the shortcomings of modern penology. It is refreshing to read a book in criminology devoted to topics other than the Oedipus complex or differential association. Legal scholars will see the implications of Vold's ideas; whether or not psychologists and sociologists will do so remains to be seen.

RAY JEFFERY*

* Department of Sociology, Arizona State College.

The Law of AWOL. By Alfred Avins. New York: Oceana Publications, 1957. Pp. 288. $4.95.

With the numerous procedural reforms instituted by the Uniform Code of Military Justice and the accompanying elimination of command control, the procedural aspects of military law have been improved to the point where "equal justice under law" is a reality, not a mere possibility, in the armed services. To ensure such justice, however, it is imperative that the substantive law be accurately and adequately stated in treatises readily available to military courts and counsel. Unfortunately, there has been a dearth of such expositions. This deficiency has been competently remedied, with respect to the law of AWOL and related offenses, by Professor Avins' book. Careful study of the book indicates that the author is not merely an ex-service lawyer bent upon finding fault with all aspects of military law. Instead, he understands the basic need for—and the delicate balance between—the necessity for discipline in the armed services and the need for exact justice for each man regardless of rank.

The results of the author's efforts to form the great diversity of military cases into logical patterns represent a major step forward in military legal thought. This is particularly true with respect to the welter of cases in which the accused was held to have had a defense to charges of being AWOL or disobedient to his orders. After the largest portion of the cases had been classified as involving impossibility, illegality or other well-recognized defenses, there remained a small number which had always defied categorization. Some, for example, were decided on the ground that a high-ranking subordinate officer had a great deal of discretion. Others were decided on the basis of the peculiar necessity of the situation, the uselessness of the order or duty, or the existence of a change in the circumstances. Each of these cases had seemed to be merely an ad hoc decision. Professor Avins, however, has found a common denominator in all of them: a mistake by the officer in charge regarding the facts surrounding the order.

In addition to forming the various groups of cases on the law of AWOL into rational patterns, the author has carefully analyzed the reasons underlying particular aspects of that law. A good example is the section on fault. Professor Avins has classified fault into the three categories of intention, recklessness and negligence. He has then taken up the difficult question of why, although a

finding of fault is a necessary element of the offense of going AWOL, the prosecution is not required to prove the existence of that element. Professor Avins' final conclusion, that fault is presumed—and the coining for that inference of the phrase *causa ipsa loquitur* (analogous to *res ipsa loquitur*)—breaks new ground in the intellectual problems of military law.

Professor Avins has also given an intriguing analysis of several of the defenses to the charge of being AWOL. For example, he divides the traditional defense of impossibility into two branches: physical impossibility, which he considers to be an absolute inability to perform the act required, and relative impossibility, which is an inability to perform the act required without incurring the risk of an undesirable result. The latter, it would seem, is based not so much on sheer lack of ability to accomplish the order as it is on a value judgment as to whether the performance of the duty is more important than running the risk of the undesired occurrence. Since a value judgment is probably an element in most cases in which the defense of impossibility is raised, it would seem that the author is correct in diagnosing that defense as in most cases one of relative, rather than phyical, impossibility. It would appear, then, that the defense of impossibility is not only a negative factor in the law of AWOL—an excuse for a duty not performed—but also a positive factor which, while serving as a defense for the accused, at the same time tends to advance military policy by serving as an adjustment medium for the importance of various duties *vis-a-vis* facts bearing on their performance.

Professor Avins has also analyzed the defense of conflict of orders so as to demonstrate its dual role as a defense to AWOL and as an adjustment medium. Duties imposed by orders are, of course, of different importance: some are more urgent or necessary than others. The defense on the part of an accused that he could not perform one duty because he had to execute another order of paramount importance serves not merely as a defense to the particular accused; it serves also to arrange duties in a hierarchical order of importance. Thus the defense assures the execution of the most important duties first. Professor Avins ranks the importance of orders solely in terms of the rank of the person giving the order. This approach is in accordance with traditional military law, but the ends of military policy may sometimes be served by a more flexible approach. The underlying policy considerations will at such times be similar to those of mistake of fact of authority and that defense will reinforce the one based on conflict of orders.

The reader should not conclude from the foregoing part of this review that Professor Avins has confined his book solely to the defenses to a charge of being AWOL. A major portion of the book is devoted to the prosecution's case. The usefulness of the book would have been increased by the addition of a section on desertion. The reviewer believes that a clarification of what constitutes a "prolonged" absence would be extremely helpful, particularly since the United

States Court of Military Appeals has just overturned the long-standing rule that a "prolonged" absence is sufficient to prove an intention to desert.[1]

The reviewer believes that Mr. Avins' book is a substantial contribution to the literature of military justice and that it should be read not only by the armed services but also by those civilians who are interested in understanding military law.

BERNARD S. BARRON*

[1] United States v. Cothern, 8 U.S.C.M.A. 158, 23 C.M.R. 382 (1957).

* Brigadier General, U.S. Marine Corps Reserve; Member of the New York Bar.

The Labor Policy of the Free Society. By Sylvester Petro. New York: The Ronald Press Company, 1957. Pp. x, 339. $5.

This is a hard-hitting, provocative book, one that will arouse its share of controversy. The author, a professor of law at New York University, believes that the union movement is built upon coercion; that unions are typically lawless in behavior and anti-social in effect; that the history of labor relations law for the past generation has been "tortured, frustrated, destructive, chaotic, senseless" (p. 282); and that its present state is characterized by "deviousness and an unutterable confusion" (p. 281). Petro clearly is given to the use of unambiguous language, and he does not spare the feelings of labor leaders, Supreme Court justices, President Truman, members of Congress, or others with whom he disagrees. Most works written from such an extremist point of view and with such sharpness of language do not merit serious attention. This is not the case, however, with Petro's work, which presents a carefully worked out argument buttressed with references to large numbers of cases and to many scholarly works. This book should be read carefully, particularly by those who disagree with the author's value orientation and who dissent most sharply from his policy conclusions.

The author starts with the free, competitive market and the rights of private property and freedom of contract. By strict adherence to these rights and principles, he believes, the free society can be built, with freedom, well-being, and security assured. Government intervention, by way of contrast, destroys all personal freedoms it can reach, reduces net social productivity, and leads to totalitarianism (pp. 29, 56, 61). Consequently, he would abolish every form of intervention by the state, restricting its function to that of keeping the peace—domestic tranquility, defense, and justice. With the conditions of peace and freedom thus established, the function of advancing the interests of the citizens is best left to them, acting individually or in voluntary associations. The sole restrictions are that they may not invade the property rights of others, that they must avoid violent, coercive, or fraudulent conduct.

In keeping with this thesis, Petro would retrace every step of intervention