SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA	:	
	:	**Case No. 2014 CMD 18262**
v.	:	**The Hon. Geoffrey M. Alprin**
	:	**CLOSED CASE**
BERNARD FREUNDEL	:	

GOVERNMENT'S OPPOSITION TO DEFENDANT'S
MOTION TO REDUCE SENTENCE

The United States of America, by and through its attorney, the United States Attorney's Office for the District of Columbia, respectfully submits this opposition to the Motion to Reduce Sentence ("Def.'s Mot.") under Rule 35(b) filed by the defendant, Bernard Freundel. Defendant pled guilty to 52 counts of voyeurism on February 9, 2015, and was sentenced by this Court to 45 days' incarceration as to each charge, to run consecutive, on May 15, 2015. Defendant requests that the Court reduce his sentence in light of his altruistic activities and various difficulties involved with incarceration at the D.C. Jail. Defendant does not, however, provide a single sufficiently compelling reason to warrant this Court's reconsideration of its legal, fair, and just sentencing decision. Therefore, defendant's plea for leniency is without merit and should be denied without a hearing.

BACKGROUND

Defendant's convictions stem from his premediated and meticulously planned use of electronic recording equipment to surreptitiously videotape at least 52 women totally or partially undressed while they were in a private, religious location.

On October 15, 2014, defendant was charged by information with six counts of voyeurism, in violation of D.C. Code §§ 22-3531(b) and (c), for installing and maintaining electronic devices for the purpose of secretly observing and recording female victims who were

using a bathroom or restroom or partially undressed or changing clothes.

On February 19, 2015, defendant entered a guilty plea to 52 counts of voyeurism. In return, the government agreed to decline to indict any additional charges arising out of the conduct described in the factual proffer, reserved its right to allocute as to whether defendant should be incarcerated pending sentencing, waived its right to file any applicable enhancement papers, and reserved its right to allocute at the time of sentencing. See Ex. A at 2.

That same date, defendant agreed to a detailed proffer of facts in connection with his guilty plea in this case. As part of the proffer, defendant admitted to the following facts: Between early 2009 and October 2014, defendant was the sole Rabbi of Kesher Israel congregation in Northwest D.C. See Ex. B at 1. In 2005, the National Capital Mikvah opened nearby. Id. A mikvah is a Jewish ritual bath that is used primarily by Orthodox Jewish women for monthly spiritual purification and by other individuals as the final step in the Orthodox Jewish conversion process. Id. The National Capital Mikvah is affiliated with Kesher Israel. Id. On numerous occasions between early 2009 and October 12, 2014, defendant installed and maintained electronic devices in the larger of two changing/showering rooms at the National Capital Mikvah. Id. Between February 19, 2012, and September 19, 2014, he used those devices to record at least 52 women who were totally or partially undressed in the showering room. Id. at 3. None of those 52 women had knowledge of or consented to being recorded by defendant. Id. In addition to the recordings that are the subject of those 52 charges, defendant also secretly recorded approximately 100 additional women totally or partially undressed before and/or after showering in the bathroom at the National Capital Mikvah between 2009 and September, 2014. Id. at 3–4. These women also did not know that they were being recorded and did not consent to being recorded. Id. at 4.

Both the government and defense submitted memoranda in aid of sentencing in preparation of defendant's sentencing. Pursuant to its memorandum, the government recommended four months' incarceration for each of the 52 counts of conviction, to run consecutively. Defendant argued that there was no need to impose incarceration and asked the Court to use alternatives to prison, such as community service, when fashioning its sentence.

At the sentencing hearing on May 13, 2015, the Court heard numerous victim and community impact statements, arguments from both the government and defense, and statements from defendant himself. The Court also noted it had received and reviewed more than 30 letters from the defense in support of defendant and 17 other letters that had been directly submitted to chambers, most of which were in support of defendant. See Ex. E at 3. After hearing those argument and statements, and fully considering the memoranda in aid of sentencing, the Court sentenced defendant to consecutives terms of 45 days' incarceration on each of the 52 counts of voyeurism for an aggregate term of imprisonment of 2,340 days—a length of approximately 6.5 years. See Ex. C. The Court also ordered a $13,000 assessment under the Victims of Violent Crime Compensation Act of 1996. Id.

Defendant filed a motion to correct illegal sentence on May 29, 2015, alleging that the Court imposed an illegal sentence by running the sentences consecutively as opposed to merging the 52 counts. The Court denied that motion on July 31, 2015, and defendant filed a timely notice of appeal on August 5, 2015. The Court of Appeals affirmed on September 15, 2016, holding that D.C. Code § 22-3531(c) "unambiguously permits separate punishment for each of Mr. Freundel's fifty-two victims in this case." Freundel v. United States, 146 A.3d 375, 384 (D.C. 2016) (attached as Exhibit D).

Defendant filed the instant Motion to Reduce Sentence pursuant to Rule 35(b) on

December 22, 2016. In his motion, defendant asks the Court to reduce his sentence on the basis of "good works in the service of others under extremely harsh circumstances in a place of confinement not designed to house sentenced prisoners such as himself." Def.'s Mot. at 19. In support of his motion, among other things, defendant submitted numerous letters from inmates at the D.C. Jail evidencing his positive behavior while incarcerated.

The government filed a motion for extension of time to file its response until February 22, 2017, which the Court granted. The government now submits this opposition to defendant's motion.

ARGUMENT

A motion to reconsider and reduce sentence is governed by District of Columbia Superior Court Rule 35(b).[1] "A motion for reduction in sentence is basically a 'plea for leniency' [and] [s]uch a motion is addressed to the trial court's sound discretion." Walden v. United States, 366 A.2d 1075, 1077 (D.C. 1976) (internal citations omitted); see also Saunders v. United States, 975 A.2d 165, 167 (D.C. 2009). When evaluating a sentence, the Court of Appeals has long recognized the "great latitude" afforded to the trial court, noting that "the court may examine any reliable evidence," and "may consider a wide range of facts concerning a defendant's character and his crime." Williams v. United States, 427 A.2d 901, 904 (D.C. 1980). This broad sentencing inquiry allows a sentencing court "to understand the measure of the defendant's conduct" and consider the defendant's conduct when imposing a sentence. Warren v. United States, 310 A.2d 228, 229 (D.C. 1973); see Powers v. United States, 588 A.2d 1166, 1169 (D.C. 1991) ("Highly relevant—if not essential—to [the trial judge's] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and

[1] Defendant's motion to reduce was filed within 120 days of the mandate "issued upon affirmance of the judgment." D.C. Super. Ct. R. Crim. P. 35(b). Hence, defendant's motion is timely.

characteristics."); Johnson v. United States, 508 A.2d 910, 911 (D.C. 1985) ("[A] trial judge may consider facts bearing on the defendant's character and the circumstances surrounding the crime of which he has been convicted.").

Defendant bases his request on two factors. First, he claims that a reduced sentence would be fair because he has demonstrated his remorse and commitment to change by dedicating his time during incarceration to improving the lives of fellow inmates and by proposing various programs, designing written materials, and creating further educational opportunities that can all be used to achieve the goals of rehabilitation and recidivism reduction among inmates, as well as prevention of incarceration amongst teenagers. Def.'s Mot. at 3–5. Second, defendant details a myriad of reasons that have caused his incarceration at D.C. Jail to be especially burdensome for his religious, health, personal, and rehabilitative needs, thereby warranting a reduction in sentence due to his suffering. Id. at 8–18. Neither of these factors warrant the need for this Court to grant relief.

While the government appreciates the steps defendant is taking to better himself and the lives of others in prison, defendant's plea for leniency does not provide a convincing or compelling reason for this Court to reduce its legal and legitimate sentence, which was fair and just under all the circumstances. At the time of sentencing, this Court considered a wealth of information regarding defendant's criminal acts, history, and character. The Court considered the extensive and severe impact that defendant's actions had on his victims, the defendant's abuse of his position of trust and superior knowledge of Jewish law and tradition with congregant members and vulnerable individuals in effectuating his crimes, and defendant's pleas for leniency that were supported by numerous examples of benevolent deeds that defendant had performed throughout his career.

Defendant's positive actions at the D.C. Jail are certainly commendable. However, the Court already took into account similar types of commendable behaviors and support from community members and factored those positive traits into its judgment. At the sentencing hearing, the Court expressly recognized that it had factored in these traits when considering defendant's plea for leniency:

> There is of course another side to the defendant and we know that and I know that and acknowledge it. He's not all bad. As attested by many letters in support of him he has gone out of his way to provide comfort and solace to many individuals in the community. The Court has read all the letters in his support and taken them into consideration. They affect the sentence but they do not exonerate the conduct or the defendant's conduct described above. The Court concludes that there must be a significant response by the secular authorities and whether I like it or not that turns out to be me today to this gross and repeated invasion of privacy, abuse of power, and violation of trust.

Ex. E. at 4. The Court's sentence of 45 days as to each count—which was less than the government's allocution of four months as to each count—reflects these ameliorative factors. As such, this Court need not revisit defendant's sentence to account for factors that it already took into consideration.

Moreover, good prison behavior is not typically a factor for trial courts to consider when determining whether to reduce a sentence. See Garcia v. United States, 542 A.2d 1237, 1240 n.4 (D.C. 1988) ("In any event, [defendant's] proffered basis for sentence reduction . . . —good prison behavior—is generally not a valid ground for the trial court to consider."); United States v. Nunzio, 430 A.2d 1372, 1374–75 (D.C. 1981) (after imposition of sentence, considerations such as prison record and indications of rehabilitation are more properly addressed by parole authorities); Burrell v. United States, 332 A.2d 344, 346 (D.C. 1975), cert. denied, 423 U.S. 826, (1975) (post-sentencing developments such as good behavior in prison and rehabilitation are not

relevant to sentencing and generally are not considered on motion to reduce, but are more appropriately considered by parole authorities).

While defendant may not be able to present evidence of his good behavior to parole authorities, he is not without the potential to benefit from his good works while incarcerated. Pursuant to the authority of the District of Columbia Good Time Credits Act, D.C. Code § 24-221.01, et seq., sentenced misdemeanants are eligible to receive credit for good behavior, rehabilitative programs, work details, and special projects, and may earn up to eight good time credits (each credit equals one day) per calendar month for positive behavior and program participation. See Ex. F. As such, this Court need not give additional credit for defendant's successful participation in rehabilitative programs, work details, and special projects when he can already benefit from those activities.

