



A visit with Nathan Diament

Nathan J. Diament is the Executive Director of the Orthodox Union Advocacy Center, where he develops and coordinates public policy research and initiatives on behalf of the Jewish community. Nathan has testified before Congressional committees and works closely with members of both political parties to craft legislation addressing issues of religious liberty, education reform and family-friendly social policies. In 2009, Nathan was appointed by President Obama to serve as one of 25 members on the President's Faith Advisory Council. He is a coeditor of *Tikkun Olam: Social Responsibility in Jewish Thought and Law* (Aronson Press, 1997) and the author of numerous articles and essays on topics including religion and state, constitutional law, social policy and international affairs. He is an honors graduate of Yeshiva University and the Harvard Law School.

Photo by Marko Dashev

Seasoned **Advocacy** in a **Tumultuous** Climate

By Rabbi Yitzchok Frankfurter

Nathan Diament with President Obama



In all the years you've been working in Washington on behalf of the Orthodox Union, have you ever seen anything like the first two weeks of the Trump administration?

No, absolutely not. What's remarkable is how President Trump and his White House are acting like "disrupters," to use the term that's circulating in Washington right now. They aren't following the conventional rules of how people operate, although I don't think it's surprising in any way. Trump ran as an outsider. He ran a campaign saying that he was

going to upend Washington, and that's what he's been doing. And he's not only doing it with the policies he's pursuing but in his mode of operation as well.

And with his bombastic style, if you will.

His bombastic style has continued, but we've also seen that he can be very sober and presidential in the way he announced his pick for the Supreme Court and the way he traveled to Dover Air Force Base to receive the remains of the fallen soldier.

Martin Indyk told me, and I assume that a lot of people agree, that while

he would never accuse Trump of anti-Semitism, he still feels that by promoting all of this anti-Muslim sentiment the Jews will be next in line, because that's what always happens when people become more nationalistic. Is there a fear in Washington that by stoking these feelings Jews will suffer as a result?

There's certainly a concern, and we've seen over the past few weeks that for a number of reasons people who have anti-Semitic or other negative views have felt freer to express them in various ways. There's been an increase of incidents of hate graffiti and crime, and that has to be

absolutely unacceptable. We would expect any President of the United States to make that clear.

So has Washington gone from a sleepy little town to a very lively city these days?

It did. In October, the month before the election, it was very quiet. Obviously, people were following politics, but all of the energy and action were taking place elsewhere, on the campaign trail. Since the election, but accelerating even more in the days leading up to the inauguration and afterward, the pace has been frenetic. This is partially because President Trump and his people are doing things so regularly to shift the perception of how various issues are going to be dealt with. And they're doing it with a White House and cabinet agencies that aren't properly staffed. There are a lot of empty offices. I have to explain to people from overseas that unlike in most other countries, here in the US we decapitate our government every four or eight years.

Do you live in Washington, D.C.?

I've been living in Silver Spring, Maryland, for about 18 years.

But you grew up in New York.

I grew up on Long Island. I went to HANC, the Hebrew Academy of Nassau County, then I went to learn in Eretz Yisrael, followed by YU for college and another year of learning in Eretz Yisrael at the YU *kollel*. I was a *talmid* of Rabbi Michael Rosenzweig and Rav Aharon Lichtenstein in Yerushalayim. After that I went to Harvard Law School. I practiced law for a few years and then started working for the OU.

Did you have a private law practice?

I was part of a big firm in New York. I also clerked for a federal judge in Brooklyn, Judge Leo Glasser, who is still on the bench. Most famously he was the judge who had the John Gotti case; I was there during the tail end of that. I started this

job with the OU almost 20 years ago. After about six months of constantly traveling back and forth, I told them, "If we really want to have a successful advocacy in Washington we need to have an office there—and by the way, I'm willing to relocate." There are currently eight people in our office, which is close to Capitol Hill.

During which administration did you begin?

It was toward the end of the Clinton administration.

