The Case of David Mitchell Versus The United States

by CONRAD J. LYNN

David H. Mitchell is a young man charged, and now convicted, in Federal Court with failing to report for induction into the armed forces. Refusing to cooperate with the system by becoming an officially recognized conscientious objector, Mitchell decided to turn the court proceedings into an indictment of his accusers, the United States government. Hence, in a profound sense, this was a case of Mitchell versus the United States rather than vice versa. In his brief on behalf of Mitchell, the noted civil libertarian lawyer Conrad Lynn presented an indictment of the United States government on moral, political, legal, and constitutional grounds in the course of defending Mitchell's refusal to make himself part of a war and a foreign policy which he abhors.

David Mitchell was convicted and sentenced to a prison term of eighteen months to five years plus a $5,000 fine; the case is up for appeal, although for various reasons it appears that the appeal will rest on narrower grounds than does the brief.

The essence of Conrad Lynn's brief for Mitchell, omitting some technical legal points, follows below.

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In 1961, shortly after his eighteenth birthday, David H. Mitchell 3rd, the defendant, then a student at Brown University and a resident of New Canaan, Connecticut, registered under the Universal Military Training and Service Act. However, the defendant's subsequent

developing consciousness of world events resulted in his active protest against the military posture of the United States government. In August 1961, his local board, number 17 in Connecticut, sent him a Classification Questionnaire. Because the defendant was involved in an act of civil disobedience in protest against the construction and deployment of nuclear-armed Polaris submarines, he did not know of this Questionnaire until his release from jail. After considerable reflection, he decided that, for political and moral reasons, he must disaffiliate himself from the conscription system and, as reply to the Questionnaire, so notified local board 17 by letter of October 8, 1961.

The local board responded by sending: 1) a Delinquency Notice (dated October 10, 1961) for failure to return the Questionnaire; 2) a Notice of Classification; 3) a letter (dated October 17, 1961) advising that a "registrant's classification depends upon information supplied by the registrant." Reiterating his disaffiliation, defendant sent a Statement of Selective Service Disaffiliation together with a three-page letter elaborating his reasons, both dated December 3, 1961. There was no response to the defendant from any part of the Selective Service System subsequently. More than two years were to elapse before the Selective Service System was again to contact the defendant.

During that time, the defendant actively maintained his opposition to the draft by helping to initiate and by participating in the End The Draft committee. In its initiating statement, of which the defendant is a signatory, End The Draft states, in part:

> "In the tradition of Thoreau and the principles of Individual Guilt and Individual Responsibility established in the Nuremberg trials and in the first session of the United Nations, we assert the right and obligation of the individual to protest and dissociate himself from these criminal preparations."

The Delinquency Notice for failure to return the Classification Questionnaire was not rescinded nor acted upon nor again referred to by the Selective Service System.

The next correspondence from local board 17, a

Current Information Questionnaire, was dated January 31, 1964. Use of the questionnaire apparently meant that the defendant's classification was being considered anew although such was not stated. An accompanying notice listed verifying certificates required in areas in which deferment rights are granted. The defendant replied in letter of February 10, 1964 that his position was unchanged. He stated, in part:

> "I realize that I could employ means to gain exemption from induction, but this does not interest me. My purpose is not to be classified quietly within the draft system, but rather to oppose the draft. While classification might suit some sort of individual 'convenience,' my acceptance of classification would be a negation of my social responsibility.
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> "I oppose the draft, not as something wrong for just me or wrong for only certain people, but as something wrong for the peace and survival of the world. Selective Service is the criminal in this case as can be judged by American militarism throughout the world--from Cuba to Panama to South Vietnam and by our basing of policies on nuclear war. I refuse to cooperate in any way which would support the continuance of such activities. I certainly wouldn't have worked in a Nazi concentration camp just because I would not have to tend the ovens or the gas but could be a guard or a clerk. Rather, as I am doing with the draft and the militarism it contributes to, I would have dissociated from such wrong and worked against it."

In addition, he enclosed the Statement of End The Draft for the Senate Armed Services Committee, dated March 12, 1963, in which they "urge(d) this committee to recommend that the draft extension bill be defeated and, thereby, to accept its responsibility in approaching world peace and the survival of the human race." The defendant received no reply.

