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Avins: The Law of AWOL

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RECENT BOOKS

THE LAW OF AWOL. By *Alfred Avins*. New York: Oceana Publications. 1957. Pp. xxxi, 288. \$4.95.

In his book, *The Law of AWOL*, Mr. Avins has tried his hand at one of the most important and pressing problems in modern military discipline. Absenteeism doubtless presented itself immediately following man's first cooperative action, and despite extensive efforts to curb the practice, it continues to be a major disciplinary problem in the Armed Services as well as a matter of the utmost importance to industry. Numerous studies have revealed that the causes of absenteeism are as varied as the instances of it. The unauthorized absences of short duration predominate. As to these, it has been stated that the underlying cause is the firmly ingrained resistance of individuals to regimentation and routine. They have also been attributed to the innate desire to roam which is said to exist in all men. Whatever the causes and the reasons there can be no doubt that the problem exists in astonishing proportions.

In the not too remote past the payday excesses involving Absence Without Leave were so extensive and commonplace in the Army that it was not unusual for unit commanders to plan on operating with a reduced force on payday and for a day or two thereafter. The practice was not condoned and there was resistance to it in the form of punishments meted out by inferior courts or perhaps by summary punishment. These normally consisted of fines, forfeiture and perhaps short periods of confinement. When the penalties were paid all was forgiven and the unit took up the slack and once more proceeded to its regular assignment with its full complement of personnel. To be sure this was in the peacetime days when specialists were few, and in general, what should be done on a certain day could be done on the succeeding one without serious inconvenience to anyone. Time was not of the essence and war came only after the expiration of various ultimatums.

Those days are gone forever. The modern "Pentomic Army" triggered for atomic war is composed largely of highly-trained specialists who function in comparatively small teams, each member being dependent upon every other member. These units must be in instant readiness to meet any situation, with the minimum of notice or even with none at all, as was the case at Pearl Harbor. To meet the changing times and methods, the Armed Services have constantly altered their planning and distribution until these factors are now in a constant state of flux. As the weapons have become more intricate, the stress has increased on education, training and, above all, reliability of individuals. It appears to be the universal view of the military experts that the skill, alertness and readiness of the military forces on the day of the attack may well determine the outcome of the next war. It is clear beyond question, therefore, that in such a

situation there is no place for absenteeism and that every effort must be directed toward eliminating it as a major disciplinary problem.

In his book Mr. Avins has directed his efforts to the punitive phase of the problem. In the introduction the author quotes Article 86 of the Uniform Code of Military Justice which denounces the offense of Absence Without Leave. He then sets forth some pungent statistics from unquestionable authorities which bring home solidly the seriousness of the problem of absenteeism in the Armed Services of the United States. He cites the Assistant Director of the Personnel Analysis Division of the Navy Bureau of Personnel as the authority for the conclusion that "AWOLism costs the Services over \$100,000,000 a year lost time and official action." He quotes Major General Enoch H. Crowder, the Judge Advocate General of the Army during World War I, as authority for the statement that slightly under one-half of the offenses in World War I were Absence Without Leave. As to World War II, Secretary of War Robert L. Patterson is quoted as authority for the statement that "Unauthorized absences accounted for more than half the Army's offenses." Again, Brigadier General James Snedeker, U.S.M.C., is cited as authority for the statement that "The volume of absence offenses was about eighty per cent of all offenses tried by naval courts-martial during World War II." The figures cited are doubtless conservative as they probably did not take into account some of the offenses tried before minor courts and probably none of those disposed of without trial. Nevertheless the figures are sufficient to point up the tremendous impact of the problem of Absence Without Leave.

In the preface, the author announces that the book was designed for a multi-purpose use, "in the law school, for the practicing attorney, for the military service school presenting a law course, for the military attorney, and for the R.O.T.C. student. But it will be perhaps most useful of all to the non-lawyer, the office administering non-judicial punishment or the summary court officer, the officer and enlisted man, who has not, or knows not how to use, the facilities of a large law library to look up points of law." This would appear to be tantamount to producing a book of general use.

The author goes on to state that "in some places the treatise resembles a case book, in others a textbook, and in still others a law review article. Some cases are set forth in full, others only in abbreviated version, and most just cited. In some places, cases have been set forth where the law is well settled, in others where it is in conflict, yet in other places well-settled law as well as conflicting decisions are referred to only by citation. In some places the author has thought that a case required no comment, or only a line of comment, while in others he has deemed it necessary to comment on the case for several pages." The foregoing statement of the author fairly describes the contents of the book.

Mr. Avins undertakes to cover the entire field of the punitive phase

of Absence Without Leave and condense it into a relatively thin volume. Basically the book is divided into three parts: The Introduction, The Prosecution's Case, and The Defence's Case. These parts are in turn broken down into chapters and sections in the usual manner. The various headings are developed by presenting extracts from or brief summations of selected cases with frequent comments from the author. As in all works of this character, the author has chosen primarily cases which in general support and further the author's own convictions. In this respect, while there are a number of well known, recent, and current cases cited and discussed, the author draws very liberally from older cases. Many foreign authorities and cases are utilized. Among these are found references to Australian, Indian, Canadian, and South African cases and authorities. The text is replete with comments of the author on the correctness of the views of the authorities cited by him. His comments sometimes take on the characteristics of advocacy rather than conclusions. When at a loss for a case to make his point, Mr. Avins resorts to hypothetical cases, which is good practice, but in this book they are sometimes unusual in text. It is the inherent right of any lawyer to disagree with the conclusions reached in any case and any view expressed by even the most respected authority. In this area it seems to me that Mr. Avins has exercised his prerogative to the fullest. Some of his views are definitely controversial but since they are sincere they are entitled to consideration. I like the candidness of this young man and I like his courage, even though I cannot go along with him in some of his views. The text indicates careful and serious research. The book is well indexed and most impressive is the Table of Authorities.

Reading this book left me with the impression that the author made a valiant attempt to encompass a very wide field and confine it to a small usable volume. That was an ambitious task especially for a young man, and all things considered he has made a timely contribution to the legal literature of the subject of Absence Without Leave. The fact that it is somewhat controversial calls to my attention again the need for a modern version of the greatest of all legal writings on military law; namely, Colonel William Winthrop's *Military Law and Precedents*. This book is a classic and will never be outmoded. However, it should be supplemented or otherwise made current. The field on this ever-changing subject is wide open and there are many scholars who are well qualified for the task who have not yet felt the urge to distinguish themselves in this manner. I know at least a half dozen such. Perhaps Mr. Avins' book will tempt some of these scholars into meeting the challenge. If it does, Mr. Avins' work will have served a purpose far beyond the intention and hopes of this young author.

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