

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION - MISDEMEANOR BRANCH**

UNITED STATES OF AMERICA)	Case No. 2014-CMD-18262
)	
v.)	Hon. Geoffrey Alprin
)	
)	Sentencing Date: May 15, 2015
<u>BERNARD FREUNDEL</u>)	

UNITED STATES' MEMORANDUM IN AID OF SENTENCING

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this memorandum in aid of sentencing. The defendant, Bernard Freundel, is before the Court for sentencing after pleading guilty to 52 counts of Voyeurism, in violation of 22 D.C. Code §§ 3531(b) and (c), involving surreptitiously videotaping 52 separate women. In light of the extraordinary scope of the defendant's crimes, the premeditation and planning involved, the substantial abuse of the defendant's position of exceptional trust, and the severe impact on the victims, the United States submits that a sentence of 208 months of incarceration would serve the interests of justice in this case. In support of its recommendation, the government relies on the following information.

FACTUAL AND PROCEDURAL HISTORY

Between approximately 1989 and October 2014, the defendant, Bernard Freundel, was the sole rabbi of Keshet Israel Congregation, located at 2801 N Street, NW, Washington, D.C. The defendant also taught courses on ethics at Towson University for approximately five years, and seminars on Jewish law at Georgetown Law Center since the early 1990s. The defendant's influence was felt not only within Washington D.C., but around the world. For years, the defendant was a leader in an effort to establish uniform standards for conversions to Orthodox

Judaism in the United States, and to ensure that many American conversions would be accepted by Israel. At one time, his reputation was that only his conversions would be guaranteed to be deemed valid by the Chief Rabbinate of Israel. As a result, people came from all over the region and the globe to study with the defendant and convert with him as their sponsor.

In 2005, a Jewish ritual bath (known as a “mikvah”) opened at 1308 28th Street, NW, Washington, D.C. Known as the National Capital Mikvah, the building is located across a courtyard from Keshet Israel.¹ A mikvah is used primarily by Orthodox Jewish women for monthly spiritual purification and by individuals as the final step in the Orthodox Jewish conversion process. The use of the mikvah and many of its attendant rituals and blessings are prescribed by Jewish text and tradition. As an initial matter, immersion in a mikvah is regarded as an intensely private and spiritual experience. As noted in a community impact statement from former members of Keshet Israel who used the Mikvah, a mikvah is regarded as “*the* most sacred space for Jewish women.” As described in the same community impact statement, Jewish law requires users to fully cleanse their body before immersion in the mikvah, so users take a bath or shower, remove all clothing, jewelry, makeup, nail polish, clean under their fingernails, and even remove their contact lenses before immersing, as doing so represents the complete absence of barriers between the user and the water. The user wraps herself in a sheet before immersing and then removes the sheet entirely as she immerses in the water. During a conversion to Judaism, three rabbis and a female attendant are present. With steps carefully choreographed to protect the modesty of the candidate, the rabbis stand in the doorway and turn to watch the candidate as his or her head immerses fully under the water.

¹ In the factual proffer in support of the guilty plea, the government indicated that the Mikvah was “affiliated with” Keshet Israel. However, the Mikvah is a separate legal entity from the synagogue.

The National Capital Mikvah has two showering/changing rooms connected to the room with the ritual bath. On numerous occasions throughout the period between April, 2009 and October 12, 2014, the defendant installed and maintained one to three hidden electronic recording devices in the larger of the two rooms for the sole purpose of secretly and surreptitiously recording women who were disrobing, using the toilet, showering, and otherwise preparing for use of the mikvah. The recording devices were disguised in common household objects: a digital clock radio, a tissue box holder, and a small table top fan. Thus, the women never knew they were being recorded and never consented to being recorded.

The defendant's scheme unraveled on October 12, 2014, when the defendant entered the larger changing/showering room with a clock radio that contained a hidden recording device. The defendant placed the clock radio on the countertop of the sink. He plugged it in, set the time so that it was accurate, and positioned the recording element so that it faced the shower. After the defendant plugged in the device, he exited the changing room. Shortly thereafter, an individual associated with the Mikvah recovered the clock and turned it over to officers of the Metropolitan Police Department (MPD).

Later that same day, MPD detectives applied for, and obtained, a D.C. Superior Court search warrant to examine the contents of the clock radio. Upon execution of the search warrant, investigators learned that this clock radio contained a recording device ("Recording Device") and six video files, each of which depicted a woman totally naked before and after showering. At least one of the videos captured the defendant setting up the clock radio and showed the defendant's face as he set the time. As is evident in these video files, all six women were completely unaware that they were being recorded.

On October 14, 2014, a D.C. Superior Court search warrant was executed at the defendant's residence at 3026 O Street, NW, Washington, D.C. At that time, the defendant was

arrested. Numerous items were seized from the defendant's home, including five desktop computers, seven laptop computers, six external hard drives, twenty memory cards, eleven flash drives, an instruction manual for the Recording Device, and another instruction manual for a recording device disguised as a fan.

