

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

UNITED STATES OF AMERICA,

v.

**Case No. 2014-cmd-118262
Senior Judge Geoffrey M. Alprin**

BERNARD FREUNDEL,

Sentencing: May 15, 2015

Defendant.

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DEFENDANT’S SENTENCING MEMORANDUM

We respectfully submit this memorandum on behalf of Rabbi Bernard Freundel in advance of Rabbi Freundel’s sentencing. “It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings” *Pepper v. United States*, 562 U.S. 476 (2011) citing *Koon v. United States*, 518 U.S. 81, 113 (1996). This is such a case.

I. Preliminary Statement

Rabbi Freundel is an orthodox rabbi and has been for 39 Years. He has resided and practiced in Washington D.C. for 26 Years. He is married and has three adult children. Prior to this matter he has no criminal history.

As the Court is aware, on February 19, 2015 Rabbi Freundel entered a guilty plea to 52 counts of misdemeanor voyeurism in violation of 22 D.C. Code § 3531 (b) and (c) (2001 ed.).¹ The facts supporting the charges are that Rabbi Freundel electronically recorded and thereby observed women in a changing room area prior to these women entering the ritual Jewish bath,

¹ Subsection (b) prohibits “observation” and subsection (c) prohibits “recording.”

known as a mikvah. No women were recorded in the mikvah. While each count alleges the recording of a single individual, the conduct was continuous and arose from a single motivation.² The government does not allege, nor could it, that any of the electronically recorded images were distributed or disseminated or that Rabbi Freundel attempted to do so.³ The charged conduct carries a maximum penalty of not more than one year imprisonment and a fine of \$2500 for violations on or after June 11, 2013 (counts 1-30) and a fine of \$1000 for violation prior to June 11, 2013 (counts 31-52).

Rabbi Freundel readily admits that he has committed a serious crime for which he takes full responsibility. That acceptance of responsibility is demonstrated by the fact that when confronted with the then alleged conduct by prosecutors he accepted responsibility early on by agreeing to plead guilty immediately after the government informed him of the charges it would file.

Rabbi Freundel also recognizes and regrets the negative impact his actions have had within the community. His conduct has brought shame upon Judaism, the synagogue he once served, his family, and himself. He has been publicly humiliated, forced to leave his office as a rabbi, and is now a convicted man. His fall, all of his own doing, has been very public and painful for the Jewish community, his family and of course, himself. Throughout the great majority of his life, Rabbi Freundel has been a contributor and made a positive difference in the

² The Information charges each count in identical language save for the identification (in code) of the name of the individual.

³ 22 D.C. Code §3531 at subsection (f) 2 makes it a felony for a person who “distributes or disseminates, or attempts to distribute or disseminate, directly or indirectly, by any means” such an image. The felony version of this statute carries a maximum term of incarceration of 5 years.

community. In this instance, by succumbing to a human failing, he has largely wiped away a lifetime of good deeds.

II. Rabbi Freundel's Personal Background

Rabbi Freundel was ordained in 1976 at Yeshiva University. In addition to serving as a rabbi for congregations (most recently Keshet Israel from July 1989 to 2014), Rabbi Freundel has been on the faculty as a professor, lecturer, adjunct, visiting scholar and/or Hillel Society lecturer at Baltimore Hebrew University, University of Maryland, Georgetown University, American University, Yeshiva University, Towson University, Queens College, Princeton University, Yale University, Cornell University, University of Pennsylvania, Columbia College, University of Chicago, and others. He has lectured at the Aspen Institute, testified before Congress on Human Cloning and been a consultant to the Presidential Commission on Cloning, the National Institute on Aging and the National Institute of Health. He is the author of over 55 published books, manuscripts, and articles on a wide variety of topics. By way of illustration, the review for his book *Contemporary Orthodox Judaism's Response to Modernity* concluded, Rabbi Freundel's "essays are accurate, entirely to the point, easy to finish without losing interest and convenient to pick up or put down at any time. Freundel's evident mastery of the vast breadth of materials within Jewish thought and law combined with his eloquent and cogent writing makes for an exceptionally worthwhile, inspirational and instructive work that no informed person should be without." (Publisher's Weekly). Likewise, author Herman Wouk's review of Rabbi Freundel's *Why We Pray What We Pray: The Remarkable History of Jewish Prayer* concluded, "This is a scholarly book of impressive depth and originality that should intrigue and enlighten a large readership. Laymen (like myself) may know much of the prayer book by heart, yet have no clue

to its underlying history and concepts. Rabbi Freundel turns a familiar liturgy into a palimpsest of emergent Jewish thought down the generations.”

