

## DECLARATION OF SHELDON H. KINNEY

The declaration of Sheldon Kinney is a boiler plate affidavit attempting to justify the summary dismissal of midshipman Kenneth L LeBrun from the U.S. Naval Academy in 1966, The following is an accurate reproduction of Sheldon Kinney's second affidavit in the black type. The red type is my correction of the numerous misrepresentations in the Affidavit. The first affidavit solicited from Kinney by the BCNR (Bureau for Correction of Naval Records) at the direction of the Secretary of the Navy was sent back for a rewrite to remove any references to my 4 year outstanding record as documented in the year books and press releases. They removed all references to my appointment as Midshipman Company Commander, election as Class President and Chairman of the Honor Committee, record setting intramural and varsity boxing record, expert rifle and pistol, and additional awards. The falsification of records supported the Navy's case in my initial summary dismissal which had to be approved by the Secretary of the Navy (SecNav) because of my appointment to the Academy from the enlisted ranks and my later appeal to the Federal Courts. See photo Signatures?

I am Rear Admiral Sheldon H. Kinney, United States Navy, Retired. I am submitting this declaration at the request of the Board for Correction of Naval Records (BCNR) in conjunction with a petition filed with BCNR by Kenneth L. LeBrun.

I first enlisted in the Navy in <sup>1</sup>1935 and progressed upward in

the enlisted ranks at sea until I was appointed to the Naval Academy in 1937. After graduating from the Academy in 1941, I served in a variety of assignments, both afloat and ashore, and was advanced to the grade of Captain (O-6). In December 1963 I reported for duty as Commandant of Midshipmen at the Naval Academy, and was serving in that position at the time of the events at issue in Mr. LeBrun's petition.

As Commandant of Midshipman from January 1964 until September 1967, I had over 8,800 different midshipmen under my command. I was involved in disciplinary actions too numerous to recall, which included some 1100 major conduct offenses. An offense was classified as major if the maximum penalty for the offense was 75 demerits or discharge. Major offenses were commonly referred to as Class A offenses. As the events occurred nearly 28 years ago, I recalled few specific details concerning Mr. LeBrun's case. I have, however, reviewed all of the materials Mr. LeBrun submitted to the BCNR, including portions of his Naval Academy records, and the materials provided to BCNR by the U.S. Naval Academy. This declaration is based upon my recollection and the materials I have reviewed.

Kinney's first affidavit submitted to the BCNR acknowledged my outstanding record which both confirms that he remembered me (I met with him multiple times as class president) and that he acknowledged that it was impossible to have two totally opposing performance evaluations showing me at the top of my class while simultaneously a gay loser. My Company Officer who signed the

negative performance evaluations had simultaneously recommended me for midshipman company commander, approved press releases and met on multiple occasions one of two young ladies I was pinned to while at the Academy.

Mr. LeBrun was put on report for an incident of fraud. He marked a Midshipman Dyer present at the midnight muster on the night of 17/18 December 1965, when available evidence failed to clearly show that Dyer was present in Bancroft Hall. In fact he was not. My memorandum of 4 February 1966 indicates the event occurred at approximately 0008 on the "evening of 18 December 1965." The memorandum should have read "morning" and not "evening." this was some 10 hours before the beginning of Christmas leave for the Brigade of Midshipmen,. The 4 February 1966 memorandum also refers to a Report of Conduct dated 18 December 1966. This should have read 18 December 1965, as the day Mr. LeBrun was put on report for fraud. Based upon the entry in the Class A Log Book maintained in the Administrative Office, I believe these errors were simply oversights or typographical errors.

Captain Kinney, in addition to being a war hero, was one of the most detailed individuals that I had the opportunity to interface with at the Academy. What he has described in his second affidavit in terms of procedures and documentation was much closer to a Keystone Cops adventure than one of his work products. The photocopy signature on the second affidavit suggests that it was not drafted by Kinney since it clearly conflicts with his first submission to the BCNR.

