

Memorial on William DeWitt Mitchell

Prepared for the
Association of the Bar of the City of New York
by Edward Everett Watts, Esq.

William DeWitt Mitchell, former Attorney General of the United States and for a long time one of the leaders of the American Bar, died at his home at Upper Brookville, Long Island, on August 24, 1955, after an illness of several months. He was in his eighty-first year. At the time of his death, Mr. Mitchell was senior member of the New York City law firm known as Mitchell, Capron, Marsh, Angulo & Cooney.

Mr. Mitchell became a member of this Association in 1933 and served as its President from 1941 to 1943. During the course of his membership he also was a member of numerous Association committees, including the Executive Committee from 1935 to 1939 and again from 1941 to 1943.

Mr. Mitchell was born in Winona, Minnesota, on September 9, 1874. He was the son of Judge William Mitchell of the Minnesota Supreme Court and Frances Merritt Mitchell. His father has been referred to by the Harvard Law Review as one of the twenty state supreme court justices who have achieved all-time eminence.

Mr. Mitchell attended Minnesota public schools, Lawrenceville school, Sheffield Scientific School at Yale and the University of Minnesota, where he received his A.B. in 1895 and his LL.B. in 1896. Before turning to the law he seriously considered an engineering career. As a boy he thought he would like to be a telegraph lineman. Later he told a friend: "The subject of electricity shocked most of my thoughts. I

built telegraph keys and most of the time my pockets were filled with screws and wire.”

Before completing his legal studies Mr. Mitchell lost his mother. Thereafter he and his father lived in particularly close companionship, having “absorbing common interests, not the least of which were fishing and the law”. Justice Mitchell was a great angler and together they fished in every part of the country.

Mr. Mitchell was admitted to the Minnesota bar in 1896 and took a law clerkship in St. Paul with Stringer & Seymour. During the Spanish–American War he served as line officer of the 15th Minnesota Volunteer Infantry, later acting as judge advocate for the United States Second Army Corps. Upon his return to civilian life he went back to the law and soon entered into partnership with his father, who had retired from the court. After his father’s death and several changes in his partnership arrangements, Mr. Mitchell became a partner of the late Carl Taylor in the St. Paul firm of How, Taylor & Mitchell. (In 1905 Mr. Taylor left Minnesota, thereafter becoming a member of the New York firm of Byrne, Cutcheon & Taylor. In 1927 after a “merger”, Mr. Taylor became senior partner in Taylor, Blanc, Capron & Marsh, to which firm Mr. Mitchell came in 1933 after his service in Washington).

Mr. Mitchell was, in 1900, secretary of the First Charter Commission of St. Paul. In 1901, he married Gertrude Bancroft, of Boston and St. Paul, who was an organizer of the St. Paul Community Chest and served on the national board of the YWCA and, as a Colonial Dame, on the Board of Regents for Gunston Hall. Mrs. Mitchell died in 1952. They are survived by two sons, William and Bancroft, and by three grandchildren.

In 1914 and 1915, Mr. Mitchell was president of the Ramsey County (Minnesota) Bar Association. In World War I, he was colonel for the Sixth Infantry of the Minnesota National Guard and later served at

Camp Taylor, Kentucky. In 1919, President Wilson appointed him Regional Counsel for the United States Railroad Administration. In 1922, he was chairman of the Citizens Charter Commission of St. Paul. During this "St. Paul period" he served many important clients. When he left that city in 1925, his firm was known as Mitchell, Doherty, Rumble, Bunn & Butler.

One of his St. Paul partners, for seventeen years, was the late Pierce Butler, who in 1923 became a Justice of the Supreme Court. When it was suggested at about that time that Mr. Mitchell's name be proposed for a vacancy on the United States Circuit Court of Appeals, he replied that the only federal post that really interested him was that of Solicitor General. He had no thought that the position would ever be offered to him but merely, as usual, spoke his mind.

