

Book Review

A QUESTION OF LOYALTY: GEN. BILLY MITCHELL AND THE COURT-MARTIAL THAT GRIPPED THE NATION¹

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*Lightning rods must galvanize public opinion and prod politicians to force the bureaucracy to change.
Mitchell was a needed spark.*³

General William “Billy” Mitchell may have ignited a fire to become “the godfather of modern naval aviation,”⁴ but author Douglas Waller fails to kindle that flame in *A Question of Loyalty: Gen. Billy Mitchell and the Court-Martial that Grippled the Nation*. Rather than fan the flames, Waller snuffs the fire out in his attempt to bring twenty-first century readers to Mitchell’s 1925 court-martial. Waller’s recitation of an otherwise “gripping” tale leaves nothing but a few embers.

In 1925, the U.S. military court-martialed then-Colonel Billy Mitchell⁵ for insubordination⁶ resulting from public comments made by the war hero.⁷ Throughout his career, Mitchell, an Army officer, publicly advocated for an independent air force separate and apart from the Departments of the Army and Navy.⁸ Appointed a general officer at the age of thirty-nine,⁹ Mitchell’s prescient predictions about the future of air power¹⁰ argued, generally, that the future of the U.S. military might lay dormant in the untapped and under-utilized resources of air power.¹¹ Mitchell voiced frustration that military decisionmakers failed to act on his ideas and failed to understand the importance of air assets.¹² After years of outspoken rhetoric through speeches,¹³ publications, and deeds,¹⁴ on 5 September 1925, Mitchell stacked the final straw on the

¹ DOUGLAS WALLER, *A QUESTION OF LOYALTY: GEN. BILLY MITCHELL AND THE COURT-MARTIAL THAT GRIPPED THE NATION* (2004).

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³ WALLER, *supra* note 1, at 364.

⁴ *Id.* at 155.

⁵ *See id.* at 2 (“Brigadier general had been [Mitchell’s] temporary rank during World War I, when officers were promoted rapidly as the army expanded for combat. After the war most reverted to their permanent peacetime ranks.”). Although Mitchell returned to the rank of colonel, many Soldiers continued to call him “General.” *Id.* Upon his ultimate retirement from military service, Mitchell retained the “use [of] ‘General’ as his title . . . because that was the rank he had achieved during the war.” *Id.* at 331. As recently as 2003, Mitchell’s heirs continued to fight for the restoration of their famous ancestor’s rank to that of brigadier general. *Id.* at 361 (referencing a U.S. House of Representatives bill introduced by Mitchell’s grandnephew “to promote Mitchell posthumously”).

⁶ *Id.* at 61; *see also* United States v. Martinez, 42 M.J. 327, 330 (1995) (“Article 134, UCMJ, and its statutory predecessor Article of War 96, proscribe all disorders and neglects by a member of the services which prejudice the good order and discipline in the armed forces and all conduct of a nature to bring discredit upon the armed forces.” (citing Parker v. Levy, 417 U.S. 733, 753-54 (1974); Dynes v. Hoover 61 U.S. 65 (1857))). Article 96, of the 1806 Articles of War, stated: “All officers, . . . of the United States, shall be governed by the aforesaid rules and articles, and shall be subject to be tried by courts martial, in the like manner with the officers and soldiers of the other troops in the service of the United States.” Major Jan E. Aldykiewicz, *Authority to Court-Martial Non-U.S. Military Personnel for Serious Violations of International Humanitarian Law Committed During Internal Armed Conflicts*, 167 MIL. L. REV. 74, 90 (2001) (citing 1806 Articles of War, 2 Stat. 359, art. 96 (1806)).

⁷ WALLER, *supra* note 1, at 20-21 (providing the substance of Mitchell’s statement which formed the basis of the subsequent court-martial charges); *see also id.* at 46 (giving the date of the court-martial), 136 (detailing Mitchell as a war hero), 324 (reciting the comment of the president of the court-martial panel that Mitchell received a lesser sentence because of his military record during World War I).

⁸ WALLER, *supra* note 1, at 2, 6; *see also* John Lehman, *The Visionary Mitchell, Maverick of Air Power*, CHI. SUN-TIMES, Nov. 21, 2004, at 16 (characterizing Mitchell as “a visionary who understood the future importance of air power long before it became a reality”).

⁹ WALLER, *supra* note 1, at 136; *see also supra* note 5 (describing Mitchell’s war-time promotion). Mitchell retained the rank of brigadier general after the war when the military assigned him as “assistant director of the air service,” which allowed for retention of the rank of brigadier general as long as the individual remained in that assignment. *See* WALLER, *supra* note 1, at 2.

