



## PLANNING THE BIG KVELL B'nai mitzvah bliss

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## JERUSALEM BROUHAHA Controversy over housing

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### COVER STORY

### SHOULD ISRAEL BE AN ISSUE IN AMERICAN ELECTIONS? — PAGE 3

## 'Supreme' advocate No. 28 for Nat Lewin

by **Richard Greenberg**  
Senior writer

There are more than 1 million practicing attorneys in the U.S., according to the American Bar Association, and the vast majority of them have at least one professional footnote in common: They have never argued a case before the U.S. Supreme Court.

And then there's D.C. legalistic legend Nathan Lewin, 75, who on Monday will stand before the high court for the 28th time in six decades. During that period, the Potomac resident has established himself as America's foremost defender of the civil rights of observant Jews, of which he is one.

"I went through some difficult experiences of my own," Lewin explained in an interview last week, "and I guess I don't want people to have to go through the same kind of thing."

He may be one of the few attorneys around who has extensive entries in both *The Best Lawyers in America* (where he has been a fixture for more than 25 years) and *Encyclopaedia Judaica*, whose mainstays include people like Moses and Maimonides.

A Polish-born, *kippah*-wearing Orthodox Jew with a modest white beard, Lewin (just plain "Nat" to almost everyone) has handled scores of religious discrimination cases pro bono (legalese for free of charge) as a service to the Jewish community, "but it's hard to make a living that way," he acknowledged, and as a result, he has also represented a vast and eclectic array of paying clients, ranging from Richard Nixon to John Lennon to Jodie Foster.

No stranger to controversy, Lewin has

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### White October

Nearly seven inches of snow blanketed Capital Camps in Waynesboro, Pa., the site of BBYO's annual New Member Weekend and Regional Leadership Training Institute (RLTI). Hundreds of area teens added "snowball fights" to the weekend's programming schedule. For more community photos, see page 6.

photo by Daniel Hamburg

## A babuska's bat mitzvah Ella Kagan's crowning achievement

by **Meredith Jacobs**  
Managing Editor

There are lives lived with years of struggle, years of challenge, years of enormous hurdles. There are those who live these lives and become hardened and bitter. And there are those who not only become stronger, but use what they have learned to give back and ease the struggles of others. Ella Kagan has chosen to give back.

Kagan was born in Moscow. Now a grandmother, she is of the generation that understands a lady should not be asked her age, and if so rudely asked by a reporter, should refuse to answer.

The only child of Miriam Dizhur and Isaak Kagan, she was not permitted a formal

Jewish education. Soviet authorities viewed attending synagogue, even the one next to her childhood home, as bad behavior. As Kagan explains, "If someone saw you near the synagogue around the holidays you could be fired from your job or kicked out of university." The only ones who dared go in were the elderly Jews, who were finished with their careers and schooling.

Kagan's family made certain she knew she was Jewish. Her father, as a boy, had gone to

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## Pathfinders Federation unveils blueprint

by **Phil Jacobs**  
Editor

1. Adapt to changing realities in the Jewish and philanthropic worlds by enhancing high impact programs, implementing new, cutting edge initiatives and services and eliminating duplication

2. Energize, motivate and re-connect with our community through a well articulated vision for the future.

3. Create personally meaningful connections between members of our community, Israel, Jews around the world and organizations we support.

4. Reduce barriers to active participation in Jewish life: financial, geographic, demographic or social.

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1 Adapt to changing realities in the Jewish and philanthropic worlds by enhancing high-impact programs, implementing new, cutting edge initiatives and services and eliminating duplication	2 Energize, motivate and re-connect with our community through a well articulated vision for the future	3 Create personally meaningful connections between members of our community, Israel, Jews around the world and organizations we support	4 Reduce barriers to active participation in Jewish life: financial, geographic, demographic or social
<b>Guiding Principles</b>			
To fulfill our mission, prepare for our future and inspire our donors, we will follow 8 guiding principles for our work:			
5 Communicate broadly and clearly what we do well and what we're going to do differently	6 Create strong partnerships with agencies and synagogues as a community leader, convenor and catalyst so that we can plan strategically and effectively with a strong, collective voice	7 Elevate our customer service to be highly responsive and welcoming to all our stakeholders	8 Expand our donor base and motivate current donors to increase their giving impact through opportunities that make a meaningful difference in our community

## ADVOCATE

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earned both plaudits and brickbats for some of the clients he has represented and some of the causes he has embraced, but even his most ardent opponents speak highly of the man who was once referred in print to as an “Orthodox Clarence Darrow.”

“He is a unique man,” offered fellow D.C. private attorney and longtime friend Abbe Lowell. “Nat remains one of the most insightful legal thinkers I have ever met. He’s absolutely fearless, and yet he does it all with a puckish smile and a certain mischievous glint in his eye and a warm personality.”