A report chit could have been submitted by the midshipman officer of the watch, the commissioned officer of the watch, or by another midshipman. As the report chit is not available for review, it is impossible to tell who initiated it. When a major offense was involved, a copy of the report chit would have been forwarded to the Administrative Office. The original report chit would be passed on to the midshipman's company officer for investigation. In this case, the Company Officer's investigation would not have occurred immediately after the report was filed, as the midshipmen were departing the Academy on Christmas leave and would not return until after New Year's Day.

I was never presented with a conduct report which required an acknowledgment of receipt with a personal signature. No such record with my signature was ever presented to me. In fact, the SecNav checked out my personnel file in violation of established procedures and removed and destroyed all documents that related to my outstanding record. They never thought to remove my records for the annual year books or the press release to my home town newspaper stating my outstanding record as a midshipman. So, I have two sets of records at opposite extremes, a virtual impossibility at the Naval Academy. Frankly, the Keystone Cops would likely have been embarrassed at the level of competency managing my summary dismissal. There is a logical explanation for the sloppy and illegal actions discussed below.

After the midshipmen returned from Christmas leave, the Company

Officer would have investigated the report chit by speaking with the individual who initiated the conduct report and all of the midshipmen with relevant information concerning the alleged offense, including the accused midshipman. A Company Officer had the authority to dismiss an offense or impose an appropriate punishment for minor offenses. In a case involving a serious offense, the investigation would be forwarded to the Battalion Officer. The Battalion Officer had authority to dismiss the charge or impose punishment in more serious matters but not in matters where the potential for separation existed. Where evidence indicated that the matter was a Class A level offense, the matter was referred to the Commandant's office for further action. Mr. LeBrun's Company Officer was Lieutenant Truxton Umstead. The Battalion Officer was Commander Walter Donovan. Both of these officers are now deceased.

After the Company and Battalion Officers decided that a conduct case indicated culpability on the part of a midshipman, and that the offense was a separation level offense, they would speak with the Administrative Officer and the Deputy Commandant about the

case. The Administrative Officer at the time was Commander John Barlow. My deputy was Captain Herbert H. Reis. A "Class A" offense log book was maintained by the Administrative Office and served as a record of major conduct offenses. The Class A Log Book for the years 1962 to 1967 shows that Mr. LeBrun was put on report for an incident that occurred on 18 December 1965.

After a report chit was referred to the Administrative Office, it was reviewed by my deputy. Based upon the investigation, he had the authority to determine whether the charges should be handled as lesser offenses or as separation level offenses. If the deputy concurred that the matter involved a separation level offense, I would receive an oral briefing on the case. I would then review the report and investigation, and, if I thought the case was substantiated, arrange for an appointment to interview the midshipman charged.

At the outset of the interview, the Company and Battalion Officers would normally be present; but in every case, I spoke with the midshipman in private, usually later, with only the two of us present. This was relatively informal, with both of us seated. I would ask the midshipman to tell me anything that might serve to exonerate him, or mitigate or extenuate his actions. I have no independent recollection of such a meeting with Mr. LeBrun, but I believe that I met with him as it was an unwavering practice for me to do so.

There was a very good reason why Kinney did not recall a meeting with me - because it never happened. The Superintendent, Admiral Kauffman, had a problem. Bruce Dyer, my new roommate who went AWOL, was the son of one of Admiral Kauffman's classmates and the Academy grads have a Blue and Gold Wall (Navy colors) that makes the legendary Blue Wall of the police look like amateurs. Dyer had arranged with two of his "Bad Boy" classmates and friends to falsify the muster report while he

went AWOL - a fact I learned 20 years later. He couldn't wait 12 hours for the start of a two week Christmas vacation to get laid. His Bad Boy friend's apparently panicked when we did a search of the company area looking for Dyer for a midnight muster knowing it was impossible to falsify a muster when the Company Honor Rep was alerted to Dyer's absence for the midnight muster. They dropped the muster into my lap and I authorized reporting Dyer absent after having reported him present for an earlier muster base on the representations of one of the Bad Boys appointed by Senator Ted Kennedy. Kennedy's likely role in rigging my summary dismissal was a piece of cake compared to Chappaquiddick. The problem for the Superintendent was that any investigation by the Midshipman Honor Committee would likely have resulted in dismissible honor offenses for the 3 Bad Boys. The bottom line is that the Keystone Cops version of my summary dismissal came about because Kauffman was unfamiliar with the procedures for either a conduct or an honor offense and he could not involve Kinney, so he just blundered through by himself confident that the threats he made against me would keep me silent.

