

STENOGRAPHIC TRANSCRIPT

IN THE MATTER OF

No. 3544/1952
STATE OF MARYLAND
VS.
GEORGE EDWARD GRAMMER

In the
Criminal Court, Part 11
of Baltimore
October 21, 1952.
October 23, 1952.
and State's Exhibit #41.

VOL. VII

JOSEPH A. MOYLAN
OFFICIAL COURT REPORTER
COURT HOUSE
BALTIMORE 2, MARYLAND

CRIMINAL COURT
BALTIMORE, MD
OCT 23 3 22 PM '52
LAWRENCE R. MOONEY
CLERK

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
LIEUT. JOHN F. HETTCHEN (Recalled)			1147	
HAROLD SPICER	1156			
MATHILDA MIZIBROCKY (Recalled)				1169

EXHIBITS

Defendant's Exhibit No. 6

Page 1164

116

NO. 3544/1952 : IN THE
STATE OF MARYLAND : CRIMINAL COURT PART II
vs : OF
GEORGE EDWARD GRAMMER : BALTIMORE CITY

.. . . .

Before: HONORABLE HERMAN M. MOSER

October 21, 1952.

.. . . .

PRESENT: Counsel for the respective parties

.. . . .

THE COURT: Are there any preliminary questions
this morning, Gentlemen?

MR. FEDERICO: No, sir.

THE COURT: Mr. Sodaro?

MR. SODARO: None from the State.

THE COURT: Then call your witness.

MR. FEDERICO: Is Lieutenant Hettchen here?

THE COURT: There is the Lieutenant now (indi-
cating), Mr. Federico.

MR. FEDERICO: Take the stand.

Thereupon --

1047

LIEUTENANT JOHN F. HETTCHEN (Recalled)

a witness of lawful age, heretofore produced on behalf of the State, was recalled and testified as follows:

By the Bailiff:

Q Lieutenant, you were sworn. Just have a seat.

RE-DIRECT EXAMINATION

By Mr. Federico:

Q Did you find these Easter cards and telegrams in the apartment? Would you look them over?

(Thereupon Mr. Federico handed a box to the witness.)

A No, I didn't find any of those.

Q Weren't they in the apartment up in New York?

THE COURT: Have you ever seen those papers that are being shown to you now?

THE WITNESS: No, sir, they are not familiar to me.

MR. SODARO: We will not object to the defense --

Q Didn't you give them to Norman Grammer? Didn't you tell him it was all right to go up there and get all the stuff?

A Yes, sir.

Q Weren't they among --

A I never saw them.

Q You did take some stuff?

A Yes, sir, but not those (indicating)

MR. SODARO: Your Honor, we are willing to concede that they are letters or post cards that were found in Mr. Grammer's room. We have no objection to their introduction.

THE COURT: Put them in by stipulation.

(Thereupon the box and its contents were offered in evidence and marked defendant's exhibit No. 5.)

MR. FEDERICO: There is a letter I would like to read from General Eisenhower.

MR. SODARO: We have no objection.

MR. FEDERICO: It is dated June 13th, 1946, the War Department, Chief of Staff, Washington, D. C.

"Dear Mrs. Grammer:

During my recent visit to Manila, I saw your husband practically every day while I was there. George was one of the Special Agents assigned to cover my visit.

While he misses you and the children very much, he is well and doing a splendid job. He is, of course, looking forward to the day he can come home to all of you. He sent his love to you, Patsy and "Punkin".

Sincerely,

(Signed) Dwight D. Eisenhower."

MR. FEDERICO: There is another one here.

War Department, Chief of Staff, Washington, D. C. June 13th, 1946.

"Dear Mr. Grammer:

I remember very well the splendid coverage given me by your detachment while in Manila, and appreciate your looking after me so well.

With best wishes,

Sincerely,

(Signed) Dwight D. Eisenhower."

Your Honor, there are certain portions omitted in the letter because, I believe, it might have been a war secret at the time. The War Department deleted it.

THE COURT: It was censored by someone other than the defendant.

MR. FEDERICO: Yes, sir. General Eisenhower had written it to Mr. Grammer. Then Mr. Grammer had sent it to his wife. When he did, they had censored it.

THE COURT: I understand. He probably spoke of other places where the General was going and they did not want that to get out.

MR. FEDERICO: Probably so. I don't know.

THE COURT: Have you put in any other matters you desire from that group? Are you offering the entire group?

MR. FEDERICO: Yes, sir.

THE COURT: Any objection?

MR. SODARO: No, sir.

THE COURT: Have it marked it as one exhibit. You had better number the articles therein and there will be no dispute as to whether any were lost or not. Do you know the number of items in that box?

Go over it. Decide on those you actually want in. When you have the number of those you want in, have each one marked as part of the exhibit, together with the box. Then there can't be any possible mistake. I

will permit you to do that before the close of the case.

MR. FEDERICO: Yes, sir.

THE COURT: You may proceed with what else you care to offer. Do you want the Lieutenant for anything else?

