

Defense lawyer to get \$200 an hour in bombing case

By Matthew Brellis
GLOBE STAFF

At a time when the federal court system is about to run out of money to pay court-appointed defense attorneys, US District Judge Rya W. Zobel has agreed to pay defense lawyer Nancy Gertner \$200 an hour — five times the going rate.

Gertner, a prominent Boston attorney, was appointed by Zobel in December to represent Thomas A. Shay in criminal charges he faces resulting from the Oct. 28, 1991, bomb blast that killed a Boston police officer.

Two other lawyers working with Gertner on the case were also granted fees above the going rate: Jefferson Boone is getting \$85 an hour and Arav Ramon Evans, \$50 an hour.

Court-appointed defense attorneys in US District Court in Boston are paid \$40 an hour for their work outside of court and \$60 an hour for time in court.

Gertner, who is a finalist for a federal judgeship in Boston, filed the request for the increase in rates on March 4. Zobel granted it on March 31. The trial, scheduled to start in June, is expected to last from four to six weeks.

Shay is charged with codefendant Alfred W. Trenkler in a five-count indictment alleging they received explosive devices in interstate commerce that resulted in death or injury; and attempted malicious destruction of property used in interstate commerce by means of explosives.

Under federal law, the maximum penalty both could have faced was death because the

explosion killed Officer Jeremiah Hurley. But in a Jan. 5 letter to defense attorneys, federal prosecutors said if the two men are convicted the government would seek a mandatory term of life imprisonment for each defendant. Gertner argued for the increase using a section of the US Code that deals with drug kingpins who face the death penalty. A subsection states that in the appeal of capital cases, a judge may waive limits on payments to attorneys, investigators and experts.

"There is a question about whether that applies to this case," Gertner said. "This is a potential capital case, and the research we had done showed the rates for capital cases were different. There is some doubt about

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whether the research that was done is accurate."

One issue is whether the provision in the statute refers only to drug kingpin cases or all capital cases.

As a private defense attorney, Gertner makes more than \$200 an hour. She said that she would stay on this case no matter what her fee was.

"I do these things, take these cases, because it is the right thing to do," she said.

Gertner said she has been too busy preparing for the trial to submit a bill under the new rate.

Asked what she would tell court-appointed attorneys who work for \$40 an hour, Gertner said she has done much court-appointed work at rates of \$25 to \$35 an hour for the past 20 years.

"The whole system is unfortunate; the rates are way below what their time is worth," she said.

Some of the court-appointed defense attorneys were shocked at the \$200-an-hour rate.

"I'm not even going to be paid for

the work I have to do, and she is getting \$200 an hour?" said one attorney incredulously. The attorney, who did not want his name used, was referring to an impending crisis in court funding.

For the third year in a row, the federal judicial system is expected to run out of money to pay court-appointed criminal defense attorneys. This year, the \$215 million budget will run out earlier than ever — later this month — with four months still left in the fiscal year, said David Sellers, spokesman for the Administrative Office of US Courts.