

OFFICE OF  
JUDGE ADVOCATE  
GENERAL  
OF THE ARMY

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WAR DEPARTMENT  
In the Office of The Judge Advocate General  
Washington, D.C.

Board of Review

CM 201390

JAN 23 1934

|                            |   |                                |
|----------------------------|---|--------------------------------|
| UNITED STATES              | ) | UNITED STATES MILITARY ACADEMY |
| v.                         | ) |                                |
| Cadet DONALD O. VARS,      | ) | Trial by G.C.M., convened      |
| First Class, United States | ) | at West Point, New York,       |
| Corps of Cadets.           | ) | December 15, 1933. Sus-        |
|                            | ) | pension until January 1,       |
|                            | ) | 1935.                          |

OPINION of the BOARD OF REVIEW

TURNBULL, BITZING and HALL, Judge Advocates.

1. The Board of Review has examined the record of trial in the case of the cadet named above and submits this, its opinion, to The Judge Advocate General.

2. Accused was tried upon the following Charge and specifications:

CHARGE: Violation of the 96th Article of War.

Specification 1: In that Cadet Donald O. Vars, First Class, United States Corps of Cadets, did, at Boston, Massachusetts, on or about November 11, 1933, drink intoxicating liquor in violation of paragraph 135, Regulations for the United States Military Academy, 1931.

Specification 2: In that Cadet Donald O. Vars, First Class, United States Corps of Cadets, was, at Boston, Massachusetts, on or about November 11, 1933, under the influence of intoxicating liquor in violation of paragraph 135, Regulations for the United States Military Academy, 1931.

He pleaded not guilty to the Charge and specifications thereunder and was found not guilty of Specification 2 and guilty of Specification 1 and the Charge. No evidence of previous convictions was introduced. He was sentenced to suspension without pay and allowances until January 1, 1935, at which time he will join the then first class. The reviewing authority approved the sentence and forwarded the record of trial for the action of the President under the 48th Article of War.

3. The evidence for the prosecution may be summarized as follows:

Major Dennis E. McCunniff, Infantry, testified that on November 11, 1933, he was in command of the cadet special that had taken the Corps from West Point to the football game at Harvard and that accused accompanied the Corps to Boston (R. 5). Witness had boarded the train just before midnight and while standing in the door of his stateroom heard some cadet calling out in a loud and boisterous tone of voice, "Is this car number 30?" Shortly thereafter accused appeared

"in what I considered a very peculiar sort of frame of mind and action. His hat was on the back of his head and he had a peculiar look in his face, and he came to attention shortly after seeing me and went on down the car." (R. 5.)

Later at an inspection of the cadets witness saw accused in ranks and recognized him immediately as the same cadet he had seen in the car.

"He was weaving very slightly in ranks, and I doubt very much if I had not previously noticed him in the car and noticed his action, that I would have been able to detect anything out of the ordinary at this inspection." (R. 6.)

Accused was ordered by witness to report to him in his stateroom immediately after the inspection. Pursuant to that order accused reported about 12:05 a.m., at which time there were also in the stateroom Captain Bentley and Lieutenant Honnen. Accused was

directed to assume the kneeling bend position and to blow his breath in the face of each of the three officers present. Witness detected a distinct odor of some intoxicant in which alcohol was present (R. 6,7). Accused did not have full and complete control of his mental and physical faculties at that time. He also had difficulty in pronouncing the name of Cadet Upham. Considering the condition of accused, witness would not have permitted him to mount guard as cadet officer of the day or to attend class (R. 7). Accused was drunk within the definition of drunkenness found in the Manual for Courts-Martial but was not drunk in the personal opinion of the witness (R. 8). His actions at no time while under the observation of witness were other than those becoming a cadet and a gentleman (R. 9).

Captain George A. Bentley, Quartermaster Corps, testified that he was present in Major McCunniff's stateroom on the football special at about midnight November 11th, together with Major McCunniff, Lieutenant Honnen and accused, having been asked to come in by Major McCunniff. Witness detected a positive odor of liquor on the breath of accused. Accused, however, was sober and had full and complete control over his mental and physical faculties (R. 11-12).

The testimony of First Lieutenant George Honnen, Infantry, was taken by deposition (Pros. Ex. A). Witness was assistant to the train commander on the Harvard Special and was present in Major McCunniff's stateroom about midnight on November 11, 1933, together with Major McCunniff, Captain Bentley and accused. Accused's breath smelled of alcohol, not a strong odor but noticeable and distinct. There was a slight impediment in his speech but in the opinion of the witness accused was not drunk.

4. The evidence of the defense may be briefly outlined as follows:

Cadet Hudson H. Upham, First Class, United States Corps of Cadets, testified that he was with accused several hours in Boston on November 11, 1933;

"I left the football game with him, met two young ladies and walked to their car after the game. In their car, we went into Boston to the Hotel Touraine.



Then we waited in the lobby for another couple, Cadet Vars and his young lady friend went out to make a telephone call. I waited for him to come back and after he came back, we went downstairs to dinner. We had a table for four and off and on during the evening until about 11:00 o'clock we danced and ate. About 11:15, we left the hotel and in the young ladies car we went down to the station. We boarded the train as soon as we got there. Getting on the train, Cadet Vars called to me, 'Where is car 30'. I did not answer him. We went into the car, passing Major McCunniff and Lieutenant Honnen. Then a few minutes later, we went out to the formation for entraining. There Major McCunniff instructed Cadet Vars to report to his drawing room after the formation. I got on the train with Cadet Vars, and then I got into my berth after that." (R. 18,19).