Although he sometimes described himself as a "congenital old-line Democrat", Mr. Mitchell in 1925 was appointed Solicitor General of the United States by President Coolidge. Before accepting, he stipulated that his representation of the Government in court should be limited to those cases in which he was satisfied that the Government's position was just. After his appointment, Solicitor General Mitchell, or subordinates acting under his direction, on thirty-four occasions advised the Supreme Court that in their opinion the lower courts had erred in rendering decisions in favor of the Government; in all but one of these cases the Supreme Court thereupon reversed.

Mr. Mitchell conducted the litigation of the United States Government with such outstanding ability, fairness and success that the justices of the Supreme Court did the somewhat unusual thing of urging upon President-elect Hoover his appointment to the office of Attorney General.

As Attorney General, he served with distinction from 1929 to 1933 in the Cabinet of President Hoover. In 1930, administration of the unpopular prohibition act was transferred from the Treasury to the

Justice Department and that heavy burden was added to the customary duties of the Attorney General. It was conceded by the Eighteenth Amendment's friends and foes alike that he handled this difficult assignment with outstanding integrity and ability. His administration of the Justice Department was also marked by firm but fair enforcement of the anti-trust laws.

During Mr. Mitchell's administration as Attorney General, there were chiseled into the wood paneling outside the Attorney General's offices the following words, well stating the principle he followed in government service:

"THE UNITED STATES WINS ITS POINT WHENEVER
JUSTICE IS DONE ITS CITIZENS IN THE COURTS"

As Attorney General Mr. Mitchell had as one of his duties the task of selecting and recommending to the President from time to time candidates for appointment to the federal judiciary. In 1932, following the retirement from the Supreme Court of Oliver Wendell Holmes, President Hoover, acting with the full approval of the other officials of the Department of Justice, asked Mr. Mitchell to take the vacant post on that Court. Although he considered appointment to the Supreme Court the highest honor that could come to any lawyer, Mr. Mitchell replied that he felt that the bar generally hoped for the appointment of the Chief Judge of the New York Court of Appeals, Benjamin N. Cardozo, and that he himself felt that Judge Cardozo was the man who should be appointed. As usual in such matters, President Hoover followed Mr. Mitchell's advice.

As already mentioned, in 1933 Mr. Mitchell rejoined in New York his former St. Paul partner, Carl Taylor, their firm then becoming Mitchell, Taylor, Capron & Marsh. Previous "seniors" of the firm (and its chain of "predecessor firms") include a number of others who served this Association: Charles B. Hunt, Secretary of the Association in 1872, who headed a predecessor partnership in 1851; Judge Charles

Pinckney Kirkland, whose Memorial in the 1884 Year Book is one of the earliest in the Association's records; Herbert B. Turner, one of the founders of this Association in 1869 (senior partner for over thirty years); and Frederick Geller, who was Chairman of the Association's Executive Committee in 1919.

In 1934 the United States Supreme Court designated Mr. Mitchell chairman of its Advisory Committee which formulated the Federal Rules of Civil Procedure, adopted in 1938. It has been said that the adoption of these rules constituted the greatest single improvement in federal practice and procedure since the creation of the federal courts. Mr. Mitchell served as chairman of that committee from the date of its formation until his death.

Among the many important clients that Mr. Mitchell served as a private lawyer were the British and American governments and The United Nations.

In 1933, he successfully represented the British government in the re-argument in the United States Supreme Court of Factor v. Laubheimer, 290 U. S. 276, involving the construction of certain treaties and the right to secure extradition. Later he served the British government as expert witness on United States law in litigation in London involving the gold clause. An episode from that case perhaps may be mentioned. After Mr. Mitchell had testified, one of Britain's leading barristers took over the cross-examination. At his request, Mr. Mitchell identified a book as one containing official U. S. Supreme Court reports. The barrister thereupon read from it several legal propositions directly contrary to the statement of law just announced by Mr. Mitchell. The witness, taken by surprise, asked to see the book, and immediately saw the trouble. He proceeded deliberately, however. As he slowly turned the pages, he sensed in the quiet courtroom a growing undercurrent of sympathy for the "expert" who had been caught insufficiently prepared. At last, quietly and tactfully, he explained that the learned barrister had made a mistake, natural

enough for one not familiar with American reports; he had been reading the syllabus of the argument advanced on behalf of the unsuccessful litigant not the Court's decision! The cross-examiner, thoroughly embarrassed, had no further questions.

