

Motion filed to block bombing retrial

By Patricia Nealon
GLOBE STAFF

Keen to avoid a retrial of Thomas A. Shay, who was convicted in the 1991 bombing death of a Boston police officer, government prosecutors today will ask a federal judge to reconsider a ruling that all but guarantees Shay a new trial.

At issue before US District Court Judge Rya W. Zobel is whether psychiatric evidence that painted Shay as a pathological liar should have been heard by the jury that convicted him of conspiring to build the bomb that killed officer Jeremiah J. Hurley Jr. and maimed Francis X. Foley, his partner.

In a 15-page motion filed with Zobel, federal prosecutors David J. Apfel and Kevin P. McGrath, and special assistant US attorney Frank A. Libby Jr. urged the judge to change her mind "before the court proceeds any further down the path

toward a retrial of this tragic case, with the inevitable pain that would cause for the victims' families."

In a long-awaited ruling issued in late September, Zobel concluded that Dr. Robert T.M. Phillips, a defense psychiatrist, should have been allowed to testify that Shay suffered from "pseudologia fantastica," a mental disorder characterized by a propensity to "spin out webs of lies, in a self-aggrandizing way, in order to focus attention on themselves."

Zobel blocked Phillips' testimony at Shay's trial in 1993. But a federal appeals court ruled that Zobel was wrong to conclude that jurors did not need to hear from him. The appeals court ordered Zobel to hold a hearing on Phillips' proposed testimony and issue findings.

Phillips' testimony would have been used by the defense to explain several incriminating statements Shay made to police, the media, and a fellow inmate, including one in

which he boasted, "You have to know me. I'm the one who killed the Boston cop."

But in their motion, government prosecutors argue that Phillips' description of "pseudologia fantastica" as a stand-alone mental disorder was not supported by psychiatric literature or listed in the standard diagnostic manual used by psychiatrists.

The purported disorder, they argue, is nothing more "than a Latinized phrase to describe lying."

As for Shay's most damaging statement - that he had killed a Boston police officer - federal prosecutors say it was not uttered in a "bombastic, boisterous or grandiose manner," but said quietly to a fellow prisoner while Shay was awaiting trial.

In response, Shay's lawyers maintain the government's motions "simply rehashes arguments that it has already made and failed to persuade."

Defense lawyers Kathy B. Wein-

man, William H. Kettlewell, and Amy Baron-Evans say that pseudologia fantastica was first described at the turn of the century and is a "widely employed psychiatric term."

When he bragged to the inmate, his lawyers say, Shea was "ranting and raving in a quiet way."

Shay's lawyers want Zobel to return the case to the appeals court, which they hope will order a new trial.

Shay is currently serving a 15-year prison sentence for conspiring to build the bomb, which was attached with magnets to the undercarriage of his father's car. But the bomb fell off, and the elder Shay called the bomb squad to the driveway of his Roslindale home. The device exploded as Hurley and Foley were inspecting it on Oct. 28, 1991.

Alfred Trenkler, who was identified as Shay's accomplice, was convicted of building the bomb and is serving a life term.