Almost two months later, however, he received Order (dated April 2, 1964) to Report for Armed Forces Physical Examination (scheduled for April 28, 1964). True to his position, he did not report. Then, by

Delinquency Notice of May 4, 1964, he was declared delinquent for failure to report. As with the previous Delinquency Notice, the Selective Service System did not pursue a resolution of the matter in the courts. However, unlike the prior situation, the local board now persisted. By induction order of May 18, 1964, the defendant was ordered to report for induction on June 10, 1964.

The defendant responded by writing an article entitled "Challenge The Draft" and sending a copy of same, as it appeared in downdraft, Vol. I, No. 3, May 1964, to local board 17. His lawyer notified the local board of his retention as counsel for defendant by End The Draft. On June 10, 1964, the defendant did not report for induction.

However, the government did not prosecute. By letter of August 18, 1964, local board 17 notified defendant that his May 4th, 1964 "delinquency status was removed," his "classification reopened and considered anew," and, hence, prepared for a third cycle of attempts to have the defendant acquiesce to selective service procedures.

Bypassing the use of questionnaires, local board 17 sent another Order (dated September 25, 1964) to Report for Armed Forces Physical Examination (scheduled for October 21, 1964). Refusal of defendant to report resulted in a Notice of Delinquency, dated November 10, 1964, which cites November 10, 1964 as the date the defendant became delinquent. There followed an exchange of correspondence between the defendant and local board 17 in which the defendant sought to clarify the sequence of events and in which he bade the local board attend to his counsel's request for copies of all material sent defendant. The local board referred defendant's correspondence to State Headquarters of the Selective Service System in Connecticut. The content of the exchange escalated also as the defendant learned of discrepancies of which he had not otherwise been notified; the defendant challenged the Selective Service System for infringements on his right of defense.

In the midst of this exchange, the local board again sent defendant an Order (dated December 14, 1964)

to Report for Induction (scheduled for January 11, 1965). Defendant's firm position of individual responsibility against his government's crimes against peace, its crimes against humanity, and its war crimes, again prevented him from obeying this order. His refusal to obey this order is the basis of this indictment. Pursuant to Rule 12 of the Federal Rules of Criminal Procedure, the defendant moves to dismiss.

POINT I

The draft call is constitutionally invalid.

Justification for the draft call cannot simply be found in the text of the Universal Military Training and Service Act. Unless that act conforms to the supreme law of the land it is of no force and effect. Marbury v. Madison, 5 U. S. 137.

While the defendant consistently maintains that it is macabre understatement to characterize murders and atrocities as unconstitutional-he submits that the draft call is in violation of treaties by which the United States is bound. It is also in violation of the peaceful intent of the Constitution:

> ". . . the genius and character of our institutions are peaceful and the power to declare war was not conferred upon Congress for the purpose of aggression or aggrandizement, but to enable the general government to vindicate by arms, if it should become necessary, its own rights and the rights of its citizens." Fleming et al. v. Page, 9 How. 603.

This conscription act has been upheld as within the power of Congress in Gara v. United States, 340 U. S. 857 (1950), by an equally divided court. It must not be overlooked that this decision was made at the beginning of the Korean War. The decision was rendered October 23, 1950. The Korean War began June 25, 1950. It is inconceivable that the court would have divided evenly unless it was troubled by the fact that Congress had not exercised its responsibility to declare war. U. S. Constitution, Article I, Section 8, Clause 11. The justification for bypassing the cited provision was the contention that the security of the United States was placed in desperate peril by the alleged aggression

of a Communist power, North Korea, against South Korea. However, the United States had occupied South Korea on September 8, 1945 with an army under the command of General John R. Hodges. Prior thereto and after the Japanese surrender in August, 1945, the Korean people by democratic methods set up a provisional government for the whole of Korea. The United States military government proceeded to break up this government and ordered that it be disbanded in South Korea. It was unable to enforce its will in the northern part of Korea in 1945 because troops of the Soviet Union supported the government of Northern Korea.

