Wednesday, however, suggested that the raising of the cluster weapon case caused "serious astonishments" that could "overcloud the good relations prevailing between the U.S. and Israel."

The most prominent of the cases related to Israel involved Jonathan Jay Pollard, the former Navy analyst who recently pleaded guilty to spying for Israel. Former Justice Department officials say they know of previous instances in which cases of Israeli spying in the United States were handled without criminal proceedings. But Mr. Pollard's behavior immediately before his arrest - a dash into the Israeli Embassy with F.B.I. agents trailing him - made it impossible to dispose of the incident quietly. Additionally, the Justice Department has taken a hard-line stand against all espionage, and was loathe to avert its eyes from Mr. Pollard just because he was working for the Israelis.

The situation worsened when Justice Department officials concluded they had been misled by the Israelis about the number of people involved in the case. "That whole thing left an extremely bad taste in people's mouths," said one official familiar with the case.

Mr. Pollard is now cooperating with the investigation and a grand jury in Washington, D.C., is continuing to investigate.

Customs officials and the Justice Department have been looking into allegations that American companies shipped technology for tank cannon barrels to Israel in violation of export laws. That case is still under investigation. Finally, a grand jury last year indicted a California businessman, Richard Kelly Smyth, on charges of illegally exporting to Israel 800 devices of the type used to trigger nuclear explosions.

(c) 1986 The New York Times, July 11, 1986

GRAPHIC: Photo of Raphael Eitan (IPPA)

SUBJECT: UNITED STATES INTERNATIONAL RELATIONS; ESPIONAGE; SCIENCE AND TECHNOLOGY

NAME: ENGELBERG, STEPHEN

GEOGRAPHIC: ISRAEL, STATE OF

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U.S. Department of Justice

United States Attorney

District of Columbia

Judiciary Center Operations

555 Fourth St. N.W.

Washington, D.C. 20001

February 9, 1987

Richard A. Hibey, Esquire
1708 New Hampshire Ave., N.W.
Washington, D.C. 20009

Re: United States v. Jonathan Pollard

BY HAND

Dear Mr. Hibey:

I am writing in response to your February 5, 1987 letter request for information which you describe as:

- "1. The damage assessment in the Pelton case.
2. Any cases of American citizens illegally providing classified information to Israel and their disposition."

You assert that you are entitled to discovery of this information because it constitutes Brady material. I will address each of your requests in turn.

1. Pelton Damage Assessment

In our view, there is no reason to believe that the damage assessment analysis of the classified information compromised in Pelton, a TOP SECRET, compartmentalized document which you are not cleared to access, contains any information which is materially favorable to your client. I have already provided to you a copy of the unclassified version of the government's sentencing memorandum filed in Pelton. The facts contained in that memorandum, as well as the evidence adduced in the trial of the case, demonstrate that there is no rational relation between the classified information compromised in Pelton and that compromised by defendant here.

Following his retirement from the National Security Agency in July, 1979, Ronald Pelton disclosed to agents of the Soviet Union oral information relating to a U.S. signals collection project operating to intercept a particular Soviet communications link.

Pelton disclosed no classified documents to the Soviet Union. Rather, he met with Soviet agents on approximately nine occasions over a five year period and related what information he could recall about the classified project he had worked on in 1979. In exchange for this classified information, Pelton was paid approximately \$37,000 by his Soviet handlers. After Pelton was convicted, he agreed to cooperate with government officials by submitting to lengthy debriefing interviews and polygraph examinations through which the above-described information was confirmed. Notwithstanding his cooperation, Pelton was sentenced to life imprisonment.

While Pelton's unlawful activities seriously damaged a particular U.S. intelligence gathering project, it does not follow that your client's conduct compares favorably with that of Pelton. Mr. Pollard routinely compromised thousands of U.S. classified documents while Pelton's oral disclosures were episodic and based on his memory which continued to diminish over a period of five years. Pelton compromised a single U.S. project and damaged the U.S. position relative to the Soviet Union; Mr. Pollard compromised a breadth of classified information unprecedented in espionage cases and adversely affected U.S. interests vis a vis numerous countries including, potentially, the Soviet Union. Finally, the amount of money for which Mr. Pollard sold U.S. secrets exceeded that received by Pelton in exchange for his disclosures.

The nature and volume of the classified information compromised in these cases varies so substantially that no basis exists for a comparison of the respective damage assessments. In short, it is our view that Brady does not require the production of information, particularly a highly classified damage assessment, on the naked assertion that the document might, possibly contain evidence favorable to your client.

