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A Shabbat Message from Rabbi Arthur Weiner

Friday July 29, 2022 ~ Parsha: Matot Masei

Dear JCCP/CBT family,

Brittney Griner and Paul Whelan: Insights from Jewish Law

How much should we pay to redeem unlawfully held prisoners? This is a particularly serious question as news reports earlier this week announced that the State Department is seeking a deal to free basketball superstar Brittney Griner and businessman Paul Whelan, who have both been held unlawfully in Russia. Ms. Griner has been held since January, and Mr. Whelan for over 3 years.

The question of redemption of prisoners is one that I have been interested in for a long time. I have spoken about it on Shabbat at least 10 times over the past 20 years. I taught about it on Shavuot at our recent *Tikkun Leil Shavuot* in early June. I've given several public lectures on the subject over the years. I have spent a great deal of time studying the long Jewish legal tradition on this subject. Indeed, the original discussions of this question goes back to the *Mishnah*, the first law code of the Rabbinic era, which was itself compiled almost 1900 years ago.

That's how long Jews have been grappling with this terribly difficult issue.

Jewish law teaches that there are several important issues to consider when determining how to negotiate for the return of unlawfully held captives.

1. Redeeming captives is a great mitzvah (Talmud *Bava Batra* 8b:1)
2. The redemption of captives takes precedence over other important mitzvot (Maimonides *Mishneh Torah*, Gifts to the Poor 8:10-12)
3. Captives should not be redeemed for more than their actual value so that their captors will not be encouraged to kidnap more people (Talmud *Gittin* 45a)

That last source is particularly significant as we consider the case of Britany Griner and Paul Whelan. Until the pandemic severely curtailed travel, over 300,000 Americans traveled to Russia each year for business and pleasure. In the past I have shared with you my belief that Jews, and for that matter any American, should refrain from travel to any country where our American passport will not protect us. Given the number I explained above, the Russians will sadly have plenty more Americans to choose from once these American citizens are repatriated.

There has been a directed public pressure campaign to raise awareness of the plight of Brittney Griner. This morning, I heard the head of the WNBA players' association speaking about the importance of Brittney Griner's release. I understand why such pressure is being brought to bear on the Biden administration. But what is being asked in return is almost unbearable. The deal recently announced, (no doubt the release of this information by the State Department is a tactic to pressure the Russians) includes the return of Viktor Bout, a notorious Russian arms dealer currently serving a 25 year sentence. He wasn't a guy selling a few RPGs to an undercover agent. This was a man who, according to federal authorities, sold weapons in such large quantities as to encourage rebellions, revolts and insurrections throughout the world. He is responsible for the death of American citizens. According to Preet Bharara, the former U.S. attorney in Manhattan, Viktor Bout had been *international arms trafficking's enemy number one* for many years, arming some of the most violent conflicts around the globe. Or to put it in different terms, he is more akin to Pablo Escobar, among the world's most notorious drug cartel leaders than the guy selling marijuana on a street corner. So as much as we want Ms. Griner's and Mr. Whelan's return, we must admit that the release of this international criminal is a high price to pay. And there lies the tension. We want to do everything within our power to return these prisoners to their families. But it is unreasonable to endanger other lives in the process. And that is what will happen if Viktor Bout is released.

Sadly, we can learn from Israel's experience when it comes to this issue. For the past four decades, Israel has engaged in a series of lopsided prisoner exchanges when its soldiers were captured. To give one example, about 14 years ago, Israel exchanged

over 1000 Palestinian terrorists in exchange for Gilad Shalit, including some of the most vicious ones like Samir Kuntar, whose murderous rampage that killed 4 Israelis was shocking even among the low standards of Palestinian terrorists. Many of those who were released went on to resume their terrorist activities. Interestingly enough, at the time, Israel's secret services and intelligence community vigorously opposed this exchange. Yet Israel's military endorsed it. And Israel's cabinet voted 22-3 in favor of it. (I should point out that our Justice Department had opposed the release of Viktor Bout for similar reasons)

So how could it be that Israel, including its military, its government, and the majority of the population, would agree to such a lopsided trade? It goes back to the competing values that our *halachic* (Jewish legal) sources address. We have a long tradition of trying not to overpay so as not to incentivize more hostage taking. And we have an equally long history of ignoring that to achieve the goal of freeing our unlawfully held prisoners.

With the public release of what the Biden administration is ready to offer, we can easily discern which value our government is choosing to prioritize right now. For the record, just as I opposed Israel's lopsided exchange years ago, I would oppose this one now. But if it does indeed lead to the release of our citizens held prisoner in Russia, I will nonetheless be elated.

Elated, that is, until the next time Russia chooses to falsely arrest an American citizen. What will we have to pay next time?

Shabbat Shalom, Rabbi Arthur Weiner