

PEARL HARBOR: FINAL JUDGMENT¹REVIEWED BY LIEUTENANT COLONEL JOHN J. SIEMIETKOWSKI²

*You are directed to give Major Clausen access to all records, documents and information in your possession or under your control, and to afford him the fullest possible cooperation and assistance.*³

I. Introduction

With these words, Secretary of War Henry Stimson created a fascinating, yet largely unknown, place in history for an Army judge advocate during World War II. In *Pearl Harbor: Final Judgment*, Henry Clausen recounts his wild ride from civilian practice in San Francisco to conducting the War Department's investigation into the Japanese attack on Pearl Harbor. Although not widely reviewed in the several years since its publication,⁴ this book is a must-read for any judge advocate, or for that matter, anyone interested in World War II history. Despite some shortcomings in the book, it has great historic value, reads like a great legal novel, and contains several important lessons in military leadership. This review analyzes *Pearl Harbor* as a historical text and legal novel, discusses the book's shortcomings, and concludes with valuable lessons from Clausen's work that are helpful to today's leaders.

II. A Historical Text

Pearl Harbor is foremost a history book. Clausen provides detailed chronologies of the communication failures leading up to the surprise attack on Pearl Harbor and his own involvement in conducting the War Department's investigation of those failures.

¹ HENRY C. CLAUSEN & BRUCE LEE, *PEARL HARBOR: FINAL JUDGMENT* (1992).

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³ Memorandum, the Secretary of War, to Army Personnel Concerned (6 Feb. 1945), reproduced in CLAUSEN & LEE, *supra* note 1, at back cover.

⁴ See Jack McKillop, *Pearl Harbor Final Judgment*, at <http://www.amgot.org/phclausn.htm> (last visited Nov. 25, 2003); Paul M. Bessel, *Pearl Harbor—Masonic Connections* (Jan. 11, 2002), at <http://bessel.org/pearlhar.htm>.

In his foreword, Clausen poses several questions that he sets out to answer in his book. He emphasizes, however, that “what occurred during the attack on Pearl Harbor is not as important as *why* it happened.”⁵ Readers looking for a chronology of events during the attack will instead find a chronology of communication failures that led to the attack. For example, Clausen discusses a 24 January 1941 letter from Secretary of War Henry Stimson to Secretary of the Navy Frank Knox (with copies to the Army and Navy commanders in Hawaii), which warned, “[I]t is believed easily possible that hostilities would be initiated by a surprise attack upon the fleet or the naval base at Pearl Harbor The dangers envisaged, in their order of importance and probability, are . . . 1) air bombing attack; 2) air torpedo-plane attack”⁶ Clausen also discusses and even reproduces two cables from Washington to Hawaii, dated 27 November 1941, that emphasized, “This dispatch is to be considered a war warning” and that “hostile action [is] possible at any moment.”⁷ Sadly, according to Clausen, neither Admiral (Adm.) Husband E. Kimmel nor Lieutenant General (LTG) Walter C. Short, the Navy and Army commanders in Hawaii, sufficiently communicated these warnings to prepare their commands against attack. In fact, Clausen describes LTG Short’s Hawaiian command as “a perpetual happy hour.”⁸

Readers will be equally appalled by Clausen’s chronology of what happened in Washington late on the night of 6 December 1941. Here, Clausen describes how two Army officers received intercepted messages from Tokyo to its embassy in Washington discussing Japan’s imminent severing of diplomatic relations with the United States.⁹ Despite reading the last part of the intercepted messages around midnight or 0100—directing their diplomats in Washington to sever relations with the United States on the afternoon of 7 December—the officer responsible for delivery of these intercepts to the senior military leadership went to bed instead of delivering them.¹⁰

⁵ CLAUSEN & LEE, *supra* note 1, at 8.

⁶ *Id.* at 75.

⁷ *Id.* at 85-86, 262 (photographs).

⁸ *Id.* at 188. Clausen also notes that General Short, while sailing to Hawaii to assume command in early 1941, read a novel rather than the briefing book his predecessor prepared for him. *Id.* at 186.