Mr. Mitchell achieved substantial success as a retriever of lost causes. He was successful in having the Black Tom case reopened by the Mixed Claims Commission and in securing a substantial award for the American claimants. He argued the case both before the international commission and in the U. S. courts (see Z. & F. Assets Corp. v. Hull, 311 U.S. 470). The late Robert T. Swaine wrote that the "successful conclusion of the case after so many reverses and discouragements, its colorful character and wide range of evidence and points of law mark it as the most spectacular of all international claim litigations. Swaine also observed that "in size of recovery" (about \$25,000,000) and "in duration of litigation" (about 24 years) it "far exceeded the Alabama claims after the Civil War" (Swaine: "The Cravath Firm", II p. 693-4).

In the celebrated patent litigation between Swan Soap and Ivory Soap, Lever Brothers Co. v. Procter & Gamble. et al., 139 F. 2d 633, Mr. Mitchell was enlisted by Lever Brothers when all appeared lost, but he turned the threatened rout into an important victory. Many considered his similar "Sheridan's Ride" in the case of Paramount Publix v. American Tri-Ergon (1935), 294 U. S. 464, even more noteworthy. When Mr. Mitchell was retained, the Supreme Court had already denied his client's certiorari petition. Upon Mr. Mitchell's somewhat unusual application for rehearing, the Supreme Court concluded to take another look. The other side thereupon retained George Wharton Pepper, who mentions the case in "Philadelphia Lawyer". Senator Pepper and his colleagues satisfied themselves "that the decision appealed from was sound" but he reports "We never had a chance; the case had been in effect decided when the petition for rehearing was granted."

Mr. Mitchell's last Supreme Court argument was in the Florida East Coast case, a railroad reorganization, decided April 5, 1954, 347 U. S. 298, in which Mr. Mitchell secured a 4 to 3 reversal.

During World War II, President Roosevelt designated Mr. Mitchell to represent the Government in an investigation involving a possible leak to certain newspapers of Navy Department confidential information on matters of high strategic importance affecting the national security.

Later in September 1945, the Joint Congressional Committee investigating the Pearl Harbor disaster unanimously selected Mr. Mitchell as its chief counsel. The New York Times reported that the procedure agreed upon by the interested government agencies gave Mr. Mitchell full access to all departmental records, to those of the Joint Chiefs of Staff and to President Roosevelt's papers at Hyde Park. On December 14, 1945 Mr. Mitchell resigned because of the delaying tactics of members of the committee and also because he had not been permitted to present evidence he thought pertinent.

In 1951 the Law School of the University of Minnesota conferred on Mr. Mitchell its first award for outstanding achievement. The certificate of commendation referred to him as a "practitioner and public servant of rare modesty, integrity, and scrupulous regard for high ethical standards". It said that he was acclaimed by many as "our country's leading appellate lawyer" and that his "incisive intelligence and searching clarity have brought honor to his profession and to himself". He also received honorary LL.D. degrees from Yale (1929), Williams (1930) and Michigan (1931). The Yale citation is typical:

"He is an ornament to the legal profession,
a barrister wise in counsel, skillful as
an advocate, and upright in character".

In December 1952, Mr. Mitchell was a member of what the New York

Times described as “a panel of three jurists of international repute” employed by The United Nations to pass upon problems raised by the refusal of some members of its staff to testify on the subject of their Communist affiliations,

For many years he served as trustee of the Mutual Life Insurance Company of New York. He was a member of the executive committee of The Pilgrims. From 1925 to 1929 he was a member of the Central Committee of the American Red Cross and also was its counselor.

Mr. Mitchell was an ardent amateur golfer. For a time he played in the low 70's, and he was a member of a team of senior golfers which represented the United States in a series of international matches.

