

Draft Protester Gets a 5-Year Term

By WILLIAM E. FARRELL
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HARTFORD, April 1—David H. Mitchell 3d, a 23-year-old Brooklyn resident who refused to report for induction into the armed forces because he felt the United States was committing war crimes in Vietnam, was sentenced today to up to five years in Federal prison.

The conviction was Mitchell's second in United States District Court on the charge. The earlier conviction, which also carried a sentence of up to five years, was reversed last January by the United States Court of Appeals for the Second Circuit on the ground that Mitchell had been deprived of enough time to obtain effective counsel of his own choosing.

Mitchell's lawyer, Mark Lane, a former attorney for Mrs. Marguerite Oswald, mother of President Kennedy's assassin, said a new appeal would be made, probably on Monday. Mitchell was continued on a \$5,000 bail bond that dates to his first trial last September.

A jury deliberated only 12 minutes last March 16 before unanimously finding Mitchell, a slender, soft-spoken clerk in a Greenwich Village bookstore, guilty of "knowingly and willfully" failing to report for the draft.

Ex-Resident of New Canaan

The case was tried in Connecticut because at the time he registered for the draft, Mitchell was a resident of New Canaan. He now lives at 150 Crown Street in Brooklyn.

At today's hearing Miller, wearing a sports jacket, dark pants, white shirt and red tie, stood before Judge T. Emmet Clarie and read from a yellow legal pad that contained handwritten notes.

Mitchell, who says he is not a pacifist and refused to seek to be excused from the draft as a conscientious objector, repeated his charge that the United States was committing war crimes in violation of international treaties, particularly the Nuremberg judgments.

"For four years I have challenged and pursued the United States Government," he said. "I raise the principles we voiced at the Nuremberg trials."

The trials in Nuremberg, Germany, tried Nazis charged with war crimes.

"This court has removed the possibility of invoking the law against the United States" by stating that it was "irrelevant to the case," Mitchell declared.



Associated Press Wirephoto
David H. Mitchell 3d after he was sentenced yesterday.

He added that the court was acting in accord with a government that was "morally bankrupt and criminally liable."

Motion Ruled Immaterial

At the March trial, motions to produce testimony charging American violations of international treaties as well as motions to introduce witnesses to testify on alleged American atrocities in Vietnam were ruled immaterial by Judge Clarie.

"This court has wiped the slate of history and legality clean of all the principles by which we tried the Germans," Mitchell told Judge Clarie, who occasionally leafed through a dossier containing information on Mitchell's background.

When Mitchell finished his statement, the silver-haired judge cleared his throat, peered over his dark framed glasses and said impassively:

"It is difficult for the court to rationalize the defendant's reference to morality and virtue to justify his position in the light of certain things in the report of the probation officer."

The report, the judge went on, stated that Mitchell was "an agnostic who doesn't believe in a supreme being" and that he had lived with a woman in a "common law relationship" for two years.

Mitchell's remarks, the judge said, his voice rising slightly,

would almost make one believe "that there was nothing good about the United States of America."

He continued:

"People come in here with tears in their eyes and take the oath of allegiance to the United States. They swear to bear arms without qualification.

"They realize they live in a democracy, in a society where there must be organization and order."

Lane's Effort Rejected

Mr. Lane unsuccessfully moved to strike from the record comments by Judge Clarie that Mr. Lane said implied that agnostics had a doubtful sense of morality.

The attorney said:

"I believe that those who take an oath to bear arms without any qualification have participated in the ultimate sin."

In pronouncing sentence, Judge Clarie said that Mitchell should not be eligible for parole until he had served in prison "the minimum time of any inductee into the armed forces." He said the sentence should be served in a prison outside of Connecticut and New York.

Near the end of the hearing, two spectators who reportedly sympathized with Mitchell rose and asked for permission to speak. Judge Clarie threatened to hold them in contempt of court if they persisted.

The two, Prof. Henry Grattan, an English professor at the University of Hartford, and Mrs. Mary A. Pallotti of Hartford, sat down. Judge Clarie then adjourned the court and left for his chambers, banging the door behind him.