

[Stamped:] Nov. 2, 1944.

[1]

FIRST ENDORSEMENT

To: The Commander-in-Chief, U. S. Fleet and Chief of Naval Operations.

Subj: Court of Inquiry to inquire into the attack made by Japanese armed forces on Pearl Harbor, Territory of Hawaii, on 7 December 1941, ordered by the Secretary of the Navy on 13 July, 1944.

1. Forwarded for comment and recommendation.

2. The weighing of conflicting evidence and testimony is peculiarly the function of a Court of Inquiry or Board of Investigation, and not that of the reviewing authorities. Where the testimony is such as will reasonably support either of two or more different conclusions, it is not within the province of the Judge Advocate General to attempt to substitute his evaluation of the evidence for that of the Court. But where there is no creditable evidence in a record to support a finding or opinion, or where the weight of evidence is so preponderantly on one side that it appears unreasonable to reach a contrary conclusion, the Judge Advocate General must hold, as a matter of law, that such a finding or opinion is not supported by the evidence adduced. See CMO 9 of 1928, P. 8; CMO 12 of 1937, P. 8; CMO 5 of 1936, P. 11.

3. Attention is invited to the following portion of Finding of Fact XVIII:

"In the early forenoon of 7 December, 1941, Washington time, the War and Navy Departments had information which appeared to indicate that a break in diplomatic relations was imminent, and, *by inference and deduction, that an attack in the Hawaiian area could be expected soon.*"

4. This Finding, standing alone, may be misleading, in the sense that it may convey an impression that the Court concluded that responsible officials of the War and Navy Departments did in fact make the inference and deduction underscored above. The fact that the Court, in phrasing this Finding, used the past tense of the verb "appear", and used the expression "appeared to indicate", rather than "should have indicated" lends support to this construction. Such

an [2] impression would not be supported by the record, as the great preponderance of the evidence before the Court refutes any such conclusion. It is quite clear from the evidence that the responsible officials of the Navy Department had evaluated the information available to them in Washington to mean that a hostile move by the Japanese could be expected, not in the Hawaiian area, except by submarines, but rather against Guam, the Philippines, and British and Dutch possessions in the Far East.

5. Those witnesses who, on 7 December, 1941, held positions in the Navy Department which qualify them to speak authoritatively as to the prevailing opinion there just prior to the attack, are all in substantial accord that the Chief of Naval Operations and his assistants had not deduced or inferred that an attack in the Hawaiian area could be expected soon. On the contrary, the consensus in the Navy Department was that any attack would probably come in the Far East, and the possibility of an air attack on Pearl Harbor was given a comparatively low probability rating. Those witnesses who stated that the information available to the Navy Department clearly indicated, by inference and deduction, that an attack on Hawaii could be expected, were all officers who were not on duty in the Navy Department at that time, or occupied subordinate positions. Their testimony is opinion evidence, undoubtedly unconsciously colored by hindsight, and arrived at by a process of selecting, from the great mass of intelligence reports available to the Chief of Naval Operations, those which in the light of subsequent events proved to be hints or indications of Japanese intentions.

6. Therefore, any finding, opinion or inference that the responsible officials of the Navy Department knew, prior to the actual attack, that an attack on Hawaii was impending, is not supported by the evidence. The Court recognizes this fact, as shown by its finding (last paragraph of Finding XVII) that;

"These considerations, and the sworn evidence of the witnesses testifying before the Court, establish the fact that although the attack of 7 December came as a surprise to high officials in the State, War, and Navy Departments, and to the Army and Navy in the Hawaiian area, there were good grounds for their belief that hostilities would begin in the Far East, rather than elsewhere."

[3] 7. The foregoing remarks apply equally to the underscored portion of the Opinion expressed by the Court (P. 1207) that:

"Admiral Harold R. Stark, USN, Chief of Naval Operations and responsible for the operations of the Fleet, failed to display the sound judgment expected of him in that he did not transmit to Admiral Kimmel, Commander-in-Chief, Pacific Fleet, during the very critical period 26 November to 7 December, important information which he had regarding the Japanese situation, and especially in that, on the morning of 7 December 1941, he did not transmit immediately the fact that a message had been received which appeared to indicate that a break in diplomatic relations was imminent, and, *that an attack in the Hawaiian area might be expected soon.*"

As has been previously pointed out, the message herein referred to was not construed by the Chief of Naval Operations and his principal advisers as indicating an attack in the Hawaiian area.

8. It is noted that the Court finds (Finding of Fact XVIII) that the time at which the War and Navy Departments had information indicating a break in diplomatic relations on 7 December 1941, and the possibility of hostile action by the Japanese on that date, was "in the early forenoon of 7 December, Washington time." It is not considered amiss to comment in further detail on this finding, in view of a widespread misconception in some quarters that this information was known in Washington on 6 December 1941. The evidence before this Court establishes, beyond any doubt, that the information referred to was not available to any responsible official in Washington prior to approximately 10:00 a. m., the morning of 7 December 1941.

9. The Judge Advocate General feels constrained to comment on the apparent contradiction between the Opinion expressed by the Court that the Chief of Naval Operations failed to display the sound judgment expected of him in failing to transmit certain information to the Commander-in-Chief, Pacific Fleet, and the final Opinion that "no offenses have been committed nor serious blame incurred on the part of any person in the naval service." That this is only an apparent, and not a real, incongruity, is shown by the Opinion that "had this important information been conveyed to Admiral Kimmel, it is a matter of conjecture as to what action he would have taken." This statement, as well as the Finding of

Facts and Opinions taken as a whole, indicate [4] that it was the conclusion of the Court, although not clearly expressed, that the evidence adduced did not prove that Admiral Stark's failure to transmit the information in question to Admiral Kimmel was the proximate cause of the damage suffered by the Fleet on 7 December, 1941, and that any causal connection between this failure on Admiral Stark's part and the disaster would be entirely speculative. Such a conclusion is fully supported by the testimony in this record.

10. Subject to the foregoing remarks, the proceedings, findings, opinions and recommendations of the attached Court of Inquiry are, in the opinion of the Judge Advocate General, legal.

T. L. Gatch,
T. L. GATCH,
The Judge Advocate General.