Witness did not see the accused take a drink during the evening nor did he at any time on that day smell liquor on accused. Witness also testified that accused is often hesitant in his speech and does not always express his ideas clearly at first and sometimes makes several attempts. Witness is not always addressed by his proper name but is often called "Ufam, Upman, Upton, Up, Upnam, and Slim" (R. 20).

On cross-examination witness declined, on the ground of self-incrimination, to answer questions as to whether or not during the evening he had seen any liquor served at the table at which he and accused were dining (R. 21).

Miss Mary McCusker, Dorchester, testified by deposition (Def. Ex. A) that she is a teacher, in Boston, and that she has known the accused for about two months. On November 11th she met accused at Harvard Yard when the Corps was dismissed for lunch at about 11:30 a.m., and had lunch with him. After the game accused came to her seat in the stadium and the two drove to the Club Touraine, where they had supper at about 6:30 p.m. and danced until 11:40 p.m., when they hurried to the train yards. Witness

is sure that accused did not drink any intoxicating liquor during any of the time he was with her; that he was sober and that she did not notice any odor of intoxicants on his breath.

Mr. Frank E. Preble, Executive Morey Paper Mill Supply Co., Boston, Massachusetts, testified for the defense by deposition (Def. Ex. B). He stated that he met accused on the evening of November 11th at the Touraine Hotel, when accused was called over to his table by a Mr. Holloway. During the evening accused came to that table several times. At no time did witness see accused take any liquor nor was any odor of liquor detected on his breath. No intoxicating liquor was served at any time accused was at that table. Witness was most favorably impressed by accused's bearing, appearance and conduct.

Numerous other witnesses testified for the defense, among whom were Cadet Herbert H. Andrae, First Class (R. 23-25), Cadet T. C. Foote, First Class (R. 26-28), Cadet Harry J. Hubbard, First Class (R. 28-29), Cadet Albert J. Shower, Second Class (R. 30-32), Cadet William F. Nesbitt, Third Class (R. 33-34), and Cadet W. W. Stromberg, Fourth Class (R. 34-38). The testimony of the above named witnesses was in the main that accused was sober on the night in question and so far as any of them knew he had taken no intoxicating liquor.

Captain Paul R. Goode, Infantry, a witness for the defense, testified that accused in his fourth class year received 50 demerits and stood 153; 36 demerits and stood 149 in his third class year, and 18 demerits and stood 89 in his second class year. Witness stated accused has the appearance and ability of the average cadet. In attention to duty and loyalty he is well above average (R. 38).

The accused elected to remain silent.

5. Accused was charged with a violation of paragraph 135, Regulations for the United States Military Academy, 1931. This regulation was read to the court by the trial judge advocate at the beginning of the trial (R. 4), but was not copied into the record. Reference to the regulations, however, shows paragraph 135

to read as follows:

"Intoxicating liquors.--Cadets who shall drink or be found under the influence of intoxicating liquor, or bring or cause the same to be brought within the cadet limits, or have the same in their rooms, tents, or otherwise in their possession, shall be dismissed the service or otherwise less severely punished."

6. The evidence of Major McCunniff, Captain Bentley and First Lieutenant Honnen sufficiently establishes the fact that at sometime during the evening of November 11, 1933, accused had violated paragraph 135 of the United States Army Regulations by drinking intoxicating liquor.

7. The accused was admitted to the United States Military Academy on July 1, 1930, with no prior military service. He is now 25 years and 3 months of age.

8. The court was legally constituted. No errors injuriously affecting the substantial rights of accused were committed during the trial. For the reasons stated, the Board of Review is of the opinion that the record of trial is legally sufficient to support the findings and sentence and warrants confirmation thereof.

W. A. Trumbull, Judge Advocate.

H. R. Higgins, Judge Advocate.

Theodore Hall, Judge Advocate.

To The Judge Advocate General.

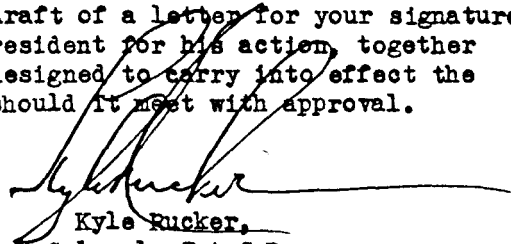
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War Department, J.A.G.O., FEB 6 1934 - To the Secretary of War.

1. The record of trial in the case of Cadet Donald O. Vars, First Class, United States Corps of Cadets, together with the foregoing opinion of the Board of Review, is transmitted herewith for the action of the President.

2. I concur in the opinion of the Board of Review that the record of trial is legally sufficient to support the findings and sentence. In view of the absence of any aggravating circumstances and of his prior good character and standing as a cadet, I recommend that the sentence be commuted to the usual restriction to limits and punishment tours, prescribed for cadets undergoing special punishment, for a period of three months beginning with the date of the action by the President.

3. Inclosed herewith is a draft of a letter for your signature transmitting the record to the President for his action, together with a form of executive action designed to carry into effect the recommendation hereinabove made should it meet with approval.



Kyle Rucker,  
Colonel, J.A.G.D.,

Acting The Judge Advocate General.

3 Incls.

Incl. 1-Record of trial.

Incl. 2-Draft of let. for

sig. Secy. of War.

Incl. 3-Form of executive action.

RECD. M. A. GROUP, APC EXCT., GFF. DIV.



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