Clinton was a pretty friendly President to Jewish causes, not only to Israel but to religious freedom as well.

Absolutely. He was very proud of having signed the Religious Freedom Restoration Act into law. It was a very important law, although it's become controversial in recent years. It was passed in response to a very bad decision that the Supreme Court made against religious liberty. Incidentally, the majority opinion was written by Justice Scalia. The decision said that if a law negatively impacted religious activities, it would still be legal as long as it wasn't the intent of the law to do so.

Nat Lewin told me that he was very disappointed by that decision.

We all were. It was in response to that that Congress almost unanimously passed the RFRA. However, religious liberty itself has unfortunately become more controversial in some ways.

Were you involved in the lobbying effort for that law?

Only toward the end; it was completed just after I started. After the act was passed, the Supreme Court struck it down as it pertained to state law, arguing that Congress didn't have the authority to impose it on the states, even though it was upheld with regard to federal law. We then worked on another law that was focused on religious land use issues and how states and localities use zoning laws to discriminate against houses of worship, whether

SOMETHING IS ABOUT TO HAPPEN TO FLATBUSH.

02/15/2017



Trump introduces Circuit Judge Neil Gorsuch, left, whom he has nominated to the Supreme Court



shuls, mosques or churches. We managed to get that law through, giving much stronger protection to religious institutions with regard to zoning laws.

What do you think about President Trump's nominee to replace Justice Scalia?

We're still reviewing Judge Gorsuch's record in detail, but at first glance I would say that it's a very encouraging nomination from our perspective. There is no issue dealt with by the Supreme Court that is more important to the Orthodox community than religious liberty. Judge Gorsuch has sat on a number of such cases. The most notable are two that involve the part of the Obamacare law mandating that employers pay for certain health coverage that can be seen to violate religious freedom. Gorsuch sided in both cases with the religious liberty claim, saying that even if the government has a compelling interest in making these kinds of health services more available, it cannot be at the price of violating the religious conscience of the employers. That's a position that was subsequently upheld by the Supreme Court.

The way he wrote about the cases also shows sensitivity to religious commitments in a very positive way.

What was your reaction to National Security Adviser General Flynn's warning to Iran, something that Obama always refrained from because he was afraid of jeopardizing the deal he'd negotiated?

It certainly indicates a change in direction, but the White House has not yet fleshed out what that means in terms of specific policies or increased sanctions.

I know that you were very against the Iran deal.

We certainly were. We mobilized a lot of people to help defeat it. We arranged for delegations of rabbis and leaders of various Orthodox communities to meet with their Senators and Congressman. I also participated with other community leaders in a number of very high-level meetings with the President, Vice President, Secretary Kerry and Secretary of Energy Moniz. The day before the vote, we brought several hundred *rabbanim* to Washington for

a rally at the Capitol and to try to persuade people against the deal. We really did everything we could.

Were you involved in Netanyahu's decision to address Congress?

No, although I found myself defending it to the media and on Capitol Hill. There were around six weeks between when it was announced and when it actually took place, so the controversy swirled for quite some time.

Do you find the fact that Trump is so negative about the Iran deal and might even do things to jeopardize it an encouraging sign?

I think it's actually concerning, not because he and his team are so critical but because it's a very delicate situation that can potentially have life-and-death ramifications. We certainly appreciate that he's taking a hardline view towards the Iranian government and its aspirations to obtain nuclear weapons, which would be terrible for Israel, the US and the world at large. But it needs to be handled deftly.

So are you advocating for its reversal?

On this type of issue the OU likes to work very closely with others, foremost among them the government of Israel, and also within the framework of its membership in the Conference of Presidents of Major American Jewish Organizations and AIPAC. We're involved in discussions with them about what the best approach should be, but we certainly appreciate that Trump has recognized the deal to be very problematic.

I would assume that AIPAC and the Conference of Presidents are more powerful than the OU when it comes to advocacy for Israel rather than religious issues.