MR. FEDERICO: Yes, sir. One question.

Q This house they were building is located --

(Thereupon Mr. Federico walked to the plat on the blackboard.)

-- about two-tenths from the knoll of the hill?

A I would not be too familiar with the property location there. I was only interested in the City Line and --

Q It is approximately so?

A Detective Crivello made the plans. He could explain that to you.

Q There is a decided incline?

A Yes, sir. There is a curve in that road, a curve to the right going east. Then it has a little incline to it. I think down at the bottom, you will see the elevation there.

Q Yes. I want his Honor to see it.

(Thereupon the Court left the Bench, walked over to the blackboard, and examined the plat.)

Q That tree you were talking about, where that pipe was found, was diagonally across from the house?

A It would have to be, yes, sir.

Q That is right. Is this the tree and the road (showing a photograph to the witness)?

MR. SODARO: Which exhibit is that?

MR. FEDERICO: I have the original numbers which conflict with the subsequent numbers. Do you have it there, Mr. Sodaro?

MR. SODARO: I think so. Is that the same picture (indicating)?

MR. FEDERICO: I think so.

MR. SODARO: That would be State's exhibit No. 26.

Q This is the tree (indicating)?

A I can't identify it because I was only told.

THE COURT: It is in the record that that is the tree.

MR. SODARO: Yes, sir.

MR. FEDERICO: Yes, sir.

Q Going in an easterly direction off Taylor Avenue, there is a decided turn? I show you this picture (indicating), is that correct, Lieutenant?

A Yes, this is looking in an eastward direction. There is the curve (indicating) about where that automobile is coming up in the road. It bears to the right and has a little incline as indicated on the drawing.

THE COURT: East? You are talking about Belair Road?

THE WITNESS: Yes, sir.

THE COURT: I think it is clearer if you said Belair Road.

MR. FEDERICO: Yes, sir.

Q Do you know how wide this road is?

A No. It should show on the plat. If you care, I will look.

Q What is it? Could you take a look, please?

(Thereupon the witness walks to the plat on the blackboard.)

A In the City it shows 19 feet wide. In the County it shows 24 feet wide. In the City it is opposite -- Taylor Avenue opposite Parkwood Cemetary, there is no curbing at that point. After it goes into the County and starts down to Belair Road it has curbing on each side.

Q At the house, it is 19 feet wide?

A Yes, sir, but I would not know the property location.

Q Does it have curbing where the automobile was supposed to have gone up the grass plot?

A Yes, sir.

MR. FEDERICO: That is about all.

MR. SODARO: That is all.

MR. FEDERICO: One more question.

Q Lieutenant, do you know how Captain Simmons got into the defendant's apartment in New York?

A No, I do not.

Q He was up there?

A I don't know.

Q Or Sergeant Holmes, do you know how he got in?

A No.

Q He was up there, wasn't he?

A I don't know. I know someone went from the County up there.

Q And that was before you, wasn't it?

A Yes, sir.

MR. FEDERICO: All right, Lieutenant.

(Testimony of witness concluded.)

MR. FEDERICO: Call Mr. DeBaufre.

THE BAILIFF: There is no one in the jury room except the News Post man.

THE COURT: Go around the Grand Jury room and bring them all around here and put them in there (indicating.)

Thereupon --

HAROLD SPICER,

a witness of lawful age, produced on behalf of the defendant, having been first duly sworn according to law, was examined and testified as follows:

By the Bailiff:

Q Give the Court your name.

A Harold Spicer.

Q Where do you live?

A 3000 N. Rogers Avenue.

Q And your position.

A Staff photographer for the News-Post and Sunday American.

DIRECT EXAMINATION

By Mr. Federico:

Q I show you the Baltimore American, a local newspaper, dated Sunday, August 12th, just before the eve of this trial. I direct your attention to page 3 and show you some pictures in the Grammer case.

(Thereupon Mr. Federico handed the newspaper to the witness for his inspection.)

Q Now, take this first picture on the left corner (indicating), did you take that?

MR. SODARO: Objected to. I might make my position clear. We object on the ground of irrelevance to the issue in this case. We don't desire to dispute the accuracy of the pictures, but certainly with respect to relevancy, it is objectionable.

THE COURT: I have not seen the proffered proof so I don't know whether it is relevant or not. I will have to take a look at it.

(Thereupon Mr. Federico passed the newspaper up to the Court for its inspection.)

THE COURT: You are referring to this picture (indicating)?

MR. FEDERICO: I am taking each one at a time.

THE COURT: All right. May I see that again?

MR. FEDERICO: Yes, sir.

(Thereupon Mr. Federico passed the newspaper back to the Court.)

THE COURT: Yes, I will permit the question to the be asked for two reasons which I gave before. First, as to perhaps leading up to some inconsistent statement on the part of a State's witness. Second, perhaps leading to contempt proceedings; perhaps some other place. I am emphasizing the word "perhaps". Read the question.

