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Judge's Ties to Jewish Leader Stir Debate in Crown Hts. Case

By JOSEPH P. FRIED

Experts in judicial ethics say the judge in the latest case stemming from the 1991 violence in Crown Heights, Brooklyn, need not step down in response to a defense charge that he has a conflict of interest.

But one expert also said last week that the judge should consider recusing himself because of the "public passion" surrounding the case.

The judge, David G. Trager of Federal District Court in Brooklyn, is presiding over a new prosecution of Lemrick Nelson Jr., 19. The Justice Department recently charged Mr. Nelson with violating the civil rights of Yankel Rosenbaum, the Hasidic scholar who was fatally stabbed during the four days of violence that engulfed Crown Heights in August 1991.

Mr. Nelson is accused of inflicting at least one of the four stab wounds that killed Mr. Rosenbaum, 29. The civil rights charge was brought two years after Mr. Nelson was acquitted of state murder charges, a verdict that led to demands by the Hasidim and their supporters for Federal action.

Mr. Nelson's lawyers in the Federal case have asked Judge Trager — who court officials say was selected at random to preside — to step down because of what they call his strong ties to Judah Gribetz, president of the Jewish Community Relations Council, an umbrella organization for 60 religious and communal organizations in the New York region. Mr. Gribetz and the council last year joined the call for Federal action in the case, urging Attorney General Janet Reno to pursue a vigorous Justice Department investigation of the violence.

The defense lawyers, Trevor Headley and Michael Warren, said that Mr. Gribetz was also the chairman of the judicial selection committee that in January 1991 recommended to Senator Daniel Patrick Moynihan that Mr. Trager be appointed to the judgeship. That recommendation led to Mr. Trager's nomination last year by President Clinton. Judge Trager, who is a Republican, joined the bench last January.

The fact that Mr. Gribetz "now has aspirations to bring about a conviction in this case puts us miles beyond clear impropriety here," Mr. Warren said in an interview. "We have a conflict of interest."

But Steven Lubet, a professor of law at Northwestern University and the author of the book "Judicial Conduct and Ethics," disagreed.

"That's too tenuous a relationship

to suggest damage to the judge's impartiality," he said. "This sort of past relationship doesn't fall into any of the categories that have been held to create that sort of question."

Stephen Gillers, a New York University law professor who specializes in legal ethics, said he found "no merit" in the recusal motion. He said that Federal law "says a judge shall disqualify himself in any matter in which his impartiality might reasonably be questioned." But, he added, "there has to be a real fact that would give the public an abiding concern" over the judge's fairness.

"The fact here — Gribetz's call for a Federal investigation — is simply too far removed from Trager's independence," he added.

In the Nelson case, Mr. Warren told Judge Trager that Mr. Gribetz "was responsible for recommending you as a judge to Senator Moynihan and, of course, Senator Moynihan in turn recommended you to the Presi-

Defense lawyers see conflict for a judge, but others disagree.

dent and you were thereafter appointed."

But Daniel J. Capra, a professor of law at Fordham University and a former chairman of the City Bar Association's committee on professional responsibility, said that Judge Trager's appointment was ultimately up to Senator Moynihan and President Clinton, not Mr. Gribetz.

Monroe H. Freedman, professor of legal ethics at the Hofstra University School of Law, said that he, too, did not see a legal or ethical requirement for recusal, though he thought the judge should "think seriously about it."

"It's not the fact that there will be people who reasonably question his impartiality," Mr. Freedman said, "but there are a lot of people who unreasonably will." And given the "inflammable nature" of the case, he said, this is a "public policy concern" that should be weighed along with the statutory requirements.

Judge Trager said in court that he would consider the recusal motion, but he did not comment on its substance. Neither he or Mr. Gribetz would comment to a reporter. If the judge denies the motion, the defense can ask for an appeals court review.

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