> "The United States Military Government seized all the former Japanese state and privately owned properties and enterprises constituting the bulk of the wealth of that area. . . This seizure and retention of the bulk of the wealth of the country prevented the rehabilitation of the Korean economy. "The acts of the United States in regard to Korea were in violation of the assurances contained in the Cairo and Potsdam Declarations. They were also in violation of the third Clause of the Atlantic Charter by which the United States assured the people of the world, including the people of Korea, that after the war it would respect the right of all people to choose the form of government under which they would live." Answer, U. S. v Farmer, U. S. District Court, Middle Dist. of Tenn. Civil Action No. 2203 (1956)."

The 1950 Korean action was a direct outgrowth of the announced decision of President Truman (The Truman Doctrine, March 12, 1947) to block by force any revolution anywhere in the world which the United States Government did not like. (See D. F. Fleming, "Cold War and Its Origins," pp. 446-7.) This country was established by armed revolution. The government of France openly supported the American Revolution with its troops and navy. Historically peoples have won their independence throughout the world by armed revolt. The doctrine that the United States executive seeks now to impose upon the world would brand as enemies of civilization those British and other European intellectuals who came to the aid of the Greeks in their fight for independence against the

Turks in the beginning of the 19th Century. It would condemn to moral obloquy the volunteers who came to the aid of the Spanish Republic when it was being crushed by the twin fascisms of Italy and Germany in the prelude of the Second World War.

The Cold War Doctrine of every President since Truman - the practice of armed unilateral intervention at the whim of the chief executive - has effectively nullified the constitutional provision reserving the power to declare war in the elected congressional representatives of the people. The barbarous war being waged now by the United States forces in Vietnam and the bloody intervention in Santo Domingo are only the latest examples of this legally and morally indefensible policy.

The Selective Service System has become the chief instrument for enabling the government to maintain huge armed forces in being for the implementation of its Cold War practices. It is true that a minority of the men in service are draftees. But the threat of conscription makes many men volunteer in order to complete a term of military service and thus no longer to be eligible for drafting.

> "The blackmail aspects of the draft were bluntly admitted during the 1959 House Armed Services Committee hearings by Assistant Secretary of Defense Charles G. Finucane who stressed the value of the draft as a threat in encouraging enlistments. . .
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> "We are criminal when we dominate or threaten to dominate small nations, both in terms of the people's right to self-determination (e.g. Cuba, South Vietnam) and in terms of the possibility of guerrilla aggression escalating into nuclear war. "The draft is a basic support for such criminality. It forces our country's people to accept war as a sane, normal function of world relations by making national policy of the military subjugation of our young men and by conditioning them, in the services to the cold war. It allows government manipulation of world tensions by the arbitrary interruption of civilian lives and arbitrary increases in the size of the draft (e.g. President

Kennedy's sudden draft increase during the Berlin crisis). It is used to give our economy the easy war-preparations way out by turning unemployed youth into soldiers, selecting, equipping, feeding, training, housing them--treating youth as so much grist for the war preparations mill. . ." Statement of End The Draft Committee, "Extension of the Draft and Related Authorities," H. R. 2438 (S. 846), March 12, 1963, pages 72, 73.

By refusing to obey the order for induction from his local draft board David Mitchell acts in the highest tradition of the responsible citizen of a democracy. He is prepared to risk his freedom and his future in an effort to halt the criminal course of the government. He summons all other citizens to join in this life-and-death struggle.

POINT II

The individual must dissociate himself from the war crimes of his government.

The defendant's fundamental concern is with the nature of the summons to military service. The defendant holds that the draft board, as an agent of the United States government, has no right to order him to take up arms and fight in the unjust wars in which this country is now engaged. He realizes that there are a variety of "acceptable" methods for him to get out of serving. But he feels that, while these may serve his convenience, they would not serve his conscience. Instead of neglecting his individual responsibility, the defendant refuses to cooperate with his government's militarism, and he raises a fundamental challenge to United States policies.

The defendant raises the parallel of Hitler's Germany where the Germans submitted to the call for law and order and neglected to take a stand on the criminal content the laws protected. He insists that empty law is the arsenal of criminal rationalization-and that if anything makes law meaningful instead of empty, it is the subordination of law to truth. The defendant reminds the court of that great movie, "Judgment at Nuremberg," in which the criminals on trial were

judges who had administered laws devoid of all morality, laws which built a protecting shell of technicalities around Nazi crimes. The defendant wonders how convincing he would have been in Germany.