We *are* involved in advocacy for Israel, although unlike those other organizations it's not our only agenda. It's very important for us to work on domestic advocacy, because the other organizations aren't involved with that. As far as Israel is concerned, we have rabbis and lay leaders who are actively engaged in the political world and have unique relationships with politicians. It has often been the case that a rabbi of a large congregation in a Congressman's district can get a different type of response from his Congressman than an activist with another group, so those two efforts can work together and complement each other.

Shifting to domestic policy, Trump made broad promises about making long overdue educational reforms and redirecting funding to the states and making it follow the student. How excited are you about those promises, and do you expect to hold his feet to the fire?

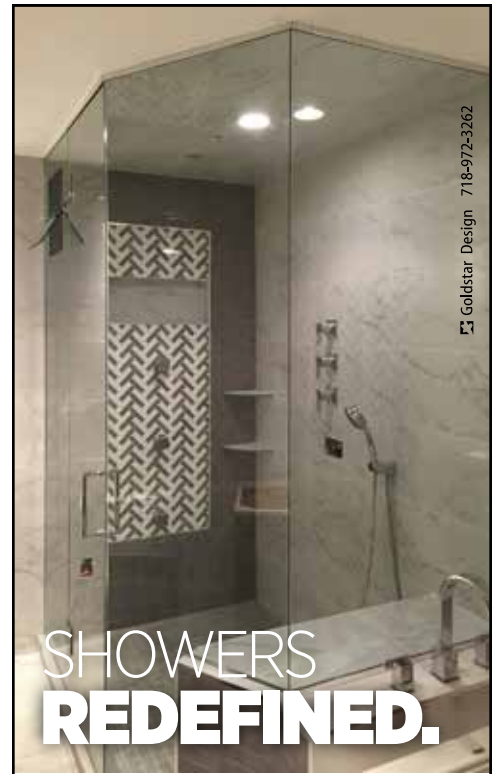
The most important thing he's done in this area has been the nomination of Betsy DeVos for Secretary of Education. She is someone who has been heavily invested in the education reform movement, both in terms of her personal time and her wealth. She has a track record of supporting school choice and non-public schools. So Trump

couldn't have made a stronger statement about having his administration follow through than by nominating her. We had conversations with senior aides to Trump during the campaign regarding issues that are of concern to the community and we've continued those conversations after his election. We've also had conversations with key members of the Senate and Congress. It's too early to say where all this will lead, but it's certainly exciting that in the coming months we'll have the biggest and best opportunity we've ever had to get legislation passed to deliver new resources to Jewish education and schools. I was just looking at some documents, and the last time Congress even considered something as big to benefit our community was in the early 1970s, when it considered an education tax credit bill. Senator Moynihan was involved with that. Don't get me wrong; they've done some nice things since then, but there's a really large opportunity in front of us right now.

I'm sure you know that a lot of people in the Israeli government are nervous about Trump because of his unpredictability.

It's still too soon to know for certain what Trump's policies are going to be. Prime Minister Netanyahu is scheduled to come here in two weeks, and I think that meeting will set the direction of their relationship over the coming months and years. President Trump made very broad and supportive statements during the campaign about how he wanted to change the tone with regard to Israel. He already has people in his administration like Jared Kushner, Jason Greenblatt and David Friedman who are very committed to a strong US-Israel relationship and Israel's security. That's definitely where their hearts are, but I think it's still too early to predict the exact direction the administration is going to take.

One thing that it is definitely not too early for is an assessment of the Obama administration. There were



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Prime Minister Netanyahu and Trump meeting in Trump Tower during the election campaign



several things that happened in its final weeks with regard to Israel, including releasing money to the Palestinians at the very last moment.

The money he released to the Palestinians was par for the course, not just for him but for prior administrations as well. They all provided financial aid to the PA. It's also important to note that they did so with the support of the Israeli government, because while Israel may not love the PA, it still provides a useful partnership in terms of security activities and various other things.