Defendant also claims that various conditions and restrictions at the D.C. Jail demonstrate that it is an inappropriate facility for defendant to serve his sentence. Def.'s Mot. at 8. Among other things, defendant claims that the District of Columbia's detention facility does not provide the adequate resources to allow him to practice his religion, participate in relevant rehabilitation programs, maintain his physical and mental health, and enjoy contact visits from family. Id. at 8–18. The government is not unsympathetic to these concerns. As acknowledged by defendant, Def.'s Mot. at 2, the government supported his attempts to be moved to the Bureau of Prisons, where he could be held in a facility that is better suited to accommodate his needs. However, as defendant explained, the Bureau of Prisons has refused to accept defendant due to a legal requirement that prisoners from the District must be serving time for a felony conviction before the Bureau of Prisons will accept them into their custody.

Defendant maintains that he "does not purport to argue that the deprivations he has suffered as a result of being in the D.C. Jail rise to violations of statute or the Constitution" and that "[h]e understands that this is not the appropriate forum in which to make that argument, if one is to be made at all, because the Department of Corrections is not before this Court." Def.'s Mot. at 18. Notwithstanding this statement, defendant is asking for relief as a direct result of his conditions of confinement at the D.C. Jail.[2] Relief from those conditions should be sought through officials representing the Department of Corrections, a party which is not before this Court, and not through a motion to reduce sentence.

Because defendant is not arguing that he deserves a sentence reduction based on any new evidence or novel legal argument, defendant is not entitled to another hearing in this case. When evaluating a motion under Rule 35(b), a hearing is not required because "the court typically will have heard evidence in mitigation at the original sentencing and thus the risk of an uninformed ruling will be slight." Williams v. United States, 470 A.2d 302, 306 (D.C. 1983), aff'd 485 A.2d 950 (D.C. 1985), cert. denied, 472 U.S. 1019 (1985). Defendant has only raised his dissatisfaction with being in prison, his self-professed commitment to change, and his desire to return to the community as reasons to ask this Court to reconsider his sentence. These arguments pale in comparison to the threat defendant poses to the public, the punishment necessary to deter

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[2] While the Constitution "does not mandate comfortable prisons," Rhodes v. Chapman, 452 U.S. 337, 349, (1981), it also does not permit inhumane ones, and "the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." Helling v. McKinney, 509 U.S. 25, 31 (1993). The Amendment imposes duties on prison officials, who "must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must 'take reasonable measures to guarantee the safety of the inmates.'" Farmer v. Brennan, 511 U.S. 825, 832–33 (1994), citing Hudson v. Palmer, 468 U.S. 517, 526–527 (1984); Helling, 509 U.S. at 31–32; Washington v. Harper, 494 U.S. 210, 225 (1990); Estelle v. Gamble, 429 U.S. 97, 103 (1976).

this kind of crime in the community, and the harm that has been caused to so many victims. The Court recognized as much at defendant's sentencing, stating:

> As many victims and writers of relevant conduct letters have attested, defendant was a trusted leader o[f] the religious community and the conversion process. The defendant repeatedly and secretly violated that trust and abused his power. He required potential converts to bathe naked in the Mikvah or possibly fail[] to attain the conversion to orthodox Judaism that each of them wished for. This case thus becomes one of a classic abuse of power and violation of trust and the defendant has just acknowledged that. He not only pled guilty here today but he has acknowledged that he committed a very serious wrong.
>
> The conduct to which defendant pled guilty is despicable. There is no realistic justification for it and the defense has offered none.

Ex. E at 3–4.

All those same sentiments and justifications for defendant's sentence still apply, and defendant has neither averred new evidence or novel legal arguments that allow the Court to find otherwise. Thus, there is no need for a hearing to address defendant's motion.

CONCLUSION

For the foregoing reasons, defendant's motion to reduce his sentence should be denied without a hearing.[3]

Respectfully submitted,

CHANNING D. PHILLIPS
United States Attorney
D.C. Bar Number 415793

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[3] If the Court were to consider granting defendant's request, then a hearing on this motion is likely necessary so that the victims may be given the opportunity to be heard on a new sentence. D.C. Super. Ct. R. Crim. P. 32(c)(4)(B) ("Before imposing sentence in a case in which a defendant has been found guilty of an offense involving a victim . . . the court must address any such victim who is present at sentencing and must permit the victim to speak or submit any information about the sentence."); see also D.C. Code § 23-1901(b)(4) ("A crime victim has the right to [b]e present at all court proceedings related to the offense, including the sentencing, and release, parole, record-sealing, and post-conviction hearings, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony or where the needs of justice otherwise require.").

MARGARET J. CHRISS
Assistant United States Attorney
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Assistant United States Attorney
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(202) 252-7876

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, this 22nd day of February 2017, I caused a copy of the foregoing to be served by email on defendant's counsel, Jeffrey Harris, at jharris@rwdhc.com.

MATTHEW P. MASSEY
Assistant United States Attorney

Exhibit A

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

UNITED STATES OF AMERICA	)	Case No. 2014-CMD-118262
	)	
v.	)	Senior Judges
	)	
	)	Status Hearing: February 19, 2015
BERNARD FREUNDEL	)	

NOTICE OF FILING

The government requests that the attached letter, dated February 18, 2015, be made part of the record in this case.

Respectfully submitted,

RONALD C. MACHEN, JR.
United States Attorney

KELLY HIGASHI
Assistant United States Attorney
Chief, Sex Offense and Domestic Violence Section

By: _____
AMY H. ZUBRENSKY
REBEKAH HOLMAN
Assistant United States Attorneys
U.S. Attorney's Office
Room 10-842
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-7076

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing Notice of filing and attached Discovery Letter has been served by email upon counsel for defendant counsel for defendant Bernard Freundel, Jeffrey Harris, jharrisesq@gmail.com, this 18th day of February, 2015.

_____
AMY H. ZUBRENSKY

U.S. Department of Justice

Ronald C. Machen Jr.
United States Attorney

District of Columbia

Judiciary Center
555 Fourth St. N.W.
Washington, D.C. 20530

February 18, 2015

Jeffrey Harris, Esq.

Re: *United States v. Bernard Freundel, Crim. No. 2014-CMD-18262*

Dear Counsel:

I am writing to extend a plea offer to your client. This plea offer will expire on **February 19, 2015**. The Government reserves the right to revoke this plea offer at any time before your client enters a guilty plea in this case. If your client accepts the terms and conditions set forth below, **please have your client execute three copies of this document in the spaces provided.** Upon receipt of the executed document, this letter will become the plea agreement between your client and the Office of the United States Attorney for the District of Columbia.

1. Your client agrees to plead guilty to fifty-two counts of **Voyeurism**, in violation of 22 D.C. Code § 3531(b) and (c). Your client understands that each count carries a potential penalty of one year imprisonment, a fine of $2,500 (for counts numbered one through 30), a fine of $1,000 (for counts numbered 30 through 52), or both.

2. Your client understands that the government will: decline to indict any additional charges arising out of the conduct described in the attached Factual Proffer; reserve its right to allocute as to whether your client should be incarcerated pending sentencing[1]; waive any enhancement papers that might apply; and reserve its right to allocute at the time of sentencing.

3. The parties further agree that your client, after taking an oath to tell the truth, shall agree to the attached Factual Proffer in Support of Guilty Plea, which both you and he will have

[1] If released, and your client later fails to appear for any proceeding, fails to obey any condition of release, or is re-arrested following the entry of a guilty plea, the government will reserve its right to request that your client be incarcerated pending sentencing.

signed.

4. Your client agrees that this letter is binding on the United States Attorney's Office for the District of Columbia and your client, but not binding on the Court, and that he cannot withdraw this plea at a later date because of the harshness of any sentence imposed by the Court.

5. Your client acknowledges and has been made aware that pursuant to the Innocence Protection Act, that there may be physical evidence which was seized from the victims, crime scene or from your client or from some other source that can be tied to your client that could contain probative biological material. Your client understands and agrees that in order to plead guilty in this case, your client must waive and give up DNA testing in this case and must execute the attached written waiver of DNA testing. Your client further understands that should he waive and give up DNA testing now, it is unlikely that he will have another opportunity to request DNA testing in this case.

6. In entering this plea of guilty, your client understands and agrees to waive certain rights afforded to your client by the Constitution of the United States and/or by statute. In particular, your client knowingly and voluntarily waives or gives up his right against self-incrimination with respect to the offenses to which your client is pleading guilty before the Court which accepts your client's plea. Your client also understands that by pleading guilty your client is waiving or giving up your client's right to be tried by a jury or by a judge sitting without a jury, the right to be assisted by an attorney at trial and the right to confront and cross-examine witnesses.

7. Your client agrees to waive being indicted on the fifty-two counts of Voyeurism.

8. Your client also agrees that if any illegal contraband were seized by any law enforcement agency from the possession of or the direct or indirect control of your client, then your client consents to the administrative forfeiture, official use and/or destruction of said contraband by any law enforcement agency involved in the seizure of these items. After the conclusion of the criminal case, the government will release to your client the five desktop computers and seven laptop computers that were seized in connection with search warrants in this case, excluding their hard drives, which will be retained by the government as evidence. All other media that contains digital evidence will also be retained by the government.

9. Your client agrees to waive the right to appeal the sentence in this case, including any term of imprisonment, fine, forfeiture, authority of the Court to set conditions of release, and the manner in which the sentence was determined, except to the extent the Court sentences your client above the statutory maximum determined by the Court, in which case your client would have the right to appeal the illegal sentence, but not to raise on appeal other issues regarding the sentencing. In agreeing to this waiver, your client is aware that your client's sentence has yet to be determined by the Court. Realizing the uncertainty in estimating what sentence the Court ultimately will impose, your client knowingly and willingly waives your client's right to appeal the sentence, to the extent noted above, in exchange for the concessions made by the Government in this Agreement.

10. This letter sets forth the entire understanding between the parties and constitutes the complete plea agreement between your client and the United States Attorney's Office for the District of Columbia. This agreement supersedes all prior understandings, promises, agreements, or conditions, if any, between this Office and your client.

Should you have any questions, please feel free to contact me at (202) 252-7076.

Respectfully submitted,

RONALD C. MACHEN JR.
UNITED STATES ATTORNEY
D.C. Bar No. 447-889

BY: _____

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DEFENDANT'S ACCEPTANCE

I have read this plea agreement and factual proffer and have discussed it with my attorney, Jeffrey Harris, Esq. I fully understand this agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to fully understand this agreement. I am pleading guilty because I am in fact guilty of the offenses set forth herein.

I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this plea agreement. I am satisfied with the legal services provided by my attorney in connection with this plea agreement and matters related to it.

2/19/15
Date

BERNARD FREUNDEL
Defendant

DEFENSE COUNSEL'S ACKNOWLEDGMENT

I have read each of the pages constituting this plea agreement, reviewed them with my client, Bernard Freundel, and fully discussed the provisions of the agreement with my client. These pages accurately and completely set forth the entire plea agreement.