The defendant can cite a history of unjust American laws-from pre-revolutionary American laws through laws of slavery to today's laws which perpetuate the brutalization and oppression of the Negro people and drive the American Indians from their culture and land in a continuing policy of genocide. He asserts that he will have no part in any of this.

While the defendant maintains a selective position toward legality, he maintains a moral position that is uncompromising. As he reminded his draft board by letter of December 3, 1961, he now reminds this court of the words of Henry David Thoreau, who refused to pay taxes for the Mexican War: "It is not desirable to cultivate a respect for the law, so much as for the right."

The defendant holds that the United States stands accused before the world on the very principles which it promulgated in the fight against and in the punishment of fascism. Unlike the non-conscience of the German people under Hitler, the defendant is remaining responsible to moral principles and the principle of individual guilt and responsibility. The defendant maintains that the government has no right to compel him to goose-step to U. S. crimes.

POINT III

The United States is committing crimes against peace.

The accused here is convinced that the United States government, its President, its military chiefs, its Secretary of Defense, its Secretary of State, its chief of the C. I. A. and its chief of the U. S. I. A., have been and are engaged in violations of international law and in war crimes deeply offensive to mankind generally and, in justice, should be brought to trial.

The conduct of the United States in Vietnam is a

prime case in point. After the Japanese were expelled from the Indo-Chinese peninsula during the Second World War, the French were reinstated in their former colonies with the help of the United States. Ho Chi Minh, leader of the nationalist Vietnamese forces, began a struggle for independence. The French entered into an agreement with the nationalists recognizing their right to territorial integrity which they broke almost as soon as made. The nationalist forces immediately embarked on a long, bitter, bloody fight for independence. The United States government supported the French with billions of dollars in the form of material supplies, war equipment and money. Finally, at Dien Bien Phu, the French were disastrously defeated. Some of their American supporters had recommended the use of the atom bomb as a last desperate expedient, but some semblance of sanity prevailed and the world survived. The French signed a treaty with the Democratic Republic of Vietnam on July 20, 1954. On July 21, 1954, this treaty was endorsed by a declaration of the Geneva Conference consisting of the representatives of Cambodia, the Republic of Vietnam, France, Laos, Communist China, the USSR, the United Kingdom and the United States. At the last moment the United States representative refused to sign. However, he appended a statement for his government at the end of the Final Declaration of Geneva Conference which reads, in part, as follows:

> "The Government of the United States being resolved to devote its efforts to the strengthening of peace in accordance with the principles and purposes of the United Nations takes note of the agreements concluded at Geneva on July 20 and 21, 1954. . . declares with regard to the aforesaid agreements and paragraphs that (i) it will refrain from the threat or the use of force to disturb them, in accordance with Article 2 (4) of the Charter of the United Nations dealing with the obligations of members to refrain in their international relations from the threat or use of force; and (ii) it would view any renewal of the aggression in violation of the aforesaid agreements with grave concern and as seriously threatening international peace and security. . .
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> "In the case of nations now divided against their

will, we shall continue to seek to achieve unity through free elections supervised by the United Nations to insure that they are conducted fairly." From full text in "The Minority of One," June 1965, Vol. VII, No. 6 (67), pages 21-25.

Article I of the Geneva Agreement fixed a "provisional military demarcation line" roughly at the 17th parallel, north of which the Peoples Army of Viet-Nam would withdraw and south of it the forces of the French Union. The major purpose was to allow for the orderly withdrawal of the French Army from the Indo-Chinese peninsula. Neither in the Agreement itself or in the Appended Statement of the United States was there any contemplation of a separate nation of South Vietnam. On the contrary, Article 14 of the Agreement states:

"(a) Pending the general elections which will bring about the unification of Viet-Nam, the conduct of civil administration in each regrouping zone shall be in the hands of the party whose forces are to be regrouped there in virtue of the present Agreement."

In fact, the Geneva Conference explicitly programmed general elections for July 1956 to ensure peace and the free expression of national will.

"6. The Conference recognizes that the essential purpose of the agreement relating to Viet-Nam is to settle military questions with a view to ending hostilities and that the military demarcation line is provisional and should not in any way be interpreted as constituting a political or territorial boundary. The Conference expresses its conviction that the execution of the provisions set out in the present declaration and in the agreement on the cessation of hostilities creates the necessary basis for the achievement in the near future of a political settlement in Viet-Nam.