Finally, it is inaccurate for you to suggest in your letter that we are asking the Court to make a decision on the evidence in this case "within parameters fixed by the Government." To the extent that any "parameters" exist in this case, they are established only by the scope of the thousands of pages of TOP SECRET and SCI information compromised by your client.

2. Information Re: Other U.S. Citizens Suspected of Israeli Espionage

Initially, we take exception to the contention in your letter that the alleged, non-criminal disposition of other, unrelated cases could somehow constitute materially favorable evidence as to a defendant who through a plea of guilty has acknowledged his long-term, systematic espionage activities conducted in exchange for financial reward. Your letter provides no authority or explanation which would warrant any search of government files for such information. Moreover, your letter does not even request information relating to any specific case, but rather seeks production of all

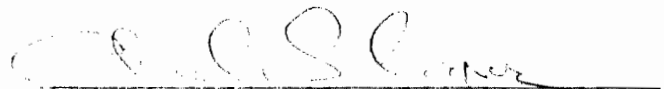
such case dispositions regardless of how long ago the events occurred, the nature and classification level of information allegedly disclosed, or whether the allegations were sufficiently reliable to even warrant criminal investigation. In view of the foregoing, we respectfully decline to conduct the wide-ranging search of records which would be required to comply with your request.

We do, however, want to take this opportunity to rebut the suggestion which, you contend, is implied by the New York Times article accompanying your letter, i.e., that Department of Justice officials have failed to pursue vigorously investigations of espionage activity of the nature engaged in by your client. I have inquired of senior officials of the Internal Security Section of the United States Department of Justice which section has responsibility for the supervision of all investigations and prosecutions of violations of the espionage laws. The collective experience of these officials encompasses all such investigations and prosecutions conducted for more than a decade. I am informed by these officials that they are aware of no instances in which prosecution was declined wherein reliable and admissible evidence had been obtained by law enforcement officers of the systematic, clandestine provision of U.S. classified information by an American citizen to Israel. Even more significantly, these officials are unaware of any prior instance of espionage committed by a U.S. citizen on behalf of Israel in exchange for money.

Should you decide to present your requests for information to the Court for disposition, we would be available to appear before Chief Judge Robinson at his earliest convenience. However, we ask that, prior to seeking a hearing on the matter, you either file a motion for production to which we can respond, or make copies of your letter request and this response available to the Court so that Judge Robinson can determine whether a hearing on the matter is necessary.

Sincerely,

JOSEPH E. DIGENOVA
United States Attorney


CHARLES S. LEEPER
Assistant United States Attorney

CSL:bb

cc: James F. Hibey

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December 22, 1985, Sunday, Late City Final Edition
Correction Appended

SECTION: Section 1; Part 1, Page 1, Column 2; Foreign Desk

LENGTH: 3122 words

HEADLINE: CLOSE U.S.-ISRAEL RELATIONSHIP MAKES KEEPING SECRETS HARD

BYLINE: By DAVID K. SHIPLER; Reporting by Stephen Engelberg, Leslie H. Gelb and Jeff Gerth contributed to this article., Special to the New York Times

DATELINE: WASHINGTON, Dec. 21

BODY:

The relationship between Israel and the United States has become so intimate that many American officials are convinced of Israel's ability, on a routine basis, to obtain sensitive information about this country's secret weapons, advanced technology and internal policy deliberations in Washington.

Israeli diplomats and leaders sometimes react to intelligence reports and policy shifts before they are even complete, the officials say. Israeli procurement officers know the stock numbers and specifications of new and advanced weapons and components that have not even been delivered to United States armed forces, according to a well-placed officer.

For the most part, the close ties have been created deliberately by the United States as a function of the long years of American military, economic and moral support for Israel's survival. And in many respects, the military and intelligence relations resemble those between the United States and such other traditionally friendly nations as Britain, Australia and Canada.

But interviews with dozens of present and former officials with experience in the White House, the Pentagon, the State Department, the Central Intelligence Agency, the Federal Bureau of Investigation and other agencies also reveal a quiet concern among some over how porous the separation between the Governments has grown.

The latest debates over the relationship have been fostered by the arrest last month of Jonathan Jay Pollard, a civilian analyst for the United States Navy charged with selling classified documents to Israel. The papers reportedly contained intelligence information on Arab countries and Soviet weaponry that the Israelis were not able to get through normal channels.

In addition, Israeli officials say the documents showed that the United States was spying on Israel.

