

April 1958

## Book Review of The Law of AWOL

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### Repository Citation

Montgomery Knight Jr., *Book Review of The Law of AWOL*, 1 Wm. & Mary L. Rev. 470 (1958),  
<https://scholarship.law.wm.edu/wmlr/vol1/iss2/14>

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## BOOK REVIEW

THE LAW OF AWOL by Alfred Avins

Oceana Publications, New York 3, 1957. \$4.95

This appears to be the first book devoted exclusively to the subject of the most common Courts-Martial offense, Absence Without Leave. The book is divided into two main areas, the Prosecution's Case and the Defense's Case, and the substantive law of AWOL is adequately presented. The book is primarily historical in nature, and the author presents many old cases from various nations showing the development of the offense of AWOL; even the Articles of War of Richard II—A. D. 1385 are cited. It must be remembered, however, that AWOL is now a specific statutory offense under Article 86 of the Uniform Code of Military Justice. The author has treated some areas with more depth than would be of practical use to the military lawyer, who has enough difficulty in interpreting the decisions of the Court of Military Appeals, which was created in 1951.

There is a saying among military lawyers that not much can be done with an AWOL case. Although there are several ways to establish a prima facie case of Absence Without Leave, the usual practice is for the prosecution to introduce into evidence morning reports, showing the inception and termination of the absence, signed by the official custodian of the accused's records. These reports fall within the official records exception to the hearsay rule. Frequently the duration of the absence is established through stipulation, and in the great majority of AWOL cases, an attorney's most valuable service to the accused is in the presentation of mitigating testimony relative to the quantum of punishment. The body of law concerning morning reports and other procedural niceties of the law of AWOL are not discussed by the author, and perhaps with good reason. However, as an Air Force Judge Advocate who frequently tries AWOL cases, I find this book short on procedural information.

With respect to the Defense's case, the author discusses, *inter alia*, the defenses of impossibility, mistake of fact, illegality, ambiguity of duty, *de minimis*, and condonation. It is in this area that his best presentation is made. I wish to take issue with one contention of the author wherein he disagrees with existing law. This involves the following situations in which a member

of the armed services is arrested by civil authority and charged with a crime:

1. Soldier arrested while on leave, held over leave, acquitted.
2. Soldier arrested while on leave, held over leave, convicted.
3. Soldier arrested while AWOL, held over leave, acquitted.
4. Soldier arrested while AWOL, held over leave, convicted.

Under existing law, the accused can plead the defense of impossibility solely in situation one. The author contends that the inability of the accused to assert defense of impossibility in situations two, three, and four is both illegal and at variance with public and military policy. However, he apparently overlooks two points—bail and military necessity. The accused normally has the right to provide bail when in civil detention, and one of the purposes of AWOL is to insure the presence of personnel under trying conditions. By being arrested at a convenient time by civil authorities for a minor crime, an accused could well miss a ship or movement of troops which was headed for a perilous area. Moreover, in cases two, three, and four, the accused has caused the situation by his own wrongdoing. Although I personally disagree with the author on this point, the Defense's case is capably presented.

In view of its limited scope, I do not think that this book will be of use for the law student, the practicing attorney, or the ROTC student as the author suggests. In view of the fact that issue is taken with existing law in several places, I definitely think this book should not be used in practice by the non-lawyer (i.e., a summary court officer). Such a layman might be confused as to what the law actually is.

In summation, this book is a scholarly and historical treatise on the substantive law of AWOL which I believe to be of limited use to the military lawyer. Its primary value would appear to be as an index to the "Common Law" of AWOL, much of which would probably be of greater interest to the student of military history than the trial attorney.

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