On October 21, 2014, law enforcement officers executed a search warrant at the defendant's office at Towson University. During that search, investigators seized additional evidence of criminal conduct by the defendant including one laptop computer, a freezer bag containing multiple Secure Digital ("SD") cards, multiple remote controls, multiple instruction pamphlets, two external hard drives, two memory stick hard drives, a Securemate tissue box camera, a Securemate clock camera, a receipt/packing slip in the defendant's name for a clock radio hidden camera, a Securemate computer charger hidden camera, an empty box for a car key microcamera, and other items.

Computer forensic examinations of all of the electronic devices and digital media storage devices seized from the defendant's home and office revealed recordings made by the defendant of at least 52 women who were completely naked in the large showering/changing room of the National Capital Mikvah between March 4, 2012, and September 19, 2014, each of whom was recorded undressing and showering on separate instances, sometimes on multiple occasions. These 52 women are the subjects of the criminal Information in this case. None of the 52 women knew she was being recorded, nor consented to being recorded. In some instances, to ensure maximum coverage of the victim's naked body and intimate, private activity, the defendant utilized up to three recording devices at the same time to obtain different angles of each woman being recorded. All of the recording devices were placed on the sink and aimed at the toilet or shower – places where the users of the room were naked or otherwise engaging in private activity. In several of the videos that capture the defendant setting up the equipment, the

defendant is seen checking the angle of the camera with his hand, drawing a line in the air to ensure that the lens would adequately capture his intended target.²

Each recording depicts the subject totally or partially undressed before and/or after taking a shower. Each woman is recorded walking into the showering/changing room, sometimes accompanied by the defendant, and other times accompanied by a female attendant. The defendant instructed many women not to place any of their belongings on the countertop, which we now know was to ensure that no items blocked the camera lens of the recording device. It is believed that the defendant brought the recording devices on each occasion that he recorded subjects, and removed the devices after he finished recording that day. The defendant created and used an elaborate system to view, analyze, process, store, name, and electronically save the captured footage. For example, he saved each digital recording separately and named each file by using the recorded woman's name or initials, as well as sequential numbers where there were multiple recordings of the same woman. Each visit by each woman resulted in numerous video segments of varying lengths, from a few seconds to a few minutes.³ Each video segment was meticulously labeled with the victim's name or initials, and a sequential number. For those victims who were recorded on multiple occasions, forensic examination revealed dozens of video segments, each labeled with names or initials and sequential numbers. It is obvious from the sheer volume of recordings and the elaborate filing system he created that the defendant spent hundreds and hundreds of hours watching and otherwise organizing the videos of the naked victims. The typical recording includes the following: the woman enters the changing room and

² A video clip depicting this will be provided to the Court and the defendant under separate cover.

³ It is not known whether the recording device stopped and started on its own, thus creating multiple segments for each woman's use of the bathroom, or the defendant edited the video footage into small segments. Either way, the defendant made sure to label each and every video segment for archiving and easy retrieval.

sets down her belongings. She is left alone and she begins to undress. She places her clothing on a chair in the room, and then takes the preparatory steps of cleaning her body according to the prescribed steps. She typically uses the toilet and then enters and uses the shower. The showering itself is obscured by the opaque shower doors. After the shower, the woman exits the shower and wraps herself in a towel or robe. Many videos end at this point, indicating that the defendant specifically saved these portions, and edited out the dead air of the empty room after the woman moved to the adjacent room containing the Mikvah itself. Many additional videos depict the same woman after the mikvah immersion, toweling off and putting her clothes back on. Some videos depict the woman collecting her belongings and leaving the room, although some do not, suggesting further editing to highlight only the defendant's most desired portions that involve nudity.

The defendant positioned the devices hidden in the tissue box holder and the fan on the sink top closest to the toilet and shower, facing the toilet and shower door. These videos depict particularly close-up images of women using the toilet. In many recordings, the women were completely naked as they used the toilet, as they were just about to enter the shower. The recording device hidden in the clock radio was usually positioned on the other side of the sink, still facing the changing area and shower door. These recordings generally captured images of women dressing and undressing, showing their whole bodies, as well as closer-up depictions of women standing in front of the vanity, which generally focus almost exclusively on the area from the woman's neck down to the top of her hips. These latter images objectify the body, as they focus exclusively on the woman's breasts and pubic areas while capturing only fleeting images of the woman's face, and only if she bends down or steps away.

In addition to the 52 recordings that are the subject of the criminal Information, computer forensic examinations also revealed that between April 2009 and September 2014, the defendant

secretly and surreptitiously recorded approximately 100 additional women who were (like the 52 victims listed in the Information) totally or partially undressed before and/or after showering in the large bathroom at the National Capital Mikvah. As with the 52 victims, these additional women never knew that they were being recorded and never consented to being recorded. The defendant recorded some of these additional women on two or more occasions, resulting in dozens of video segments for each woman recorded. The videos that fell outside the statute of limitations are identical in content and depict the same full nudity as the videos that fell within it.