Rabbi Freundel’s good works, in addition to his scholarship, are well known. In addition there are many private works for those who sought him out during a personal crisis. For example, a Georgetown student called in the middle of the night. She was talking about suicide and clutching a handful of pills. Rabbi Freundel went to her house, and after some conversation, managed to get her into his car and drive her to the emergency room, where she was admitted. Today, she is married, lives in a suburb of Dallas, Texas with her husband and several children.

On another occasion Rabbi Freundel received a call from a congregant in the middle of the night, whose husband had died sitting in the living room chair. The doctor who had been called had told the woman, after declaring the man dead, that he was leaving, and so he sat with the woman in the living room on the sofa, with her deceased husband in the easy chair, until the medical examiner and the morgue attendants arrived at 8:00 am the next morning.

Rabbi Freundel has opened his home to those in need. When one of his congregants lost her husband in a tragic car accident, he took her and her mother into the house for the entire holiday of Passover and for subsequent days, so that she could perform the home mourning rituals required by Jewish law in a place that was comfortable for her.

While clerical duties always involve assisting congregants with personal crisis, these brief examples, among many, demonstrate that Rabbi Freundel always went the extra mile to provide compassion, guidance and caring for his congregation.

III. Support in the Community for Rabbi Freundel Notwithstanding the Conduct that gave rise to this case.

Rabbi Freundel has received numerous unsolicited communications of support. This show of support includes letters from six victims; from people that have known Rabbi Freundel over the course of many years; from people that he has helped over the years; and from people he has taught over the years. All of these people are well aware of the facts that gave rise to this case but understand that one's life is not only defined by the worst moment. Below are illustrative excerpts from these communications the Court has received which give a sense of the letters as a whole.

I am obviously not in a position to know what happened or why nor is it important for me to know but I do want to say that a lifetime of good works, Torah scholarship and helping countless people in need is not destroyed because of mistakes or failures. . . . You have done much good and I hope that in some way you will be able to continue.

I just wanted to let you know that—if true—although what you have done is terrible . . . I also want you to know that I haven't forgotten all the good things you have done. I will remind those I know that no one is summed up in total by their worst moment.

. . . whatever problems you have right now does not detract from the help, teaching and guidance you gave us . . .

. . . we treasure our past relationship with you and are thankful for the teaching and guidance you gave our family . . .

I am so grateful--will always be grateful—for your wisdom and friendship of more than 30 years. Because of your help and counsel, my children and I have always been completely accepted in the Jewish community here and in the States.

I am writing to tell you in particular how you enriched our lives.

I don't pretend to know what is or is not factual in what I read and hear. But this I do know— You are my friend and have been a shaping influence in my life. You opened doors to me that I did not know existed. You enabled me to see G-d's

word through Jewish eyes.

At this stressful time for you, I want you to know how much your extensive religious scholarship and knowledge has meant to me over the years.

You have always been there for my family and myself. That means so much and we have not forgotten your support.

Keep the faith! Know your innocence as well as your guilt and your responsibility—and remember that all sins have the potential to be transformed into merit.—your true friend, and a friend to your family

Regardless of what happened, I want you to know you have and continue to have a profound positive impact on my approach and practice of Judaism.

We would like you to know that there are many, many of us in the community who care very much about you, We miss you, and we especially miss learning Torah with you.

I have very fond memories of my time as your intern and I will continue to cherish the many skills, insights and values I learned from you.