(Thereupon the reporter read back the last question.)

THE WITNESS: Yes, sir, I did.

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Q Where did you take it and under what circumstances?

MR. KARL F. STEINMANN: Your Honor, we represent Mr. Spicer and the News-Post. We have advised Mr. Spicer that he does not have to testify, under Section 2, Article 35, to the source of any news that may have been included in the pictures.

THE COURT: I do not believe we have gotten to that particular phase of it as yet. You watch carefully. When you hear a question asked that you think does, you call my attention to it.

MR. STEINMANN: This question is ambiguous on that point.

THE COURT: The implication is that this man took the picture himself. Not that anybody gave it to him. I don't think that is a source. It is an action. First, where did you take it?

THE WITNESS: On the parking lot in the rear of the Fullerton Police Station.

THE COURT: At what time did you take it?

THE WITNESS: At about five p. m. I would

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have to refer to some notes to be sure, but I think it was August 26th.

THE COURT: Who was present when you took it? Mr. Steinmann, you can object to it if you want to.

MR. STEINMANN: That is all right.

THE COURT: Are you objecting?

MR. STEINMANN: No, sir.

THE WITNESS: Another reporter and four or five curiosity seekers.

THE COURT: Any officials?

THE WITNESS: There may have been a few police officers. I wasn't scrutinizing the crowd too thoroughly.

THE COURT: You don't know who they were?

THE WITNESS: I would rather not answer that.

MR. STEINMANN: I see no reason why you can't answer that question.

THE COURT: I am afraid I will have to insist upon an answer.

THE WITNESS: There was a couple of uniformed men from Fullerton. I don't know their names.

THE COURT: And?

THE WITNESS: And there was a Captain Baumiller. When I took the picture, I don't know whether he was present or not. When I left, he was.

THE COURT: Any other officials?

THE WITNESS: No other officials that I know of.

Q Referring to the same page, on the right hand corner (indicating)?

A No, I did not take that picture.

Q From what source did you obtain that picture?

A The paper obtained it. I did not obtain it.

THE COURT: The question was, From what source he obtained it. He said he did not obtain it, the newspaper did.

Q That is the picture of Miss Mizibrocky and Mr. Grammer together.

A They are two separate pictures.

Q They are separate but they appear to be together.

A They are inset.

Q I mean individually.

THE COURT: They are clearly distinct.

Q This picture with the accelerator (indicating),
under what circumstances did you take that picture?

MR. STEINMANN: Objected to.

Q Did you take it?

A Yes, sir, I did.

Q Where?

A The same place as the other one.

Q The same day?

A The same day.

THE COURT: Were the same persons present?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Was anyone else present, other than the people
you mentioned?

A Not that I know of. There were a lot of
people around. I don't know who they were.

THE COURT: You said --

THE WITNESS: Some spectators.

Q Who fixed the object like it is there (indicating)

MR. STEINMANN: Objected to.

THE COURT: Did you fix the object as it is there?

MR. STEINMANN: We do not object.

THE WITNESS: Yes, sir.

THE COURT: You fixed it?

THE WITNESS: Yes, sir.

THE COURT: From whom did you obtain the object?

You are going to object?

MR. STEINMANN: I object.

THE COURT: Show me the Article. That runs head-on into what you are talking about.

(Thereupon Mr. Steinmann passed the Code up to the Court).

THE COURT: Has this ever gone to the Court of Appeals, this particular section?

MR. STEINMANN: No sir. For your information, I might say that Judge Niles has interpreted this Section to be the privilege of newspapers as well as the privilege of reporters. So, on behalf of the paper, we are claiming the privilege.

THE COURT: I assume that Mr. Spicer, as the individual involved, is also claiming the privilege to

refuse to answer.

THE WITNESS: Yes, sir.

THE COURT: I am withdrawing the question only for one reason. At this point I see no purpose in complicating this case with another case. It hasn't that much importance and relevancy in this case. Not that I am convinced one way or the other as to that Act as applied to this situation.

Q This (indicating) is your newspaper?

A Yes, sir.

THE COURT: I don't mean I think it does or does not.

MR. STEINMANN: I would like to approach the Bench to determine first the relevancy of the testimony before the applicability of the statute involved.

(Thereupon Mr. Steinmann approached the Bench, and talked with the Court.)

THE COURT: I think I am going to change that now. What is the question?

Q Just one last question. (indicating) Is this your newspaper?

MR. STEINMANN: Not his newspaper.

Q You are employed by them?

A Yes, sir.

MR. FEDERICO: We offer it.

MR. SODARO: We object.

THE COURT: I will permit it in. Everything in there with the exception of the two inserts is in any way.

MR. FEDERICO: All right.

(Thereupon the News-Post of October 12th, 1952 referred to was offered in evidence and marked defendant's exhibit No. 6.)

(Testimony of witness concluded.)

MR. FEDERICO: Is Mr. DeBaufre here?

THE BAILIFF: There are no witnesses in there (indicating).