"7. The Conference declares that, so far as Viet-Nam is concerned, the settlement of political problems, effected on the basis of respect for the principles of independence, unity and territorial integrity, shall permit the Viet-Namese people to enjoy the fundamental freedoms, guaranteed by

democratic institutions established as a result of free general elections by secret ballot. In order to ensure that sufficient progress in the restoration of peace has been made, and that all the necessary conditions obtain for free expression of the national will, general elections shall be held in July 1956, under the supervision of an international commission composed of representatives of the Member States of the International Supervisory Commission, referred to in the agreement on the cessation of hostilities. Consultations will be held on this subject between the competent representative authorities of the two zones from 20 July 1955 onwards." Final Declaration with regard to Geneva Agreement, from full text in "The Minority of One," supra.

The subsequent history of United States involvement in Viet-Nam has been one of continual and ever-broadening violation of the 1954 Geneva Agreement, as well as other commitments to international law (Kellogg-Briand Pact, Atlantic Charter, U. N. Charter). By attempting to impose upon the Viet-Namese a permanent division of their country, the U. S. embarked on a policy of contempt for the principles of independence, unity and territorial integrity. The United States set up SEATO and placed South Viet-Nam under its "protective cover," although South Viet-Nam was not a separate state and was prohibited by the Geneva Agreement from such alliances. With the French we had attempted to bolster the exiled Emperor, Bao Dai, but failing there, the C. I. A. groomed Diem as the next puppet dictator. Diem was supplied with funds and aid from the U. S. as he assumed authoritarian control and refused consultations on elections to unify the whole of Viet-Nam. That the U. S. did not want general elections to ascertain the people's will in Viet-Nam - for fear that ". . . possibly 80% of the population would have voted for Ho Chi Minh" - is admitted by the then President Eisenhower in his book "Mandate for Change."

The determination of successive United States governments to frustrate the will of the Viet-Namese people lies at the heart of all the illegal actions of our governing authorities since that period. In Viet-

Nam, the government is attempting to subjugate by force a people which has been fighting for independence for more than twenty years against Japan, France and now the United States. As with its previous interventions in China, Korea, the 1954 overthrow of the Guatemala government, etc., the U. S. is acting in the face of the same internal aspirations that it had to admit existed after its failure to dominate the Chinese people:

> "The unfortunate but inescapable fact is that the ominous result of the civil war in China was beyond the control of the United States. Nothing that this country did or could have done within the reasonable limits of its capabilities could have changed that result; nothing that was left undone by this country has contributed to it. It was the product of internal Chinese forces, forces, which this country tried to influence but could not." State Department White Paper on Relations With China, July 30, 1949, page 402.

After the blockage of 1956 elections to reunify Viet-Nam, the U. S. backed Ngo Dinh Diem in his repression of dissidents by what are commonly referred to as "manhunts" throughout South Viet-Nam. As resistance to Diem formed, the U. S. increased its intervention with what were first called "American advisers," who aided in a program of "pacification" of South Viet-Nam by bombing and burning villages and crops, and placing the population in concentration camps. Diem was finally executed by his own followers, and since then South Viet-Nam has gone through no less than ten governments as the U. S. scurries to give some appearance of legality to its open aggression. Even in the face of student and Buddhist protests within the city of Saigon itself during the last two years the United States has increased its intervention by committing to open combat upwards of 150,000 U. S. troops and massive bombing of both the southern and northern parts of Viet-Nam and areas of Laos.

All of this is prohibited by Geneva Agreement prohibitions against the introduction of fresh troops, military personnel, arms and munitions and military bases, specifically emphasizing any ". . . military bases under the control of a foreign state. . ." As if the facts were not enough to show American policy

as the reimplementation of Nazi Germany's policies of world domination by force, the words of our ruler give emphasis. Johnson stated to American students in February 1965 that he "would like to see them develop as much fanaticism about the U. S. political system as young nazis did about their system during the war." (N. Y. Times, February 6, 1965.) And the latest U. S. imposed rulers in South Viet-Nam give loud voice to such advice by act and word. The newest head of the government in Saigon, Ky, stated, when asked who his heroes were, "I have only one-Hitler." (London Daily Mirror, July 4, 1965. Also see London Sunday Times, January 10, 1965.)

