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Book Reviews

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BOOK REVIEWS

THE LAW OF AWOL, by Alfred Avins, Oceana Publications, New York, 1957, XXXI, 288 pages, Price: \$4.95.

Among the great numbers of law books published each year, a book dealing solely with military law is comparatively rare, and even rarer is such a book concerned with but one field of substantive military law. However, Mr. Alfred Avins, member of the New York, Florida, and District of Columbia Bars, former special deputy Attorney General of New York State, and presently Instructor in Law at Rutgers University School of Law, has produced such a book, *The Law of AWOL*.

Packed into the book's 288 pages is the most definitive statement of the law of absence without leave yet to join the body of recorded military law. At first blush it seems doubtful that an entire volume could profitably be written on this single, highly specialized, subject. After reading the book, however, the reader is sure to be amazed at the variety of ramifications in the AWOL problem, its impressive historical documentation, and the intricacies and complexities of the questions of law which are a part of it.

There is little doubt that one of the thorniest problems of modern military law is to find a workable solution to absenteeism. Simple truancy is a serious problem in the peaceful communities, whether it occurs in the shop, the school, or the home. In the military services peace-time absenteeism demands an exorbitant price in manpower lost which the services can never afford. In this connection Mr. Avins notes that the U. S. Navy estimated in 1953 that "AWOLism costs the services over \$100,000,000 a year in lost time and official action." From Caesar to MacArthur the military effect of AWOL has been a consideration in the military planning at every echelon. But today, when nuclear weapons are available for employment in tactical as well as strategic roles, and when it has become possible with one shot to eliminate an entire tactically deployed battalion and to neutralize for long periods of time great portions of a battle area with unseen but deadly radioactive contamination, the problem of military absenteeism reaches its apex. Keeping troops on the line, in their extended positions, or just on the job in a rear echelon headquarters, will puzzle every military commander in the atomic era.

Mr. Avins' book, of course, does not present a cure-all for the AWOL situation. No one expects that a statement of the law on any subject would,

of itself, achieve solution. What the book does do, however, is really three-fold. First, it is a monumental collection of pertinent legal references. Second, it is a penetrating analysis of existing law. And, third, by reason of its unique organization, it is a handbook for those whose work requires frequent reference to military law.

The author deliberately designed his book for multi-purpose use, hoping to make it valuable to the law student, the practicing attorney, the military service school, the military attorney, the ROTC student, and the unit commander. Such an ambitious goal inevitably presents some organizational problems, and the result here is that the book cannot be read fleetingly or lightly, if it is to be fully comprehended. The non-lawyer is bound to be more than a little troubled by the citations and quotations from cases of such disparate sources, many of which are unusual or ancient and seldom used. The lawyer must sort out from the substantive law the heavy interlarding of administrative materials or citations from non-authoritative jurisdictions. And all readers will have to be diligent to find the statement of position of the services' Boards of Review (comparable to appellate courts) and of the United States Court of Military Appeals, the ultimate spokesmen of United States military law today.

Particularly as a collection of cases and interesting historical notes, Mr. Avins' book is superb. Probably not since the celebrated Second Edition of Colonel William Winthrop's *Military Law and Precedents*, published in 1896, has there been such a fully annotated military law book.

While students of military history as well as lawyers will find of great interest Mr. Avins' novel discussion of the legal defense of "mistake of fact of authority," that portion of his book is sure to arouse the wrath of hard-bitten traditionalists. Here Mr. Avins elaborates on the theory that in certain instances a subordinate is at liberty to disobey the superior, when, in fact, the superior is laboring under a mistake. "A material fact at the time the order is communicated or is to be executed may be so different from that which the superior envisaged that he would not want the order to be executed at all or in the way he issued it. If the inferior knows or reasonably believes this, *he is privileged to disobey or vary the order*" (emphasis added).

The book, true to its title, is preoccupied with absence without leave, but it is not restrictive in its coverage of that subject. Many other areas of law touch upon AWOL, and where they do they are brought forth by the author to stand scrutiny. For example, desertion, leave, the issuance of orders and their legality and tests therefor, and the defenses of mistake of fact and impossibility are obviously intertwined with AWOL and are considered.

In such a complete study of the subject it is important for the reader to keep in mind the perspective of *military common law development*, a phenomenon that parallels and in some respects is more pronounced than that found in civilian law. Military law is not static but is a growing, changing thing, which requires constant study and surveillance, if mastery of it is to be achieved. Mr. Avins equips the reader with the background, brings him up to date in the law's development, and sends him on his way with what is, in almost every case, a good logical guide for the future twists and turns to be taken by this law.

Mr. Avins has made a solid contribution to military legal thought. He has established a pattern that, if followed by other writers, civilians or military, cannot but assist in accelerating the rapid pace of progress in military law.

GEORGE S. PRUGH.*

MASTERS OF DECEIT—by J. Edgar Hoover. New York: Henry Holt & Co., 1957. \$5.00.

As is to be expected from J. Edgar Hoover, this work does not seek to raise the hue and cry against Communists or to harry them out of the land. Rather it is an attempt by the long-time Director of the Federal Bureau of Investigation to inform the American people of the threat which the Communist Party poses to the security of the country. In an admittedly primer form, the work sketches the history of Communism, the organization and activities of the party in this country and experiences of some people who have been associated with the party here.

Never an advocate of witch hunting, the author urges that citizens undertake the ever so much more difficult tasks of thinking through the problems posed by social, political and economic inequality, moving effectively to alleviate these problems through established governmental machinery, and evaluating the real motives of individuals and organizations which purport to offer a program of social betterment.

Mr. Hoover is concerned, that though men will die for the republic if necessary, they will avoid jury duty, service on the school board, union meetings, and fail miserably in conveying to their offspring the significance of the American way of life.

The records of the Bureau disclose that many of the people who have done the party's work in one capacity or another in this country, have been

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drawn to the party out of a need for a cause, a sense of being a part of something or a feeling of rejection by parents or family. How does a people, whose back is not to the wall, maintain a positive fighting faith which would provide the cause, fill the need and offer participation to those feeling rejected? A hard question and one which we are inclined to avoid by asserting that Communism contains the seeds of its own destruction and that by being prepared to defend, militarily, the United States and other strategic countries we have done all which need be done.

The revival of real religious spirit, and a thorough grounding in American history, government and culture is the answer suggested by this dedicated man, who has admirably performed in that difficult role of guarding a nation's security while respecting the liberties of its people.

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