⁹ *Id.* at 82.

¹⁰ *Id.* (quoting interview statement of Colonel C.C. Dusenberry, “I did not wish to disturb the usual recipients who were probably at home asleep, as I did not see the implications of immediate hostilities [in the messages]”).

Along with chronicling the communication failures leading up to the Pearl Harbor attack, Clausen also provides a captivating narrative of his whirlwind military career, culminating in his testimony before Congress regarding the findings of his Pearl Harbor investigation.

Soon after hearing the news about the attack on Pearl Harbor while working in his San Francisco law office, Clausen decided to write all three of the existing military services to offer them his legal services.¹¹ He was thirty-six years old and had four small children. Clausen's descriptions of his early JAG experiences provide a small but fascinating window into JAG life at the beginning of World War II. Clausen describes taking a week-long train ride to Washington, reporting for duty, and promptly shaking the Judge Advocate General's (TJAG) hand rather than saluting him. The Judge Advocate General interviewed Clausen personally and assigned him to review court-martial sentences. Clausen describes being promoted from captain to major quickly and working with other volunteer officers like Leon Jaworski. Clausen's descriptions of his assignments at Salt Lake City, the new JAG School at the University of Michigan,¹² and at the Litigation Division in Washington, will also interest modern judge advocates. While at the Litigation Division, Clausen prosecuted a procurement fraud case against a defense contractor, apparently earning him nicknames like "Bull Dog" and the "Methodical Major" in the press.¹³ Through his work on this case, Clausen came to know Senator Harry Truman, who later wrote a letter to TJAG commending Clausen. From this high-visibility assignment, Clausen next sat on a "Presidential Appellate Court" reviewing the trials of captured German spies, hearing the Attorney General argue, and deciding, along with fellow court members, which German spies would be executed.¹⁴ While reading Clausen and Lee's book, young judge advocates, toiling through early assignments in claims and legal assistance, may find themselves wishing they had entered the JAG Corps at a different time in our nation's history.

Although this early part of Clausen's JAG career is interesting, his description of his involvement in the Pearl Harbor investigations is even more fascinating. Clausen describes Congress's appointment of

¹¹ *Id.* at 55-57.

¹² ("[T]he schoolwork was interesting, but not taxing, and it was easy to get good grades.") *Id.* at 55.

¹³ *Id.* at 56-57.

¹⁴ *Id.* at 58.

Army and Navy boards to investigate what led to our defeat at Pearl Harbor and who should be court-martialed as a result.¹⁵ The War Department appointed Clausen as the Recorder to sit on the Army's board, along with three general officers. After the board concluded its deliberations in October 1944, Secretary Stimson, Clausen, and TJAG suspected that the board's conclusions were faulty because it had heard false testimony and because it had not had access to all of the relevant classified documents. Clausen relates Stimson's seemingly implausible proposal to rectify the board's erroneous conclusions: "Major, I want you to go back over the operations of the Army Board with a fine-toothed comb. Retake every bit of evidence that needs to be clarified You are to follow any unexplored leads you find necessary. Leave no stone unturned."¹⁶ In a brief moment, Stimson had guaranteed Clausen's place, not only in military legal history, but also more generally in the history of World War II.

Any military counsel bemoaning frequent temporary duty travel will find no solace in Clausen's description of what his investigation required of him. During seven months in 1944 and 1945, Clausen traveled more than 55,000 air miles, interviewed ninety-two witnesses, and took forty-three affidavits.¹⁷ He took statements from Europe to the South Pacific, and interviewed witnesses in recent and still-active combat zones. Those currently deployed might relate to Clausen's description of "the sharp crack of ammunition 'cooking off' in the flames"¹⁸ Today's judge advocates might also have a difficult time, however, relating to a field-grade lawyer taking statements from such famous individuals as Douglas MacArthur and George Marshall. A judge advocate today is even less likely to carry evidence in a bomb satchel attached to his chest, with orders to detonate the bomb and himself if captured by the enemy.¹⁹

Today's military lawyers will also have difficulty imagining themselves testifying before Congress as Clausen did in early 1946. Having submitted his lengthy report to Secretary Stimson and leaving the Army as a lieutenant colonel, Congress asked Clausen to testify regarding his findings.²⁰ Clausen concluded his testimony before

¹⁵ *Id.* at 30.