The United States stands nakedly revealed as an imperialist power determined to maintain, at whatever cost, a colonialist outpost on the mainland of Asia. It is clearly guilty, as defined by the Charter of the International Military Charter at Nuremberg, of crimes against peace for ". . . planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances. . ." The obviously immoral and illegal position of this government is emphasized by its refusal to submit the controversy to the United Nations.

Nor is the role of the U. S. in Viet-Nam an isolated example of government-ordered crimes against peace. The sudden dispatch of more than 20,000 marines to the tiny nation of the Dominican Republic this spring demonstrated again the utter contempt our present government has for international law and its own solemn word. This action is reminiscent of the U. S.-sponsored invasion of Cuba in April 1961. Our gunboat diplomacy has long been a loathsome familiarity to Latin Americans.

In Santo Domingo, when the United States was not physically occupying it, a puppet dictator ruled at the behest of this government. After the overthrow of Trujillo a democratic regime was briefly installed by the people. A liberal constitution was adopted in 1963. But the elected President, Juan Bosch, was not pliable enough for powerful financial interests in this country, so a military coup was arranged and Bosch was sent to Puerto Rico in exile.

A popular uprising broke out this spring and Bosch was summoned home to resume his Presidency, but, just as the revolutionists were about to triumph, President Johnson intervened to "stop communism." There is considerable evidence that the American Ambassador ordered the bombing of the capital city, resulting in the loss of thousands of lives, just before the United States soldiers landed.

American intervention and domination of foreign lands takes place around the world, from Viet-Nam and Santo Domingo to U. S. paid mercenaries in the form of Cuban exile pilots (see N. Y. Times, July 17, 1964, p. 1) and "rescue missions" in the Congo to U. S. sponsored juntas and dictators with their U. S. trained armies and U. S. military missions for counter insurgency. The Johnson Doctrine, which this accused has been ordered to take up arms to support, requires the United States be the final bulwark of reaction everywhere in the world. The defendant is performing a duty in refusing to become a robot in uniform to enforce this savage pax Americana.

POINT IV

United States authorities and their agents are committing war crimes and crimes against humanity.

The Second World War was the second war of annihilation of this century. In extent and intention it dwarfed the First World War. Not only was a nearly successful experiment made in exterminating an entire race of people but the deliberate slaughter of noncombatants in cities was made a deliberate pattern of policy. The Germans began this latter practice at Guernica, Lidice and Coventry. But the United States perfected it in large-scale massacre at Dresden and ignored a proffered Japanese offer of peace to wreak the unprecedented havoc and horror of the atom bomb on Hiroshima and Nagasaki. (See, Gar Alperovitz, "Atomic Diplomacy," 1965.)

Small wonder then that the veterans of this conflict do not hesitate to apply torture, terror and callous slaughter in order to extinguish the spirit of

self-determination in the Viet-Namese people! Let us note a few examples!

Extensive raids on Viet-Nam peasant villages have been carried out in an effort to "pacify" the villagers by burning crops and homes and forcing the people into government concentration camps in scorched earth operations. Homer Bigart wrote in the March 29, 1962 New York Times concerning such an operation:

> "The government was able to persuade only seventy families to volunteer resettlement. The 135 other families in the half dozen settlements were herded forcibly from their homes. . . Some families were able to carry away beds, tables and benches before their homes were burned. Others had almost nothing but the clothes on the backs. A young woman stood expressionless as she recounted how the troops burned the families' two tons of rice."

New York Herald Tribune Dispatch from Saigon stated on May 23, 1965 that ". . . The marines set crops on fire and burned or dynamited huts in a scorched earth operation."

Jack Langguth writing for the June 6, 1965 edition of the New York Times reported on the results of a raid by United States planes, dropping napalm bombs on Viet-Namese villages: The air force reported that the raid killed 500 Viet Cong guerrillas. But Langguth said:

> "The American contention is that they were Viet-cong soldiers. But three out of four patients seeking treatment in a Vietnamese Hospital afterward for burns from napalm, or jellied gasoline, were village women."