MR. FEDERICO: Mr. Kessler?

THE COURT: Have we gotten a report from the Grand Jury room?

AN OFFICER: There are no witnesses around there.

THE COURT: So, unless they are in court --

MR. FEDERICO: Mr. Bruno?

THE COURT: Mr. Peltz, will you call those

1165

names for Mr. Federico? Your voice carries a little better.

MR. FEDERICO: He has a better pair of lungs.

(Thereupon the Bailiff called the names of several witnesses for Mr. Federico but received no response.)

MR. SODARO: If we can be of any assistance?

THE COURT: Are they character witnesses?

MR. FEDERICO: No, they built that house.

THE COURT: That plumber was here the other day and he indicated that he did not want to come back.

MR. FEDERICO: If they will agree to it, that there was pipe all over the lawn --

THE COURT: Instead of telling me, you tell it to Mr. Sodaro and see if you can get a stipulation. If not, I will issue an attachment or summons, whichever you want. The reason I say attachment is that I remember his attitude on the first day of this trial. He was more than reluctant.

(Thereupon Mr. Sodaro sends for Lieutenant Hettchen and confers with him and Mr. Grady at the trial

table.)

MR. FEDERICO: Your Honor, the State will agree that ^{if} the builder and plumber were present -- that they were building this particular house and there was new and old pipe all over the lawn, cuttings.

MR. SODARO: We will so stipulate.

THE COURT: Do you not say of a similar nature as State's exhibit No. 35?

MR. FEDERICO: That is right. Mrs. Mizibrocky, I would like to have her back.

MR. SODARO: She will be available, she has not gone back to New York. We can get her here unless we can stipulate on something ^{that would} obviate the necessity of her appearance.

THE COURT: See if you can stipulate on that.

(Thereupon counsel conferred at the trial table.)

MR. FEDERICO: Your Honor, will you bear with us?

THE COURT: Take your time. You can probably save a great deal of time by this stipulation.

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MR. FEDERICO: Yes, sir.

(Thereupon counsel continued their conference at the trial table.)

MR. SODARO: Your Honor, Mr. Federico desires to have Miss Mizibrocky take the stand. She will be available. I was telling him if he wanted to proceed with some other witness, we will have her here before his side closes.

THE COURT: Do you want her back, Mr. Federico?

MR. FEDERICO: Before I do, I want to point out that in the August 26 letter she says: "I'm scheduled to arrive in Hamilton at 12:00 noon on Friday and shall try to call you in the afternoon." That is in conflict with what she said yesterday.

THE COURT: Regardless of your reason, if you want her back --

MR. FEDERICO: How soon can we get her back?

MR. GRADY: We anticipate she will be a rebuttal witness.

THE COURT: You are going to have her back anyway?

MR. GRADY: Yes, sir.

THE COURT: Get her back right away, and how soon will that be?

MR. SODARO: Ten or fifteen minutes.

THE COURT: Are you ready to proceed or would you rather wait for her?

MR. FEDERICO: Rather wait for her.

THE COURT: Am I going to take it then that you have no other witnesses other than, perhaps, the defendant?

MR. FEDERICO: I am not stating at this time --

THE COURT: I will have to ask you that at that time. I am not asking whether you are going to put the defendant ^{on} / or not, because that is a decision you can make at the last moment. Do you have any witnesses other than the defendant that you are planning to put on?

MR. FEDERICO: Yes, sir.

THE COURT: That is why you are asking me to wait ten or fifteen minutes?

MR. FEDERICO: Yes, sir.

THE COURT: We will take a recess. You may

come in if you care to.

(Thereupon a short recess was taken.)

(AFTER THE RECESS.)

Thereupon --

MATHILDA MIZIBROCKY (Recalled)

a witness of lawful age, heretofore produced on behalf of the State, was recalled and testified as follows:

THE BAILIFF: You were sworn yesterday. Be seated. You might give us your name again.

THE WITNESS: Mathilda Mizibrocky.

RE-CROSS EXAMINATION

By Mr. Federico:

Q Could you tell the Judge the name of the person you went to Washington with in November, 1951?

A I went to Washington alone in November, 1951.

Q Who did you meet there, the name of the person?

A I was met at the air port by a friend.

Q What is his name?

MR. GRADY: Objected to, on the ground of relevancy unless there is some proffer.

THE COURT: What is the proffer?

-170

MR. FEDERICO: The proffer is that she has gone with other men and I will expect to lead it up to another question after a while.

THE COURT: On Cross Examination yesterday, as I recall, she said she had perhaps been infatuated with other men at times. I will permit you to ask the question. I see no point in using the name of the man unless you are going to bring him in as a witness because it serves no purpose.

Q Was it a man or woman you met?

A It was a man.

Q Was that a week-end date?

THE COURT: I heard a murmur. I want no expressions one way or the other from the court room. As I said yesterday, I will have no noise in this room. Now, what was the question?

Q Was that a week end date?