2/19/15
Date

Jeffrey Harris, Esq.
Counsel for Defendant Bernard Freundel

Exhibit B

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

UNITED STATES OF AMERICA	)	Case No. 2014-CMD-18262
	)	
v.	)	Senior Judges
	)	
	)	Status Hearing: February 19, 2015
BERNARD FREUNDEL	)	

FACTUAL PROFFER IN SUPPORT OF GUILTY PLEA

If case 2014-CMD-18262 had gone to trial, the government's evidence would have shown beyond a reasonable doubt that between early 2009 and October, 2014, the defendant, Bernard Freundel, was the sole Rabbi of Kesher Israel congregation, located at 2801 N Street, NW, Washington, D.C. 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, and is affiliated with, Kesher Israel. A mikvah is used primarily by Orthodox Jewish women for monthly spiritual purification and by other individuals as the final step in the Orthodox Jewish conversion process. The National Capital Mikvah has two changing/showering rooms connected to the room with the ritual bath. On numerous occasions between early 2009, and October 12, 2014, the defendant installed and maintained electronic devices in the larger of the two changing/showering rooms for the sole purpose of secretly and surreptitiously recording women who were using the bathroom and totally and partially undressed before and/or after showering. The women recorded did not know that they were being recorded and did not consent to being recorded.

On October 12, 2014, 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 in the clock radio, set the time so that it was accurate, and positioned the recording element so that it faced the shower area. The defendant had engaged in similar activity on numerous occasions starting in 2009. After the defendant plugged in the device, he exited the changing room. Shortly thereafter, the clock radio was taken by an individual associated with the Mikvah and turned over to officers with the Metropolitan Police Department (MPD).

Later that same day, MPD detectives applied for, and obtained, an emergency 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 contained six (6) video files, each of which depicted a woman totally or partially undressed before and/or after taking a shower. At least one of the videos depicts the defendant setting up the clock radio and shows the defendant's face as he sets the time. As is evident in these video files, none of the six women knew that they were being recorded and none consented to such recording.

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 also arrested. Numerous items were seized from the defendant's home, including five desktop computers, seven laptop computers, six external hard drives, 20 memory cards, 11 flash drives, a manual for the Recording Device, and another manual for a different surreptitious digital recording device disguised as a fan.

On October 21, 2014, law enforcement personnel executed a search warrant at the

defendant's office at Towson University. During that search, investigators seized 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/purchase order for a hidden camera, a Securemate computer charger hidden camera, an empty box for an "808" 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 totally or partially undressed in the large showering/changing room of the National Capital Mikvah between February 19, 2012, and September 19, 2014, each of whom was recorded undressing separately. These 52 women are the subjects of the Information in this case. None of the 52 women had knowledge of, or consented to, being recorded by the defendant. In some instances, the defendant utilized up to three recording devices at the same time to obtain different angles of each woman being recorded. The defendant set up and utilized additional hidden recording devices concealed in a tabletop fan and a tissue box holder. Each of the recordings the defendant made depicts the recorded woman totally or partially undressed before and/or after taking a shower. The defendant periodically installed and removed the recording device. The defendant saved each digital recording separately and named each file by using the recorded woman's name or initials.

In addition to the 52 recordings that are the subject of the Information, computer forensic examinations also revealed that the defendant secretly and surreptitiously recorded approximately 100 additional women totally or partially undressed before and/or after showering in the large

bathroom at the National Capital Mikvah between 2009 and September, 2014. These additional women did not know that they were being recorded and did not consent to being recorded.

DEFENDANT'S ACCEPTANCE

I have read and discussed the Government's Proffer of Facts with my attorney. I agree and acknowledge by my signature that this Proffer of Facts is true and correct.

2/19/15
Date

Bernard Freundel
Defendant

Exhibit C

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

United States of America
Vs.

BERNARD FREUNDEL
DOB:12/16/1951

JUDGMENT IN A CRIMINAL CASE
(Incarceration)

Case No. **2014 CMD 018262**
PDID No. **686097**
DCDC No.

THE DEFENDANT HAVING BEEN FOUND GUILTY ON THE FOLLOWING COUNT(S) AS INDICATED BELOW:

Count	Court Finding	Charge
1	Found Guilty - Plea	Voyeurism - Recording
2	Found Guilty - Plea	Voyeurism - Recording
3	Found Guilty - Plea	Voyeurism - Recording
4	Found Guilty - Plea	Voyeurism - Recording
5	Found Guilty - Plea	Voyeurism - Recording
6	Found Guilty - Plea	Voyeurism - Recording

SENTENCE OF THE COURT

Count 1: Voyeurism - Recording Sentenced to 45 day(s) incarceration., $250.00 VVCA, VVCA Due Date 11/15/2015

Count 2: Voyeurism - Recording Sentenced to 45 day(s) incarceration, $250.00 VVCA, VVCA Due Date 11/15/2015

Count 3: Voyeurism - Recording Sentenced to 45 day(s) incarceration, $250.00 VVCA, VVCA Due Date 11/15/2015

Count 4: Voyeurism - Recording Sentenced to 45 day(s) incarceration, $250.00 VVCA, VVCA Due Date 11/15/2015

Count 5: Voyeurism - Recording Sentenced to 45 day(s) incarceration, $250.00 VVCA, VVCA Due Date 11/15/2015

Count 6: Voyeurism - Recording Sentenced to 45 day(s) incarceration, $250.00 VVCA, VVCA Due Date 11/15/2015

The defendant is hereby committed to the custody of the Attorney General to be incarcerated for a total term of **2,340 days** . MANDATORY MINIMUM term of _____ applies.

Upon release from incarceration, the Defendant shall be on supervised release for a term of: _____

The Court makes the following recommendations to the Bureau of Prisons/Department of Corrections:

Total costs in the aggregate amount of $ **13,000.00** have been assessed under the Victims of Violent Crime Compensation Act of 1996, and ☐ have ☑ have not been paid. ☐ Appeal rights given ☐ Gun Offender Registry Order Issued

☐ Advised of right to file a Motion to Suspend Child Support Order ☐ Sex Offender Registration Notice Given

☐ Domestic violence notice given prohibiting possession/purchase of firearm or ammunition

☐ Restitution is part of the sentence and judgment pursuant to D.C. Code § 16-711. ☐ Voluntary Surrender

5/15/2015
Date

GEOFFREY M ALPRIN
Judge

Certification by Clerk pursuant to Criminal Rule 32(d)

5/15/2015
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Case: 2014 CMD 018262
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CASE NUMBER: **2014 CMD 018262**
DEFENDANT: **BERNARD FREUNDEL**

(Additional Charges Page)

JUDGMENT IN CRIMINAL CASE (CONT'D)

Count	Court Finding	Charge
7	Found Guilty - Plea	Voyeurism - Recording
8	Found Guilty - Plea	Voyeurism - Recording
9	Found Guilty - Plea	Voyeurism - Recording
10	Found Guilty - Plea	Voyeurism - Recording
11	Found Guilty - Plea	Voyeurism - Recording

Count 7: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 8: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 9: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 10: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 11: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

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JUDGMENT IN CRIMINAL CASE (CONT'D)

Count	Court Finding	Charge
12	Found Guilty - Plea	Voyeurism - Recording
13	Found Guilty - Plea	Voyeurism - Recording
14	Found Guilty - Plea	Voyeurism - Recording
15	Found Guilty - Plea	Voyeurism - Recording
16	Found Guilty - Plea	Voyeurism - Recording

Count 12: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 13: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 14: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 15: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 16: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

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JUDGMENT IN CRIMINAL CASE (CONT'D)

Count	Court Finding	Charge
17	Found Guilty - Plea	Voyeurism - Recording
18	Found Guilty - Plea	Voyeurism - Recording
19	Found Guilty - Plea	Voyeurism - Recording
20	Found Guilty - Plea	Voyeurism - Recording
21	Found Guilty - Plea	Voyeurism - Recording

Count 17: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 18: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 19: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 20: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 21: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

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JUDGMENT IN CRIMINAL CASE (CONT'D)

Count	Court Finding	Charge
22	Found Guilty - Plea	Voyeurism - Recording
23	Found Guilty - Plea	Voyeurism - Recording
24	Found Guilty - Plea	Voyeurism - Recording
25	Found Guilty - Plea	Voyeurism - Recording
26	Found Guilty - Plea	Voyeurism - Recording

Count 22: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 23: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 24: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 25: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 26: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

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JUDGMENT IN CRIMINAL CASE (CONT'D)

Count	Court Finding	Charge
27	Found Guilty - Plea	Voyeurism - Recording
28	Found Guilty - Plea	Voyeurism - Recording
29	Found Guilty - Plea	Voyeurism - Recording
30	Found Guilty - Plea	Voyeurism - Recording
31	Found Guilty - Plea	Voyeurism - Recording

Count 27: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 28: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 29: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 30: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 31: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

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JUDGMENT IN CRIMINAL CASE (CONT'D)

Count	Court Finding	Charge
32	Found Guilty - Plea	Voyeurism - Recording
33	Found Guilty - Plea	Voyeurism - Recording
34	Found Guilty - Plea	Voyeurism - Recording
35	Found Guilty - Plea	Voyeurism - Recording
36	Found Guilty - Plea	Voyeurism - Recording

Count 32: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 33: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 34: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 35: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 36: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

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JUDGMENT IN CRIMINAL CASE (CONT'D)

Count	Court Finding	Charge
37	Found Guilty - Plea	Voyeurism - Recording
38	Found Guilty - Plea	Voyeurism - Recording
39	Found Guilty - Plea	Voyeurism - Recording
40	Found Guilty - Plea	Voyeurism - Recording
41	Found Guilty - Plea	Voyeurism - Recording

Count 37: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 38: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 39: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 40: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 41: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

CASE NUMBER: **2014 CMD 018262**
DEFENDANT: **BERNARD FREUNDEL**

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JUDGMENT IN CRIMINAL CASE (CONT'D)

Count	Court Finding	Charge
42	Found Guilty - Plea	Voyeurism - Recording
43	Found Guilty - Plea	Voyeurism - Recording
44	Found Guilty - Plea	Voyeurism - Recording
45	Found Guilty - Plea	Voyeurism - Recording
46	Found Guilty - Plea	Voyeurism - Recording

Count 42: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 43: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 44: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 45: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 46: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

CASE NUMBER: **2014 CMD 018262** (Additional Charges Page)
DEFENDANT: **BERNARD FREUNDEL**

JUDGMENT IN CRIMINAL CASE (CONT'D)

Count	Court Finding	Charge
47	Found Guilty - Plea	Voyeurism - Recording
48	Found Guilty - Plea	Voyeurism - Recording
49	Found Guilty - Plea	Voyeurism - Recording
50	Found Guilty - Plea	Voyeurism - Recording
51	Found Guilty - Plea	Voyeurism - Recording

Count 47: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 48: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 49: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 50: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Count 51: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

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DEFENDANT: **BERNARD FREUNDEL**

JUDGMENT IN CRIMINAL CASE (CONT'D)

Count	Court Finding	Charge
52	Found Guilty - Plea	Voyeurism - Recording

Count 52: Voyeurism - Recording Sentenced to 45 day(s) Incarceration, $250.00 VVCA, VVCA due date 11/15/2015

Incarceration is to run consecutive in all counts*

Exhibit D

DHP had "presented substantial evidence of need" for a new transplant facility and thus should receive a certificate of need. Because OAH exceeded its reviewing authority, we must reverse.