The clients Lewin is representing Monday before the Supreme Court are not famous, although their case has attracted considerable attention for several reasons, including the fact that the backdrop for the litigation — the ancient city of Jerusalem — is suffused with geopolitical controversy.

The case (bearing Supreme Court docket number 10-699) stems from a court battle that was touched off shortly after the birth in October 2002 of Menachem Binyamin Zivotofsky, the son of former Silver Spring residents Ari and Naomi Siegman Zivotofsky, who moved to Israel in 2000.

Menachem was born at Shaare Zedek Hospital in western Jerusalem, and because his parents were U.S. citizens at the time of his birth, he too was automatically designated a U.S. citizen.

But thanks to the realities of both Middle East politics and a Washington turf war, Menachem’s passport does not reflect an undeniable, if inconvenient, truth: the city in which he was born is indeed located in the state of Israel.

The section of Menachem’s passport that designates place of birth says only: Jerusalem. The word Israel is nowhere to be found — despite a federal statute enacted in October 2002 that says Americans born in Jerusalem are entitled to have Israel listed on their official papers as their birth country.

The administrations of both George W. Bush and Barack Obama have ignored that law, however, with Bush claiming that it infringes on the president’s statutory authority to formulate foreign policy positions, such as the administration’s stance on the status of Jerusalem.

With Lewin as their (pro bono) counsel, the Zivotofskys went to court in September 2003 to challenge the State Department policy that they claim has wrongfully nullified the 2002 statute.

(The litigation was promptly dismissed — setting the stage for a series of appeals — with the trial judge maintaining that the case raised a “quintessentially political question” rather than a legal one. Lewin, in contrast, has maintained that he is not asking the court to tinker with a politically charged foreign policy matter, but rather to simply enforce a law passed by Congress and signed by the president, but never fully enforced by him.)

The State Department policy is “singularly arbitrary and discriminatory,” according to the Zivotofsky’s Supreme Court petition, because it unfairly singles out Americans born in

Jerusalem rather than, say, those born in Tel Aviv or Haifa. “To these Americans [born in Jerusalem],” the petition states, “personal dignity and conscientious conviction calls on them to identify themselves as born in ‘Israel.’”

Furthermore, the litigation adds, the policy permits Palestinian Americans born within Israel to have the city of birth entered on their passport “so that [the word] ‘Israel’ may be eradicated.” In short, the Zivotofskys maintain, the State Department rules “bar only supporters of Israel — overwhelmingly Jews who have a religious attachment to the land — from identifying their birthplace in a manner that conforms with their convictions.”

Regardless of the outcome of the lawsuit, it will not affect the official U.S. position on the status of Jerusalem, according to the petitioners. “This court is not being asked to award Jerusalem to Israel or to jeopardize Middle East peace negotiations,” their latest brief states. “The State Department claims that if American citizens who are natives of Jerusalem identify as born in ‘Israel,’ the perception (albeit mistaken) of Arab states will be that official American policy has changed.” There is no evidence that will occur, according to the Zivotofskys.

“It’s a silly rule on the part of the State Department,” Lewin added during last week’s interview, calling it a “relic” of the time when anti-Israel “Arabists” were said to have dominated at Foggy Bottom.

He was asked if he is confident about the outcome of the case. “I think we decimate the government in our argument,” he responded, describing himself as an optimist by nature. “But unfortunately,” he added, “sometimes I get persuaded by my own rhetoric.”

*The interview takes place over iced tea in a conference room at the I Street office Lewin shares with his daughter and sole legal partner, District resident Alyza Lewin, the younger of his two daughters. (Founded nearly 10 years ago, Lewin & Lewin LLP specializes in white-collar criminal defense work and federal appellate litigation. At least 30 percent of the firm’s time is spent doing pro bono work related to social justice issues in the Jewish community, Alyza estimated.)*

*The walls of the conference room are bedecked with a framed “lawyer’s prayer” in Hebrew, an antique map of the Holy Land and several courtroom artist sketches of Lewin in action.*

*The interviewee himself, who bears a slight resemblance to the veteran character actor Eli Wallach, is wearing a knit kippah that is framed by a fringe of white hair. (He does not cover his head in court, however, according to Alyza. “That’s because of the generation he comes from,” she explained, noting that younger Orthodox Jews are far more likely to wear a head covering in such a setting.)*

*Born in Lodz, Poland, in 1936, Lewin was smuggled to safety after the Nazis invaded, thanks to a visa provided by Chiune Sugihara, the legendary Japanese diplomat serving in Eastern Europe who enabled thousands of Jews to escape the Nazis via Japan. After traversing Siberia, Lewin and his family briefly found refuge in Kobe, Japan, and finally made their way to the United States in 1941 when Nat was 5. However, three of his grandparents did perish in the Holocaust.*