However, what the Obama administration did at the UN Security Council was absolutely terrible. It also undermined the basic argument that President Obama repeatedly made about his "unshakable commitment to Israel's security." The standard to which I have always held President Obama and his people was their own standard. By that I mean that the OU leadership might have had disagreements with the approach they were taking—particularly toward the peace process—but we always had the sense that they were doing things that were consistent with their stated goal, namely: "We believe that Israel's security over the long term requires a two-state solution, so we're taking the following steps in pursuit of that solution for Israel's own benefit." That logic didn't apply to the abstention, since the content of that resolution—declaring everything to the east of the 1967 borders to be occupied territory—undermined the prospects for a two-state solution because it gave the Palestinians a victory without having to negotiate for it. It rewarded them for intransigence rather than encouraging them to come and talk. Obama even admitted in his last press conference that the purpose of the abstention was to send a message—he called it a "wake-up call"—to Israel about how harmful he considers settlement activity. Hidden in that statement is a concession that the abstention was not for the purpose of advancing any policy; it was simply a public relations stunt. It was really terrible.

I know you sent a letter to Represent-

tative Chris Smith that was read into the Congressional record that was highly critical of Obama's decision not to veto the UN resolution.

Yes, I did. Another important thing to mention is that in the course of my job, I am often invited to various meetings and events. A few days after the abstention, I was invited to attend the speech that Secretary Kerry gave at the State Department, and I did something that I had literally never done before in the nearly two decades I've been in Washington. I responded with an email, saying, "I'm declining your invitation, and I am doing so in protest." Then I wrote a few sentences explaining why I was so offended by what they did at the UN Security Council. I wanted to make it clear that I wasn't simply unavailable but deliberately not attending.

So you abstained from that speech.

[Laughs]. Yes. I would have vetoed it if I could, but I don't have that ability.

Do you believe that this was a defining moment for Barack Obama after eight years of debate as to how friendly he is to Israel?

I would still say that in his own mind—as much as one can really know someone else's mind—he does not have animosity toward Israel.

But would you agree with Michael

Oren that he has a very warm place in his heart for the Palestinians and Muslims?

I would put it differently, and a number of others have also made this comment. The Israel that Barack Obama idealizes is a particular kind of Israel. It's the Israel of Shimon Peres, the Israel of the heyday of the Oslo Accords, that kind of internationalist, secular Israel. It's not the Israel that actually exists today, with a large segment of society that is politically conservative and religious.

What do you think about Michael Oren's book in general?

Reading that book was one of the more surreal things I've ever experienced, as I was present at a lot of the events it mentions. As far as Obama's attitude is concerned, I'll say this: I've known Barack Obama for a very long time. We were in law school together, although he was a year ahead of me. We weren't close friends, but we used to play basketball together—he was a very good player. We weren't in touch after law school, but when he started running for the Senate we got back in touch and remained so for a few years before he became President. The first thing I would say is that he is certainly not an anti-Semite. He has a great affinity for the Jewish people, and what you've seen him say publicly is very much who he is. I wouldn't go so far as to say that he is anti-

Israel, but he has a particular view that has been very hurtful to Israel. It is because of him that Israel has been more diplomatically isolated over the last few years.

So to sum up, you're happy with Trump's picks for education, the Supreme Court, and presumably for Ambassador to Israel as well.

We haven't yet made an official statement on that; we're waiting until we're closer to Mr. Friedman's confirmation hearing. Regarding the Supreme Court, the benchmark we've always focused on in the past is how the Court has dealt with issues of religious liberty. That led us to support President Bush's nominations of John Roberts and Samuel Alito, who had very good records, but it also led us to support the nomination of Elana Kagan because she also had a good record with regard to religious liberty. We've tried to remain principled and consistent throughout; it's not just a partisan thing.

Do you think that President Obama was as supportive of religious liberty as President Trump is?

