

DEFENSE BASED ON NUREMBERG

Mitchell convicted again in draft case, will appeal

DAVID MITCHELL has been convicted a second time. The 23-year-old objector to the draft will be sentenced in about two weeks for refusing to report for induction into the armed forces—an offense that could be punished by a five-year prison term. His attorney, Mark Lane, intends to appeal.

A federal jury in Hartford deliberated for only 12 minutes March 16 in returning the verdict after having been instructed by Judge T. Emmett Clarie to disregard the main point of Mitchell's defense—that the U.S. is guilty of war crimes in Vietnam. Earlier Clarie refused to permit the two defense witnesses to address the jury of nine men and three women.

Mitchell, a bookstore worker from Brooklyn, informed his Connecticut draft board soon after he became 18 that he refused to cooperate with the Selective Service System. Brought to trial last September, he was convicted and sentenced to up to five years in prison. In January a three-judge appeals board reversed the decision, implicitly rebuking the first judge for not permitting Mitchell to develop his defense around the contention that the U.S. is guilty of domestic and international crimes in prosecuting the war in Vietnam.

MITCHELL CONTENDS that he would be "guilty of complicity" in wars of aggression and "acts of inhumanity" if he served in the U.S. Army. He bases his defense in part on the Nuremberg trial decision that, in his words, it was "the clear responsibility of the individual to refuse when his government orders him to aid and abet crimes against peace and humanity."

At the second trial, which lasted two days, Mitchell was allowed to state his case, but witnesses and documents to substantiate him were ruled irrelevant.

Among the witnesses was Staughton Lynd, a Yale professor who recently made an "unauthorized" trip to North Vietnam and who was prepared to testify about American atrocities he said he witnessed. Another was Ralph Schoenman, an American living in London, who is personal secretary to Bertrand Russell and is active in Russell's Peace Foundation. Schoenman recently visited North Vietnam.

The judge also ruled against a statement given in North Vietnam to Schoenman after he interviewed a captured U.S.



DAVID MITCHELL (R) WITH HIS LAWYER, MARK LANE
At Hartford, Conn., federal building for second trial

"Now, I feel very strongly because of the deep love and affection I have for my country. I feel very strongly we are involved in a situation in which we have no business and I believe I understand how we became involved."

Coffee acknowledged in the statement that American pilots have bombed such non-military targets as hospitals, schools and churches.

SCHOENMAN SAID the North Vietnamese government was willing to release Coffee in order for him to testify at the trial.

Judge Clarie rejected this request as well as a motion to subpoena draft director Lewis Hershey and an unidentified U.S. marine now in Vietnam who, the defense said, was prepared to testify that American servicemen have committed atrocities.

The judge previously refused to allow Lane to take depositions from American newsmen in Vietnam, North Vietnamese officials and a French scholar who has been to Vietnam.

Judge Clarie's conduct of the trial.