His clubs included the University Club, Century Association and Down Town Association, of New York; the Piping Rock Club and the Garden City Golf Club, of Long Island; the Metropolitan Club and the Burning Tree, of Washington; also the Somerset Club, University Club and White Bear Yacht Club, of St. Paul.

He was for many years a member of the Council of the American Law Institute. He also was a member of the American and New York State Bar Associations, the New York County Lawyers Association, the American Judicature Society, the Spanish War Veterans and the American Legion.

When Mr. Mitchell's portrait was presented to the Minnesota Historical Society several years ago, the speaker of the day said, among other things:

“The qualities of successful advocates vary * * Mr. Mitchell * * is not of the type to move juries, nor does he rise to great heights of eloquence. Rather he is the intellectual type, the perfectionist, appealing to reason and at his best before appellate tribunals where his manner is

calm and self-possessed, his exposition temperate, and his arguments possess the power which moderation and balance give. His special quality is his searching, accurate and lucid intelligence and clarity of thought which penetrate to the ultimate and exact truth of the matter in hand and discern everything which may make it intelligible and probable to the general mind of the court.”

The New York Herald Tribune, in reporting Mr. Mitchell’s death, stated that he had been called “one of the half-dozen best legal minds in the nation.” Whether that is an understatement, it is clear (using the language of the Yale citation) that the bar of this city has lost a major ornament. ¹

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The following memorial to William D. Mitchell was delivered at the annual memorial services of the Ramsey County Bar Association on March 31, 1956. ²

¹ A carbon copy of this address is filed in Box One of the William D. Mitchell Papers at the Minnesota Historical Society. A date —10/7/55 — is typed in the upper left hand corner of the first page, and that probably is the date it was delivered by Mr. Watts at a meeting of the New York Bar Association. His spelling, punctuation and citation style are not changed.

² The entire memorial service is posted in “Ramsey County Bar Memorials– 1956” (MLHP, 2016).

RAMSEY COUNTY BAR ASSOCIATION
ANNUAL MEMORIAL SERVICES
Court House, Saturday, March 31, 1956, 10:00 A.M.

On Saturday, March 31, 1956, Memorial Services in honor of those members of the Ramsey County Bar who died during the past year were held in the Court House.

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Mr. Sharood: A committee composed of Michael J. Doherty, Chairman, Montreville J. Brown and John A. Burns have prepared a memorial for William D. Mitchell, which will be presented by Mr. Doherty.

Mr. Doherty read the memorial for Mr. Mitchell.

William D. Mitchell was for 29 years a member of the Ramsey County Bar and at one time president of the association. While the last thirty years of his life were spent elsewhere, he never lost touch with the Bar and people of this community. The committee in charge of this program has deemed it fitting that he should be included among those to be remembered at this meeting, the more so perhaps because of the honor which has been reflected upon this City, and this State by his distinguished career.

Mr. Mitchell was born in Winona, September 9, 1874, and was therefore at his death last year of the, age of 81 years. His ancestry was Scottish. His grandparents emigrated from Scotland to Ontario, Canada, which was the birthplace of a son William Mitchell who, 49 years later, after having moved to this state, was appointed by Governor Pillsbury to our State Supreme Court on which he served for 19 years and became one of the great judicial figures not only of the State but of the country.

Early in his professional career, William Mitchell Senior established his residence, and office at Winona, Minnesota, and it was there that William D. Mitchell was born. His early education was had in the public schools of Winona and at Lawrenceville Academy in New Jersey. A rather surprising fact is that his first interest, looking toward professional career, was in the subject of electricity. With intention of pursuing that subject, he entered Sheffield Scientific School at Yale University for a course in engineering. Evidently becoming convinced that his stronger interest and talents belonged to another field, he discontinued the engineering course at the end of his sophomore year, returned to Minnesota and entered the State University. With some credits from Yale, he earned an A.B. degree in two years. In addition, he took night law school work during his senior academic year and finished the law course in an additional two years, receiving his L.L.B. degree in 1896, at the age of 22 years.