MR. GRADY: Objected to.

THE COURT: That is a loose term.

THE WITNESS: I was in Washington for the week end. I stayed with friends. I saw this person

who met me at the plane. I had not seen him for a long time.

Q Did you stay with him?

A I did not.

Q This same person, did you not stay with him over the week end of New Year's?

MR. GRADY: Objected to.

THE COURT: 1952?

MR. FEDERICO: Yes, sir.

THE COURT: Overruled.

THE WITNESS: I went out with him. I had a date with him on New Year's Eve. I did not stay with him.

Q Is it not a fact that you were considering marriage to a person -- I am not going to mention his name -- in Hamilton, Ontario, about five years ago?

MR. GRADY: Objected to.

THE COURT: Five years ago?

MR. FEDERICO: Yes, sir.

THE COURT: I will permit her to answer that with the remote possibility that you might follow it up to show there was a pattern, that there was a breaking off

which fits into a pattern. I can't conceive of any, though.

THE WITNESS: I did have an offer of --- a ^{proposal} proposal. It was someone I had met when I worked in Hamilton. I always gave my proposals fair consideration. I think it was only fair to the individual who proposed to me.

Q Did you act as a hostess ^a for United States Government representative in Korea?

MR. GRADY: Objected to.

THE COURT: Is the answer yes or no.

THE WITNESS: The answer is no.

THE COURT: I don't want to hurry you. Take your time.

MR. FEDERICO: I think that is all.

MR. SODARO: You may be required to take the stand again, I don't know, so you will be available?

THE COURT: Do you want to send her over to your office?

MR. SODARO: I think so.

THE WITNESS: (O. K.

(Testimony of witness concluded.)

THE COURT: All right, gentlemen.

MR. FEDERICO: Your Honor, we rest.

THE COURT: Is that your case?

MR. FEDERICO: Yes, sir.

THE COURT: As to argument, I don't want to limit you at all in argument but I would like to have a general idea of about how long each side will desire.

MR. FEDERICO: I would like to have at least a day or so on the argument. I haven't had time --

THE COURT: Do you want a day or so to prepare the argument?

MR. FEDERICO: Yes, sir. There were seven or eight days of trial.

THE COURT: I will permit you to do it.

MR. FEDERICO: Will you give me until Thursday or Friday.

THE COURT: I will give you up till Thursday. That will give you the rest of today and tomorrow. What assignment do I have for tomorrow?

MR. DONOVAN: I can give you an answer in a

very few minutes.

THE COURT: We have no other cases to dispose of. We can handle it on Thursday.

MR. FEDERICO: I want the record to also show this -- I would like to make another motion at this time or, if you will permit me to make it on Thursday morning. I don't want my client's rights --

THE COURT: You are renewing the motions which you made at the close of the State's case?

MR. FEDERICO: That is right.

THE COURT: And as of this time the Court is not acting upon it because it is waiting argument. After argument, it will act upon the motions as well as upon the verdict at the same time. If you insist upon it, the Court will rule on the motions at this time.

MR. FEDERICO: No, sir.

THE COURT: I think that preserves your rights.

MR. FEDERICO: I said we rest. Is that right, Mr. Grammer?

GEORGE EDWARD GRAMMER: That is right.

THE COURT: You want to show that your client

entered into that decision with you?

MR. FEDERICO: Yes, sir.

MR. SODARO: Your Honor, in view of the decision, the State moves to strike from the record all testimony of all witnesses who testified with respect to the character and reputation of the accused.

THE COURT: Only as to character and reputation, not as to home surroundings and other contacts they may have had.

MR. SODARO: Yes, sir.

THE COURT: I will hear from you on that, Mr. Federico. The character witnesses are admissible only if the defendant takes the stand and you were permitted to take them out of turn on the assumption that might occur.

MR. FEDERICO: I understand. You are right.

THE COURT: Strike out from the record all character witness testimony, as to character alone.

Lieutenant, I want to thank you and the other members of the Department now for the help you have ^{given} this Court. We all, counsel as well as the Court, appreciate

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the manner in which you have handled the details, you and the other Lieutenant who was here before you came. I would appreciate it if you would carry that back to the other men. I am going to write a letter to the Commissioner.

THE COURT NOW STANDS ADJOURNED.

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NO. 3544/1952 : IN THE
 STATE OF MARYLAND : CRIMINAL COURT PART II
 vs : OF
 GEORGE EDWARD GRAMMER : BALTIMORE CITY

.. . . .

Before: HONORABLE HERMAN M. MOSER

October 23, 1952.

.. . . .

PRESENT: Counsel for the respective parties.

.. . . .

THE COURT: Gentlemen, at the conclusion of the testimony at the close of the last session, the State asked the Court to strike out all testimony as to character witnesses. Apparently there was no objection on the part of the defendant.

On reflection, however, the Court has decided to reverse itself, so to speak. All character witness testimony is now back in the record. I am striking out the striking out, so it is all back in the record again.