We are full of gratitude for you many kindnesses over the past 30+ years . . .

Independent of any personal transgression, you have much to offer, and we hope for the day when this incident is behind you so you can go on with a productive life. Many great men, and you are still great in our eyes, have overcome personal pitfalls to come back.

We have never forgotten how you helped us and we know the kind of person you are.

I hope that this will not close the door on your brilliant rabbinic career . . .

Thank you very much for all you did for me.

Thinking of you and how the two of you have always been there for us.

IV. Internet Posting by Women Congregants of Rabbi Freundel

In addition to communications sent to Rabbi Freundel there are public internet postings which express the confusion of many of the women congregants who are trying to understand the paradox of the great rabbi they know with the conduct that this case has brought to light. For example:

Watched some of my wedding video today . . . I was inexplicably surprised when Rabbi Freundel came on the screen to talk to Scott about it and sign my ketubah [Jewish wedding contract]. Didn't watch long enough to see his thoughtful speech. That's the nice guy I remember . . . Is it normal that I'm still confused?

[REDACTED]

Yes. There is still a nice guy in there I am sure. And an intelligent caring Rav. Unfortunately he is also suffering from something broken within him or an addiction or a mental issue. It doesn't take away from the good he did. It's on top of its (sic). So hard. We can't throw the baby out with the bath water. He did so much good before he got lost and went a different way. The good still exists.

[REDACTED]

Of course. Because if there wasn't confusion we would all understand perfectly. We can't understand for the very reason that it doesn't make logical, comprehensible sense.

[REDACTED]

I will always think of him as my Rav/teacher. To this very day (15 years later) I still here (sic) his halachic explanations in my head when I am pondering a question. I pray that whatever led him astray gets wiped out and that his teshuvah is one day accepted by not only Hashem; but by the community as a whole.

[REDACTED]

Exactly how I'm feeling. How do I reconcile the Rabbi that I knew—who officiated at both of my weddings, drove me to get my Get [Jewish divorce] so that I wouldn't have to drive home alone, and guided me through so much, both good and bad – with the person today? Too much cognitive dissonance.

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Even Elanit Rothschild Jakabovics, the President of Keshet Israel, who has been unrelenting in her condemnation of Rabbi Freundel wrote this: “The good should not be thrown out with the bad.”

IV. Argument on Sentencing

While the District of Columbia Sentencing guidelines apply to felonies and not to misdemeanors, and while the District of Columbia Sentencing guidelines are strictly advisory, they do provide general factors that the Court may consider in determining an appropriate sentence. These factors, which are set out in the D.C. Code are:

Seriousness of the offense;

Dangerousness of the offender;

Need to protect the safety of the community;

Offender’s potential for rehabilitation; and

Use of alternatives to prison, where appropriate.

D.C. Code § 3-101. *Speaks v. United States*, 959 A.2d 712, 717-718 (D.C. 2008).

A. Seriousness of the Offense

While every violation of the criminal law is serious, this factor addresses the relative seriousness of the many violations of the criminal law set out in the District of Columbia Code. The felony version of the crime of voyeurism (22 D.C. Code §3531 (f)(3)) is in offense severity category group 8 out of nine categories with group 8 being the next to the least severe category. Rabbi Freundel has been charged with the misdemeanor version of this crime which, by its very nature, is far less severe than the felony version of this statute. However, it is also can be argued

(as the government will undoubtedly do) that the commission of this crime by one in the position of a rabbi makes this crime more serious than if committed by one not so situated. This factor may be fairly characterized then as a relatively low level crime committed by a person who in so doing breached his position of trust.

B. Dangerousness of the Offender

Rabbi Freundel is a non-violent first time offender with a respected record of positive contributions to the community. His crime is not a violent one. It does not involve physical contact with anyone. This factor asks the Court to assess how dangerous Rabbi Freundel is to the community. The fair answer is that Rabbi Freundel is not a dangerous offender, especially when compared with the dangerousness of other offenders who come before this Court on a daily basis.