IV. Conclusion

[12] For the foregoing reasons, we reverse the OAH ALJ's order directing SHPDA to issue DHP a certificate of need. Ordinarily, if an agency fails to employ the proper standard of review, as OAH did in this case, we remand to the agency to conduct its review anew under the correct standard. *See, e.g., E. Capitol Exxon*, 64 A.3d at 882. But recognizing that a substantial amount of time has passed since SHPDA, at the direction of OAH, issued the certificate of need, and with the understanding that DHP is currently operating its transplant facility, we remand to OAH with instructions to remand this matter to SHPDA to determine whether to modify or retract the certificate of need that it issued to DHP. *See, e.g., District of Columbia Dep't of Emp't Servs. v. Smallwood*, 26 A.3d 711, 716 (D.C.2011) (remanding to OAH with instruction to remand to expert agency for further proceedings).

So ordered.

Bernard FREUNDEL, Appellant,

v.

UNITED STATES, Appellee.

No. 15-CO-899

District of Columbia Court of Appeals.

Argued June 21, 2016

Decided September 15, 2016

Background: Defendant was convicted upon a guilty plea in the Superior Court, Geoffrey M. Alprin, J., of 52 counts of voyeurism and received consecutive sentences of 45 days on each count. Defendant appealed.

Holding: As a matter of first impression, the Court of Appeals, McLeese, J., held that sentences did not violate the Double Jeopardy Clause prohibiting multiple punishments for the same offense.

Affirmed.

1. Double Jeopardy ⇐5.1

The Double Jeopardy Clause prohibits multiple punishments for the same offense. U.S. Const. Amend. 5.

2. Double Jeopardy ⇐5.1

The prohibition of multiple punishments for the same offense in the Double Jeopardy Clause extends not only to consecutive sentences but also to separate convictions. U.S. Const. Amend. 5.

3. Double Jeopardy ⇐132.1

Although multiple punishments for a single offense are forbidden under the Double Jeopardy Clause, a defendant may receive multiple punishments for separate criminal acts, even if those separate acts do happen to violate the same criminal statute. U.S. Const. Amend. 5.

4. Double Jeopardy ⇐134

If the legislature so intends, multiple punishments for violating a single criminal statute may be imposed based on a single act without violating the Double Jeopardy Clause. U.S. Const. Amend. 5.

5. Double Jeopardy ⇐134

In reviewing claims of unlawful multiple convictions under a single statute in violation of the Double Jeopardy Clause,

the court's role is to determine what the legislature intended to be the allowable unit of prosecution. U.S. Const. Amend. 5.

6. Double Jeopardy ⇐29.1

Consecutive sentences of 45 days on each count of 52 counts of voyeurism to which defendant pleaded guilty in violation of statute prohibiting non-consensual electronic recording of an individual who has a reasonable expectation of privacy and is using a bathroom or is totally or partially undressed did not violate the Double Jeopardy Clause prohibiting multiple punishments for the same offense; defendant, a rabbi, used multiple recording devices over a period of years to record multiple victims, each of whom was recorded undressing separately at a nearby mikvah, which was a ritual bath primarily used by Orthodox Jewish women for spiritual purification. U.S. Const. Amend. 5; D.C. Code § 22-3531(c).

7. Disorderly Conduct ⇐123

The statutory provision prohibiting non-consensual electronic recording of an individual who has a reasonable expectation of privacy and is using a bathroom, is totally or partially undressed, or is engaging in sexual activity, is directed at protecting individual privacy. D.C. Code § 22-3531(c).

8. Double Jeopardy ⇐29.1

The Double Jeopardy Clause does not prohibit separate and cumulative punishment for criminal acts perpetrated against different victims. U.S. Const. Amend. 5.

9. Double Jeopardy ⇐134

In deciding whether certain conduct constitutes a single offense or multiple offenses for purposes of the Double Jeopardy Clause, the court does not simply count the number of discrete acts, i.e., there is no general rule that a single act can support only a single conviction; multiple punishments are permissible even where multiple charges are the product of a single act. U.S. Const. Amend. 5.

10. Criminal Law ⇐12.7(2)

The "rule of lenity" operates to preclude multiple convictions under the same statute that are based on the same act if it is unclear whether the legislature intended to impose multiple punishments.

See publication Words and Phrases for other judicial constructions and definitions.

11. Criminal Law ⇐12.7(2)

The rule of lenity is reserved for situations where the statute's language and structure, legislative history, and motivating policies do not remove any reasonable doubt as to the scope of the statute with respect to multiple punishments.

12. Criminal Law ⇐12.7(2)

The rule of lenity does not apply to situations involving multiple victims where both the language and logic of the statute, such as the statute prohibiting non-consensual electronic recording of an individual who has a reasonable expectation of privacy, reflect the legislature's intent to safeguard its constituents as individuals. D.C. Code § 22-3531(c).

Appeal from the Superior Court of the District of Columbia (CMD-18262-14) (Hon. Geoffrey M. Alprin, Trial Judge)

Jeffrey Harris, with whom Frederick D. Cooke, Jr. was on the brief, for appellant.

Nicholas P. Coleman, Assistant United States Attorney, with whom Channing D. Phillips, United States Attorney, and Elizabeth Trosman, Amy H. Zubrensky, and Priya N. Naik, Assistant United States Attorneys, were on the brief, for appellee.

Before Glickman, Blackburne-Rigsby, and McLeese, Associate Judges.

McLeese, Associate Judge:

Appellant Bernard Freundel pleaded guilty to fifty-two counts of voyeurism. The trial court sentenced Mr. Freundel to consecutive sentences of forty-five days of incarceration on each count and also imposed a fine on each count. Mr. Freundel argues that the consecutive sentences violate the Double Jeopardy Clause. We affirm.

I.

In connection with Mr. Freundel's guilty plea, the United States filed an information charging Mr. Freundel with fifty-two counts of voyeurism, in violation of D.C. Code § 22–3531(b)-(c) (2016 Supp.). With exceptions not pertinent here, those provisions make it unlawful:

> (b) . . . to occupy a hidden observation post or to install or maintain a peephole, mirror, or any electronic device for the purpose of secretly or surreptitiously observing an individual who is:
>
> (1) Using a bathroom or rest room;
>
> (2) Totally or partially undressed or changing clothes; or
>
> (3) Engaging in sexual activity[;] and
>
> (c)(1) . . . to electronically record, without the express and informed consent of the individual being recorded, an individual who is:
>
> (A) Using a bathroom or rest room;
>
> (B) Totally or partially undressed or changing clothes; or
>
> (C) Engaging in sexual activity.
>
> (2) Express and informed consent is only required when the individual engaged in these activities has a reasonable expectation of privacy.

Each count related to a separate victim, and each count alleged that Mr. Freundel violated both section 22–3531(b) and section 22–3531(c) as to each victim. A violation of either provision is a misdemeanor punishable by up to one year of incarceration, as well as a fine. D.C. Code § 22–3531(f)(1).

In pleading guilty, Mr. Freundel acknowledged the truth of a proffer that included the following facts. Mr. Freundel was a rabbi in Washington, D.C. His congregation was affiliated with a nearby mikvah, which is a ritual bath primarily used by Orthodox Jewish women for spiritual purification. There were two showering and changing rooms connected to the room housing the mikvah. On numerous occasions between 2009 and 2014, Mr. Freundel placed video-recording devices inside one of those rooms. Mr. Freundel installed and maintained the devices "for the sole purpose of secretly and surreptitiously recording women who were . . . totally and partially undressed before and/or after showering" in the room.

On October 12, 2014, Mr. Freundel placed a clock radio with a hidden video recorder in the room, positioning the radio so that it faced the shower area. Later that day, an individual associated with the mikvah took the radio to the Metropolitan Police Department. Officers obtained a search warrant and found that the radio contained six video files, each depicting a woman who was completely or partially undressed before and/or after showering in the room. At Mr. Freundel's office and residence, officers recovered other hidden cameras and related equipment, as well as numerous recordings of women who were partially or totally undressed in the room. In some instances, Mr. Freundel used as many as three different recording devices at the same time, to capture different angles of the woman being recorded. Recording devices were hidden in the radio, a tabletop fan, and a tissue-box holder. Mr. Freundel periodically installed and removed the devices.

Mr. Freundel saved each recording separately and labeled each file using the name or initials of the woman recorded. None of the women knew about the recordings or consented to being recorded. With respect to the charged offenses, each of the fifty-two women was recorded undressing separately. The charged offenses took place between February 2012 and September 2014. Mr. Freundel recorded approximately one hundred additional women between 2009 and 2014.

At sentencing, defense counsel argued that it would be illegal for the trial court to impose consecutive sentences on the fifty-two counts, because Mr. Freundel engaged in a single course of conduct. The trial court disagreed. Mr. Freundel filed a motion to correct illegal sentences pursuant to Super. Ct. Crim. R. 35(a), again arguing that the trial court could not lawfully impose consecutive sentences. The trial court denied the motion, and Mr. Freundel seeks review of that ruling.

II.

Mr. Freundel argues that the trial court could not lawfully impose a sentence of more than one year of incarceration, because Mr. Freundel engaged in a single course of conduct. We conclude that Mr. Freundel's sentences are lawful.

A.