Many See Nothing Sinister

Many officials believe that there is nothing sinister in the kind of informal ties that exist between some Israelis and Americans, and that Israeli security benefits United States interests. Some point out that the United States gets

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intelligence information from Israel, often illicitly as well as formally.

"By using exactly the same techniques in Israel as the Israelis use, we learn as many secrets in Israel as they learn," said a former official. In addition, formal, authorized exchanges have gone on for years.

The officials disagree about the value of such information, however. Some say it has been most useful when Israel has provided captured Soviet-made military equipment, and when it comes from a country such as Iran, where the Israelis continue to have contacts. Israel has also provided information on Pakistan's nuclear weapons development, officials said. But policy makers and intelligence officials have found broad intelligence assessments from Israel biased and, in one official's words, "highly tinged" to advance Israeli policy.

In the Pollard affair, Prime Minister Shimon Peres of Israel issued an apology, returned the documents and produced Israeli officials for questioning by a United States team of investigators that completed its work this week. But the case has focused attention on the Israeli-American relationship and has released some anger long pent up by officials who have resented what they perceive as Israel's strong political influence in Washington.

Information Flows On Several Paths Israel appears to obtain information on several tracks. One is espionage, reportedly conducted in the United States since the late 1940's. Another involves personal contacts with officials who feel strongly that Israeli interests should be supported. A third is through authorized channels of intelligence-sharing and strategic cooperation, which have been enhanced under the Reagan Administration.

Although many officials welcome the intricacy of the relationship as beneficial to the strategic position of the United States in the Middle East, others worry about the seepage of privileged information to the Israelis. Over the years, these officials have taken silent steps to transfer those under suspicion or to cut them out of Middle East affairs.

"There is one guy - I won't talk if he's in the room," an Administration official said. "I won't say anything."

For other American officials, however, personal friendships with Israelis often seem to help their careers.

"There is a breadth and depth to the relationship that didn't exist five years ago," said one American who works as a pro-Israel lobbyist. "An infrastructure has been built between the two armed forces, the two defense bureaucracies, the political-military types at State. People have careers invested in it. The President wants it, the Secretary of State wants it. That's what makes this town work."

Although the Pollard case is the only one to have been prosecuted, it is not the only example of Israeli spying to have come to the attention of law enforcement officials.

"They certainly have operated here before," said Raymond W. Wannal Jr., a former Assistant Director of the F.B.I. who served on the bureau's Middle East desk from 1947 to 1953. "When they first set up their state, they were very efficient. They set up a pretty good network in this country,"

(c) 1985 The New York Times, December 22, 1985

After gaining independence in 1948, he said, Israel ran surreptitious operations in the United States with a four-member commission that included an American citizen, two Israeli diplomats and an Israeli troubleshooter who traveled frequently to this country.

The F.B.I. knew of at least a dozen incidents in which American officials transferred classified information to the Israelis, Mr. Wannal said. The Justice Department did not prosecute.

Some Officials Are Not Astonished "When the Pollard case broke, the general media and public perception was that this was the first time this had ever happened," said John Davitt, former chief of the Justice Department's internal security section. "No, that's not true at all. The Israeli intelligence service, when I was in the Justice Department, was the second most active in the United States, to the Soviets."

Mr. Davitt, who left the Justice Department in 1980 after 30 years, said most of the Israeli activity was aimed at gathering information on Arab countries. But, he added, "there were instances in which we were targeted."

"They would approach someone in our Government and in our defense industries and seek to obtain classified information," he said.

In 1979, the C.I.A. reported in a study that Israeli intelligence agencies were engaged in the "collection of information on secret U.S. policy or decisions, if any, concerning Israel" and "collection of scientific intelligence in the U.S. and other developed countries."

Other officials were also less than astonished by the Pollard case. "I'm not very surprised this happened," said Richard V. Allen, a former national security advisor to President Reagan. "The relationship between the U.S. and Israel has never been so completely candid and deep as to preclude the possibility of this happening."

The Israeli espionage efforts appear to spring from a dual sense of uncertainty about American friendship and dependence on American aid, which reached \$3.75 billion this year. It is the most assistance given to any country by the United States. Yet Israelis often say that Washington's support has limits, that the United States would not come to Israel's rescue militarily in a war of survival and that, in a crisis, Israel must rely only on itself.

In Mr. Allen's view, the Pollard case was an "aberration" that "went over the boundaries of accepted behavior." But he added: "I have to assume that all friendly or allied nations are on the make for whatever information they can get. The boundary line has to be respected by both sides, and it may not always be explicit."