Using his position of trust and superior knowledge of Jewish law and tradition with congregant members and vulnerable individuals going through the conversion process, the defendant employed elaborate schemes to get women to use the changing room so he could record them naked and otherwise engaging in private activity. For example, the defendant asked most conversion candidates to engage in a “practice dunk” prior to the date of their actual conversion. The concept of a “practice dunk” is not sanctioned (let alone mandated) by Jewish law or tradition, and appears to have been a creation of the defendant for the sole purpose of increasing the number of women, and the number of times, he was able to capture women naked in the changing room. On the days when conversion candidates came for the “practice dunk” only the defendant and a female mikvah attendant (many of whom had converted to Judaism under the defendant’s supervision and thus would not be suspicious of the validity of its practice) were present - as opposed to the additional two rabbis who would be present for the conversion. The defendant told conversion candidates that the “practice dunk” would be a good opportunity to immerse so that they would feel more comfortable with this aspect of the conversion process, and so there would be no embarrassing mistakes during the actual conversion, such as a woman inadvertently exposing herself to the rabbis. Some conversion candidates tried to decline the “practice dunk,” but the defendant did not accept their refusal. He typically insisted that they

complete one. Realizing that the defendant alone controlled whether the victim's conversion was approved, many conversion candidates participated in the "practice dunks," only to learn later that that the sole reason for it was to secure an additional recording of them naked. Sometimes the "practice dunk" was the only occasion on which a woman was recorded; presumably the defendant knew that he might not have an opportunity to bring in recording equipment on the victim's conversion date when additional rabbis would be present.

Another scheme the defendant used to expand the opportunities to tape naked women was to convince women who had successfully completed their conversions that there had been a "problem" with their immersion that required them to return to the Mikvah and repeat the process. To ensure that his questionable practice was not detected and challenged, the defendant told some of the women not to tell anyone else about the "re-dunk."

The defendant's exploitation and victimization extended beyond those affiliated with Keshet Congregation and/or the Mikvah. The defendant invited female students in his classes from Towson University and Georgetown Law Center to immerse in the Mikvah, a practice that is contrary to Jewish law in that the students were neither converting nor married. The defendant told the students that it would be a special opportunity for them to experience the Mikvah, but the sole reason he invited them to attend and immerse was to enable him to record them naked.

HARM TO THE VICTIMS AND THE GOVERNMENT'S RECOMMENDATION

A. Scope of Relevant Conduct to Assess Defendant's Character and Crime

It is well-established that the Court, "when imposing sentence, may conduct an inquiry broad in scope, largely unlimited as to the kind of information received and the source from which it is received." Powers v. United States, 588 A.2d 1166, 1169 (D.C. 1991). Accordingly, the Court "may consider a wide range of facts concerning a defendant's character and his crime."

Id. (quoting Barnes v. United States, 529 A.2d 284, 288 n.5 (D.C. 1987)). In all criminal cases, the sentence should reflect the seriousness of the offense and the criminal history of the offender; provide for just punishment and afford adequate deterrence to potential criminal conduct of the offender and others; and provide the offender with any needed educational or vocational training, medical care, and other correctional treatment. Indeed, these factors are required to be considered in felony cases pursuant to in 24 D.C. Code § 403.01(a) (2008).

B. Sentencing Range

Pursuant to 22 D.C. Code § 3531(b) and (c), each count of Voyeurism carries a potential penalty of one year imprisonment, and a fine of \$2,500 (for counts numbered one through 30) or \$1,000 (for counts numbered 30 through 52), or both.

C. Impact On The Victims Who Were Recorded In The Changing Room

The defendant's conduct had an unimaginably profound impact on the victims. All of the women recorded, whether during the statute of limitations or beyond it, feel equally violated by the defendant's despicable conduct. Other women who used the Mikvah but who were not recorded or chose not to find out whether they were recorded, also feel deeply violated, as they experienced similar feelings of exposure and intrusion. The government asks the Court to consider all of the victim impact statements and relevant conduct letters to fully appreciate the impact of the defendant's conduct on this community. In addition, the defendant's conduct impacted many others including members of his congregation, women who use mikvahs around the world, and others who looked to the defendant as a religious and moral leader.

1. Abuse of Trust as A Religious Leader and Advisor

The most profound impact on the victims stems from the defendant's abuse of his position of trust. As a rabbi, and particularly an Orthodox one, the defendant held himself out as a role model and living example of how to live ethically and abide by Jewish teachings and

commandments. As many of the victim impact statements note, the defendant publicly asserted the highest standards for himself and his congregants in terms of religious observance. As a teacher and mentor, the defendant held not just weekly, but daily, learning sessions with members of his congregation and conversion candidates regarding how to live Jewishly and ethically on matters large and small. He told numerous converts to leave their local synagogues, claiming that they were not Orthodox enough, and, in so doing, isolated women from their communities and supporters, causing them to be entirely dependent on him and his rules.