[1, 2] The Double Jeopardy Clause prohibits multiple punishments for the same offense. *Sutton v. United States*, 140 A.3d 1198, 1206 (D.C.2016). That prohibition extends not only to consecutive sentences but also to separate convictions. *Waller v. United States*, 531 A.2d 994, 995 n. 2 (D.C.1987). Mr. Freundel frames his argument as a challenge only to his consecutive sentences, but we nevertheless treat Mr. Freundel as raising "a challenge to the convictions themselves," because multiple convictions for the same offense are unlawful even if concurrent sentences are imposed. *Id.*

[3–5] Although multiple punishments for a single offense are forbidden, a defendant may receive multiple punishments for "separate criminal acts, even if those separate acts do happen to violate the same criminal statute." *Id.* (internal quotation marks omitted). Moreover, if the legislature so intends, multiple punishments for violating a single criminal statute may be imposed based on a single act. *See, e.g., Lennon v. United States*, 736 A.2d 208, 209 (D.C.1999) ("There is therefore no double jeopardy violation when the legislative intent is to impose more than one punishment for the same criminal act."). "In reviewing claims of unlawful multiple convictions [under] a single statute, our role is to determine what the legislature intended to be the allowable unit of prosecution." *Hammond v. United States*, 77 A.3d 964, 967 (D.C.2013) (internal quotation marks omitted). We decide that question of statutory interpretation de novo. *Id.*

As previously noted, each of the fifty-two counts in this case charges Mr. Freundel with violating both section 22–3531(b) and section 22–3531(c). The United States argues that those provisions establish separate offenses. Although charging multiple offenses in a single count can create procedural problems, *e.g., Johnson v. United States*, 398 A.2d 354, 369 (D.C.1979), Mr. Freundel has not challenged his convictions and sentences on that basis. We therefore do not address whether a violation of section 22–3531(b) and a violation of section 22–3531(c) may appropriately be charged in a single count. The United States further contends that Mr. Freundel's convictions and sentences should be affirmed as long as multiple punishments are permissible under either section 22–

3531(b) or section 22–3531(c). Mr. Freundel does not dispute that contention, which we therefore accept for purposes of deciding this appeal. Finally, relying on *United States v. Broce*, 488 U.S. 563, 109 S.Ct. 757, 102 L.Ed.2d 927 (1989), the United States argues that Mr. Freundel's decision to plead guilty to fifty-two counts precludes Mr. Freundel from obtaining relief unless Mr. Freundel can establish on the face of the current record that multiple punishments are impermissible. Mr. Freundel argues to the contrary that the United States must establish from the current record that multiple punishments are permissible. Because we conclude that multiple punishments are permissible on the current record, we do not reach the question of *Broce*'s applicability.

B.

[6, 7] We consider whether Mr. Freundel's convictions and sentences were permissible under section 22–3531(c). As noted, that provision prohibits non-consensual electronic recording of an individual who has a reasonable expectation of privacy and is using a bathroom, is totally or partially undressed, or is engaging in sexual activity. The provision by its terms is directed at protecting individual privacy. *See, e.g., Ex parte Thompson*, 442 S.W.3d 325, 348–49 (Tex.Crim.App.2014) ("[S]ubstantial privacy interests are invaded in an intolerable manner when a person is photographed without consent in a private place, ... or with respect to an area of the person that is not exposed to the general public ...."; statute prohibiting non-consensual photographing or recording of person in bathroom or private dressing room was "drawn to protect substantial privacy interests").

[8, 9] Generally, "[t]he Double Jeopardy Clause ... does not prohibit separate and cumulative punishment ... for criminal acts perpetrated against different victims." *Snowden v. United States*, 52 A.3d 858, 872 (D.C.2012) (internal quotation marks omitted); *see also, e.g., Brannon v. United States*, 43 A.3d 936, 938–39 (D.C. 2012) ("[A]s a general rule, crimes do not merge if they are perpetrated against separate victims."). Under that general principle, we have interpreted many provisions comparable to section 22–3531(c) to permit separate punishment where a single act affected multiple victims. As we have explained:

> In deciding whether certain conduct constitutes a single offense or multiple offenses, we do not simply count the number of discrete "acts." That is, there is no general rule that a single act can support only a single conviction; multiple punishments are permissible even where multiple charges are the product of a single act. *See, e.g., Ruffin v. United States*, 642 A.2d 1288, 1298 (D.C.1994) ("[W]here a single assaultive act results in the criminal injury of multiple victims, there may be as many offenses as there are victims."); *Williams v. United States*, 569 A.2d 97, 104 (D.C.1989) (assuming defendant's conduct constituted a single assaultive act, yet nevertheless upholding seven separate manslaughter convictions); *Murray v. United States*, 358 A.2d 314, 320 (D.C.1976) (affirming two negligent-homicide convictions in connection with a single car crash). Rather than simply tallying "acts," we have looked to the offense's definition. Where the definition contemplates that an injury to each new victim will constitute a separate offense, we have endorsed the imposition of multiple punishments.

Vines v. United States, 70 A.3d 1170, 1176–77 (D.C.2013) (two convictions for destruction of property were not same offense for Double Jeopardy purposes, be-

cause appellant "caused two separate victims to suffer injuries to two distinct property interests"); *see also, e.g., Speaks v. United States*, 959 A.2d 712, 716 (D.C. 2008) ("[W]e conclude that the statute defining the crime [of second-degree cruelty to children] was intended to protect individual victims, and that consequently, the gravamen of the offense is the *proscribed effect on each victim*, not the acts or omissions leading to it.").

This court has not yet had occasion to consider the appropriate unit of prosecution under section 22–3531(c) or any other provision of the voyeurism statute. We have located one out-of-jurisdiction case addressing that issue with respect to a voyeurism statute much like section 23-3531 (c). That case held that the Double Jeopardy Clause permitted imposition of two convictions, one for each victim, on a defendant who peered through a window to watch two people having sexual intercourse with each other. *State v. Diaz–Flores*, 148 Wash.App. 911, 201 P.3d 1073, 1075–76 (2009) (statute at issue prohibited "view[ing], photograph[ing], or film[ing] ... [a]nother person without that person's knowledge and consent while the person ... is in a place where he or she would have a reasonable expectation of privacy"; "The plain language of the voyeurism statute establishes that the legislature intended the unit of prosecution to be each victim whose right to privacy is violated.") (internal quotation marks omitted); *see also* 18 Pa. Cons. Stat. Ann. § 7507.1(a)-(a.1) (West, Westlaw through 2016 Reg. Sess. Acts 1 to 101) (under statute prohibiting, among other things, "record[ing] another person without that person's knowledge and consent while that person ... would have a reasonable expectation of privacy," legislature explicitly provides for separate punishment as to each victim, even where recording occurs at same time and pursuant to one "scheme or course of conduct").

Although Mr. Freundel argues that multiple punishments were unlawful in this case, we do not find Mr. Freundel's arguments persuasive. First, and most broadly, Mr. Freundel argues that, no matter how many individuals he taped and no matter what other circumstances intervened between the recordings of the victims in this case, only one voyeurism sentence was lawful, because Mr. Freundel acted with a single voyeuristic purpose. It is not clear what Mr. Freundel means by a single voyeuristic purpose or whether Mr. Freundel acted with such a single purpose in this case. We need not address those issues, however, because we conclude that Mr. Freundel's argument contradicts section 22–3531(c)'s evident purpose of protecting the privacy of individual victims and does not "comport[ ] with reason and with sound public policy." *Abdulshakur v. District of Columbia*, 589 A.2d 1258, 1266 (D.C.1991). Under Mr. Freundel's interpretation, once a defendant unlawfully recorded one victim, all future voyeuristic recording, even of different victims with different recording devices in different locations and at different times, would not be separately punishable as long as the defendant in some sense had a single voyeuristic purpose. Thus, "[t]here would be no incentive for the defendant not to do it again (and again and again)." *Id.* "This is surely not a result which the legislature intended." *Id.*

Second, Mr. Freundel draws a comparison to the provision punishing the felony offense of distributing or disseminating "a photograph, film, ... digital video disc, or any other image or series of images ... that the [defendant] knows or has reason to know were taken in violation of subsection (b), (c), or (d)" of section 22–3531. D.C. Code § 22–3531(f). Mr. Freundel argues that a single act of disseminating multiple recordings of different victims

would constitute a single violation of section 22–3531(f) and thus would be punishable by no more than a single five-year term of incarceration. D.C. Code § 22–3531(f)(2). Thus, he concludes, it would not make sense to permit separate misdemeanor convictions under section 22–3531(c) for each victim, because the maximum penalty for violating the less serious misdemeanor offense by recording numerous victims could far exceed the maximum penalty for the more serious felony offense of disseminating recordings of numerous victims.

Mr. Freundel's argument rests on the premise that a single transmission of recordings of multiple victims is punishable as a single offense. The correctness of Mr. Freundel's premise is unclear. *Compare, e.g., Brown v. State*, 912 N.E.2d 881, 892–95 (Ind.Ct.App.2009) (separate convictions permissible based on single act of disseminating separate images of child pornography; statute prohibited disseminating "matter" depicting sexual conduct by child, where "matter" was defined as any of various specified materials as well as "other ... materials"), *with, e.g., State v. Losada*, 175 So.3d 911, 912–15 (Fla.Dist.Ct.App. 2015) (only one conviction permissible for granting access to thirty-two images on file-sharing site; statute prohibited "transmitting" child pornography and defined "transmit" as "the act of sending and causing to be delivered any image"). We express no view on that point, however, because in any event we see no incongruity sufficient to undermine the conclusion that recording multiple victims ordinarily constitutes multiple violations of section 22–3531(c).

Third, Mr. Freundel argues that the legislative history of the voyeurism statute contradicts the conclusion that a defendant may separately be punished under section 22–3531(c) for each victim. We do not agree. Mr. Freundel relies on the title of the omnibus act establishing the voyeurism statute, which describes the statute as making it unlawful to record "individuals" "engaged in personal activities." According to Mr. Freundel, the use of "individuals" rather than "individual" in the title shows that the legislature intended to punish the conduct of recording rather than to separately protect the privacy of each individual who is recorded. Mr. Freundel places unwarranted weight on the title of omnibus act. As we have explained:

> The significance of the title of the statute should not be exaggerated. The Supreme Court has stated that the title is of use in interpreting a statute only if it sheds light on some ambiguous word or phrase in the statute itself. It cannot limit the plain meaning of the text, although it may be a useful aid in resolving an ambiguity in the statutory language.

Mitchell v. United States, 64 A.3d 154, 156 (D.C.2013) (citations, brackets, and internal quotation marks omitted). Moreover, both the singular and the plural form of "individual" appear in the legislative-history materials, *compare* D.C. Council, Report on Bill 16-247 at 12 (April 28, 2006) ("The Committee recommends that the language be changed to make it illegal for someone to ... surreptitiously observ[e] *an individual* ....") (emphasis added), *with id.* at 2 ("[The voyeurism bill] criminaliz[es] the ... electronic recording of *individuals* ....") (emphasis added), which suggests that the forms were used interchangeably. *Cf.* D.C. Code § 45–602 (2012 Repl.) ("Words importing the singular number shall be held to include the plural, and vice versa, except where such construction would be unreasonable."). In any event, to the extent that the use of the singular or the plural form of "individual" sheds light on legislative intent, our primary focus must be on the statutory lan-

guage, which uses the singular rather than the plural. D.C. Code § 22–3531(c)(1) (prohibiting recording of "*an individual* who is ... [t]otally or partially undressed or changing clothes" without consent "of *the individual* being recorded" when "*the individual* ... has a reasonable expectation of privacy") (emphasis added); *cf., e.g., Sanders v. United States*, 809 A.2d 584, 606 (D.C.2002) (relying on statutory use of singular as supporting conclusion that legislature intended to permit multiple punishments); *Abdulshakur*, 589 A.2d at 1267 (attributing "marginal[ ]" significance to use of singular in statute when determining whether legislature intended to permit multiple punishments).

