

DASH + FBI + HURLEY

Reversal may mean new trial for bomber

By RALPH RANALLI

In a decision destined to disrupt the lives of two Boston police families devastated by a

1991 bombing in Roslindale, a federal judge has ruled that she erred by excluding psychological testimony from one of the bomber's trials.

U.S. District Court Judge Rya Zobel's decision will almost certainly result in a new trial for Thomas A. Shay, who was convicted in 1993 of killing Boston Police Bomb Squad Officer Jeremiah Hurley and maiming his partner, Officer Francis Foley, lawyers involved in the case said yesterday.

Foley, who is now retired,

said he was "disappointed" at Zobel's ruling because of the effect it could have on Hurley's relatives, particularly his wife Cynthia.

"It's terrible for them," said Foley, 54, who lost an eye in the incident. "I'm sure it's going to bring it all back for her again."

Foley and the Hurleys lived through two emotionally



HURLEY



SHAY

Though jurors in the Shay case heard Foley's graphic, heartbreaking description of the incident that killed his partner, they didn't hear expert testimony from Dr. Robert Phillips, a psychiatrist hired by the defense.

Phillips diagnosed Shay with a disorder called "pseudologia fantastica," which compelled him to tell grandiose lies which would feed his need for attention.

Shay was convicted partly based on physical evidence, but also on incriminating statements he made to the media and to fellow inmates after he was arrested.

Shay's lawyer at the time, Nancy Gertner, who is now a federal judge, called the alleged disorder the key to understanding why her client made the incriminating statements — including dubbing himself "Boom-Boom" to a fellow inmate.

Federal prosecutors Paul Kelly and Frank Libby, however, ridiculed Phillips' testimony as hired-gun "psycho-babble."

Zobel excluded it from Shay's trial. She later allowed it during his sentencing hearing, but said she gave it no weight in her decision to send Shay to prison for 16 years.

But in 1995, the First Circuit Court of Appeals pressed Zobel for the reason she excluded the testimony from the trial.

In a 4-page decision made public yesterday, Zobel said she erred in not allowing the jury to hear Phillips testify.

"Though psychology is not an exact science, it does shed light on the behavior of people, and . . . I find adequate support for Dr. Phillips' conclusion to satisfy the requirements for specialized knowledge and reliability," the judge wrote.

Kathy Weinman, Shay's new attorney, said she was "gratified" by Zobel's ruling. U.S. Attorney Donald K. Stern said his office was ready to retry the case, but would also argue to the First Circuit that Zobel's reversal was itself an error.

wrenching federal trials in 1993 and 1994, which resulted in the convictions of Shay, who is now 25 years old, and his alleged accomplice Alfred Trenkler, 41, of Quincy.