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The Law of AWOL. By Alfred Avins.

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THE LAW OF AWOL, Alfred Avins. New York 3, N. Y.: Oceana Publications, 1957. Pp. 288.

Historically, AWOLism has been a major problem in military groups throughout the world. Statistics compiled during World War I and World War II however, have shown that the problem has become an increasingly more serious one for the United States military forces. Commander W. J. Ruher, Assistant Director of Personnel Analysis, Navy Department, estimates that the United States Government suffers an annual loss of over \$100,000,000 in lost time and official action as a direct result of AWOL offenses. ("Combatting AWOLism" by W. J. Ruher, JAG Journal, July 1955, p. 3). During World War I, less than half of the offenses of the United States Army were AWOLs. During World War II however, Secretary of War Robert L. Patterson stated that unauthorized absences accounted for more than half of the offenses in the Army. In the United States Navy an even more serious problem is presented by AWOLism. Although a house officer estimates that unauthorized absences account for eighty per cent of all offenses tried by Navy Courts-Martial during World War II, since only general courts-martial are referred to in these reports, it is not surprising that other reliable authorities estimate that ninety-four per cent of all Naval offenders during World War II committed AWOL. "Study of the Naval Delinquent by Questionnaire," 38 J. Crim. L. & Crim. 218 (1947). Recognizing the threat to military discipline that an offense of unauthorized absence creates, a book concerning itself with the law of AWOL is especially timely.

Mr. Alfred Avins has addressed himself to this problem and has compiled a book which purports to discuss the more important phases of the law of AWOL. The first division of three main subdivisions of the book consists of an explanation of the offense but more important, AWOL is carefully distinguished from related offenses.

For example, difficulty is often encountered when an attempt is made to distinguish the offense of AWOL from the offense of disobedience to orders. Generally, within every rule or regulation there is included a direction that the accused appear at a particular place or that he not leave a designated post. Defiance of the order in its entirety presents a situation very similar to the ordinary case of unauthorized absence and may initiate a period of AWOL. Fundamentally, the basis of disobedience of orders is a wilful defiance of authority; the basis of AWOL is absence from duty. Which of these aspects is most important must determine whether the offense charged is actually AWOL or disobedience. Viewed in connection with these other offenses, it becomes apparent that the offense of AWOL is a particular kind of dereliction of duty, a subdivision of culpable failure to perform one's duty [Art. 92(3)] created by Congress into a separate offense for convenience in prosecution.

Part II, captioned "The Prosecution's Case" sets forth the task of the prosecuting attorney faced with an alleged offense of AWOLism. Introduced by "Who Can be AWOL," each of the elements necessary to establish the offense are traced in the logical sequence necessary to establish the prosecution's case (at the outset it is noted that Article 86 is, by its terms, limited to a member of the Armed Forces). The final chapter of Part II discusses the various ways in which AWOL may be aggravated through specific intent, termination, through apprehension, absence while in combat, etc.

The third and concluding portion of the book is devoted to a discussion of the affirmative defenses which may be posed by the defense counsel. Chapters are devoted to such defenses as impossibility, ratification, condonation and mistake of fact. An especially interesting treatment is given by the author to the defense of *de minimus* derived from the common-law maxim, *de minimus non curat lex*. Since the present military law represents the culmination of a continuing military law development traceable to the English common-law, common-law maxims are equally applicable to the military law. The defense of *de minimus* can only be justified by the necessity of preventing useless and time consuming litigation from wasting time of Courts-Martial. Difficulty is encountered however when the Court seeks to determine at what point the defense of *de minimus* comes into existence. A general rule cannot be established with precision. Rather, the facts of each case must determine whether or not the offense charged is inconsequential.

Because the book is intended explicitly for the layman as well as for the lawyer, the author shows a constant awareness of the lay audience. However his tendency to explain in detail, readily understandable legal problems creates an awkward stilted style which is distracting to the reader. Where the law is difficult however, the author presents it in all of its complexity through the aid of illustrative cases. A few cases are set forth in full, others only in an abbreviated version, and a great many are merely cited to enable the student to more readily pursue a particular problem. Throughout the book, no particular format is used. In part it resembles a casebook, in others a textbook and still others a law review article.

Because of the dearth of textual material on this subject there is undoubtedly a need for a short general treatise on the law of AWOL such as Mr. Avins' book purports to be. The text which is wide in scope with a historical and theoretical background is something to which a lawyer, student or serviceman may refer for a comprehensive view of the subject. Although many may criticize the manner of presentation adopted by the author, one cannot dispute the scholarly nature of the treatise nor the fact that the text is certain to be of great service to a wide audience.

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