Senator Wayne Morse speaking in the United States Senate on June 7, 1965 charged:

> "One who listens to the President. . . would think we were killing no one in North Vietnam. . . If anyone says we can bomb munition centers, bridges, transportation centers, terminal centers and railroad yards and not kill human beings, he is misleading the American people. . . Of course we

are killing North Vietnamese. We are killing thousands in South Vietnam. . . The Defense Department keeps and publishes all the figures of killings and casualties in the south committed by the Vietcong. But they tell nothing of the South Vietnamese civilians we are killing and maiming with our napalm and our strafing and our artillery. . . The period of this war will not be a proud chapter in their country's history for future American boys and girls to read."

And again speaking on the Senate floor on June 15, 1965, Morse charged:

"It is our power and our money that continue the war in Vietnam. It is our napalm that burns the people of Vietnam and that destroys their meager possessions. I do not know of any weapon, or terror of the Vietcong that has destroyed as much in South Vietnam as U. S. aircraft have destroyed, all in the name of benevolent persuasion."

Even Senator Mansfield, the administration floor leader reports his revulsion at Republican support of the President that "can only amount to an indiscriminate slaughter of Vietnamese by air and naval bombardment-a slaughter of combatants and noncombatants alike, of friend and foe alike." New York Times, July 2, 1965, page 2.

Besides the patterned genocide to carry out a "pacification" program against the Vietnamese, U. S. forces are aiding and abetting a general program of torture in Vietnam:

"According to the Japan Times (May 20) the 'TV camera crew claims it had to work under serious restrictions' as it followed a Saigon marine battalion on combat missions. The resulting footage was edited into three half-hour sections for TV showing on successive Sunday nights. The films documented such extreme barbarism by the Saigon marines that, according to the Japan Times, 'the broadcast film was only a small portion of the entire footage and it was edited to mitigate the degree of brutality shown. One can well imagine what the deleted parts would be like.'" National Guardian, June 12, 1965.

"This conduct (torture) has been accepted as a matter of course in the United States. May I point out that it is in direct violation of provisions of the 1949 Geneva Prisoner-of-War Convention which has been ratified or adhered to by Vietnam (1953), the USSR (1954), the United States (1955), Communist China (1956), and the Viet Minh (1957), presumably the countries most directly concerned. (Actually by June 1964, 103 countries had agreed to be bound by the Convention.)

"While the 1949 Convention is directed primarily towards the regulation of international warfare and the conflict in Viet Nam is, at least theoretically, a civil war, there is one article of the Convention which relates exclusively to civil wars; and it specifically prohibits, with respect to prisoners of war, 'violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.'" Howard S. Levie, Colonel U. S. A. (Ret.) and Assoc. Prof of Law, St. Louis University Law School. Quoted in St. Louis Post Dispatch, April 9, 1965.

When Dean Rusk, the Secretary of State was asked by a reporter on television show why the United States forces did not respect the Geneva Convention on the treatment of war prisoners he blandly replied: "But we are not at war!" In other words, not only is the administration absolved from seeking democratic approval of its course by having Congress declare war as its constitutional prerogative, but the absence of a declaration of war enables authorities to resort to medieval tortures and genocide with a clear conscience. (See G. I. A. D. Draper "The Red Cross Conventions," pp. 149-183).

As a result of the horrors of the new scientific savagery the United States is introducing in Vietnam, a new type of real hero is emerging among the Americans. On June 23, 1965, Lieutenant Richard R. Steinke was brought for trial before a Court Martial on Okinawa because he refused an assignment in a Vietnamese village of the type described. Lt. Steinke is an honor graduate of West Point. He had been accepted and trained in the elite Special Forces, an anti-guerrilla group established by

President Kennedy. On January 31, 1965 in Saigon the Lieutenant declared his disapproval of United States policy and actions in Vietnam and expressed his conviction that the Vietnam war "isn't worth a single American life." He was convicted on June 25, 1965 of having disobeyed orders. To reduce publicity the Army dismissed him from the service. In Steinke's home town of Milwaukee, Wisconsin, his wife, a young daughter and twenty persons staged a spontaneous demonstration on June 26, 1965 in his support at the main post office. (National Guardian, July 3, 1965.)

Germans were tried for crimes such as America commits by its genocide and torture in Vietnam. The U. S. is guilty under the provisions for war crimes and crimes against humanity in the Nuremberg Charter on all counts (IMT Charter):

> "b) War crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or person on the seas, killing of hostages, plunder of public property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.
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> c) Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated." R. K. Woetzel, "The Nuremberg Trials In International Laws," pp. 274-275.