As noted in the community impact letter by women who worked with the defendant to build the Mikvah, the defendant emphasized the strict rules to be followed by this Mikvah to make it sufficiently observant. As noted in the letter, he “harshly and publicly criticized other Mikvahs in the DC area for not strictly adhering to all the various rules designed to make the Mikvah spiritually pure.” The letter also notes that the defendant excluded women who he believed did not meet certain standards of religious observance. The letter notes, “He not only violated our personal privacy, and that of our friends, but he also trampled on the very sanctity he so strenuously admonished us to observe. The hypocrisy is deafening.”

Another community impact letter notes the depth of the abuse of power by the defendant, who knew -- more than anyone -- how personal and sacred the Mikvah was to its users, and yet chose to place recording devices there. As the statement powerfully notes:

We were at our most holy and our most naked. And he was watching it all.

We imagine him watching and re-watching these videos, sitting in his home, pulling up video files on this computer with our names and the names of our friends. Was he getting sexually excited when he was doing this? Was it about his power over us at our most vulnerable? Our stomachs turn. Disgust, embarrassment, shame, and anger continually wash over us.

And it is not just that *someone* was watching us at this moment of vulnerability. It is that it was *him*—our Rabbi, our spiritual and religious leader. He participated in our weddings, he has known us since we were children, he has seen us with our

husbands, our parents, our children each week at synagogue. He is no stranger—he knew us, he knew every name on those video files. And, more than anything, we trusted him. We trusted him as our leader, our sage, our moral instructor.

This is the man who built the mikvah, who promised us that it was to be at the highest and strictest levels of holiness, who extolled the sanctity of the place and used his power and authority to encourage us to use it. All while he, as a predator who sets a trap for the weak, was planning, plotting, videotaping, cataloguing, and watching us. For years.

Another victim notes the pain of the defendant's abuse of power:

[The defendant] emotionally and psychologically abused countless women in order to commit the act of voyeurism. In order to commit that crime, he also committed fraud – another crime punishable by law. He lead women to believe going to the mikvah for “practice dunks” were for their benefit. He manipulated his position as a leading rabbi in conversion. Women like myself blindly followed his instructions for fear of seeming insincere. His manipulation was pre-meditated and calculating. Candidates were encouraged to attend his weekly classes to hear him rant about the abuses he fought in the orthodox conversion. We thought he was the knight in shining armor riding in to save the conversion candidates from being abused and tricked by power hungry rabbis. Now it is clear his anger toward abusive rabbis was great because he himself was one of them.

One victim reflects back on a consultation she had with him on an academic subject matter, and remembers a “sly” look he gave her as they talked. She now feels sick at the thought that he was reveling in the knowledge that he knew something that she did not: that he was exploiting her. Another victim questions: “Was it a perversion – a sickness? Was it curiosity? Was it power – the power of control; of hierarchy? Why?”

This victim goes on to almost shout her rage:

No one understands my anger of the situation (“the situation” – what a name!). I WAS VIOLATED. THAT WILL NEVER CHANGE. THERE IS NO ERASER. THERE IS NO SILVER LINING. MY RABBI IS A PERVERT. HE SAW ME NAKED WITHOUT MY PERMISSION. HE MISUSED HIS POSITION. . . . HOW COULD HE?

The defendant's acts of meticulously saving and cataloguing the images by name is further evidence that he used his position to deceive and derived specific satisfaction from exploiting women he knew. As one victim notes, “Freundel labeled his video files with women's

names. This detail nauseates me. He didn't choose random women. He chose women he knew, he chose women who trusted him."

2. The Defendant Exploited the Conversion Process and Female Conversion Candidates

As noted above, the defendant was the advisor and guide for many women (and men) who converted to Judaism. When non-Jews go through the arduous conversion process, they put complete faith and trust in the sponsoring rabbi – here the defendant – as only that person can approve the conversion. Conversion candidates are particularly vulnerable to abuse because they do not know if the rules set by the rabbi-sponsor are valid, and they are eager to do everything required to convert. As many victims note, it was difficult if not impossible to say no to the rabbi in charge of their conversions. One victim writes, "[I]magine . . . that this one man stands between you and your true self? You would do almost anything to win his approval. And he is world-renowned, and trusted, and has been part of the community forever, so when he says you should practice for the day that you are waiting for, you do it." Another victim notes, "During conversion, the supervising rabbi more or less tells you what he finds acceptable Jewish practice and you do it." Another victim notes, "[W]e trusted him and felt no reason not to."