Mr. Freundel also relies on a letter from the Attorney General of the District of Columbia to the legislative committee considering the voyeurism statute. In that letter, the Attorney General contrasted two versions of the statute that were then under consideration. Specifically, the Attorney General noted that one version provided for different penalties depending on whether the victim was a minor or an adult and whether the conduct was a first or subsequent offense, whereas the other version provided for different penalties depending on whether the defendant recorded a victim or distributed images. We see nothing in the Attorney General's letter suggesting that a defendant who recorded multiple individuals could be punished only once.

Fourth, Mr. Freundel accurately points out that we have in some circumstances recognized an exception to the principle that offenses such as assault ordinarily permit multiple convictions for a single act affecting multiple victims. *See, e.g., Snowden*, 52 A.3d at 873 (D.C.2012) ("Where by a single act or course of action a defendant has put in fear different members of a group towards which the action is collectively directed, he is guilty of but one offense. Multiple convictions and consecutive sentences will be appropriate only where distinct, successive assaults have been committed upon the individual victims.") (brackets omitted; quoting *United States v. Alexander*, 152 U.S.App.D.C. 371, 381–82, 471 F.2d 923, 933–34 (D.C.Cir. 1972)); *cf. Bowles v. United States*, 113 A.3d 577, 579–80 (D.C.2015) (discussing *Ladner v. United States*, 358 U.S. 169, 79 S.Ct. 209, 3 L.Ed.2d 199 (1958) (holding that single discharge of shotgun injuring two federal officers was punishable as single violation of statute prohibiting interference with federal officers)).

It is unclear whether the exception noted by Mr. Freundel has any application to the voyeurism statute. *Compare, e.g., Graure v. United States*, 18 A.3d 743, 763 (D.C.2011) ("[T]he rule that a single assaultive act directed at a group of individuals, but injuring no one, bears only one count of assault applies in cases involving 'threat to do bodily harm' assault (sometimes called 'intent-to-frighten' assault), but does not apply in cases involving 'attempted-battery' assault, which has different elements.") (internal quotation marks omitted); *Speaks*, 959 A.2d at 714–17 (declining to apply exception to second-degree child cruelty), *with, e.g., Smith v. United States*, 295 A.2d 60, 61 (D.C.1972) (single threat uttered to two people standing together permitted only one conviction). We do not decide that question. Rather, we hold that in any event the exception does not apply in the undisputed circumstances of the present case, because Mr. Freundel's conduct was not a single act directed at the victims generally. By his own acknowledgment, Mr. Freundel used multiple recording devices over a period of years to record multiple victims, each of whom was recorded undressing separately. Because each victim was recorded undressing separately, we need not decide

whether multiple punishments would be permissible based on a single recording depicting more than one victim at the same time. Nor need we address what other factual circumstances might reflect a "fork in the road" or "new impulse" permitting multiple punishments. *See generally, e.g., Spain v. United States*, 665 A.2d 658, 660 (D.C.1995) (multiple punishments permissible where defendant "reached a decision point, a fork in the road leading to a new impulse, resulting in a different offense") (internal quotation marks omitted).

Fifth, Mr. Freundel relies on *Whylie v. United States*, 98 A.3d 156 (D.C.2014), to argue that we should interpret section 22–3531(c) as criminalizing a course of conduct rather than separate offenses against individual victims. *Whylie*, however, involved the stalking statute, which specifically defines stalking as a "course of conduct," rather than as a single act. 98 A.3d at 161–62. Section 22–3531(c) contains no similar language. Moreover, *Whylie* did not address the issue in this case—whether multiple punishments were permissible because multiple individuals were affected by the defendant's action.

Sixth, we are unpersuaded by Mr. Freundel's reliance on *Bell v. United States*, 349 U.S. 81, 75 S.Ct. 620, 99 L.Ed. 905 (1955). In *Bell*, the defendant had in one trip transported two women across state lines for "immoral purpose[s]," in violation of the Mann Act. *Id.* at 82, 75 S.Ct. 620 (internal quotation marks omitted). Concluding that it was unclear whether the legislature intended multiple punishments in such circumstances, the Supreme Court held that only one conviction was permissible. *Id.* at 82–83, 75 S.Ct. 620. We have explained, however, that the Mann Act was ambiguous because it had two possible purposes: either "to protect each woman carried across state lines, or rather to strike generally at the business [of trafficking in women] and in particular at its use of interstate transportation facilities." *Murray*, 358 A.2d at 320 n. 20 (internal quotation marks omitted). One significant indication that the Mann Act had the latter purpose rather than the former is that the Mann Act applied without regard to the consent of the woman who was transported across state lines. *See, e.g., United States v. Phillips*, 640 F.2d 87, 96 (7th Cir.1981) ("The kidnapping statute was enacted to protect individual victims, while the purpose of the Mann Act is to preserve community moral standards. The Mann Act does not protect the individual woman transported in the same way that the kidnapping statute protects a victim; the consent of the woman involved is no defense to a Mann Act charge, but would be a defense to kidnapping."). In contrast, section 22–3531(c) requires proof that the victim did not consent to being recorded. For that reason and for the others we have discussed, section 22–3531(c) is plainly directed at protecting individual privacy.

[10–12] Finally, Mr. Freundel invokes the rule of lenity, which operates to preclude "multiple convictions under the same statute that are based on the same act" if "it is unclear whether the legislature intended to impose multiple punishments." *Heard v. United States*, 686 A.2d 1026, 1028 (D.C.1996). "The rule of lenity is reserved for situations where the [statute's] language and structure, legislative history, and motivating policies do not remove any reasonable doubt as to the scope of [the] statute." *Id.* at 1029 (internal quotation marks omitted). We conclude that the rule of lenity does not aid Mr. Freundel, because "the rule of lenity does not apply to situations involving multiple victims where, as here, both the language and logic of the statute reflect the legislature's intent to

safeguard . . . its constituents as individuals." *Murray*, 358 A.2d at 321.

In sum, section 22–3531(c) unambiguously permits separate punishment for each of Mr. Freundel's fifty-two victims in this case. The judgment of the Superior Court is therefore

Affirmed.

IN RE Kathy D. BAILEY, Respondent.

A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 427407)

No. 16-BG-790

District of Columbia Court of Appeals.

Decided: September 15, 2016

Background: Board on Professional Responsibility Hearing Committee recommended approval of petition for negotiated discipline.

Holding: The Court of Appeals held that two-year suspension was appropriate for misappropriating client funds, failing to supervise staff, and failing to maintain adequate records of client funds.

Suspension ordered.

Attorney and Client ⇐59.13(4)

Negotiated discipline of two-year suspension was appropriate for misappropriating client funds, failing to supervise staff, and failing to maintain adequate records of client funds. D.C. R. Prof. Conduct 1.15 (a), 5.1 (a, c), 5.3 (a, b).

On Report and Recommendation of the Board on Professional Responsibility Hearing Committee Number Five, Approving Petition for Negotiated Discipline (BDN-341-12)

Before BECKWITH and MCLEESE, Associate Judges, and FARRELL, Senior Judge.

PER CURIAM:

This decision is non-precedential. Please refer to D.C. Bar R. XI, § 12.1 (d) governing the appropriate citation of this opinion.

In this disciplinary matter, the District of Columbia Court of Appeals Board on Professional Responsibility Hearing Committee Number Five ("the Committee") recommends approval of a revised petition for negotiated attorney discipline. The violations stem from respondent Kathy D. Bailey's professional misconduct arising from her negligent misappropriation of funds belonging to three clients, failure to supervise staff, and failure to maintain adequate records of client funds.

Respondent acknowledged that she (1) negligently misappropriated funds belonging to her firm's clients; (2) failed to hold client funds and third-party funds separate from the firm's funds; (3) failed to maintain adequate records of client funds; (4) failed to make reasonable efforts to ensure her firm had in effect measures giving reasonable assurance that all lawyers in the firm conformed to the District of Columbia Rules of Professional Conduct ("the Rules"); (5) was responsible for another lawyer's violation of the Rules; (6) failed to make reasonable efforts to ensure her firm had in effect measures giving reasonable assurance that the conduct of all nonlawyers in the firm was compatible with the professional obligations of a lawyer; and (7) supervised a nonlawyer but failed to make reasonable efforts to ensure that the person's conduct was compatible with the professional obligations of a lawyer, there-

Exhibit E

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA	:	Docket No.: 2014 CMD 018262
	:	
vs.	:	
	:	
BERNARD FREUNDEL,	:	
	:	
Defendant.	:	
	:	Friday, May 15, 2015
	x	Washington, D.C.

The above-entitled action came on for a hearing before the Honorable GEOFFREY ALPRIN, Senior Judge, in Courtroom 202.

APPEARANCES:

On Behalf of the Government:

AMY ZUBRENSKY, Esquire
JELAHN STEWART, Esquire
Assistant United States Attorney

On Behalf of Defendant:

JEFFREY HARRIS, Esquire
Washington, D.C.

Deposition Services, Inc.
12321 Middlebrook Road, Suite 210
Germantown, MD 20874
Tel: (301) 881-3344 Fax: (301) 881-3338
info@DepositionServices.com www.DepositionServices.com

trying to put some positive energy rather than negative energy. I am praying that I can hold onto those pieces of life that I am trying to build out of this absolute wreckage. Your Honor, I end as I began. I was wrong. I am sorry. I was shattered. I was broken. I was reprehensible. I was horrible. I did terrible things and I say again, I make no bones about it. I was a dreadful terrible place but assure you with every fiber of my being and you've heard from several people that this is true, I am no longer in that place. I can no longer imagine going back to that place. I am no longer that individual who just went off the rails in the way that you have heard. I make an apology. I don't ask people to forgive me because I don't know that I have a right to. I just ask people to hear the apology and I hope they can hear that it is sincere. I end as I began, Your Honor. I am truly sorry.

THE COURT: Thank you.