Upon admission to the Bar his first employment was as a law clerk in the office of Stringer & Seymour where he continued until the outbreak of the Spanish American War in 1898. He then entered the military service receiving a commission as Second Lieutenant in the Fifteenth Minnesota Volunteer Infantry. In the course of the War he served in several capacities.

At the conclusion of the War he returned to the office of Stringer & Seymour for about a year, after which he went into practice with his father, an association which ended with his father's death only eight months later.

Following this he became a member of the firm of Palmer, Beek & Mitchell, the duration of which was cut short by Mr. Palmer's resignation to become President of the Minnesota Mutual Life Insurance Company and by Mr. Beek's taking up commercial work. He next joined in the formation of the firm of Howe, Taylor & Mitchell, his partners being Jared Howe and Carl Taylor.

In 1905, Pierce Butler (later Justice Butler) resigned as general attorney for the Omaha Railroad Company and with Mr. Mitchell and Jared Howe organized the firm of Howe, Butler and Mitchell, a firm

which with various changes of membership has had continuity up to the present time. Changes of firm name during the time Mr. Mitchell remained a member, included Butler, Michell & Hoak, Butler, Mitchell & Doherty, and Mitchell, Doherty Rumble, Bunn & Butler.

In the year 1901, Mr. Mitchell married Gertrude Bancroft of Saint Paul. They had two sons, William and Bancroft. William followed in the profession of his father and grandfather, became a fine lawyer, practicing with his father's firm and its successor in Saint Paul and, under special assignments, with the Government in Washington. He is now General Counsel for the United States Atomic Energy Commission. Mrs. Mitchell preceded Mr. Mitchell in death by about three years, leaving a grievous void in the final years of Mr. Mitchell's life.

During the years of his practice in Saint Paul, Mr. Mitchell participated in various civic and military activities. He was secretary of the First Charter Commission of this city and later Chairman of the Commission. In 1917, he was Colonel of the Sixth Infantry, Minnesota National Guard, which he helped organize. In 1918, at the age of 43 years, he enlisted in the National Army and was assigned to the Field Artillery Officers Training School at Camp Taylor, Kentucky, and remained in service to the end of World War I. In 1919, under appointment by President Wilson, he became Regional Counsel for the United States Railroad Administration.

In 1925, James M. Beck then Solicitor General of the United States resigned that office. Unsolicited, Mr. Mitchell was tendered the appointment by President Coolidge to fill the vacancy. He accepted. His reason for accepting the appointment may be partly explained by the view which he held and then expressed that to escape the danger of premature retrogression it was particularly imperative that a lawyer should continue to develop after the age of 50. He had himself matured mentally early in life. He became established in his profession with an ample clientele at an age much younger than most lawyers. In 1925 he was 51 years old and evidently felt that the opportunities for further professional advancement here were rather limited, but saw in the new field opened by the tendered appointment

possibilities of new and broader interests and activity and greater usefulness.

Some reference should be made to Mr. Mitchell's work as Solicitor General. It included the important duty of representing the interests of the Government in cases before the Supreme Court. It is estimated that Government cases constitute between 25 and 35% of all the business of that Court. It would probably be no exaggeration to say that no Solicitor General in the history of that office ever gained and held the confidence and good opinion of the members of the Court to a greater, if as great, a degree, as did Mr. Mitchell. This is attributable mainly to two things. First, Mr. Mitchell's ability as a lawyer and the demonstrated soundness of his judgment on legal questions, and second, his complete candor and honesty with the Court in presenting and discussing the merits of the Government's position in cases before the Court. It wasn't with him so much a question of whether, with his urging, the Government might prevail as it was a question of whether the Government deserved to prevail. The fact that the Government might have prevailed in the lower courts was not at all a persuasive consideration. During the 3 years and 9 months he occupied the office, he or his subordinates under his direction, in 34 cases conceded to the Supreme Court that the lower Court's decisions in favor of the Government were erroneous.

The reputation which Mr. Mitchell gained as Solicitor General was, it may be assumed, one of the things that recommended him for the honor next conferred upon him.