After meeting with the midshipman, I could dismiss the conduct case, impose some form of punishment less severe than discharge from the Academy, or send the case forward to the Superintendent of the Academy with a recommendation for discharge. As shown by my memorandum of 4 February 1966, I felt that discharge was appropriate in LeBrun's case. Submitting a false muster report is a serious act. In a naval context, one must be able to rely

completely and totally on muster reports, especially at sea or in combat where such reports are critical to determine whether a man has been lost overboard, has been killed or wounded, or is otherwise missing. A midshipman's training emphasized this.

Prior to submitting a recommendation for discharge, I always informed the accused midshipman of my intent to do so. At that time, I also informed the midshipman as to whether I would recommend acceptance of a qualified resignation in lieu of discharge. A qualified resignation had certain benefits for the midshipman as opposed to an involuntary discharge. The midshipman could truthfully state that he had resigned and had left the Academy of his own accord. The Report of Transfer or Discharge (DD Form 214) would also reflect "resignation" as the reason for separation. The nature of the separation would not be apparent unless the individual chose to disclose it. Where circumstances and the midshipman's record warranted it, I would support a qualified resignation. Mr. LeBrun's contribution as class president, his role in the honor system, his academic performance, and his conduct record were among the factors I would have considered in determining whether to support a qualified resignation. The record indicates that on 2 February 1966, Mr. LeBrun elected to submit a qualified resignation and that I supported that request in my memorandum to the Superintendent dated 4 February 1966.

The forced resignation was the only document that I ever saw and



it was destroyed when the SecNav checked out my file and because it did not fit the scenario that Kauffman chose to create after my dismissal. Since there never was a meeting with Kinney, none of the standard protocols that he discussed ever happened. Of interest is that Kinney was responsible for both the conduct and honor codes at the Academy. The honor system was created at the inception of the Academy dating back to 1848. And Kinney had updated the honor code in the fall of 1965 with a detailed explanation of how the proceedings should take place. Of note is that those documents stated that falsifying a muster report was **the classic example of an honor offense to go before the Midshipman Honor Committee** - consistent with more than 100 years of practice at the Academy. If Kinney had been in control he would have been in violation of his own rules treating the allegations as a conduct offense rather than an honor offense. And Commander Barlow's affidavit that such a document did not exist was a blatant act of perjury. The Midshipman Class President and Chairman of the Honor Committee who succeeded me, Robert Spooner, submitted an affidavit to that effect. He was given a direct order by Barlow NOT to get involved in my summary dismissal. **Since I did NOT commit an honor offense they could not let me go before the Honor Committee.**

The Commandants memorandum of 4 February 1966 appears to be consistent in format and substance with other memoranda I submitted to the Superintendent on matters involving involuntary

discharges and qualified resignations due to major conduct offenses. The text of such memoranda discussed the offense in some detail and made a recommendation as to disposition of the case. The first enclosure to the memorandum was the qualified resignation, if the midshipman chose to submit one. The second enclosure was the conduct report which precipitated the case. The third enclosure was a Midshipman Personal Evaluation Summary Sheet, or Midshipman Summary Sheet, which was completed by the midshipman's Company Officer in conjunction with the case. The fourth enclosure was a draft of a recommended letter from the Superintendent to the Secretary of the Navy. The fifth enclosure was a draft of a letter for the Superintendent to send to the midshipmen's parents. With regard to the draft correspondence, the Superintendent would have the letters typed and prepared for signature by his staff. He could have the letters prepared as my staff recommended in the draft or with modifications that reflected his particular decision or choice of language. Included in the documentation I have reviewed is a copy of an unsigned letter from the Superintendent to the Secretary of the Navy. I believe this is a copy of a draft letter prepared by my staff and submitted to the Superintendent with my memorandum of 4 February 1966. The letter to Mr. LeBrun's mother which I have examined also appears to be a draft letter prepared by my staff and submitted to the Superintendent. The manner in which the letters are dated is indicative of draft correspondence. This era preceded Xerox and word processing. The final letters would