SENTENCING

THE COURT: As a preliminary, I don't believe that the single impulse test applies in this situation. The complainants in this case are all different. There are 25 different dates in which these events occurred and to uphold the defendant's position is to say essentially that a serial rapist could not be sentenced consecutively in cases involving different complainants. That just is

not an cannot be the law. So, the claim that consecutive sentences are not authorized in this case made by the defense is denied or overruled. Now, as you know, the defendant pled guilty to 52 counts of voyeurism as defined by D. C. Code Section 3531(b) and (c). The plea took place on February 19th I believe, 2015 and the defendant has been on release status since that time. These numbers have changed a little bit because I was handed a couple today but the court has received at least 27 victim impact statements, 13 relevant conduct letters, persons as you know who would have been victims if the alleged criminal conduct had been committed within the three year statute of limitations, 33 letters from the defense in support of the defendant and 17 other letters submitted directly to chambers, mostly in support of the defendant. The court has also received five community impact letters, four out of five of which have been objected to by the defense but which objection is now overruled. The conduct that is the subject of the voyeurism charges in this case concerns the defendant's surreptitious recording of victims' use of an orthodox Jewish ritual bath called a Mikvah at times when the victims were undressing, were undressed or were completely naked. The photographic recording was in all cases done without the consent of the victims and without their knowledge. The recordings were done intentionally

and with premeditation. The cameras used were concealed so as not to be discovered by the victims during their use of the Mikvah and associated rooms. At times, the use of the Mikvah by the victims was required by the defendant as part of the victim's progress towards conversion to orthodox Judaism. At other times, the Mikvah was used as a cleansing mechanism at various time during the month. The defendant is the chief rabbi of Kesher Israel Congregation, an orthodox Jewish congregation located in the Georgetown section of Washington, D. C., essentially controlled the conversion process and thus was in a position of authority and power over the victims. As many victims and writers of relevant conduct letters have attested, defendant was a trusted leader or the religious community and the conversion process. The defendant repeatedly and secretly violated that trust and abused his power. He required potential converts to bathe naked in the Mikvah or possibly failed to attain the conversion to orthodox Judaism that each of them wished for. This case thus becomes one of a classic abuse of power and violation of trust and the defendant has just acknowledged that. He not only pled guilty here today but he has acknowledged that he committed a very serious wrong. The conduct to which the defendant has pled guilty is despicable. There is no realistic justification for it and the defense has

offered none. As stated, the defendant essentially lured the victims to the Mikvah, some more than once and secretly photographed them in various stages of undress without their knowledge, using cameras hidden in radios or lighting fixtures or otherwise. There is of course another side to the defendant and we know that and I know that and acknowledge it. He's not all bad. As attested by many letters in support of him he has gone out of his way to provide comfort and solace to many individuals in the community. The court has read all the letters in his support and taken them into consideration. They affect the sentence but they do not exonerate the conduct or the defendant's conduct described above. The court concludes that there must be a significant response by the secular authorities and whether I like it or not that turns out to be me today to this gross and repeated invasion of privacy, abuse of power and violation of trust. Therefore, the sentence is as follows: on each count and there are 52 of them in the information, the defendant is to serve 45 days. The sentences on each count are consecutive. The total therefore, is 2,340 days which is 78 months or just under six and a half years. The court has concluded that the Government's request for 17 years is disproportionate and overreaching and the defense' request for no time at all, only community services, is

unrealistic in light of the pain and the harm done to the victims. I won't ask those folks to identify who they are. The defense' request is unrealistic in light of the pain and the harm done to the victim. There will be a Victims of Violent Crime assessment in this case. The maximum is $250 per count. I will assess that in all 52 counts. That is $13,000. That is the maximum allowable by the statute and the court expects that it be paid within six months of today or by November 15, 2015. Defendant will be taken into custody at this time by the U. S. Marshal Service.

MR. HARRIS: Your Honor, would you consider allowing the defendant a report date?

THE COURT: No, he's had three months. He knew this was coming. We all knew this was coming and I will not allow him a surrender date. Court is adjourned.

(Thereupon, the proceeding was concluded.)

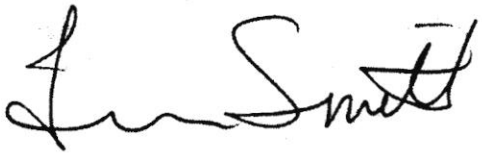
√ Digitally signed by Terri Smith

ELECTRONIC CERTIFICATE

I, Terri Smith, transcriber, do hereby certify that I have transcribed the proceedings had and the testimony adduced in the case of UNITED STATES OF AMERICA V. BERNARD FREUNDEL, Case No. 2014 CMD 018262 in said Court, on the 15th of May, 2015.

I further certify that the foregoing 124 pages constitute the official transcript of said proceedings as transcribed from audio recording to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 9th day of June, 2015.



Transcriber

Exhibit F

	DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS **POLICY AND PROCEDURE**				
		EFFECTIVE DATE:	August 25, 2015	**Page 1 of 12**	
		SUPERSEDES:	4341.1 August 17, 2012		
		OPI:	Records		
		REVIEW DATE:	August 25, 2016		
		Approving Authority	Thomas Faust Director		
	SUBJECT:	**GOOD TIME CREDITS**			
	NUMBER:	**4341.1A**			
	Attachments:	Attachment 1-Good Time Credit Memorandum (Misdemeanant) Form			

SUMMARY OF CHANGES:

Section	Change
	No Changes Were Made During Annual Review Period

APPROVED:

8/25/2015

Thomas Faust, Director ***Date Signed***

1. **PURPOSE AND SCOPE.** The Department of Corrections (DOC) may award Good Time Credits (GTC) for good behavior and successful participation in rehabilitative programs, work details, and special projects for the period of time in custody prior to or after sentencing for a misdemeanor. GTC provide inmates with an incentive to maintain good behavior and enroll in institutional programs for purposes of self-development and/or rehabilitative objectives.

2. **POLICY.** It is DOC policy to award Good Time Credits to inmates consistent with DC Code § 24-221.01, et seq. and in the following manner:

   a. Each inmate committed to the DOC who is sentenced for a misdemeanor pursuant to D.C. Code § 24-403.02 may be eligible to receive credit for good behavior, rehabilitative programs, work details, and special projects.

   b. Authorized good time credits shall be applied to the person's minimum term of imprisonment to determine the date of eligibility for release.

   c. When an inmate is found guilty of one or more Class I, Class II, or Class III offenses, as defined in PM 5300.1, *"Inmate Disciplinary and Administrative Housing Hearing Procedure"*, the DOC Director or designee may forfeit or withhold good behavior credits.

   d. The DOC Director or designee may also restore good behavior credits in accordance with this directive.

   e. Inmates are limited to eight (8) days credit per month, even if enrolled in more than one eligible program.

3. **APPLICABILITY**

   This policy shall apply to every inmate of a District of Columbia correctional institution who is serving a sentence for a misdemeanor pursuant to section 3(b) of An Act to Establish a Board of Indeterminate Sentence and Parole for the District of Columbia (D.C. Official Code § 24-403.02).

4. **PROGRAM OBJECTIVES.** The expected results of this program are that inmates, by virtue of personal development and positive behavior, may receive an earlier release from confinement as well as the opportunity for a more successful reintegration into the community.

5. NOTICE OF NON-DISCRIMINATION

In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2.1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

6. DIRECTIVES AFFECTED

a. Directive Rescinded

1) PP 4340.2 Educational Good Time Credits

b. Directives Referenced

1) PM 5300.1 Inmate Disciplinary and Administrative Housing Hearing Procedures

7. AUTHORITY

a. DC Code § 24-211.02, Powers; Promulgation of Rules

b. DC Code §§ 24-221-.01-06, Educational Good Time

c. DC Code § 24-101, et seq., Transfer of Prison System to Federal Authority

d. District of Columbia Municipal Regulations (DCMR), Title 28. Corrections, Courts and Criminal Justice, Chapter 6, Good Time Credits

8. STANDARDS REFERENCED

a. American Correctional Association (ACA) 4th Edition Performance-Based Standards for Local Adult Detention Facilities 4-ALDF-5A-09

9. **DEFINITIONS.** For the purpose of this directive the following definitions shall apply:

a. **Department of Corrections facility.** A facility that houses an inmate committed to the District of Columbia Department of Corrections.

b. **Disciplinary Violation.** A guilty finding pursuant to the Department of Corrections Policy PM 5300.1, Inmate Disciplinary and Administrative Housing Hearing Procedures for any institutional Class I, II, and III offenses as defined in Chapter 5 of Title 28 of the Code of D.C. Municipal Regulations.

c. **Disciplinary Board**. A Board established pursuant to the DOC Policy PM 5300.1, Inmate Disciplinary and Administrative Housing Hearing Procedures that conducts hearings, makes findings and imposes appropriate sanctions for incidents of inmate disciplinary violations.

d. **Expiration of the Sentence.** An inmate's sentence has expired, requiring the release from incarceration without further supervision of an inmate because he or she:

1) Has served the maximum term of commitment; or

2) Has served the maximum term of commitment less the GTC credits awarded pursuant to District of Columbia Good Time Credits Act of 1986, effective April 11, 1987 (D.C. Law 6-218; D.C. Official Code §24-221.01, et seq.).

e. **Good time credit.** Means either good behavior credit or other credit earned as a result of successful participation in rehabilitative programs, work details, and special projects.

f. **Incarceration.** Custody resulting from pretrial or pre-sentence detention, a sentence, or detention pending a hearing on revocation of probation or release in the Central Detention Facility, Correctional Treatment Facility, or another secure facility under contract to the District of Columbia Department of Corrections.

g. **Rehabilitative program.** Program providing opportunities for self-improvement, including treatment, academic, or vocational programs.

h. **Special Project.** A designated, non-reoccurring special project.

i. **Successful participation.** Active and constructive participation including satisfactory attendance and compliance with any rehabilitative program, work detail, or special project.

j. **Term of commitment.** The period of an inmate's current incarceration. The term "term of commitment" includes the following:

1) A single sentence;

2) A combination of concurrent sentences (a concurrent sentence is two (2) or more sentences that run simultaneously), in which case the term of commitment is the period of commitment between the earliest starting date of those sentences and the latest expiration date of those sentences;

3) A combination of consecutive sentences (a consecutive sentence is two (2) or more sentence(s) following one after the other in uninterrupted succession), in which case the term of commitment is the period of commitment between the starting date of the first consecutive sentence and the expiration of the last consecutive sentence;

4) A combination of concurrent and consecutive sentences in which case the term of commitment is the period of commitment between the earliest starting date of the sentences and the last expiration date of the sentences;

5) A combination of sentences imposed before and after release on parole or probation and the probation or parole is revoked, in which case the term of commitment is the period of commitment between the earliest starting date of the sentences and the latest expiration date of the sentences, excluding time out of custody for which credit is not allowed.

k. **Work detail.** Assignment to a recurring task pursuant to an institutional work program.

