

METRO UPDATE

No ruling on new trial for Shay

By Paul Langner
GLOBE STAFF

It has been 15 months since a federal judge said she would consider whether Thomas Shay Jr., convicted of conspiring to make a bomb that killed a Boston bomb squad officer, should get a new trial. In a twist, Shay's attorney says that Shay is a pathological liar.

Shay, 25, was found guilty in US District Court in 1993 of conspiracy to make a bomb with the apparent intention of killing his father, Thomas Shay Sr. Instead, the bomb killed officer Jeremiah Hurley and injured his partner, Francis Foley.

Shay received a 15-year sentence. Accomplice Alfred Trenkler was convicted of making the bomb and is serving a life term.

The bomb was attached with magnets under the senior Shay's car, but it fell off in his Roslindale driveway on Oct. 27, 1991. He called the bomb squad.

Before the younger Shay was arrested, he gave an interview to a TV reporter, and later made incriminating statements to inmates and police officers.

During the trial before US District Court Judge Rya Zobel, Shay's attorney Nancy Gertner asked to present testimony from psychiatrist Robert T. M. Phillips, of Washington, D.C., that Shay was suffering from what the DSM-IV, the bible of psychiatry, calls a "factitious disorder." According to DSM-IV, sufferers indulge in uncontrollable, pathological lying.

William Kettlewell, who took over Shay's case when Gertner became a federal judge, said that both Phillips and Dr. Martin Kelly, who testified for the government, agreed that the DSM-IV is "a cookbook with labels and does not and cannot cover all psychiatric conditions."

Zobel decided that the jury didn't need expert testimony. But a federal appeals court justice urged Zobel to hear Phillips and report what she had found. Thus far, Zobel has not ruled.

Kettlewell recently said that "usually the prosecution tries to depict my clients as hopeless, incorrigible liars. Now when I try to make that claim for Mr. Shay, the prosecutors insist he told the truth."