

Prosecutor Faces Obstacles in Seeking Death Penalty for UAL Airliner Dynamiter

By FRANK PITMAN

DENVER (AP) — Prosecutors of John Gilbert Graham, accused of causing an airliner crash which killed 44 persons, face formidable obstacles in their announced attempt to send him to Colorado's gas chamber.

To execute Graham, the prosecution must prove he signed voluntarily a statement that he placed a dynamite bomb in the luggage of his mother, Mrs. Daisy King, 55, before she boarded a United Air Lines plane last Nov. 1.

Graham, charged with murdering his mother, contends he was forced to make the statement.

If the state cannot prove to the judge and jury that the statement was voluntary, then the most severe penalty Graham could receive would be life imprisonment. Colorado law prohibits the death penalty unless there is a voluntary confession or an eyewitness to murder.

Federal law is useless in this case. Graham cannot be prosecuted in federal court because U.S. law does not cover murder in aircraft.

Colorado Law
Also complicating the prosecution's task is a Colorado law which says that if a person is insane when he commits a crime he must be confined to an asylum. If he is later declared sane, he does not have to face trial for the crime.

The determination of Graham's sanity — at every stage of his case — will be made by a jury, acting on testimony of psychiatrists, psychologists, medical doctors and others.

Graham, 23 and father of two small children, pleaded innocent by reason of insanity at his arraignment Dec. 9. At that time, the court sent him to Colorado Psychopathic Hospital in Denver for 30 days observation. The first report from the state doctors who observed his mental condition was presented in court last week. They declared he was sane.

The defense elected to have a trial by a separate jury on the sanity question. Otherwise the sanity issue would have been woven into the trial on Graham's guilt or innocence to the crime. The jury hearing this combined trial would render separate verdicts on his sanity and on his guilt or innocence.

At the separate sanity trial, the only issues to be presented to the jury will concern Graham's mental condition, both present and past. In addition to expert witnesses, persons who have known Graham throughout his life would be asked to testify.

If he is found insane in a separate sanity trial, Graham will be sent to the state hospital at Pueblo for treatment until "restored to reason." The hospital staff may determine when — if ever — this will be, or attorneys for Graham may seek a later court determination of his sanity.

Will Hear Testimony
Before he could be released from the hospital, however, Graham would have to be judged sane by a jury that would hear testimony of psychiatrists, psychologists, doctors and others.

Whether for the separate sanity hearing or the trial itself, this will not be Graham's first trip into court. His first brush with the law came in 1931, when he stole checks from a truck trailer firm where he worked. He left Denver on a 5-state tour in a new convertible, purchased with the proceeds of forged checks. He was caught in Lubbock, Tex., where he tried to crash a road block. Later he served 60 days in jail on charges of bootlegging.

A Denver court granted Graham probation on the forged charges. A probation report later said: "He shows very little concern over his present offense. For the past couple of years he led a wild life — spent most of his money on drinking parties and women."

Aside from the sanity issue, the statement which federal officials called a "written admission" will determine if Graham is subject to execution.

Two Parts
Placing this statement in evidence will be a major phase of the prosecutor's case, which can be summarized into two parts:

1. Establish corpus delicti — the basic facts necessary to the commission of a crime.
2. Connect the defendant with the crime.

The introduction of evidence to prove a crime has actually been committed will be the most time consuming part of a trial. The prosecution expects to call about 75 witnesses.

Defense attorneys have said the statement is the only thing the state has to connect Graham with the crash. They have made clear that they will seek to block its introduction as evidence.

The established procedure in this phase is for the jury to be excused while the judge hears op-

Trial Date Set for Accused Slayer



DENVER—John Gilbert Graham (center), 23, accused of dynamiting an airliner in which 44 died, heard a District Court judge Thursday set his sanity trial for March 5. If found sane, he must stand trial on a murder charge. With Graham are W. Logan Ketcham (left) and Charles Rudd (right) of the Denver sheriff's office. (AP Wirephoto)

posing attorneys argue the legal points involved.

Judge to Decide
After hearing the arguments of attorneys, and possibly testimony from Graham himself, the presiding judge — 36-year-old Joseph M. McDonald — will decide whether the statement was voluntary or involuntary. If he finds threats or promises were used in obtaining the statement, he will hold that it was involuntary and bar its introduction as evidence.

If the judge holds the statement was voluntary, the prosecution is allowed to read it to the jury. But

the jurors are not required to accept the judge's ruling.