The Court is doing that for a number of reasons which I don't have to go into but one, particularly, and

that is that the defendant had taken the stand in reference to the statements, and the Court believes that the testimony of the character witnesses should be in.

Is there any objection on any body's part?

MR. SODARO: Not from the State.

THE COURT: Just give me some idea as to how you desire to proceed --- First, are there any preliminary motions to be disposed of?

MR. FEDERICO: I don't believe you definitely ruled on the reoffering of my motions.

THE COURT: I did not rule on it. I said I would rule on it after the arguments.

MR. FEDERICO: That is right.

THE COURT: Now, are there any other preliminary motions or matters to be disposed of?

MR. SODARO: None from the State.

MR. FEDERICO: No, sir.

THE COURT: Will you let me have some idea as to time? I am not going to limit you strictly to the limit but it has been our experience that unless we have some idea of time, we wander all over the lot. Give me

some idea as to time.

MR. SODARO: Mr. Grady will make the opening argument which will probably take ^{three} ~~A~~ quarters of an hour. Then I propose to make the closing argument which will run not over an hour.

THE COURT: An hour and ~~forty-five~~ minutes for the State. Mr. Federico, how much time do you want?

MR. FEDERICO: I imagine an hour.

THE COURT: Let me again emphasize that that was merely an indication to the Court. Should you go over that time, I will only call it to the attention of the other side so they may take more time if they desire. I won't stop you.

The Court is ready to hear you, Gentlemen.

(Thereupon Mr. Grady made his argument on behalf of the State.)

(Thereupon Mr. Federico made his argument on behalf of the defendant to the Court.)

(Thereupon Mr. Sodaro made his argument on behalf of the State to the Court.)

THE COURT: Mr. Federico, is there anything

further you care to add?

MR. FEDERICO: No, sir.

THE COURT: Now, gentlemen, what I intend to do is to go over again the testimony. I have heard the arguments. When I have reached a conclusion, I will probably immediately return and let you know what that conclusion is and will state my reasons for it. So, we are not adjourning at this time.

(Thereupon the Court retired to Chambers.)

(At one o'clock an hour's recess was taken for lunch).

(At 2:39 p. m., in open court).

THE COURT: The Defense's motions are overruled. I would indeed be unmindful of those things that have occurred around and about this room if I did not first of all express my appreciation for the manner in which the police and the watchmen here in the building, together with my bailiff, have made the task of the Court somewhat easier. I would also be withholding something that I felt if I did not say that counsel have done everything possible to assist the Court in arriving at its conclusion in this case.

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Both sides had a difficult and trying job, and they performed their obligations, and duties, to the best of their ability and in a manner for which the Court is grateful.

I want to say now that I do not expect, and I will not tolerate, any display of any kind at all from this time on. When I am through, I expect everyone to remain quietly seated until the Court is adjourned.

We who spend our working days here in the courthouse take for granted the understanding of the general public about many of the rules that govern our conduct about which they are completely unknowing. It therefore seems to the Court essential to explain a few of them which control the judgment and verdict of the court in this case.

The person on trial, in criminal cases called the defendant, has the choice of either a trial by twelve jurors, or a trial by the Court. If he elects a trial by jury, he has a further right through counsel to examine each prospective juror for the purpose of ascertaining if such juror has any preconceived belief about

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the case which would prevent such juror from giving the defendant a fair and impartial trial based only upon the sworn testimony from the witness stand. If such juror has such belief, he is excluded from the jury panel. If the defendant does not desire a trial by jury, he may, as in this case, choose a trial by the Court.

In Baltimore City, unlike many other places, it is the custom, rather than the exception, for the defendant to ask for a trial by the Court without a jury. Since the first of this year in Criminal Court Part II, there have been several thousand cases tried before me, in all of which I sat without a jury. This is not a unique experience, but all of the other Members of the Supreme Bench, while presiding in the Criminal Courts, have a similar one. It is, however, quite possible where a Court trial is prayed to ask other judges to sit. At all times in the past, in cases of murder and rape, where the possibility of capital punishment was involved, this Court has, with but two exceptions (where special circumstances existed which are not present here) tried such cases sitting alone. It does not feel that

divided responsibility makes the duty and the burden of decision a less serious or heavy one. Therefore when a court trial was prayed in this case, the Court did what had been customary in the past, and sat alone. This Court, however, has the great comfort of knowing that its decision on a motion for a new trial will be reviewed by Chief Judge Smith and Associate Judges Niles, Tucker, Moylan, Carter, Mason, Manley, France, Warnken and Byrnes, constituting the entire rest of the Supreme Bench of Baltimore City, and these Judges will not only review the record for the purpose of ascertaining if any mistakes in law were made, but will further give careful and conscientious consideration as to whether the Court's verdict was incorrect for being against the weight of the evidence. Should a majority of them decide that there were mistakes in law, or that the verdict of the Court was against the weight of the evidence, a new trial will result, and the verdict of this Court will be stricken out. In addition thereto, even though these ten other judges do not strike down this verdict, this Court has the further assurance that its

findings can be reviewed by the five Judges of the Court of Appeals, who also have the authority to reverse this verdict.