¹⁶ *Id.*

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 140.

¹⁹ *Id.* at 33-35.

²⁰ *Id.* at 255.

Congress on 14 February 1946.²¹ Interestingly, but not surprisingly, Clausen faced criticism before he even arrived on Capitol Hill. Some members of Congress accused him of coercing a witness to change his testimony, and one newspaper asked why the Army would “send a lowly Major all over the world to get this testimony”²² If nothing else, Clausen’s description of his testimony before Congress illustrates for today’s judge advocates how involvement with important matters can quickly thrust one into the spotlight.

Finally, for the historical purist not satisfied with reading Clausen’s summary of intelligence failures and his role in investigating them, Clausen also supplies a 157-page appendix containing raw intelligence data and some of Clausen’s more detailed findings.

III. A Legal Novel

Pearl Harbor: Final Judgment is more than just an excellent history of the communication failures that preceded Pearl Harbor and the author’s role in investigating them. It is an intriguing narrative that reads like a legal novel. Clausen once worked as an Assistant U.S. Attorney, and consciously wrote his book from the perspective of a prosecutor.

Clausen calls himself the “independent prosecutor appointed by [the] Secretary of War”²³ and crafts his story as a novelist would craft a book, but from the perspective of a courtroom lawyer. Clausen assembles the evidence surrounding the Pearl Harbor debacle as a trial attorney would assemble it before trial and then relates it as a story, presenting his case to the readers as if they were a jury. “Facts are the nails that the prosecutor uses to seal his case for the jury. So my investigation focused on what happened, how it happened and if it happened. From these facts, the reader can determine *why* Pearl Harbor happened.”²⁴

Like any good legal novelist, Clausen walks the reader through the evidence, including examples of his questioning—“What about

²¹ *Id.* at 285.

²² *Id.* at 257.

²³ *Id.* at 4.

²⁴ *Id.* at 5.

General Short? Did Layton have any contact with him?”²⁵—as well as offering insights into the mind of the trial lawyer—“Fine and dandy, I thought. Listen to what the man isn’t saying. Sometimes that’s more important than what he’s talking about.”²⁶

Clausen devotes an entire chapter²⁷ to his “jury summation,” arguing that Adm. Kimmel and LTG Short were guilty of neglecting their command duties at Pearl Harbor. He begins his argument by stating, “[I]f a case were to be made against Kimmel and Short, this is how I would have presented it.”²⁸ Clausen proceeds to explain the basic duties of Kimmel and Short, and then provides eleven specific instances of how each commander breached those duties. The chapter reads like a good trial notebook. Clausen does not stop there, however, stating that, “this can be translated into guilt that can be charged against individuals.”²⁹ The author names the guilty parties and assigns culpability to each them on a scale of one to ten.³⁰

Unlike most legal novelists, Clausen seems to direct his book toward an audience of lawyers. Clausen uses legal analogies common in civilian practice (the duty to exercise due care while driving), and examples unique to military practice (the duty of sentries to maintain a lookout). He also discusses “the proximate cause . . . for the disaster at Pearl Harbor,”³¹ which helps lawyers understand his arguments but which may be a bit much for non-lawyers to understand.

Clausen also does something else that most legal novelists do not do—he provides a historical analysis of his narrative. The foreword to the book makes it apparent that Clausen wrote this book to counter many of the conspiracy theories³² and other myths that he saw clouding the truth about Pearl Harbor. In attempting to dispel these clouds of untruth, Clausen not only relates interesting facts through telling his story, he also analyzes those facts and draws conclusions from them. This is most noticeable in his discussions of Pearl Harbor’s “proximate causes,” and

²⁵ *Id.* at 129.