The defendant, by his challenge to his government, voices an indictment against its leaders for their national arrogance and racial chauvinism. Possibly it is difficult for them to accord to brown, black or yellow people the full status of humanity. They have difficulty identifying with them. Hence, Hiroshima, Nagasaki, Indian and Negro genocide, and the atrocities in Vietnam.

The accused is asking us all to stop at the brink before it is too late. His moral stand of refusing complicity in his government's atrocities ranks as the highest order of allegiance to humanity. Such an allegiance was plainly lacking in Germany as its population rallied to patriotism-that "last refuge of the scoundrel."

POINT V

The United States violates treaties regarding war and self- determination.

In the section of the United States Constitution which makes it plain that treaties are a part of the supreme law of this land (Article VI, Section 2) the obligation on the part of all government officials to conform to treaties is manifest. A treaty is not in the same category as a mere act of Congress or the law of a state. After the carnage of World War I Justice Oliver Wendell Holmes foresaw the necessity of the national states foreswearing some of their sovereignty in order that the collective body of mankind might survive upon the earth. In writing the opinion of the court in Holland v. Missouri, 252 U. S. 416, he placed treaties on a par with the United States Constitution:

> "Acts of Congress are the Supreme Law of the Land only when made in pursuance of the constitution while treaties are declared to be so when made under the authority of the United States. . ."

Besides being in violation of treaties and assurances concerning self-determination and the use or threat of force, the U. S. is in violation of numerous specific conventions on warfare which form background and amplification for Nuremberg International Law.

The use of poison gas bombs and other chemical substances among civilian populations is banned by the Hague Regulations of 1907, Article 23(A) and (E) and by the Geneva Protocol of 1925 ban of "asphyxiating, poisonous or other gases. . . " By the murder en masse of civilians or of individuals without charge, without trial, and by the wrongful seizure and imprisonment, ill-treatment and tortures of the civilian inhabitants in the areas occupied, U. S. forces have

broken express provisions of the Hague Regulations of 1907 (Article 46) imposing a duty on the Occupying Power to protect the lives of the inhabitants. The bombardment of undefended towns and villages far from the front and the indiscriminate destruction from the air of non-military objectives are in violation of the accepted Laws and Customs of War and, in particular, the Hague Regulations. Articles 46 and 52 of the Hague Regulations prohibit the deliberate destruction or the confiscation without requisitioning authority and without compensation or receipt of foodstuffs and the private property of civilians not necessary for the forces. The Conventions of 1929 and 1949 concerning the treatment of prisoners of war prohibits humiliating and degrading treatment, mutilation, torture and murder. By violating all of the above, the U. S. is guilty of war crimes as defined by Article 6 of the Charter of the International Military Tribunal of Nuremberg and the Genocide Convention of 1948.

POINT VI

The indictment should be dismissed

It is clear that David Mitchell is not a draft dodger. He does not evade his duty as a citizen. He presses upon the court and, therefore, upon the government, the criminality implicit in the present bloody course of this nation.

For years in correspondence with his local board, Mitchell presented the fundamental issues he has now raised in this challenge to the indictment. While the accused raises many points of constitutionality and legality which have important bearing in exposing the conduct of his government, they are subordinate to the essence of his challenge-the priority of morality over legality.

Even if the atrocities and fascistic domination around the world had been constitutionally authorized, the moral responsibility of the individual to dissociate and challenge would remain. On this point the accused asks the court to fulfill its responsibility to humanity, to refuse to permit the nazification of American courts into mere instruments of national policy, and, so, dismiss the indictment.

The order for induction is based upon a law which presumes a grave national emergency or actual war. The emergency is unmasked as callous, unprincipled power plays by the executive arm of the government. No declaration of war has been sought from Congress. The government breaks one solemn treaty after another in a determination to become the gendarme of the world. This policy seeks to kill the hopes of all people everywhere in their struggle to be free. It brands the United States as the chief enemy of liberty in the world. In no way can David Mitchell be accused of aiding and abetting the crimes under discussion. The accused has not been charged with a crime, but rather with obstructing crimes. The accuser stands accused!