

FILED

MAR 3 1987

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CLERK, U. S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
v.)
)
JONATHAN J. POLLARD)
)

Criminal No. 86-0207

DEFENDANT JONATHAN J. POLLARD'S RESPONSE TO THE
GOVERNMENT'S REPLY MEMORANDUM IN AID OF SENTENCING

I. Introduction

Defendant Jonathan J. Pollard, by counsel, responds herein to the Government's Reply Memorandum in Aid of Sentencing.

In the usual case, the comments of the parties with respect to the sentencing memorandum submitted to the Court are reserved for the sentencing proceeding itself. In this case, where classified information is inextricably involved in the issues which attend sentencing, responsive pleadings, albeit last-minute in their submission, appear to be an appropriate way to proceed.

Defendant wishes to address five points relative to the Government's Reply Memorandum:

1. The Government expresses a horrified realization that Mr. Pollard envisions a political solution to his legal problems.

2. Mr. Pollard's ill-advised interviews with Wolf Blitzer, while yielding grist for the Government's allocution, did not result in the disclosure of classified information.

3. Mr. Pollard's polygraph examination on the issue of ideology versus money, as a motivation for the commission of the crime, instead of being clarified, has been hopelessly confused by the Government.

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4. The Government repeats its failure to demonstrate that Mr. Pollard's conduct has harmed the national security.

5. The Government's appraisal of the extent and value of Mr. Pollard's cooperation is inconsistent with the truth of the situation and is itself motivated out of a desire to see that Mr. Pollard receive the maximum sentence.

II. The Political Solution

The Government has relished in citing the articles of Wolf Blitzer, who interviewed Mr. Pollard and reported a number of statements relative to his fears and desires in this case. In doing so, it treats Mr. Pollard's hope for a political solution to his problems as if it were just discovered. Mr. Pollard has made no secret of the fact from the outset, and has been consistent in his statements to his interrogators as well as to this Court, that he understood that he must be accountable to the law for his conduct; yet, it does not detract from his desire to see the vengeance of the law tempered by any merciful solution, including a political one. Indeed, there was a brief time during this case when another lawyer, purporting to speak for Mr. Pollard, suggested that Mr. Pollard's sentence be the stripping of his U.S. citizenship and his deportation to Israel. Mr. Pollard flatly rejected that unauthorized statement, making it very clear that he understood that he must be accountable to the law for his conduct. A copy of an article reporting his statement is attached hereto as Exhibit A.

Mr. Pollard does not recede from his desire one day to return to Israel. In candor, such a desire might seem at odds with the fact that he is to be sentenced for the crime of espionage. It is his desire, nevertheless, and it obviously reflects the hope that this Court will be merciful in the imposition of its sentence.

III. Disclosure of Classified Information in the Blitzer Articles

The Government cites seven items which appeared in Wolf Blitzer's February 15, 1987 article in the Washington Post (see Exhibit B to the Government's Memorandum) and claims that they constitute disclosures of classified information by Mr. Pollard. This is not true. Each of the referenced items is either unclassified or not attributed to him as the source thereof.

A. The Raid on Tunis

A complete account of the raid on Tunis appears in defendant's version of the offense, in redacted form, after pre-publication clearance by an appropriate classification officer. See Defendant's First Memorandum in Aid of Sentencing, redacted version (hereinafter "Redacted First Memorandum"), p. 23.

B. Iraqi and Syrian Chemical Warfare Capabilities

The Redacted First Memorandum also contained unambiguous reference to Iraqi and Syrian chemical warfare capabilities, including a statement pertaining to the probable utilization of such weapons by the Syrians in the event of another war with Israel. Redacted First Memorandum, p. 22.

C. PLO Force 17

The Blitzer article never refers to PLO Force 17 by name. The Redacted First Memorandum clearly identifies the Force 17 unit. Redacted First Memorandum, p. 23.

D. Arms from the U.S.S.R. to the Arab States

In the Redacted First Memorandum, at p. 20, Mr. Pollard stated that the provided information regarding both current and projected Soviet SAM technology, its associated electronic devices, and command/control/communications systems to the Israelis. The systems mentioned in the articles clearly fall within the parameters of this disclosure, which was approved by the classification officer.

E. The Soviet Fighters

The Blitzer article does not mention the name or type of Soviet-made fighter concerning which Mr. Pollard gave an intelligence assessment to the Israelis. The entire reference in the Blitzer article is:

The U.S. intelligence community's assessment of a particular Soviet-made fighter.

There is no specific information associated with this quotation. Thus, accepting that it is a verbatim quotation rendition of what Mr. Pollard said, it contains no greater quantum of information than any other statement he made which has been subject to the review of a classification officer.

F. Pakistani Nuclear Capabilities

The Blitzer article reports information regarding Pakistan's nuclear program, but identifies his source as an American with

detailed knowledge of the Pollard case. Blitzer does not attribute his information on the subject of Pakistan to Mr. Pollard.