The defendant held himself out as the best, most highly regarded leader and advocate for this trusting population. As one convert describes, "Bernard Freundel held himself out as just such an authority, often talking about his expertise in conversions, how outstanding his reputation was, and how his conversions were the most universally accepted and respected." All the while, the defendant was using that reputation to gratify his own criminally deviant desires by creating opportunities to record women naked. Many victim impact statements and relevant conduct letters reflect the deep pain, sense of betrayal, and vulnerability they feel knowing the defendant's true intentions. One impact letter notes how frightening and embarrassing it was for conversion candidates to have been placed in the position of feeling that "anything could have

been done to us,” as long as the defendant told them that it was part of the conversion process required by his synagogue and the wider Orthodox Jewish community. Many converts now doubt all aspects of the defendant’s religious teachings, feeling like they have no idea what is actually required by Jewish law and tradition, and what was invented by the defendant for his own corrupt purposes. These victims now feel duped and manipulated into being filmed for his sexual gratification.

3. The Defendant Created Opportunities to Record Women Naked by Deception and Deceit

The defendant’s deceptive conduct of creating opportunities to record women is another prevalent theme found in many of the victim impact statements, relevant conduct letters, and community impact statements. Between inventing the “practice dunk,” which he promoted as beneficial to their conversion, to asking women who had converted to “re-dunk,” his converts believed his explanations and participated in immersions whose sole purpose was to surreptitiously capture more women on film. Another victim notes that the defendant, who officiated at her wedding, used the wedding as an opportunity to recruit more women to immerse in the mikvah. She later learned that at least one of her wedding guests was subsequently recorded. She painfully notes that where her wedding should have been a celebration of the sacred unification of two people, the defendant used it as an opportunity to add to his “perverted collection of naked women from our community.”

One of the students notes that she was so excited when the defendant called her aside and appeared to take an interest in her. The defendant told her that he often invited students to his synagogue “as a learning experience,” and asked if she would be interested. At the time, she was pleased and honored to go to the Mikvah, and is still shocked that someone she trusted and looked up to could have betrayed her so deeply. Another student notes that she accepted the

defendant's invitation to immerse in the Mikvah, believing that she was "participating in an educational experience under the supervision of one of the most respect[ed] rabbis in Orthodox Judaism." She notes that, at the time, she found the experience itself "one of the most moving experiences of her life," one that was "extremely personal, private, and spiritual." She now knows that she was "lured to the mikvah as a specimen, rather than a student. The previously wonderful memory of the day at Kesher Israel has been tainted with the knowledge that the entire day was not at all focused on my education about the synagogue, the Torah, the mikvah, or the kosher lunch he treated his students to at the end of the day. The entire day was focused around the moment when each of his female students would lock the second door of the mikvah bathroom, disrobe before the hidden camera, and leave footage for him to enjoy later."

4. The Defendant Exploited Women Who Were Especially Vulnerable For His Own Sexual Gratification

The defendant's exploitation seems to have no bounds. His creation of opportunities to record victims extended to the truly abhorrent. Victims who had confided past sexual abuse and other painful personal experiences to the defendant were encouraged to use the mikvah for spiritual healing. To at least one of these women, the defendant assured her that even the mikvah attendant would not know why she was there, as if establishing a connection that only he would understand and support her. At the time, these women felt that immersion in the mikvah waters would provide solace and healing. Now their trauma is compounded by the knowledge that the defendant used their past abuse as an opportunity to violate them again by recording them naked and using the recordings for his own sexual gratification.

5. Victims Feel Disillusionment In, And Isolation From, Their Faith And Have Profound Loss Of Trust In Religious Leaders

Many of the victims now feel isolated from their faith entirely, including other religious leaders, as a result of the defendant's actions. As one victim notes, she has no desire to continue

being a part of a community where people want to demonstrate their faith and judge others for not being “as religious.” For this victim, because the defendant behaved in this manner, she cannot trust any other leaders in the Jewish community. She is not alone. Another victim notes that she now has difficulty trusting other rabbis. Another victim notes that it is difficult to attend weekly services as she has always done. She notes that rabbis are supposed to be held to a higher standard, and that she no longer trusts even rabbis from other synagogues. She voluntarily avoids attending celebrations officiated by the other rabbis who served on her conversion court, even though she believes that they were unaware of the defendant’s actions. Another victim notes that she feels extremely disconnected from her faith, as every symbol reminds her of the defendant’s actions in taking advantage of her. She notes that she is hesitant to trust another rabbi and fears that she will never be able to get close to another religious leader. The community impact letter submitted by women who helped build the Mikvah notes that many people followed the defendant’s teachings, believing him to be a great scholar and pious leader. Now that their trust has been broken, many of them doubt his teachings and the very foundations of the faith that he inspired in them.