That inexplicit boundary has been a problem for some American officials, especially those with social, business and ideological ties to the Israelis.

One former White House employee with friends in the Israeli military and Government drew the line at documents, saying that conveying information verbally was often the stuff of diplomacy but providing a document was taboo, except through authorized channels of exchange.

(c) 1985 The New York Times, December 22, 1985

"Diplomats and intelligence officers barter information," said a diplomat. "That's the way they get information. That's what the game is all about."

Furthermore, he and others observed, respect for the sanctity of classified information had been eroded by the Government's tendency to classify practically everything. "We know everything is overclassified," the diplomat said. "You have to have an inner rudder to tell you when you've gone beyond the national interest."

Not everyone appears to have such an inner rudder.

A former National Security Council official told of suspected violations by a C.I.A. watch officer in the White House situation room. The man expressed unusual interest in Middle East affairs, the former official said, adding that his co-workers noticed that he came in on weekends, asked about cable traffic regarding the Middle East and looked at materials he had no need to see.

The former official recalled that an Israeli Cabinet minister once inquired about a White House policy strategy that had been closely held, and suspicions were raised that the C.I.A. officer had conveyed privileged information.

One day the President was talking on the telephone with a Middle East head of state. As is customary, the official was monitoring the conversation on a speaker phone. The C.I.A. officer hung around, trying to listen, the former official said. Finally, he motioned the C.I.A. man out of the room and closed the door. Then he got the man transferred out of the White House to a non-sensitive job, and what the official called "resonances" from the Israelis about American policy stopped.

In another incident, a small study group was assessing the military balance in the Middle East after the 1973 war. It included officials from the C.I.A., the National Security Agency, the Defense Intelligence Agency and the intelligence and research section of the State Department. As drafts of the report were being prepared, Israeli officials were contacting Americans in the C.I.A., the State Department and the Pentagon to complain about specific sentences and paragraphs, according to a senior official involved. "The drafts were getting to the Israelis as fast as they were getting to the top of the C.I.A.," he recalled.

Although he suspected one official, he did nothing, the senior official said.

In 1965, a small nuclear processing plant in Apollo, Pa., the Nuclear Materials and Equipment Corporation, was unable to account to the Government for 381.6 pounds of highly enriched uranium, enough to serve as raw material for 10 nuclear bombs.

Zalman A. Shapiro, the founder and first president of the firm, repeatedly maintained that the uranium had been lost naturally during processing. But Federal documents showed that the F.B.I. was investigating the possibility that it had been transferred to Israel. The investigation was inconclusive. A list of the F.B.I. files on Mr. Shapiro, obtained recently, shows reports on his activities from 1949 to 1953 and from 1967 to 1974. One man listed as a contact of Mr. Shapiro was Avraham Hermoni, a former science attache at the Israeli Embassy in Washington.

(c) 1985 The New York Times, December 22, 1985

A Case Said to Leave 'Unanswered Questions'

On March 9, 1978, Steven D. Bryen, an aide to the Senate Foreign Relations Committee, had breakfast with Israeli officials at the Madison Hotel in Washington. Seated nearby was Michael Saba, a former executive director of the National Association of Arab-Americans.

Mr. Saba said in a sworn affidavit that he heard Mr. Bryen tell the Israelis: "I have the Pentagon document on bases, which you are welcome to see."

Mr. Bryen has emphatically denied making such an offer, saying Mr. Saba "heard what he thought he heard because he wanted to hear it" and criticizing investigators for never questioning the Israelis who had been present. A two-year investigation by F.B.I. agents, which looked into the possibility of espionage charges, failed to find proof that Mr. Bryen had passed classified information to the Israelis. The case was dropped with the approval of senior Justice Department officials.

According to Justice Department documents recently released under a Freedom of Information lawsuit by the National Association of Arab-Americans, the agents did conclude that Mr. Bryen had a close relationship with Zvi Rafiah, who was responsible for Congressional liaison at the Israeli Embassy. Mr. Bryen called that relationship "all aboveboard and proper," and said, "I got a lot of information off him for the committee."

A Justice Department memorandum reviewing the case, written in December 1981, said:

"Although there are a number of unanswered questions regarding Mr. Bryen's relationship with officials of the Israeli Government, and in particular his efforts to obtain sensitive information for which he had no apparent legitimate need but which would have been of inestimable value to the Israelis, it appeared that the Department exhausted all leads and that additional investigations would not resolve these questions."