G. The Weinberger Affidavit

The Government contends, and Mr. Pollard does not dispute, that he provided the verbatim quote in Blitzer's article regarding the essence of the damage assessment signed by Secretary Weinberger. The Government misleads the Court, however, by stating that the assessment is classified TOP SECRET (Codeword), thereby implying that the quote is classified as well. To the contrary, a classification officer cleared public discussion of the same point, i.e., that the United States' ability to negotiate with Israel has been impaired because of Mr. Pollard's conduct, in the redacted version of Defendant's Second Memorandum in Aid of Sentencing. See Redacted Defendant's Second Memorandum in Aid of Sentencing (hereinafter "Redacted Second Memorandum"), p. 6. More importantly, in the unclassified report of the Pre-sentence Investigation filed by the U.S. Probation Office, the victim impact statement contains the same point, in very similar language. Indeed, upon seeing the pre-sentence report, counsel inquired whether it contained classified information, yet the U.S. Attorney's Office, after examining the document anew, stated that it was devoid of classified material. The effort of the Government to suggest that Mr. Pollard's parallel extract from the Weinberger affidavit represents a compromise of classified information is perhaps indicative of the dual standards by which the Government determines whether information is classified.

IV. The Polygraph Examination

Counsel has had the opportunity to confer with Special Agent Barry Colvert of the F.B.I., who conducted the polygraph examinations of Mr. Pollard. He has confirmed the following:

1. He asked a question regarding Mr. Pollard's sole motivation in providing documents to the Israelis and Mr. Pollard's answer was deceptive.

2. Mr. Pollard's answer was expected to be deceptive because it was unfairly formulated.

3. The question was unfair because it had no time reference and because it failed to take into account the mix of motives which impelled Mr. Pollard's conduct at the point where he became the recipient of money.

4. Because the question was unfair, it was not reported in any document which was provided to the defense.

5. The question, albeit a control question, came toward the end of the examination session, and not before.

6. It was not one of the questions used to demonstrate to Mr. Pollard how the polygraph can catch a person lying.

7. At the time the question was put, Special Agent Colvert had completed a lengthy discussion with Mr. Pollard concerning the corruptive effect of money on his conduct.

8. Special Agent Colvert pointed out that in other examinations of Mr. Pollard, he passed on the question of whether any of the answers he gave were false or misleading.

Against the full background of these facts, a more appropriate description of Mr. Pollard's statements to the

polygraph operator would be that he credibly stated that his initial motivation for his conduct was to help Israel and that only later was that motivation corrupted, but not superseded, by the money which his handlers gave him.

V. Lack of Harm to U.S. Security

The Government's argument in reply assumes flights of rhetorical fancy regarding the harm suffered by the national security. We will repeat time and again that Mr. Pollard's conduct is wrong and unacceptable by any standard of accountability under the law; thus, it serves no useful to repeat his acknowledgement that there is no justification for his conduct. Stripped to its non-inflammatory essentials, the issue is what was the harm to the national security. We contend that there was none, and even assuming that there was some, it was minimal. No more eloquent summation of the Government's position relative to injury to the United States exists than in the victim impact statement contained in the Pre-sentence Investigation of the U.S. Probation Office. The most profound allegation of loss reported (in an unclassified document) was the reduction of U.S. negotiating power in intelligence exchanges with Israel. This is a far cry from any statement of damage that one expect in cases such as Walker, Whitworth and Pelton. In each of those cases, the one ingredient that is common to them, that is absolutely missing here, is the fact that the Soviets received the product of their espionage. In the final analysis then, this case is reduced to the simple, and for the country, fortunate, reality

that Mr. Pollard's criminal conduct was not compounded by his having given the information to our enemies.

VI. Extent and Value of Cooperation

It is truly unfortunate that in a case where the defendant confessed orally three times and twice in writing before he was even "arrested," and where he had provided hundreds of hours of information regarding a wide variety of subjects which we have set out for the Court in our Second Memorandum in Aid of Sentencing, that the Government's lust for the imposition of the maximum sentence cannot even credit accurately the extent and value of Mr. Pollard's cooperation during the last fifteen months. It is not as though that by giving Mr. Pollard this small credit where it is due, he is likely to realize his fantasy for freedom; rather, it would seem that simple justice would dictate that he be given a fair assessment of his cooperation.

The Government takes shots at the lists of subjects of his cooperation. Might not it have been fairer for the Government to have provided the Court and counsel with a list first, rather than denigrating our own effort to state this important element of the case?

One cannot escape the irony inherent in the announcement that a grand jury of the United States has this day returned an indictment against General Avi Sella for his part in this espionage operation. One can only look forward to the day when the prosecutors will rise in final argument to urge the jury to believe its principal witness as a man who told the truth and

provided this critical and valuable information to the United States.

Respectfully Submitted,

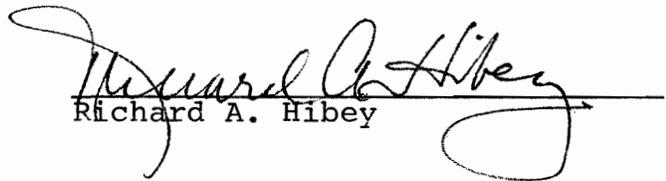

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was hand delivered to Charles S. Leeper, Esq. and David Geneson, Esq., Assistant U.S. Attorneys, this 3rd day of March, 1987.


Richard A. Hibey

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Discovery was delivered by messenger this 13th day of February, 1987 to Charles S. Leeper, Esq., Assistant U.S. Attorney, 555 4th Street, N.W., Room 5800, Washington, D.C.



Gordon A. Coffee