10. APPLICABILITY OF AWARDING GOOD TIME CREDITS

a. Each inmate committed to the Department of Corrections, who is sentenced for a misdemeanor pursuant to D.C. Code § 24-403.02, may be eligible for good time credits to be applied to his/her sentence pursuant to the Good

Times Credits Act of 1986 , effective April 11, 1987 (D.C. Law 6-218; D.C. Official Code § 24-221.01 et seq.), in one or more of the following categories:

1) Good behavior;

2) Rehabilitative programs;

3) Work detail; and

4) Special projects.

b. Credit shall be calculated from the first day of incarceration but will not accrue until the 20th day of incarceration. The credit shall be calculated regardless of whether the inmate is pre-trial, pre-sentence, sentenced, a full-time inmate or serving a sentence of weekends. The credit will apply once an inmate is sentenced. One (1) credit is equal to one (1) full day of reduction in a sentence. Except in the case of good behavior credit awarded pursuant to section 11(a) of this directive, all credits shall accrue each calendar month for successful participation in rehabilitative programs, work details, and special projects, in the following manner:

1) If participation in the program, detail, or project lasts twenty (20) days or less: one (1) credit;

2) If participation in the program, detail, or project lasts more than twenty (20) days, but less than twenty-six (26) days: two (2) credits; and

3) If participation in the program, detail, or project lasts twenty-six (26) days or more: three (3) credits.

c. An inmate shall not earn more than eight (8) good time credits per calendar month.

d. Once an inmate has been released, either to probation or by the expiration of his/her sentence, good time credits awarded during the period of incarceration are of no further effect and shall not be used to shorten the period of probation, to shorten the period of incarceration which the inmate may be required to serve for violation of probation, or to shorten any subsequent sentence.

11. APPLYING GOOD TIME CREDIT

a. Good Behavior

1) An inmate shall be awarded good time credit at the inception of his/her incarceration for anticipated future good behavior and institutional adjustment that will result in the automatic reduction of the inmate's term of commitment unless all or part of such credits are revoked pursuant to Section 15 herein.

2) The reduction described in section 11(a) shall be calculated from the first date of commitment at a rate of three (3) days for each full calendar month during the inmate's commitment, or, if the inmate is committed for less than a full calendar month at a rate of one day for each ten (10) day period within a calendar month in which an inmate is committed.

3) An inmate shall not receive credit under this section for any ten (10) day period during which the inmate is not incarcerated, including a period where the inmate's sentence is stayed or the inmate has escaped.

4) The amount of good behavior credit is subject to disciplinary revocation under Section 15 of this directive.

b. Rehabilitative Programs

1) An inmate shall be eligible for a good time credit deduction from the inmate's term of commitment for successful participation in one or more self-improvement programs.

2) The deduction described in subsection (1) shall be calculated from the first day the inmate demonstrates successful participation in the program using the formula set forth in Section 11(a)(2).

c. Work Detail

1) An inmate shall be eligible for a good time credit deduction from the inmate's term of commitment for demonstrating successful participation of assigned work tasks.

2) The deduction described in subsection 1 shall be calculated from the first date of assignment and continue through termination from the detail assignment or release from custody using the formula set forth in Section 11(a)(2).

d. Special Projects

1) An inmate shall be eligible for a good time credit deduction from the inmate's term of commitment for demonstrating successful participation in a designated non-recurring special project. Special projects are considered to be services provided to enhance community and agency initiatives such as snow removal, paint squads, and environmental initiatives. Special projects will be considered on a case by case basis.

2) The deduction described in subsection 1 shall be calculated from the first date of assignment and continue through the completion of the assignment or as long as the inmate is committed to the Department Corrections, whichever is shorter, using the formula set forth in Section 11(a)(2).

12. PROCESS FOR AWARDING GOOD TIME CREDITS

a. The squad supervisor or program official shall complete and submit the Good Time Credit Memorandum (Misdemeanant) Form (Attachment 1) for rehabilitative programs, work detail, and special projects to the Chief Case Manager or designee for approval within two (2) business days of the inmate's successful participation/completion of the eligible program. The Chief Case Manager shall submit the approved form to the Record Office Administrator for processing.

b. Good Time Credits for good conduct shall be awarded by the Record's Office upon the inmate being sentenced. The Record's Office shall forward to the Chief Case Manager or designee a daily list of the inmate's sentenced from the previous day.

c. The Records Office Administrator or designee shall ensure priority sentence computation for sentenced misdemeanants when it appears that application of credits would sufficiently reduce the inmate' minimum or maximum sentence making the inmate eligible for immediate release. The Records Office will apply good time credit to effectuate the inmate's release as time served.

d. Within three (3) business days, the Chief Case Manager or designee shall deliver the approved Good Time Credit form to the Records Office.

e. Good time credits shall not be awarded in an amount that would make the inmate past due for release (i.e., credits may be prorated to avoid late release).

f. The affected inmates shall be informed of all awards, forfeitures or restorations of good time credits.

13. LIMITATIONS ON CREDITS

a. Good time credits shall not reduce the minimum sentence of any inmate convicted of a crime of violence as defined by § 22- 4501, by more than 15%.

b. Good time credits shall not be applied to the minimum terms of persons sentenced under:

1) DC Code § 22-4502 Crime of Violence or Dangerous Crime While Armed,

2) DC Code § 48-901.02 Controlled Substances Act,

3) DC Code § 48- 904.01 Controlled Substances Act,

4) DC Code § 22-2104(b) Murder in First and Second Degrees,

5) DC Code § 22-2803 Carjacking, or

6) DC Code § 22-4504(b).Possession of Firearm While Committing a Crime of Violence or a Dangerous Crime

c. Good time credits shall not apply to a sentence of civil contempt.

d. An inmate may not earn more than eight (8) good time credits per calendar month under this directive.

14. WITHDRAWALS

a. Involuntary Withdrawal. If an inmate is removed from a program/detail or project for administrative reasons, the squad supervisor or program official shall designate the inmate as an involuntary withdrawal. Administrative

reasons may include, but not be limited to: medical restrictions, temporary transfer from the facility or disciplinary detention.

b. Reenrollment. The inmate may later reenroll through routine institutional procedures.

c. Voluntary Withdrawal. If an inmate voluntarily withdraws from the program and later re-enrolls and completes the program, the inmate is eligible for credits for the time enrolled prior to voluntarily withdrawal.

15. PROCEDURES FOR REVOKING GOOD TIME CREDITS

a. Good behavior credit may be revoked as the result of a disciplinary violation imposed by the Department of Corrections pursuant to the procedures set forth in PM 5300.*1, Inmate Disciplinary and Administrative Housing Hearing Procedures*.

b. Good time credits for participation in rehabilitative programs, work detail, and special projects, once awarded, may not be revoked.

c. If the inmate has been found guilty of one or more Class I, Class II or Class III offenses, good behavior credits may be revoked during the disciplinary process, as may be appropriate, within the discretion of the Adjustment Board in accordance with the following:

1. Class I Offenses: up to 100% of credits may be revoked.
2. Class II Offenses: up to 50% of credits may be revoked.
3. Class III Offenses: up to 25% of credits may be revoked.

d. The Adjustment Board shall forward the disciplinary findings in accordance with PS 5300.1, PS 5300.*1, Inmate Disciplinary and Administrative Housing Hearing Procedures* to the Warden or designee for final approval.

e. The Warden or designee may take one of the following actions:

1) Recommend that the action be sustained;

2) Reverse the Board's decision and recommend award of all or a portion of the credit for which the inmate might have been eligible;

3) Remand the recommendation to the Adjustment Board for further review when the Warden has determined that the board failed to consider relevant evidence that was not made part of the record due to administrative or procedural error. Remand shall not be made to increase the amount of credit being recommended for withholding or forfeiture.

16. RESTORATION OF REVOKED GOOD BEHAVIOR CREDIT

a. An inmate may submit an application for the restoration of good behavior credit revoked for disciplinary reasons.

b. Application for restoration of good behavior credits shall be made to the Warden or designee, who shall consider the following factors when making a recommendation:

1) The severity of and circumstances of the disciplinary violation that resulted in revocation;

2) The inmate's disciplinary record during his or her current incarceration;

3) The inmate's rehabilitation efforts during his or her current incarceration period; and

4) The inmate's demonstrated positive adjustment since the violation and revocation occurred.

c. Good behavior credits may be restored to the inmate at the following rate;

1) Up to 50 percent (50%) of the total credit revoked if the inmate has been free of any subsequent disciplinary violations for six (6) months; or

2) Up to 100 percent (100%) of the revoked credit if the inmate has been free of disciplinary violations for twelve (12) months.

d. An inmate has no entitlement to approval of restoration of revoked credit.

e. An inmate may appeal the Warden's decision to revoke good behavior credit to the Director or designee of the Department of Corrections by submitting a letter to the Director.

f. If the inmate is not satisfied with the decision of the Director the inmate may appeal to the Mayor's Institutional Appeals Board.

g. The Department of Corrections shall provide staff support to any Institutional Appeals Board established by the Mayor.

17. RECORDS MANAGEMENT AND REPORTING OF GOOD TIME CREDIT

a. The Director or designee shall maintain a system for administering good time credits for each inmate.

b. The record of good time credits shall:

1) Start from the first date the inmate is committed to the Department of Corrections;

2) Contain entries reflecting good time credits granted, revoked or restored; and

3) Reflect a current and accurate record of good time credits affecting an inmate's term of commitment.

c. The Director shall ensure that staff is responsible for maintaining records of the good time credit are notified within five (5) days after:

1) The date on which an inmate is assigned to, completes, or is subsequently removed from a rehabilitative program, a work detail, or a special project;

2) Revocation of an inmate's good behavior credit; and

3) The Warden's or Director's approval to restore an inmate's revoked good behavior credits.

Attachment

Attachment 1 – Good Time Credit Memorandum (Misdemeanant) Form

TO: Records Office Administrator

THRU: Chief Case Manager

FROM: _____
Academic Principal, Case Manager, Program Coordinator, NIPS Coordinator

SUBJECT: Good Time Credit (Misdemeanant)

RE: □Rehabilitative Program □Work Detail Program □Special Project

Inmate: _____ DCDC#: _____

Projected Total Days of Credits to be Awarded Per Month: _____Participation _____
Project Credits: _____

Program Entry Date: _____ Projected Exit Date: _____
must be after 1-18-2011
This information has been verified by one of the following prior to submission:
Academic Principal, Program Coordinator, NIPS (Non Industrial Pay) Coordinator

Name: _____Date: _____Release Date: _____

To be completed by the Case Manager

This confirms that the inmate listed above has or has not successfully participated in the indicated program(s) and is or is not entitled to good time credits.
□ Yes Inmate has successfully participated and is therefore eligible for GTC.
□ No Inmate has not successfully participated and is therefore not eligible for GTC.

_____ _____
Signature, Case Manager Date

To be completed by Chief Case Manager or Designee

Approved by:

_____ _____
Chief Case Manager Date

To be completed by the Record Office Chief or Designee

GTC was awarded on _____in the amount of _____
(entered into JACCS) Date #days

Recomputed Face Sheet was scanned/signed Date: _____

_____ _____
Signature, Record Office Chief or designee Date

cc: Inmate's Institutional File

(Total credits per month cannot exceed 8. Eligible inmates will automatically receive 3 days per month from the Record office).