have been retyped, would have had a serial number assigned, and the date would have been written out, not abbreviated by numerals separated by slants. Nowhere in the materials made available to me have I seen a copy of the letter sent to the Secretary of the Navy and signed by the Superintendent. The date on the draft letters is consistent with the time frame during which I would have interviewed Mr. LeBrun and informed him of my willingness to support a qualified resignation. It was routine to prepare draft correspondence at that juncture so that all would be ready if the midshipman elected to submit a qualified resignation.

Again, there was no meeting with Kinney. If I had seen the performance evaluation suggesting that I was gay (doesn't date girls) we might have had an unpleasant exchange of words. That statement is beyond a "dog whistle" - more like a fog horn - particularly since my company officer had met one of the two ladies that I had been pinned to during the time I served as his midshipman company commander - documented in the year book. It was a blatant and fraudulent misrepresentation of facts to avoid explaining why a midshipman with an outstanding record coming out of the enlisted ranks was being summarily dismissed so close to graduation. An appointment to the Academy out of the enlisted ranks came from SecNav and had to be approved by SecNav. The records sent up to SecNav were blatantly fraudulent with none of my outstanding records included.

Prior to making a recommendation to the Secretary of the Navy concerning a qualified resignation or discharge, it was the policy of the Superintendent to meet with the midshipman.

Although I have no independent recollection of such a meeting in Mr. LeBrun's case, such a meeting would have occurred as it was the Superintendent's practice to do so. I was always present at that initial meeting. The Battalion and Company Officer could be present as well. The meeting would be formal, with the midshipman reporting to the Superintendent in a military manner. In such meetings, the Superintendent wanted to hear what the midshipman had to say in defense, extenuation, or mitigation. He often spoke with the midshipmen later in private. Rear Admiral Draper L. Kauffman was the Superintendent of the Naval Academy during the events at issue. He went out of his way to be friendly and outgoing with the midshipmen. It would be fair to say that Admiral Kauffman actively disliked disciplining midshipmen and tended to be lenient when he could. Admiral Kauffman is now deceased.

My private meeting with Kauffman was very brief. He said that he wanted my resignation and if I did not comply he would destroy me. I would never get into another college or get a job because he would see to it that I would get a dishonorable discharge. If you came out of the enlisted ranks with no political connections it doesn't take much to understand that you have no choice in the matter. Falsifying the homosexual

reports confirm that he meant business.