Donald Trump has said various things about religious liberty, even last week at the National Prayer Breakfast, but my litmus test is actual policy, so it's too early to tell. As far as Obama is concerned, I'm very critical of his record on religious liberty. His administration took positions on a number of policy issues and Supreme Court cases that were not sympathetic to a broad understanding of religious liberty. Going back to the two cases involving Judge Gorsuch, we had meetings with

senior White House people and even one meeting with President Obama in the summer of 2012, and we appealed to them to find other ways to achieve their goals without infringing on religious liberty. Unfortunately, they did not. That's only one prominent example of many things they did that weren't friendly toward religious liberty.

I know you're more interested in policy than attitude, but Trump's attitude has been almost Reaganesque when it comes to religion.

He definitely has an appreciation for religious people, as was evidenced by some of the remarks he made at the National Prayer Breakfast. One of the things he mentioned was that he was very moved on the campaign trail when people told him that they were praying for him.

Do you feel that Obama is guilty of fomenting an anti-religious zeitgeist in the United States?

I think that things are more nuanced and complicated than just a simple yes or no answer to that question. President Obama himself is certainly not anti-religious, but he comes from a liberal perspective so he thinks of himself as religious but devoted to liberal values at the same time. I do think that his administration has been sensitive to issues of religious discrimination. Still, they pursued some policies that were problematic for religious life. In addition to Obama's fights with the Christian community with regard to the healthcare law, a few years ago there was a case before the Supreme Court that discussed whether a

Christian school had the right to dismiss a teacher who was doing things that were at odds with its tenets. There's a long standing concept in law that's called a ministerial exception, which says that if you have a house of worship or a religious school you can hire or fire employees based on your religious principles. This teacher claimed that she wasn't fired because of religious reasons; rather, it was because of a disability. When it came before the Supreme Court, the Obama administration took a very radical position, saying that the ministerial exception didn't apply and all sorts of things like that. Their position was so extreme that they lost the case in a unanimous decision, with even the liberal justices voting against the administration.

So there was a shift in attitude between the Bush and Obama administrations.

Well, the Bush administration was certainly friendlier to religious freedom. President Bush launched something called the Faith Based Initiative, which was all about enabling religion-based social welfare charities and others to receive government funding. In general, I think it's important to evaluate government officials based on policy, because that's their stock-in-trade. Their attitude is completely irrelevant; it's only their policies that matter.

Does the OU get involved in every religious issue that comes up?

No, thank G-d. There are some advocacy organizations that get involved in everything, but we don't. In addition to

This Year In Jerusalem.



Former Secretary of State John Kerry, center, and Martin Idyk, right, arriving in Israel for a visit.



religious liberty, our primary focus is support of Israel and its security and welfare.

Do you think that now that we have a Secretary of State, the President will defer to him, or will he still be making foreign policy tweets?

I don't know, but I would imagine they're going to have to come up with some sort of system. If you're the Secretary of State, you don't want to have a situation where you're in Berlin meeting with Chancellor Merkel when suddenly a tweet comes out that seems to be going in a different direction and complicates what you're trying to do. It might turn out that we have a Secretary of State who travels less frequently than John Kerry because of that dynamic.

Well, I'm glad that we can now refer to him as former Secretary of State John Kerry.

I agree. He couldn't leave fast enough.

How closely do you work with other

religious advocacy groups? You mentioned the Catholics; I would imagine that there is a lot of commonality on many issues.

There is, particularly in Washington, but the same is true at the state level. Very little happens without some sort of coalition. Sometimes when there's an issue of particular interest to us we spearhead the coalition, like when it came to working on the Homeland Security grants program. Other times we're more of a junior partner with other groups that share our interests. That can include secular Jewish groups, as well as Catholics, Evangelical Christians, Mormons, Seventh-Day Adventists, Sikhs and others. It really depends on the issue and the attempt to put together a coalition of groups that are willing to join together.

I assume that you're closer to the Catholics than to secular Jews on many religious issues.