²⁶ *Id.*

²⁷ *Id.* ch. 13.

²⁸ *Id.* at 229.

²⁹ *Id.* at 300.

³⁰ *Id.* at 300-09. Admiral Kimmel and Lieutenant General Short are at the top of the list with ratings of ten; the author gives President Roosevelt a five. *Id.*

³¹ *Id.* at 300.

³² *Id.* at 1.

who was responsible for them. Ultimately, Clausen wrote this book because he did not and could not write a conclusion to the 1945 report he provided to Secretary Stimson.³³ In this sense, then, Clausen's "Final Judgment" becomes the conclusion he never wrote in his report, merging the storytelling talents of a legal novelist with the analytical abilities of a historian.

IV. The Book's Limitations

One of the few drawbacks of *Pearl Harbor: Final Judgment* is the prominence of the author's ego. The influence of the co-author, Bruce Lee, is insufficient to conceal Clausen's affinity for embellishing his story and accomplishments. He begins Chapter 1 by saying, "I was born to survive calamitous events."³⁴ Although he makes this statement in the context of surviving the 1906 San Francisco earthquake as a baby, Clausen clearly also means this statement as a prelude to his story as the Pearl Harbor investigator. The reader could do without such melodrama. For the same reasons, listening to Clausen's cocky description of his congressional testimony grates on the reader during passages like, "[Senator] Ferguson became incensed. He realized I had him cold;"³⁵ "[Representative Keefe and I] went around the mulberry bush for some time on the matter, and I finally let him have it."³⁶ Clausen's condescension borders on disrespect.

Judge advocates are likely to tire of Clausen's frequent statements of his preference for civilian practice. "[I] was a civilian at heart. I didn't give two hoots in hell for a military career The Army could have my body as long as the war lasted, but it could never have my heart. That belonged to the law."³⁷ While perhaps refreshing to hear that Clausen had a successful JAG career without beating the "soldier first, lawyer always" drum, his disdain for his military career will irritate most judge advocates. Clausen also gives short shrift to the Soldier skills he fails to mention but necessarily employed during his travels throughout various theaters of operation.

³³ *Id.* at 4. Clausen states that he did not have the authority to "speak for the Secretary of War." *Id.*

³⁴ *Id.* at 21.

³⁵ *Id.* at 269.

³⁶ *Id.* at 274.

³⁷ *Id.* at 30-31.

Finally, although Clausen persuasively musters the evidence to support his conclusions, he never stops to seal any of the holes in his investigation. For instance, Clausen never interviewed Short and Kimmel and never explains why. Clausen mentions that the Navy appointed an admiral to conduct a parallel investigation, but never discusses that officer's findings or the investigation's impact on his own. Clausen never discusses, much less admits, any weaknesses in his report or in his congressional testimony. For example, although Clausen harshly criticizes those who missed war warnings in intercepted Japanese messages, he never allows for the overwhelming amount of raw data that the intelligence analysts had to sift through to find something worthwhile.

V. Lessons Learned

Despite these drawbacks, Clausen's book contains numerous lessons for military leaders. Clausen rails against the "codependence" of the Army and Navy commanders, for example, and argues that a unity of command could have helped to prevent the surprise attack.³⁸ More importantly, Clausen notes the disastrous effects of interservice rivalries, especially regarding the sharing of intelligence.³⁹ Finally, Clausen cautions against the dangers of arrogance and hubris in anyone who leads.⁴⁰ All of these lessons apply to both civilian and military leaders. They are especially important for military leaders because of the military's high stakes, as at Pearl Harbor.

VI. Conclusion

Pearl Harbor: Final Judgment is more than just fascinating reading. It is a treasure trove of valuable historical analysis and leadership lessons. Despite its shortcomings, it should be on the bookshelf of any judge advocate with an interest in the "lore of the corps." The book provides a window into the brief yet captivating career of one World War II Army lawyer.

³⁸ *Id.* at 131, 293.

³⁹ *Id.* at 221, 273, 293.

⁴⁰ *Id.* at 244-245.