6. The Defendant’s Actions Have Had A Great Impact on Married Victims

Some of the victims who use the mikvah for family purity purposes are experiencing marital discord as a result of the defendant’s actions. Orthodox married women are required to use the mikvah for monthly purification purposes, and many now feel disgust and shame, and fear of being recorded again, using any mikvah. Some feel the desire to abandon this tenet of their faith, which creates tension with their husbands, who wish them to continue with the tradition of the mikvah and wish not to engage in intimate relations with a wife who is, in their minds, unclean. One victim explains, “Every time I go [to the mikvah], I think about what has passed and the violation he committed. And I have to go. It’s not as though I can just avoid it and

not go. I am required by Jewish law to go. I have to go. I didn't particularly enjoy going before, but now I hate it. I try to ignore my feelings and just push through to get it done, which, of course, makes it difficult to emotionally and spiritually connect with God through this holy ritual. . . . [I]t's difficult at times to separate everything and have a feeling of purity when I feel tainted and dirty by what Rabbi Freundel did."

7. The Impact on the Victims Is Particularly Strong Because He Exploited Religiously Modest Women in the Most Private Setting Engaging in the Most Private Activities

As is evident from their victim impact statements, relevant conduct letters, and community impact statements, to learn that their rabbi, teacher, and spiritual leader had been recording women naked for five years, and had recorded over 150 women, was uniformly shocking to the victims. Because of the defendant's position of trust in the community, this was far and away a greater violation than if these same women had been recorded changing in a store dressing room or at the gym, as the nudity itself was only part of the violation they felt.

That being said, the fact that these women were recorded completely naked was itself an intense violation. Modesty is a central tenet of Orthodox Judaism. Women are expected to cover their arms and legs fully when in public or in the presence of members of the opposite sex, even in hot weather. Some married women also cover their hair with scarves or wigs when in public or in the presence of any man not part of their immediate family. That the defendant exploited the mikvah's requirement of complete nudity to spy on and record these women for his own permanent collection of images was unimaginable. As one victim notes, "How silly it seems to be worrying about modest dress in public, when your rabbi can look at video footage of you naked, any time he wants. How interesting that Freundel spoke time and again about the evils of pornography, as he turned the women of his community into unwitting porn stars."

The harmful impact of being recorded naked was further compounded by the fact that all of the victims were not just showering, but also engaging in intensely personal activities in preparation for immersing in the mikvah. As one community impact statement describes:

As we prepare for the mikvah, we are instructed to clean out every crevice of our bodies – our ears, our noses, our navels, the corners of our eyes. We push back our cuticles and remove all barriers between us and the water we will soon enter. We take off all our jewelry, our makeup, our nail polish, our contact lenses. We are instructed even to comb out our hair and scrub the dead skin from our feet. Without our wedding rings on our fingers or our glasses on our eyes, we are completely, entirely, and unmistakably bare, naked, and vulnerable in the most literal and figurative ways.

It is ironic that literally two days before recording his last victims, the defendant commented to Washington Jewish Week about the damaging effects of pornography, while creating his own:

The lack of sexual morality that pervades this society is all over the place, and the Orthodox community, no matter how traditional, is not immune from this, and it creates terrible problems. Pornography and its accessibility is wrecking marriages. It's two keystrokes away. You get on the computer, you hit the button twice and you're there.

See <http://washingtonjewishweek.com/15742/a-matter-of-balance> (last visited May 8, 2015)

(emphasis added).

Many of the victims find themselves searching for hidden cameras every time they return to the mikvah, or are in any public changing room or gym, wondering who may be watching.

D. Impact on Others

In addition to the harm to the 52 victims reflected in the plea, the defendant's conduct affected additional women and members of his community and the larger Orthodox Jewish community, as reflected in the relevant conduct letters. One woman who knew the defendant for almost a decade feels despondent by the news that her rabbi, whom she believed could do no wrong, engaged in this conduct. Although she herself was not recorded, her faith is shattered. Another woman who has known the defendant for years, and who was recorded outside the

statute of limitations, is struggling to reconcile her feelings stemming from the fact that the defendant was present during the happiest moments of her life, including her wedding, yet engaging in these evil actions behind everyone's backs.

One of the most shocking and disturbing pieces of evidence concerns the defendant's videotaping of a domestic violence victim who relied on the defendant for safety and security when she was the most vulnerable. In Relevant Conduct Letter 3, the defendant recorded this woman not in the Mikvah, but in a safe house that the defendant *created for her* at a time when she was fleeing from a violent situation with her husband. The government found these images on the defendant's computer. This victim submitted a heartbreaking letter that demonstrates the impact the defendant's behavior had on her and so many other people. The victim states that approximately six years ago, she had been in an abusive marriage for over a decade, and finally found the courage to leave. This required considerable strength, in that her own Orthodox rabbi and his wife had told her to stay with her abuser, and her local religious domestic violence organization was unwilling to protect her. This woman reached out to a friend who was affiliated with Keshet, who brought her to the defendant because they believed he would help her. Indeed, the defendant told her that there was a vacant apartment belonging to a congregant who was travelling that she could stay in. Imagine her pain and shock to find out that, unbeknownst to her, the defendant had set up recording devices in the bathroom and bedroom. As she notes:

Rabbi Freundel recorded me both in the bedroom and in the bathroom, watching me as I slept and bathed, memorializing my intimate actions for all eternity. He found pleasure in my pain as he took advantage of me, as he used me and pinned me up as his personal electronic specimen. . . . I thought I saw a holy man of God, a man whom I could trust to protect me from outside evils, but I have come to see the blackness which hid beneath the garments, and I realize that in fact the danger was in his apparent solicitude which I unsuspectingly accepted.