The jury determines itself, finally, whether the statement was voluntary or involuntary. Prosecution and defense attorneys can be expected to repeat before the jury the same arguments presented to the judge regarding the statement, if it is admitted.

If the jury, after receiving the case, decides the statement was involuntary, it must be disregarded in the verdict. This would mean — in the absence of an eyewitness — that the jury could not sentence Graham to death even if he is convicted.

District attorney officials expect the court to instruct the jury to return a verdict only on first degree murder. There would be no consideration of lesser degree murder charges.

Death or Life
The penalty for conviction of first degree murder must be death or life imprisonment. There can be no reduction of the life sentence except by a pardon or commutation by the governor.

A few hours after FBI agents arrested Graham Nov. 14, U. S. Atty. Donald E. Kelley said Graham had signed a written admission to sabotaging the plane. Fed-

eral officials turned over prosecution to state officials because of the inadequacy of federal law in the case.

The most serious federal charge that could be applied to the case is one of "peace-time sabotage." The maximum penalty is 10 years in prison and a \$10,000 fine.

Several members of Congress have said they will seek special legislation providing the death penalty for plane sabotage resulting in fatalities.

Judge McDonald, assigned to the Graham case by a regular rotation procedure, will be hearing his first district court criminal case. He is familiar with criminal procedures and the laws of evidence through three and a half years service as a Denver municipal judge.

Hard-Working
The judge, father of four, is described by lawyers and fellow judges as one of the most competent, hard-working jurists in Denver despite his relative youth and limited service on the bench.

McDonald was elected to the district court in November 1934. Born in Ashley, Pa., Aug. 11, 1917, he is the son of a lawyer and a one-time district judge. He has two brothers who are lawyers. He received his law degree from the University of Pennsylvania and settled in Denver after World War II service with the Air Force.

Once the murder trial of Graham begins, it could last three to five months. The three court-appointed defense attorneys already have indicated they would contest every move of the prosecution. Two of them, John Gibbons and Charles S. Vigil, former U. S. attorneys for Colorado, have said publicly they do not consider Graham guilty.

Judge McDonald has said he will "do what I can to give prosecution and defense counsel the earliest trial date practicable. Delay will be granted only for reasons that are clear and convincing."

Graham Sanity Trial March 5

By FRANK PITMAN

DENVER (AP) — John Gilbert Graham's claim he was insane at the time he is accused of killing 44 persons aboard an airliner will be tried before a jury beginning March 5.

Trial of the 23-year-old defendant on his plea of innocent by reason of insanity was ordered Thursday at the request of defense attorneys despite reports of four psychiatrists that Graham was sane last Nov. 1. That is the date he is accused of planting a dynamite bomb in the luggage placed aboard a United Air Lines plane by his mother, Mrs. Daisy E. King, 55.

Graham is charged with the murder of Mrs. King who plunged to death with 43 others when the plane exploded 11 minutes after taking off from the Denver airport. If the jury finds him sane, Graham will be tried on the murder charge.

The defense request for a separate sanity trial constitutes a rejection of the psychiatrists' findings.

Found Graham Sane
Two members of the medical staff of Colorado psychopathic hospital, a state-operated institution, reported Thursday to Dist. Judge Joseph M. McDonald they had found Graham was sane, at the time of the alleged crime. Those findings by Drs. R. Robert Cohen and Leo V. Tepley, private psychiatrists appointed by the court to examine Graham for the defense.

The four doctors made independent examinations of Graham over a 30-day period. Graham was placed under observation at Colorado psychopathic hospital Dec. 9 after he pleaded innocent and innocent by reason of insanity to the charge of murdering his mother.

The court-appointed defense lawyers requested the separate trial on the sanity issue after the reports of the two state psychiatrists were opened and read in court by Judge McDonald.

March 5 Compromise
Defense Attorneys John J. Gibbons and Charles S. Vigil asked that the trial be set in April because of other cases they are handling. Gregory Mueller, chief deputy district attorney, asked for a start Jan. 23. The March 5 date represented a compromise.

This trial—expected to last about 30 days—will center around the four psychiatrists' reports. They will be questioned about the details of their examinations and their conclusions. The facts of the alleged crime will be brought into the trial incidentally — perhaps in the psychiatrists' reports of their conversations with Graham.

If the jury finds Graham was sane, he will then go to trial on his plea of innocent to the charge of murdering his mother.

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