

DRAFT CONVICTION IS APPEALED HERE

Judge Fears 'Anarchy' if All
Evaders Get Jury Trials

A Federal judge said yesterday it would be "anarchy" if every draft evader demanded and received a jury trial in an attempt to avoid service in the armed forces.

The statement was made by J. Edward Lumbard, Chief Judge of the United States Courts of Appeals for the Second Circuit, in the case of David Henry Mitchell 3d, Brown University dropout who is now a clerk in a book store in Manhattan and lives in Brooklyn.

Mr. Mitchell is appealing a fine of \$5,000 and a sentence of up to five years for "willfully and knowingly failing to report for induction into the armed forces of the United States."

Mr. Mitchell, 23 years old, is free on \$5,000 bail. He marched briefly with nearly 100 pickets outside the Federal Courthouse in Foley Square yesterday for the benefit of press photographers and then joined his lawyer, Mark Lane, on the 19th floor of the building.

The case was argued yesterday by Mr. Lane and Jon O. Newman, United States Attorney for the District of Connecticut.

On the bench besides Judge Lumbard were Senior Judge Harold R. Medina, who is in retirement but sits occasionally, and Judge Irving R. Kaufman, who had passed the death sentence on Julius and Ethel Rosenberg at their trial for atomic espionage.

New Trial Asked

"We ask that the case be sent back for a new trial on the ground that evidence was excluded in the last case," Mr. Lane said yesterday in the Miller appeal, "and that a jury be permitted to hear evidence regarding the treaty obligations of this country and the manner in which they are being violated in Vietnam."

He said the United States District Court in Hartford had ruled that treaties approved by the Federal Government had no place in an American court in this case. Thus, Mr. Lane said, the Federal Government was asking the defendant "to violate treaties."

It was at this point that the presiding judge said that it would be "anarchy" to give a jury trial to every person seeking to evade the draft.

Treaty Violation Charged

prepared, if necessary, to carry the case to the United States Supreme Court.

Mr. Lane said the defendant's position was that the war in Vietnam violated a number of treaties, and that the use of "chemicals and gas" was contrary to international law and the findings at the Nuremberg trial.

Thus, Mr. Lane said, the defendant's service in the armed forces would make him "a war criminal."

Mr. Newman countered that the defendant had not reported for a physical examination to see if he was physically and mentally fit for service and that, in addition, he had no way of knowing whether, if accepted into the service, he would be sent to Vietnam, Germany or be kept in this country.

The defendant, who is not a draft-card burner, failed to report to his draft board in Norwalk, Conn. He formerly lived in New Canaan, Conn.

He was fined and sentenced to prison in September, 1965, appealed on the ground he needed new counsel, was granted a new trial last Jan. 13, was convicted again after a trial in Hartford last March 15 and 16 and again appealed. This the the action heard yesterday.

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The conviction of David Henry Mitchell 3d for willful failure to report for draft induction was unanimously upheld yesterday by the United States Court of Appeals for the Second Circuit.

Mitchell contended that the Selective Service System was an adjunct of unlawful military action by the United States in Vietnam.

Mitchell, 24 years old, of 150 Crown Street, failed to report for introduction on Jan. 11, 1965, in Connecticut where he was registered. He was convicted by a jury in that state and sentenced to five years in prison.

At his trial last March Mitchell testified that he had not reported for induction because he felt this country's war effort in Vietnam was unlawful.