The traumatic effects for this victim run deep. Not only is she working to rebuild her life from domestic violence, the dissolution of her marriage, and the failure of her faith to protect her, but now she has another layer of trauma to endure. Her words speak for themselves:

The dreadful symptoms I once banished have returned. I cry when I am awake, and I scream out against the darkness in the nightmares of my sleep. I have constant flashbacks of the worst times of my life, as I am forced to repeatedly relive the horrors I once knew. I dare not look at myself unclothed in a mirror, for it is a glaring reminder of what was taken and stolen. I am afraid to spend the night in a room which I have not prepared, for I have known the spying eyes and they watch me always as I sleep.

All of these events, from recording women in the mikvah to recording a woman seeking safe shelter with a religious leader, are not aberrations with the defendant's character. The government's forensic examination of the defendant's computer further revealed that the defendant videotaped himself engaging in sexual situations with several women who were not his wife, which was further deception, not just to his family, but to all of his congregants, to whom he represented himself as a man committed to the sanctity of his marriage and an example that other married congregants could look to and consult with in times of marital distress. Compounding even this violation, it appeared that not all of the women he recorded in sexual situations were aware of, or consented to, being recorded.

E. Government's Recommendation

The government recommends that the Court sentence the defendant to **four months' incarceration for each of the 52 counts of conviction, to run consecutively, for a total of 208 months of incarceration.** Four months per count would represent one third of the maximum punishment available to this Court per count, and is reasonable and just punishment for this severe conduct that falls on the extreme end of the voyeurism spectrum, for the reasons detailed in this memorandum. It would also provide adequate deterrence to this defendant and other

religious leaders by showing that the justice system takes very seriously crimes of voyeurism and sexual abuse.

The defendant's conduct is the most egregious set of facts constituting the crime of voyeurism, and thus justifies severe punishment. Voyeurism encompasses a range of conduct, the less serious of which might be "upskirt" videos, wherein an offender holds a smartphone under the skirts or dresses of women who are strangers to him while standing behind them on escalators or stairs. Such conduct generally captures fleeting glimpses of the victim's buttocks and inner thighs, often covered by underwear. Such is a crime of opportunity; even if the defendant goes to the location with a recording device intending to record unsuspecting victims, it is pure chance if a victim happens by in a manner that allows her to be recorded. Often times the victim does not know that she was recorded, and thus, whether good or bad, there is no emotional impact for the victim. On the scale of conduct, this activity would be considered on the minimal side.

More serious is the installation of cameras in public bathrooms, which tends to result in greater exposure of the victim in that unclothed genitalia can often be viewed. Sometimes this conduct ensnares persons who are strangers to the suspect, although there have been cases where individuals install cameras in their workplaces and capture those whom they know.

The defendant's conduct is the most severe example of voyeurism in that it constitutes the most invasive type of recording, where each woman is filmed fully naked, for several minutes, dressing and undressing, showering, drying off, using the toilet, and engaging in religious cleansing rituals. Moreover, the defendant used his position of trust to target victims he knew, took advantage of their presence to record them, and by corruptly deceived many into using the mikvah solely so he could record them.

Voyeurism itself is a form of sexual assault and abuse. The National Institute of Justice, the research, development and evaluation agency of the U.S. Department of Justice, defines sexual abuse as covering a range of conduct including voyeurism, unwanted exposure to exhibitionism and pornography, among other unwanted sexual conduct. See <http://www.nij.gov/topics/crime/rape-sexual-violence/Pages/welcome.aspx> (last visited May 4, 2015). It is evident by the numerous victim impact statements, relevant conduct letters, and community impact statements, that victims experienced this violation as a form of sexual abuse. They are well aware of, and disgusted by, the fact that the defendant experienced sexual pleasure from his unauthorized, surreptitious recordings of them.

Most importantly, the conduct was committed by a leading and esteemed rabbi, a person in a position of ultimate trust. Individuals in a position of trust are held to a higher standard than all others. In the federal sentencing guideline system, abuse of a position of trust in a manner that significantly facilitates the commission of the crime is considered an aggravating factor, and the applicable guideline level is increased by 2 levels. See United States Sentencing Guidelines § 3B1.3. This defendant abused his position of trust in the worst way -- for the gratification of his own sexual impulses. As reflected in the victim impact statements, relevant conduct letters, and community impact statements, the defendant claimed to set the standards for strictly observing the teachings of Orthodox Judaism, yet lived a double life, breaking the rules he so hollowly and arrogantly entreated others to follow. He used his position of trust to take advantage of a place of peacefulness, spirituality, and privacy, deceiving women into attending, and surreptitiously recording his congregants, students, and potential converts naked. Every time he interacted with each of these women, the defendant must have reveled in the knowledge that he had recorded her naked and could view her performing her most intimate rituals any time he pleased.