*Lewin’s formative years were spent on the Upper West Side of Manhattan, and his accent still eloquently attests to that fact. Asked why he gravitated to the law, he noted that his father had a law degree in Poland, although he was never a practicing lawyer.*

*By the time Lewin was in seventh grade, however, his talents for reasoning and argumentation were so pronounced that his teacher was compelled to remark: “Nathan, you’re a Philadelphia lawyer,” he recalled. “That sounded pretty good to me,” he added, “except that I had not the foggiest notion of what lawyers do other than appear in court.”*

*He would eventually find out. After receiving his undergraduate degree from Yeshiva College in 1957, Lewin entered Harvard Law School, where one of his classmates was current Supreme Court Justice Antonin Scalia, whom he considers a good friend. Scalia has eaten in Lewin’s sukkah, as has fellow Justice Stephen Breyer.*

### ‘Nat remains one of the most insightful legal thinkers I have ever met.’

*Prior to enrolling at Harvard, however, Lewin had had little or no meaningful contact, not only with non-Jews, but with non-religious Jews. “Actually, it wasn’t that big of a culture shock,” he said, pointing out that he shared an apartment with three Yeshiva College graduates, and for the first year at least, he had little time for socializing. “Otherwise, most of the Jews I met at Harvard seemed the same as the non-Jews; they didn’t keep Shabbos and they didn’t keep kosher.”*

*In one sense, though, Harvard was an eye-opener for Lewin, who arrived at Cambridge well-schooled in Talmud, that classic Jewish text that employs a rigorous, almost legalistic, approach to examining an oceanic volume of subjects, often in exacting detail.*

*Conventional wisdom says that Talmudic study helps explain why so many Jews are lawyers — but Lewin actually found it to be a hinderance in law school.*

*In American law books, unlike Talmudic tomes, little is sacrosanct, and Lewin had trouble wrapping his mind around that fact when he got to Harvard. “That confounded me,” he said. “In law school, they questioned everything. I was intimidated; here I was, this yeshiva bochur [student].” He was sometimes publicly ridiculed by his law professor when he attempted to use Talmudic reasoning in class.*

*It took him about seven months to become acclimated to this radically new approach to text study, but any ill effects were not longlasting. Lewin graduated from Harvard magna cum laude, ranking fifth in a class of 450 (ahead of Scalia, among others) before landing a position as a law clerk to Supreme Court Justice John Harlan, who agreed to let him work on Sundays so he could observe Shabbat.*

*However, Lewin found a far less hospitable climate when he sought legal work in the private sector. He was repeatedly rebuffed by law firms when they found out he was Shabbat-observant, he said. “They’d tell me, ‘Go talk to your rabbi and get a dispensation,’” Lewin recalled.*

*Following several stints doing legal work at various federal government agencies, Lewin co-founded the law firm Miller Cassidy Larroca and Lewin, which remained intact for nearly 40 years prior to the formation of Lewin & Lewin.*

A total of 11 Jewish organizations have filed court briefs supporting the Zivotofskys in the passport case, and only one — the dovish group Americans for Peace Now — has filed papers opposing them. “This case represents a direct challenge to more than six decades of United States foreign policy on one of the most sensitive foreign policy questions facing the United States — recognition of sovereignty in Jerusalem,” APN said in its brief, which was filed last month.

APN is not the only liberal Jewish group that has clashed with Lewin on high-visibility, civil liberties and First Amendment issues — often those involving church-state separation. In defending what he considers the constitutional right of observant Jews to practice their faith, Lewin has advocated a relatively permissive position on the appropriate place of religion in the public square, a stance that has both staunch advocates and die-hard detractors.

Lewin, for example, has successfully championed the right of Jews to display the Chanukah menorah on public property in several jurisdictions. Likewise, he argued that a fervently Orthodox sect in Kiryas Joel, New York, had the right to create a special publicly funded school district for its handicapped children, a case that was heard by the Supreme Court in 1994.

Lewin has also brought lawsuits on behalf of Shabbat observers who allegedly faced discrimination in the workplace, Jewish prisoners who were denied kosher food, Jewish military chaplains whose constitutional rights allegedly were violated by a policy prohibiting beards, and an Air Force psychologist who challenged a military regulation that barred him from wearing a kippah while on duty. (Although Lewin lost that case 5-4 in the Supreme Court, he subsequently played a key role in drafting legislation requiring the military to permit personnel to wear head coverings and other presentable forms of religious garb. In 1972, he wrote an amendment to the Civil Rights Act of 1964 that expands that landmark law by protecting the religious practices of both public and private employees.)