With the accession of Herbert Hoover to the Presidency in 1929, he appointed Mr. Mitchell to the Cabinet Post of Attorney General. Mr. Mitchell in common with his father had always been a democrat. So far as information is available this was the first time that a President of the United States drew upon a rival party for an appointee to his Cabinet.

The four years of Mr. Mitchell's tenure as Attorney General were difficult years for the Department of Justice. It had the duty among other things of enforcement of a law that was unenforceable, namely

the National Prohibition Act. With the assistance of a capable staff including such men as G. Aaron Youngquist, a former Attorney General of Minnesota, the Department headed by Mr. Mitchell, among its other functions, gave the best administration possible of the then existing Criminal Code.

One branch of Mr. Mitchell's duties as Attorney General, of special interest to lawyers, was his recommendations for judicial appointments. Due to his insistence upon careful screening of candidates and by reason of President Hoover's implicit reliance upon his judgment and recommendations, the character of appointments to the Federal Courts during his term of office was unusually high.

With the expiration of President Hoover's term, Mr. Mitchell again retired to private life. His official career in Washington had proven such a heavy drain up on his financial resources that he felt the necessity of renewing his practice where a liberal income would be an early prospect. He went to New York City becoming immediately the head of the firm of Mitchell, Taylor, Capron & Marsh. The Taylor of this firm was Carl Taylor who had been one of Mr. Mitchell's old time associates in Saint Paul. He continued as head of this firm until his death on August 24th, 1955.

The reputation and prestige he had acquired during his official career in Washington attracted a large clientele in New York City and his practice there soon included some highly important public and private litigation and matters. He represented both the American and British Governments in notable cases. On one occasion he went to London at the request of the British Government to testify as an expert witness on American law in a case involving the Gold Clause in British bonds.

From 1941 to 1943, Mr. Mitchell was President of the Bar Association of the City of New York. In 1945 he was selected as Counsel for the Joint Congressional Committee for the investigation of the Pearl Harbor disaster.

By Act of Congress of June 19, 1934, the Supreme Court was given power to prescribe the practice and procedure in civil actions in the District Court of the United States. The Court appointed an Advisory

Committee to draft and submit a proposed set of rules. This Committee composed of 14 members, included a number of the most prominent law school men in the country as well as leaders of the American Bar engaged in practice. Mr. Mitchell was selected as Chairman of the Committee. After three years of study and discussion, the Committee submitted a final draft to the Supreme Court with recommendations for its adoption. With some modifications, the Court promptly adopted the draft and it became effective on September 16, 1938. This set of rules was a monumental achievement and the other members of the committee were quite unanimous in conceding to Mr. Mitchell a major share of the credit for the success of the project. These rules served as a pattern for the Rules of Procedure for the District Courts of Minnesota adopted in 1951.

Mr. Mitchell will rank high in the history of the American Bar. To say how great a lawyer he was would require agreement on the marks of a great lawyer. He lacked some of the qualifications usually associated with a great advocate, using that term in the restricted sense. He was not an eloquent nor polished speaker. His language had none of the quality of rhetorical elegance. He was nothing of the showman, practiced no appeal to the emotions and made no effort to impress by the mere force of his personality. Such things were alien alike to his gifts and his character. His right to be called a great lawyer rests upon a more solid foundation; upon abilities that distinguish a great lawyer in a truer sense; abilities essentially of an intellectual order. He was a legal scholar in the full sense of the term. His mind was clear and quick, one that could make short work of the analysis of intricate legal problems, one that could go directly to the core of a matter in controversy stripping it speedily down to the decisive, controlling point or points and subject those points to a sound and penetrating judgment. With these qualities of mind went a capacity for sustained concentration which enabled him, for example, at a single session to dictate a lengthy contract or other legal document or brief so completely and precisely as to require, when transcribed, the change of scarcely a word or phrase. He was never put, as so many of us are, to a second, third or fourth draft each trying to improve upon the others.