Mr. Davitt, then chief of the Justice Department's internal security section, said the prosecutors handling the case wanted to bring it before a grand jury. The suggestion was rejected by Philip B. Heymann, who headed the Justice Department's criminal division at the time. Mr. Davitt called it an "honest difference of opinion."

In the Reagan Administration, Mr. Bryen became a Deputy Assistant Secretary of Defense overseeing transfers of technology to foreign countries.

Mr. Davitt said he disagreed with the decision to award Mr. Bryen a top-secret security clearance, which was recommended by the Defense Department's Security Division.

"I find it difficult to understand how anyone reading the file could conclude, 'Well, this matter was investigated and he was given a clean bill of health and all the allegations were resolved in his favor,'" Mr. Davitt said. He explained that even without sufficient evidence for prosecution, a security clearance could reasonably be denied.

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"When you're looking at an individual who will have access to sensitive information," Mr. Davitt said, "you should sin on the side of being overly cautious."

"I think he's wrong," Mr. Bryen countered. "I believe in justice in the old-fashioned sense. Either you're guilty of something or you're innocent. There is no reason I shou

~~CORRECTION-DATE: December 25, 1985, Wednesday, Late City Final Edition December 23, 1985, Monday, Late City Final Edition~~

~~CORRECTION:~~

~~A history of unexpected snowstorms in Science Times yesterday incorrectly recalled the political fate of Mayor John V. Lindsay after he drew criticism for slow snow removal in the winter of 1969. He lost the Republican primary in June 1969 but was re-elected. He should not have a clearance. This kind of guilt by suspicion is an outrage.~~

The example of Mr. Bryen illustrates the complexities of friendships and associations entered by some officials who support Israel. In his financial disclosure statement filed when he took office in 1981, Mr. Bryen listed his most recent major source of income as the American-Israel Public Affairs Committee, the pro-Israel lobby that has a staff of 82 and a national membership.

In addition, Mr. Bryen's wife Shoshana directs the Jewish Institute for National Security Affairs, a group of prominent Americans "committed to explaining the link between U.S. national security and Israel's security, and assessing what we can and must do to strengthen both," in the words of the institute's newsletter.

Officials and former officials describe a schizophrenic attitude in the Government toward Israel that has transcended administrations. They say Israel and its American supporters have considerable political influence. On the other hand, that influence antagonizes the middle-level military officers, intelligence officials and civilians who represent the bureaucracy's long institutional memory.

A former Pentagon official described a scene he said was typical: An Israeli colonel, a military attache, has a Pentagon pass, as do attaches from other friendly countries. He goes into an intelligence office at night and asks the captain or major on duty for some urgent information. The junior officer hesitates, saying such data is not included in guidelines of material to be released. The Israeli colonel presses, hinting that he may have to call his ambassador. The American, caught between two risks, may decide either way, the official said, but a resentment smolders.

The military's annoyance at Israel has other roots as well, including remaining anger over the Israeli sinking of the U.S.S. Liberty, an American spy ship in the Mediterranean during the 1967 war. Thirty-four men were lost in what Israel maintains was an accident.

Israel's continuing ability to get military equipment right off the assembly lines, even when it is needed by United States forces, has also generated resentment. One American officer recalled dealing with one of the Israelis

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involved in the Pollard case - Yosef Yagor, who was listed as a science attache but was known to the American as a procurement officer based in the Israeli Consulate in New York. "He had the exact numbers of sophisticated types of weapons that nobody was supposed to know existed," the officer said. The Israeli requests are routinely denied by the military, he added, only to be granted at the higher political levels of the Defense Department. A Danger Is Seen Of Anti-Jewish Feeling Some officials see a danger that anti-Jewish sentiment lurks behind an effort to plug leaks to Israel. Though some Jewish officials feel comfortable dealing with the Middle East, others and some non-Jewish officials say they believe Jews who work on Middle East affairs do so under a cloud, the objects of vague and unjust suspicion.

"I think there's probably some truth to that," said Richard N. Perle, Assistant Secretary of Defense for International Security Policy and a strong friend of Israel. "I don't work on Middle East affairs, and I'm happy I don't."

A former White House official who is Jewish and a Middle East specialist declared: "I will never go back to government. You are under a spotlight."

According to former officials, the C.I.A. kept Jews out of Middle East affairs until 1973, when William E. Colby became Director and made the agency more open to minorities. A State Department official said that 15 or 20 years ago, Jewish diplomats were usually not sent to the Embassy in Tel Aviv, just as Italian-Americans were not sent to Rome.