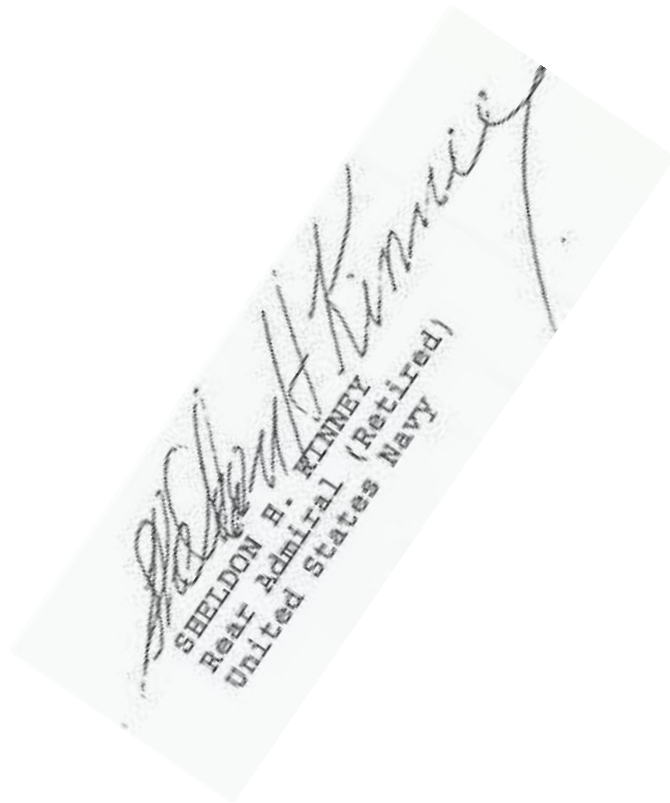
The Superintendent was independently advised in discharge cases by his staff legal officer. At the time in question, the legal officer would have been either Captain Paul Borden or his successor, Commander Gordon Neese. Both were Special Duty Law Officers, U.S. Navy. Both are now deceased. Where the Superintendent determined that separation was appropriate, the case would be submitted to the Secretary of the Navy for a final decision. A recommendation for discharge from the Academy or a favorable endorsement on a qualified resignation would be sent from the Superintendent to the Secretary of the Navy, via the Chief of Naval Personnel for a recommendation as to the appropriate disposition. During my tenure as Commandant, it was my practice in cases such as Mr. LeBrun's to send a letter to Captain Homer Walkup (Special Duty Law), USN, at the Bureau of Naval Personnel, setting forth the circumstances of the case in more detail than the Superintendent's letter. Captain Walkup was serving as legal advisor in the Performance Division of the Bureau of Naval Personnel and was, in effect, the lawyer for the Chief of Naval Personnel in such matters. My letter to Captain Walkup of 17 February 1966 contains the same information as my memorandum of 4 February 1966 to Admiral Kauffman. The date of my letter to Captain Walkup and the entry in the "Miscellaneous Correspondence" section of Mr. LeBrun's midshipman record both indicate that the Superintendent submitted the case to the Secretary of the Navy, via the Chief of Naval Personnel, in mid February 1966.

It was proper to handle Mr. LeBrun's actions as a violation of the conduct system. Submitting a false muster was a serious matter and among those listed as Class A level conduct offenses. At the time, certain matters could be handled under either the conduct or the honor system if they involved fraud. It was also the policy at the time that once a conduct case or an honor case were begun concerning a particular offense, the proceedings of origin were used to the exclusion of the other system. In Mr. LeBrun's case, the matter originated as a conduct offense. Once the report chit was submitted, the matter became a conduct action and remained in the Administrative Conduct System. Once the Superintendent recommended an individual for discharge from the Academy, or recommended that a qualified resignation be approved, the midshipman was normally placed on leave awaiting the Secretary's action and allowed to depart the Academy. In the normal course of events, Mr. LeBrun would physically have left the Academy in February.

I note that Lieutenant Umstead submitted a second Midshipman Personal Evaluation Summary Report on Mr. LeBrun in March of 1966. That report coincides with the final action on the qualified resignation. A final evaluation was prepared by the Company Officer for inclusion in the record forwarded to the Office of the Registrar upon the midshipman's actual separation from the Academy. This final evaluation is specified on the evaluation form and was in addition to that which accompanied

the conduct report. Based on the foregoing, I believe that all of the actions taken in the case of former Midshipman LeBrun were supported by the facts, followed established procedures, and constituted an appropriate response to his major conduct offense.

For additional information: [www.USNABadBoys.com](http://www.USNABadBoys.com) - and of particular note is the fraudulent performance evaluations. Select the "Fraud - Evaluations" button. And I also note that the following signature is done as a photo image - not an original signature - suggesting that Kinney never saw this second draft - consistent with a long series of fraudulent documents to cover up a major scandal. (photo images are easy to rotate)



**STATE OF MARYLAND  
COUNTY OF ANNE ARUNDEL**

Subscribed and sworn to before me, in my presence, this 24th day of January, 1994, a Notary Public in and for Anne Arundel County, State of Maryland.

A handwritten signature in cursive script, reading "Patricia D. Lingner", is written on a light-colored, rectangular strip of paper that is tilted diagonally.

Patricia D. Lingner 7 Notary  
Public  
My Commission Expires 9-1-97