He had a distaste for jury trial work but derived much satisfaction from presenting matters to judge constituted courts, particularly Appellate Courts where he could rely upon logic, sound reasoning and understanding of the law. His arguments were effective because, for one thing, he always had the advantage of close and usually open minded attention of the judges who knew in advance that they would hear an able, honest and fair presentation. He scrupulously avoided exaggeration or the claiming for a point more than its real value. He was invariably dignified, poised and decorous. His language, written or spoken, though plain as to literary style, was like his thinking, clear, concise and definite. Its meaning was never mistakeable.

Meticulously ethical in his contacts with his clients, with other lawyers and with the Courts, his ethical sensitiveness seemed to his associates at times to border on the extreme.

Mr. Mitchell had his roots, professionally speaking, in what this generation of lawyers is inclined to look back upon as the golden years of the Ramsey County Bar, years in which Saint Paul had probably a stronger Bar, particularly a stronger senior Bar, than any city of comparable size in the United States—and one of the most colorful. A dozen or more names could readily be recalled of men whom everyone would recognize as the leaders of that great Bar, but to offer any list as complete would be hazardous. Mr. Mitchell, although one of the juniors of that group, carried its tradition forward to the end of his career and was one of its last as well as one of its most worthy exemplars, in point of ability, learning, character and professional achievement.

Respectfully submitted,
M. J. DOHERTY, Chairman
MONTREVILLE J. BROWN
JOHN A. BURNS

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The following sketch of William D. Mitchell, written by Professor Kent Kreuter, was published in the *Dictionary of American Biography* (Supplement Five, 1951–1955):³

MITCHELL, WILLIAM DEWITT (Sept. 9, 1874–Aug. 24, 1955), lawyer and government official, was born in Winona, Minn., the son of William and Frances Merritt Mitchell. His Father was a lawyer who eventually became a state supreme court justice. After receiving his early education in Winona schools and the Lawrenceville (N.J.) School (1889–1891), he enrolled in the Sheffield Scientific School at Yale in 1891. Two years later, his interest having shifted to law, he transferred to the University of Minnesota. Living with and increasingly close to his recently widowed father, Mitchell was soon immersed in discussion and study of legal issues. Taking night law courses to make up for lost time, he received the A.B. in 1895. He obtained the LL.B. and was admitted to the bar in 1896.

Mitchell immediately began practicing law in St. Paul. After serving in several firms, including practice with his father until the latter's death in 1900, in 1902 he joined two well-established lawyers to form How, Taylor and Mitchell. This firm, flourishing on the rapid growth of city and state, soon became one of the largest and most important in the upper Midwest. Pierce Butler, a future United States Supreme Court justice, became a partner in 1905 and began a long and close relationship, with Mitchell. Although a Democrat like his father, Mitchell never was politically active, nor did he develop any sustained interest in the public and cultural life of St. Paul. The only serious rival for his almost single-minded interest in the law was his family. On June 27, 1901, he married Gertrude Bancroft, they had two children

By 1925 Mitchell described himself as "in a rut," and accepted the position of solicitor general when offered it by President Calvin

³ Kent Kreuter, "William DeWitt Mitchell" in John A. Garraty, ed., *Dictionary of American Biography* (Supplement Five, 1951–1955) 501–3 (Charles Scribner's Sons, 1977).

Coolidge. He found it his most interesting professional experience, and performed so capably that the Justices of the Supreme Court took the unusual step of urging President Herbert Hoover to appoint him attorney general. When Mitchell reluctantly accepted that position in 1929, he was for the first time in his life in the midst of intensely controversial issues of broad national concern. Those issues—principally prohibition and the Great Depression—made it virtually impossible for him to accomplish his objectives. Mitchell wanted to improve the administration of justice and modify the judicial structure of the government. He was able to achieve some of his goals, but only after leaving office. Instead, he was swamped with what he called the "miserable task" of enforcing prohibition. It kept him from more important matters and also reflected, he believed, a decline in state responsibility that troubled him for the rest of his life.

Mitchell felt that the central enforcement obligation lay with the states; under no circumstances did he want a large federal police force created to ensure compliance. The growing reluctance of some states, however, especially those on the East Coast, made compliance even more unlikely and increased the burdens on Mitchell's already understaffed department. Nevertheless, Mitchell saw to it, in his careful, unflamboyant way, that enforcement grew increasingly efficient. His success had ironic consequences. First, the federal prisons were soon overflowing, so that Mitchell was forced to lobby for new prisons. Second, the very efficiency of his enforcement may have helped convince people to repeal a policy he supported.