While acknowledging that the American Jewish community has often benefited from constitutional safeguards preventing government from meddling in religious matters, Lewin feels that progressive Jews have often gone overboard in their attempts to render the sacred-secular barrier unbreachable. In the process, he added, they have routinely engaged in reverse discrimination against observant Jews “and others who take their faith seriously” — one of the few forms of bias still countenanced in the U.S., he said.

“It’s an unthinking kind of reaction, a reflexive Jewish feeling that is by now really obsolete,” Lewin said of the opposition he has often encountered from left-leaning and secularist Jews.

That group includes Harvard law professor and outspoken civil libertarian Alan Dershowitz, Lewin’s longtime friend, occasional colleague and serial nemesis on the touchy issue of



Nat Lewin admires a courtroom sketch of himself in action.

Photo by Richard Greenberg

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sacred and secular spheres commingling.

During a 2006 conference on *Jews and the Legal Profession*, Lewin took Dershowitz, among others, to task for allegedly defending the Constitution more faithfully than they defend “their people,” to which Dershowitz responded: “Having more religion in the public square may seem ‘good for the Jews’ in the short term, but in the long term, it’s extremely dangerous.”

The loyal opposition includes Rabbi David Saperstein, who is also an unabashed admirer of Lewin’s. “Nat’s a brilliant lawyer and a mensch of a guy,” said Saperstein, director of the Religious Action Center of Reform Judaism, “but we do differ on some key issues.”

Israel figured prominently in yet another landmark piece of litigation initiated by Lewin, this one on behalf of a 17-year-old American-born student, David Boim, who was shot and killed by Hamas terrorists at a bus stop near Jerusalem in May 1996.

The lawsuit, which was filed in May 2000, re-

sulted in a \$156 million verdict against U.S.-based Muslim organizations that had contributed funds to Hamas in the mid-1990s, reportedly the first time such a legal tool had been successfully used against domestic groups supporting terrorism.

As the case was wending its way through the legal system, however, Lewin dropped a bombshell when he publicly advocated the execution of family members of suicide bombers — unless the relatives publicly condemned the crime or took other steps to fully disassociate themselves from the act.

Reform movement leader Rabbi Eric Yoffie, among others, condemned Lewin, describing his position as “utterly reprehensible and totally contrary to the most fundamental principals of the Jewish religious tradition. ...” (As for Dershowitz, he argued that Lewin’s proposal was a flawed yet legitimate attempt to reconcile the need to fight terrorism with the obligation to maintain democratic norms.)

Said Saperstein, in a recent interview: “Nat’s perspective was just off on this one — but at least he did try to make the argument in moral terms. I don’t think this was an example of angry bar-

barism on his part, but an attempt to minimize losses from terrorism. Still, I think he was wrong.”

Lewin’s legal pioneering has extended to the domestic sphere as well, but not without occasional controversy. He is the chief author of New York’s original “get law,” a landmark 1982 statute that prohibits a civil divorce from being granted unless a Jewish divorce, known as a *get*, is first issued, thus enabling the wife to remarry within the faith, according to Jewish law. Until then, she is known as an *agunah*, a “chained woman,” subject to the whims of a recalcitrant spouse.

The “get law,” which has been hailed as a masterpiece of progressive legislation, has also been condemned as a patently unconstitutional violation of church-state separation (even by those who sincerely sympathize with the plight of *agunot*). A *get* statute exists nowhere else but in New York state, and attempts to pass a similar law in Maryland have failed three times in the last several years, with Lewin testifying on its behalf in each instance.

State Sen. Jamie Raskin (D-Montgomery County) was, and is, a staunch opponent of the legislation, which he characterized as “an honest effort to assist women” that also happens to be

a flagrantly unconstitutional infringement on church-state separation.

“That said, I have tremendous respect for Nat’s legal passion and intellect,” added Raskin, who is also a professor of constitutional law. “He has this very classic, fast-talking New York lawyer style. I found his presentation compelling, but in the final analysis it was not convincing. We have a serious intellectual difference on this issue, but there was no personal animosity at all.”

Following their most recent head-to-head encounter, Raskin joined both members of the Lewin legal team and they adjourned to a kosher restaurant in Potomac for chicken soup with matzah balls.

The senior Lewin lives not far from that eatery with his wife, Rikki, and they both attend Potomac’s Orthodox Beth Sholom Congregation and Talmud Torah, as well as a local Chabad *shul*. During his spare time, Lewin teaches a Talmud class at Beth Sholom and conducts lectures comparing and contrasting Jewish law and American jurisprudence.

“Where he finds the time to do this, I don’t know,” remarked Alyza. “It’s truly amazing.”