C. Need to Protect the Safety of the Community

This factor largely is a complement to the factor above. If an offender is not dangerous, then there is little need to protect the safety of the community. The fact that people on the no contact list went out of their way to have themselves removed so they could resume contact with Rabbi Freundel is illustrative of the fact that others in the community do not feel the need for the Court's protection. Further the fact, as set out below, that Rabbi Freundel has been requested by several groups to resume teaching them (which he is doing) also speaks to the fact that there is no need to protect the safety of the community by incarcerating Rabbi Freundel.

D. Offender's Potential for Rehabilitation

Rabbi Freundel, of his own volition and not at the urging of counsel, immediately after his arrest sought medical help to seek to understand and insure that he never again engages in the type of behavior that causes him to be before the Court. To say that that behavior is out of

character is to state the obvious. What is not so obvious is what caused him to act in that manner, and what the likelihood is he will ever again engage in such behavior. These are the questions he has been addressing each and every week with his doctor. Counsel understands that the doctor in question has communicated directly with the Court addressing both the causes of Rabbi Freundel's conduct and likelihood of it recurring in the future. If Rabbi Freundel is permitted, he intends to continue his treatment.

Rabbi Freundel has already taken first steps to return to society in a positive way. He has been requested to conduct small classes (without compensation) on Torah and other Judaic subjects. Rabbi Freundel is teaching a telephonic class each Sunday morning. He is also teaching a class by telephone conference call on Tuesday evening as well as conducting Sabbath study for 3-4 people on Saturday.

E. Use of Alternatives to Prison, Where Appropriate

This is a case where it is appropriate to use alternatives to prison. Incarceration's purposes generally speaking are punishment, deterrence, incapacitation, and rehabilitation. There is no need for the Court to incarcerate Rabbi Freundel in order to punish him. He has already been punished in that he has lost his employment as a rabbi and is never likely to be so employed again. He has been publically humiliated and his prior reputation as a Judaic scholar, teacher, and counselor have been destroyed. Those academic institutions and governmental bodies that have previously sought him out on important ethical questions (such as cloning, genetic research, treatment of aged and the like) are likely never to do so again. He has lost the only home he and his family have known for over 20 years (the rabbinical residence as Kesher Israel). He finances are in ruins. All these facts achieve the measure of retributive justice that fits the crime.

Deterrence, both of the general and specific kind, do not require incarceration. Those looking at this case will realize that Rabbi Freundel has virtually destroyed his former life of respect and virtue. His fall from grace has been total, and that certainly will deter him or others similarly situated. He is, for example, not an athlete or movie star who will be seen by others to continue to earn a mega salary and move on to the next game or movie without missing a beat. Incarceration will not add to the deterrence quotient. The highly publicized nature of these proceedings also serves as unique and significant deterrent to others who may consider committing similar crimes in the future.

There is no need to incapacitate Rabbi Freundel by sending him to prison. He has been free in society since his arrest. His conduct has been totally lawful and appropriate. Putting him behind bars to keep from interacting with society is not called for or necessary. Quite the contrary, Rabbi Freundel is a perfect candidate for a sentence of community service. His entire career has been helping people as the letters summarized above testify to. If there is a way to make some good come out of this case, it would be to have Rabbi Freundel give back to the community in a way that helps those less fortunate members of society. Incarcerating Rabbi Freundel helps no one.

The best way to serve to purpose of rehabilitation is to permit Rabbi Freundel to continue on that path with his doctor. The Court can fashion a sentence that keeps close tabs on Rabbi Freundel's progress through the probation department and thereby have the necessary assurance that he is moving on with his life on a lawful path. As we were leaving court during the last appearance, the Court said, in the context of continuing unsupervised release, "Rabbi don't disappoint me." We ask the Court to continue to trust that, if given the opportunity, Rabbi

Freundel will not disappoint the Court. We ask the Court to sentence Rabbi Freundel to an alternative to prison while at the same time fashion a sentence that extends trust but verifies.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 8th day of May 2015 a copy of the foregoing was mailed, first-class mail postage prepaid to the attorney for the government listed below.

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