In criminal trials in Maryland, there are certain fundamental rules by which the trier of the case, whether court or jury, are bound. One of these is that all defendants are presumed to be innocent, and this presumption of innocence surrounds the defendant throughout the entire trial, and until the verdict of the court is reached.

Another rule is that the State has the burden of establishing by proof every fact material to the guilt of the defendant, including every circumstance that enters into the grade and degree of the crime charged, beyond a reasonable doubt, and to a moral certainty. That does not mean, however, that the State must prove the defendant guilty to an absolute mathematical certainty. It means such evidence as one would act upon in a matter involving most important affairs in ones life or business, or in regard to ones property. Evidence is sufficient to remove a reasonable doubt when it convinces the judgment of an ordinarily prudent

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man of the truth of the proposition with such force that he would act upon that conviction without hesitation in his own most important affairs.

Another rule is that it is the privilege of the accused not to testify in a criminal case, and there can be no presumption against him of any kind because of his failure to take the witness stand in his own behalf. He has the option, but not the obligation to testify.

This indictment is one charging in the language of the statute the crime of murder. A verdict of guilty calls for a decision of which of three degrees of offenses are involved:

- (1) Murder in the first degree.
- (2) Murder in the second degree.
- (3) Manslaughter.

The difference between these degrees, both as to the elements and the possible punishments therefor, are as follows:

Murder in the first degree is a wilful, deliberate, premeditated, malicious homicide. Deliberate means

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acting in a cool state as distinguished from hot blood, or a heated state. Should there be such finding, either capital punishment or life imprisonment may be the penalty.

Murder in the second degree is a homicide committed with malice but without premeditation. Malice is the doing of a wrongful act with intent, which might deprive a person of his life, and may be legally presumed from the manner or means with which such act is done. The penalty possible under this finding is any sentence up to but not exceeding 18 years confinement.

Manslaughter is an unlawful homicide without malice and without premeditation. The penalty possible under this type of verdict is any sentence up to but not exceeding 10 years confinement.

In this particular case there are three problems before the Court:

(1) Was the death of Mrs. Grammer an unlawful killing?

(2) If the answer to the first question is "yes", the next question is -- Did the defendant commit the unlawful act?

(3) If the answer to both questions is "yes", the third question is -- Under what circumstances did the defendant commit this unlawful act? In other words, what degree of offense has the State proven that the defendant is guilty of beyond a reasonable doubt and to a moral certainty?

The Court has no difficulty in determining that the death of Mrs. Grammer was an unlawful homicide. The testimony of Dr. Fisher, the admission of the accused, and all of the surrounding physical circumstances, conclusively show that Mrs. Grammer died, not an accidental death, but a criminal one.

The Court has no difficulty in determining that the defendant, George Edward Grammer, was responsible for and did commit this unlawful act. This conclusion is overwhelmingly clear from all of the evidence in the case.

As stated before, the main problem before the Court is, under all the evidence in this case, of what degree of homicide is the defendant guilty. To determine the answer to this, the Court must of necessity do

several things: First, examine the statements of the accused, and second, attempt to evaluate and appraise the accused as a person, and third, attempt to evaluate all the other evidence in the case.

A statement given by an accused may be many things. It may be a complete denial, such as "I did not commit the offense". It may be exculpatory -- that is, "I did commit the offense but I did it under such circumstances that I may not be legally held accountable therefore." As an example, an accused may admit he killed the deceased but under such circumstances as amounted to a self-defense. And it may be partially incriminatory in that it admits the commission of the offense but gives facts and details which might, if completely believed and not combatted by any other evidence, cause the accused to be convicted of something less than the highest degree of the crime charged. It also may be true, false or part true and part false.

Seldom, except in those cases where the offense itself carries with it the degree, as for example, a homicide committed in the perpetration of a robbery, does any defendant ever say in simple, direct language,

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"I committed these acts with deliberation, premeditation, willfully, and maliciously". And the law does not require such a clear, unequivocal statement of the intention of the accused. A Court can only judge what was in a man's mind at or about the time of the commission of an offense by the kind of a man who committed the crime and by the manner and circumstances preceding and surrounding the commission of the crime.

The Court has no difficulty in assaying the defendant as a clear thinking, well controlled, and mentally detached person. It cannot, under the evidence in this case and from its close and careful scrutiny and observation of the defendant accept this crime as one of hot blood, provocation, or lack of control due to drink or anger, or both.

It has further a motive or reason for this man who had started from scratch and by his own close application and native talents had risen to a position of some importance in his chosen field and who was apparently on the threshold of even greater successes suddenly diverting his talents and energy from the lawful to the

unlawful.