The defendant's actions in this case reflected substantial premeditation. Under the District of Columbia Voluntary Sentencing Guidelines, if this case were a felony, Aggravating Factor 5.2.2(4), Substantial Premeditation, would be appropriate. While the government recognizes that the VSG do not technically apply in this case, the principals underlying the aggravating factors are relevant to all criminal cases; therefore, the government urges this Court to consider the spirit of this aggravating factor. Each step of the process, he planned and plotted. Upon having the idea to install a secret camera in the showering/changing room, the defendant had to create the ability to do so in a manner that would be undetected. He purchased numerous hidden cameras secreted in ordinary objects that would not seem out of place in a bathroom. The defendant had to create opportunities to install the hidden cameras in the changing room without anyone seeing or believing that anything was wrong. He was likely able to do so for so long because no one would have suspected him of any wrongdoing in installing a clock to keep track of time or a small fan for ventilation. As the community impact statement submitted by the Mikvah notes, the person who first feared that the clock contained a recording device doubted herself for even thinking that her rabbi could ever engage in such conduct, and initially thought her own suspicions to be preposterous and offensive. After making recordings, the defendant then saved the recordings, and meticulously catalogued them. A forensic examination of the defendant's electronic files revealed video after video, most labeled with victims' names and sequential numbers, ensuring that each video could be retrieved and re-watched, over and over, with a single click.

The defendant's premeditation was not just logistical. He expressly used his position of authority as the ultimate word on Orthodox law and tradition, and turned Orthodoxy on its head with his false rituals: his invention of the "practice dunks" and the mandatory, secretive "re-dunks." He deceived students, who have no religious obligation to immerse in a mikvah, luring them to come to the place where he had ultimate control, so they could be secretly recorded,

viewed, catalogued, and archived by him. All of these facts reflect the defendant's substantial premeditation and would warrant an upward departure from any applicable guideline range. The same spirit should be considered here as this Court fashions an appropriate sentence.

The scope of the defendant's conduct is truly shocking. The defendant committed this conduct over a period of five years, approximately 152 separate times. While some women were recorded on the same dates as other women, this does not minimize the fact that each recording, and each woman recorded, constitutes a separate crime. There is no basis to engage in "grouping" of any videos that were made on the same dates as other videos, as each offense was committed against a separate victim, and the recordings were viewed, edited, and saved by the defendant in separate electronic files. The Voluntary Sentencing Guidelines require that multiple offenses committed against multiple victims be sentenced consecutively, see VSG Chapter 6.1, and the government urges that the spirit of this sentencing rule be applied here, such that the sentences for each count be served consecutively. Even if one did consider the fact that some women were recorded on the same dates, the defendant pled guilty to engaging in this crime on 25 separate dates. Forensic examination of all the video files shows that the defendant engaged in this crime on many more dates. The extensiveness of the defendant's conduct weighs strongly against any minimization of his sentence because some women were recorded on the same dates. Indeed, the fact that the defendant sometimes captured women on the same dates as each other only shows that he sometimes herded groups of women – such as his students – into the shower room to be recorded one after the other, to maximize the efficiency of his surreptitious conduct.

The defendant has pled guilty to these offenses, which has saved this Court and the government the resources of a trial, and the victims from having to testify publicly. We note, however, that the defendant would have faced dozens of additional counts if this case had gone to trial, in that some victims who were reflected in a single count of conviction were also

recorded on additional dates that could have been charged. In addition, the government would have expected to charge the defendant for those counts within the statute of limitations even if the victim's identity remained unknown. As a result, the defendant could have been charged with over 100 counts of voyeurism had he not pled guilty. Moreover, the evidence in this case was overwhelming, such that a trial would have held very little potential benefit to the defendant. The government's requested sentence that the Court impose only one-third of the maximum sentence for each count to which he pled guilty takes into account the defendant's acceptance of responsibility and is just and appropriate punishment for the defendant's egregious, exploitative conduct. The fact that the defendant has no prior criminal history does not make him a "first-time offender" worthy of this Court's lenience – it only means that the defendant did not get caught until he had committed this crime over 150 times.

CONCLUSION

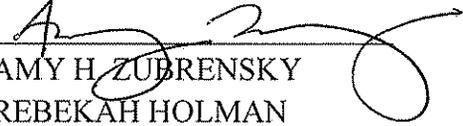
WHEREFORE, the United States respectfully requests that the Court sentence the defendant to a total of 208 months of incarceration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Memorandum in Aid of Sentencing has been served by email upon counsel for the defendant, Jeffrey Harris, Esq., at JHarris@rwdhc.com, this 8th day of May, 2015.


AMY H. ZUBRENSKY