The Great Depression also affected Mitchell's career as attorney general. It meant reduced budgets and also lay at the root of probably the single most controversial event in his career as a public servant: the expulsion of the Bonus Army in July 1932. Although Mitchell did not order the use of federal troops, he was responsible for a widely publicized report on the matter. His defense of the government was so sweeping that even some law enforcement officials objected; perhaps most surprising was the occasional note of shrillness in his

concern about criminal and communist influence, so out of character in a man customarily reserved in manner and statement.

Quite in character, on the other hand, was his aversion to enforcing antitrust legislation. Big business, unlike big government, never particularly concerned Mitchell. When pressed to move against corporate consolidation, he found the Great Depression a good reason for not doing so. He explained that economic conditions were already bad enough without Justice Department prosecutions making them worse. In any event, few attorneys general did less in this area. The contrast with his approach to prohibition enforcement is significant.

The New York period of Mitchell's life began in 1933, when he left Washington for the comparative quiet of a Wall Street law practice. His greatest service during that period was the revision of the federal rules of civil procedure, which he undertook at the request of the Supreme Court. Finally adopted in 1938, the new rules rank as a major reform in the administration of justice.

In 1945 Mitchell's high standing in the legal profession and his moderate political posture made him an excellent choice for chief counsel of the congressional investigation of the Pearl Harbor disaster. So rancorous and unproductive did the hearings become, however, that Mitchell soon resigned. His involvement illustrates a recurring paradox of his life. Not a colorful personality, either in or out of the courtroom, he was repeatedly involved in dramatic, even tumultuous, events.

Throughout his later years Mitchell worried about the growth of government bureaucracy resulting, as he believed, from the inability of Congress to administer the welfare functions it increasingly assumed. The behavior of President Franklin D. Roosevelt and an increasingly flexible Supreme Court also saddened him deeply. He died at his home in Syosset, N.Y.

[The Minnesota Historical Society has a small collection of Mitchell papers plus useful related materials. The Herbert Hoover Library has excellent materials on his appointment as attorney general and considerations of him for the Supreme Court. Justice Department papers are in the National Archives. Mitchell's speeches and articles are indexed in *Index to Legal Periodicals*, beginning with vol. I.

There is no biography. The best account is the obituary by Mitchell's law partner Edward Everett Watts, Jr., in *Memorial Book of the Association of the Bar of the City of New York* (1955). Robert Sobel, ed., *Biographical Directory of the United States Executive Branch, 1774-1971* (1971), is useful. Also good is S. J. Woolf, "Enforcing a Nation's Laws Is His Task," *New York Times*, Mar. 31, 1929, sec. V, with a good likeness. David Danelski, *A Supreme Court Justice Is Appointed* (1964), is helpful on the early years. Andrew Sinclair, *Prohibition* (1962), and Walton Hamilton and Irene Till, *Antitrust in Action* (1941), are useful on his years as attorney general. Merlo Pusey, *Charles Evans Hughes* (1950), and William Harbaugh, *Lawyer's Lawyer, the Life of John W. Davis* (1973), are among many helpful sources on the legal profession.]

KENT KREUTER

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For a related articles, see the Address of Attorney General Mitchell on December 20, 1932, in "Dedication of the St. Paul City Hall-Ramsey County Courthouse" 35-44 (MLHP, 2012), and "Photographs of William DeWitt Mitchell (1935-1935)" (MLHP, 2015).

For a recent biographical sketch, see Thomas H. Boyd & Douglas R. Heidenreich, "William DeWitt Mitchell: The Other Mitchell," 54 *Ramsey County History* 1-9 (Summer 2019). ■

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Posted MLHP: May 17, 2012;
expanded December 7, 2016, to include Ramsey County Bar Memorial and
profile from *Dictionary of American Biography*.