This Defendant, the Court believes beyond any reasonable doubt, suddenly found himself in the grip of a situation that called upon him to use all of his mental equipment to solve. He was in love with another woman. And it is abundantly clear to the Court that even if the defendant's wife was willing to consent to free him and give him a divorce, and there is evidence to the contrary, this would not have given him an answer because the woman with whom he was in love, because of her religious belief, could not readily have accepted a divorced man as a husband. It is quite clear from the evidence that even believing he was free to marry, she nevertheless was coldly and firmly insistent upon him changing his religion prior to their marriage. His letters to her, her statements on the witness stand, and all the surrounding circumstances show that the relationship between the two had slowly but irrevocably come to the point of decision from which there could be no possible return.

This is the drive which turned a loving

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husband and kind father and a man apparently at peace with himself and the world into a violator of all those God-given commandments he had heretofore apparently respected.

The necessity for the killing of his wife, from all the evidence in this case, is as clear as the fact that Grammer did kill his wife. The manner in which the killing occurred again illustrates conclusively the kind of person who committed it. The conversation he gives as an excuse or provocation for him to so lose control of himself that he committed this brutal act is so slight as to be entirely and totally unbelievable.

The Court does not know what conversation preceded the killing but it is certain of one thing -- that this defendant did not murder his wife simply because he had had a few drinks and she said to him "You think more of your job than you do of me."

This is not only entirely out of keeping with the character and actions of this accused but it would be difficult to believe it could occur from even one considerably less controlled.

Even he, in his statements, indicates not that he had reached a blind rage but that (to quote his statement) "I was a little mad. I am not normally like that. I can't remember the last time I lost my temper."

The very facts surrounding the killing and the evidence subsequent thereto show a man concerned with the scheme and plan of committing murder and getting away with it, the most potent are these:- the pebble under the accelerator. Grammer, in his own statement, says he could have placed it there. The Court finds he did place it there. He placed it there immediately after killing his wife for the definite, deadly purpose of concealing the crime.

Was that the action of an enraged, drink-controlled individual? Or was it the action of one who had coolly and carefully within the limits of the drive under which he was laboring and of his own capabilities planned to escape the consequences of his act so he could spend the rest of his days with the woman he loved?

The very weapon that was used, whether it be the pipe, State's exhibit No. 35 or some similar instru-

ment, was the kind that, coolly thinking, he had to use. Any other type of weapon, such as a knife or gun or poison would not have fitted into his plan that this killing be made to look like an automobile accident. The pattern of the blows have some significance. There was no overall bashing in of the skull but every blow struck was in that portion of the head that normally would have been involved had there been an automobile accident. And if, as the defendant says in his statement, the deceased fell forward with the first blow, he must have been very, very careful as to where the other blows descended.

If it had not been for the sheer chance of two Baltimore County policemen being on Taylor Avenue at this time, there is little doubt but that he could have gotten away with it. Because it was not only possible for this car to have gone down Taylor Avenue into the heavy traffic of Belair Road and, if not struck there, to have continued across Belair Road and to have piled into the concrete abutment facing Taylor Avenue. But even if this had not occurred, when it turned over, as it did,

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this car would have caught fire and most of the evidence pointing to the crime could have been therefor destroyed.

He had no way of knowing his wife's body would have been discovered so soon. Therefore, this man who now says he was so enraged and so under the influence of liquor that the deed he committed was an uncontrollable act, then proceeded to do several things.

First, he destroyed the evidence about him which would have pointed to his connection with this offense. He burned the clothing which undoubtedly was blood spattered and he attempted to prepare his alibi by making it appear that he caught the 11:28 train from Baltimore and that he did deliver certain papers early in the morning to his office. These papers that were of such importance to the office and were of such importance to him, both as an employee and as part of his alibi that, according to his own statement, he picked them up from the seat of the car before he started the car on its way and left the scene of the killing.

The Court agrees with the contention of the

State that from the four corners of his confessions, plus the testimony and demeanor of this man and the conclusions that must be drawn therefrom, that there could be a verdict of murder in the first degree. A cold, meticulous person who in one of his confessions says: "I thought of it for a while, stopped the car and got out. I guess I was just going to leave. I did not know exactly. I saw a piece of pipe and remember hitting her with it once."

The Court does not believe that this man did not know what happened thereafter. The Court believes he knew exactly what he did before and exactly what he did after the killing.

But there are in this case many, many other surrounding facts and circumstances which point beyond any doubt that the defendant, George Edward Grammer, intended to kill his wife because that was the one way that he could continue the life he had chosen to live and that he deliberately, with premeditation and with malice, carried out that intent.

The verdict of this Court is Guilty of Murder

in the First Degree.

The Court is adjourned.

S T I P U L A T I O N

It is Agreed and Stipulated by and between counsel for the State and counsel for the defendant that the within transcript of testimony be, and the same is, hereby accepted as the AGREED STATEMENT OF FACTS in the above entitled case.

Anselm Sodaro
(State's Attorney)

Joseph Huber
(Counsel for defendant)

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~~(Counsel for defendant)~~