As these restrictions have broken down, Jews have moved into responsible positions. "I am Jewish," one official said. "I don't feel pressure. I never get pressure from the Israeli Embassy either, which is testimony to their smartness."

A dispatch from Washington on Sunday about the ability of Israel to obtain sensitive information about American weapons, technology and policy incorrectly stated the damage caused by an Israeli air and sea attack in 1967 on the Liberty, an American spy ship in the Mediterranean. The ship was badly damaged but was able to reach port in Malta.

GRAPHIC: Photo of Jonathan Jay Pollard being taken from a hearing last month at U.S. District Court in Washington (UPI)

SUBJECT: UNITED STATES INTERNATIONAL RELATIONS; UNITED STATES ARMAMENT AND DEFENSE; ESPIONAGE; NATIONAL SECURITY; ARMAMENT, DEFENSE AND MILITARY FORCES

NAME: SHIPLER, DAVID K

GEOGRAPHIC: ISRAEL, STATE OF

New Tack on Cases Against Israel?

By STEPHEN ENGELBERG
Special to The New York Times

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WASHINGTON, July 10 — There was once a time when allegations that the Israeli Government had violated American law were handled with an eye to preserving the close relationship between the United States and Israel.

Suspicious of misconduct by Israel typically did not end up in front of grand juries but were resolved quietly through talks between diplomats.

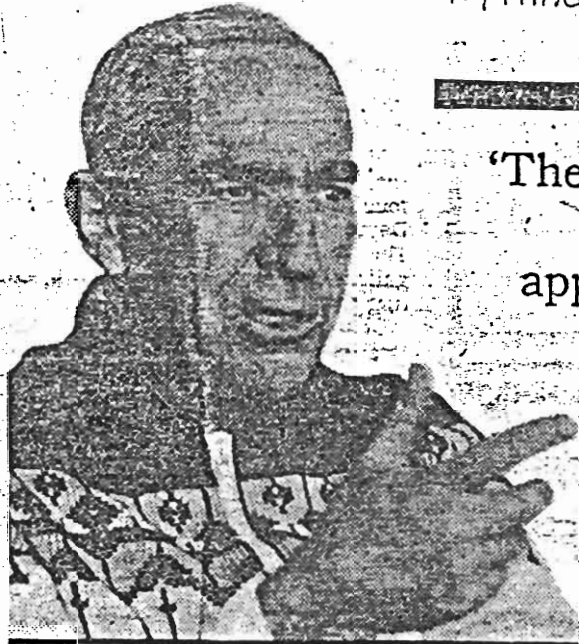
Matters are somewhat different now. In the last year, the Israelis have been the subject of a series of well-publicized investigations involving allegations of espionage and illegal export of American technology.

At no time in the history of the state of Israel have the United States authorities been investigating more visibly embarrassing cases involving charges of crimes by the Israeli government or its representatives.

Senior Administration officials deny that this sudden spurt of cases reflects a change in policy toward Israel. Some observers contend, however, that the investigations are a sign that the White House has failed to maintain discipline over the Government's law-enforcement agencies. Pro-Israel lobbyists are privately asking whether mid-level officials in the Justice Department or United States Customs Service have been disclosing the investigations as part of an unauthorized vendetta against Israel.

Whatever the case, the relationship between Israel and the United States does appear to be moving in several different directions at once.

On Sunday, for instance, the chairman of the Joint Chiefs of Staff, Admiral William J. Crowe Jr., was at the Israeli Embassy for a ceremony



**'The Americans
could have
approached us
quietly...'**

*Raphaël Eitan,
former Israeli
chief of staff*

proached us quietly and discreetly and clarified matters."

The Israelis were particularly angry that the case had been disclosed to the news media by unnamed officials before they were notified of its existence.

Another case involving the possible illegal export of technology for tank cannon barrels broke last December, and in that instance camera crews from "The NBC Evening News" accompanied the Customs Service agents as they executed search warrants in upstate New York.

Steven Green, who has written critically of the Israeli-American military relationship, said that he

contend, the Reagan Administration remains a staunch supporter of Israel.

"There has never been a period with this much friendliness and trust," said Hymen Bookbinder, the Washington representative of the American Jewish Committee. "This is an unprecedented period of friendship and there are a few people who don't like this."

An official Israeli statement on Wednesday, however, suggested that the raising of the cluster weapon case caused "serious astonishments" that could "overcloud the good relations prevailing between the U.S. and Israel."

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