It depends. On issues of religious liberty for individuals, there's a very broad con-

sensus across the spectrum from liberal to conservative, whether Jewish or not. The issue of government spending for religious institutions is where you tend to see the divide. Take an issue like immigration, which isn't something we're particularly involved in. There are some Evangelical Christian groups that are supportive of an open-door policy, particularly for refugees who are seeking asylum. The Catholics in particular have a strong record of support for refugees. But then you have conservative Evangelical groups that are strongly opposed to it.

Considering that we are such a small minority compared to the Christian groups, what do you add to their efforts?

When it comes to politics, the Jewish community—and this includes the Orthodox community—punches above its weight class, so to speak.

Why is that?

Because even though we're small, we're very active and organized, and we build relationships and coalitions. We don't do things on our own; we team up with other groups that have similar interests in protecting their religious institutions. It's also beneficial for legislators to see that it's not just a single group that's interested in a given topic. Additionally, some people think that politics and getting things done is all about money. I'm not going to deny that money plays a significant role, but from what I've seen over the past 20 years, it's not the only thing either. Moral persuasion really has an impact, as does building relationships with the legislators. If you have a relationship with a Senator or a Congressman and he knows that you represent a constituency about an issue of particular concern to him, you can sometimes persuade him on that basis alone.

Are the Agudas Yisrael and the OU usually on the same page on issues affecting the Jewish community?

Most of the time, although there might be some differences in nuance here and there. Abba Cohen, Agudah's representative in Washington, and I get along very well. There's something of an informal division of labor between us, where we might take the lead to work on certain issues that Agudah supports but isn't spending time on and vice versa.

As an attorney with a background in law, I would imagine that most of your focus is on the legal issues.

Sure. I work on drafting legislation, and we sometimes participate in Supreme Court

cases through friend of the court briefs.

What do you think is the most important challenge the Orthodox Jewish community should be cognizant of?

I know it's nothing new, but I think it's clear that Eretz Yisrael is facing severe challenges, considering what's going on in the Middle East. There's also a dynamic in the US where there's been an erosion of support for Israel in some quarters of the American political community in general and the Jewish community in particular that's very problematic. We don't get involved in partisan politics, but if you look at the competition for the person who is going to become the new Chairman of the Democratic Party it's very scary. The contest is between Keith Ellison, whose views have been referred to as "disqualifying" by the ADL, and Tom Perez, the outgoing Secretary of Labor who is much friendlier towards Israel. On the domestic policy side, I would say that the foremost issue is the balance between the current expansion of legal rights for certain groups and how that interacts with liberty for religious organizations and institutions. For example, when we were working earlier this year on the legislation to provide security for non-public schools, one of the members of the City Council declared that he wouldn't support allocating funds to schools with conservative religious views. That's just one example of the manifestations of the conflict between opposing discrimination for certain groups and full liberty for religious organizations.

How is the OU's advocacy group con-

tributing to that?

We're working to ensure that anti-discrimination laws contain exemptions for religious institutions when it contradicts the tenets of their faith. For example, when the marriage equality act was passed in New York City we didn't get involved. But we said that if they were going to pass such a law, here are the kinds of protections we would like to see. New York State is actually quite good about that and offers a lot of protection for religious organizations.

Looking back at the nearly 20 years you've been doing this, what kind of major shifts in attitude have you seen?

I would say that during the Bush years we had a situation where we were playing on the offense, where we were able to propose legislation and had support even if it didn't always actually come to fruition. During the Obama years, we've been playing more often on the defense. Looking ahead, at least in the short term, with Trump as President and a Republican majority in both houses, we think we'll be able to shift back to offense in terms of being able to propose ideas that will be supported by the administration.

What are you most optimistic about in terms of help for the community?

Support for Jewish education. We'll be working hard to maximize it for the *frum* community. I don't know if we'll be able to achieve everything we hope for, but to use another metaphor, we're going to be swimming with the current instead of against the tide. ●

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