¹⁰ *See id.* at 5-6. In 1923, Mitchell predicted the Japanese bombing of Pearl Harbor that was not to happen until 1941. *Id.* at 56-57. An additional prediction described the destruction to be caused by “[a] single explosion’ well placed by aircraft into the heart of New York City.” *Id.* at 6. Further, Mitchell foresaw the use of air power to drop munitions on foreign targets, a revolutionary concept in the 1920s. *Id.* at 5. Waller notes that such anticipated cruise missiles and unmanned aerial vehicles (UAVs) were used against Iraq and Afghanistan, respectively. *Id.* Waller further credits Mitchell as having “planted the intellectual seeds for what is now America’s global airpower.” *Id.* at 8.

¹¹ *Id.* at 2, 5-6.

¹² *Id.*

¹³ *See id.* at 7 (providing a description of Mitchell’s congressional testimony charging that “America’s air service . . . was woefully unprepared for a future war”).

proverbial camel's back of the U.S. War Department.¹⁵ Two days earlier, the *USS Shenandoah* crashed, killing fourteen members of the crew.¹⁶ Believing the flight to have been a useless publicity stunt,¹⁷ Mitchell issued a statement to the press accusing the Navy and War Departments of "incompetency, criminal negligence and almost treasonable administration of the national defense."¹⁸ In the end, after a month-long trial with the testimony of ninety-nine witnesses¹⁹ filling over 3,700 pages,²⁰ Mitchell's peers declared him guilty of violating eight specifications of Article 96 of the Articles of War.²¹ Although the panel gave Mitchell a relatively light sentence,²² public disgrace and financial necessity caused the former general to resign his commission less than two months after his conviction.²³

At the time Waller authored *A Question of Loyalty*, no less than nine Mitchell biographies existed.²⁴ Why write a tenth? Waller claims that "parts of [Mitchell's] life still remained a mystery for those who had written about him before. Questions about the man, and his court-martial, remained unanswered."²⁵ While Waller provides over three-hundred pages that deem to address the unanswered questions, he neglects to identify the missing pieces that are relevant to an understanding of Mitchell as a man or as a military accused. At times, Waller even fails to follow through on his own historical narrative.²⁶ He references how Mitchell, during one flight, was forced to land his aircraft in East Potomac Park near Washington, D.C.²⁷ Waller does not explain what caused this experienced pilot to land on this "makeshift" field or the consequences of the landing.²⁸ In another episode, Mitchell encounters his estranged children at a horse show.²⁹ Waller describes how difficult the alienation was for one of the children but never describes the sure to be explosive, or at least icy, interaction between Mitchell and the children on this occasion.³⁰ Which begs the question, why include this information at all?

A veteran author³¹ and journalist,³² Waller handicaps *A Question of Loyalty* with too many facts and details. Rather than dissect volumes of research to provide a riveting tale of an unusual court-martial under unusual circumstances, Waller

¹⁴ See *id.* at 5, 7 (describing Mitchell's writing for the *Saturday Evening Post*), 7 (noting the 1925 publication of Mitchell's treatise on air power, *Winged Defense*), 139 (citing *Our Air Force* as Mitchell's "first book on aeronautics").

¹⁵ *Id.* at 17-19.

¹⁶ *Id.* at 10. The United States modeled the *Shenandoah*, a dirigible, on the German Zeppelin design. *Id.* at 11. The government paid \$2.7 million for the airship, a "fortune" by economic standards of the day. *Id.* For a concise, yet thorough, recitation of the *Shenandoah* incident and the subsequent court-martial of Mitchell, see JOSEPH DIMONA, GREAT COURT-MARTIAL CASES 93-115 (1972).

¹⁷ See, e.g., WALLER, *supra* note 1, at 200 (presenting testimony from the *Shenandoah* pilot's widow that the pilot thought the fatal flight "was made solely for political purposes"), *id.* at 289 (demonstrating that Mitchell's attorney elicited testimony from a witness that lists facts the *Shenandoah* would fly over, when formulating its route).

¹⁸ *Id.* at 20. Mitchell issued to the press a typed, single-spaced, nine-page statement, totaling over six thousand words. *Id.* The statement also condemned the Navy's poor preparation and oversight of the flights of several naval seaplanes from California to Hawaii. See *id.* at 17-18.

¹⁹ *Id.* at 316.

²⁰ *Id.* at 356, 426.

²¹ *Id.* at 89-91, 324. The panel deliberated for approximately three hours. See *id.* at 322-23.

²² *Id.* at 324 (stating that the panel sentenced him "to be suspended from rank, command and duty with the forfeiture of all pay and allowances for five years"). Waller describes Mitchell's sentence as one of "peonage" because Mitchell "would be allowed to remain in the army, but he would have no rank, command nobody, do no job, and be paid nothing." *Id.*

²³ *Id.* at 331.

²⁴ *Id.* at 425; see also *id.* at 420-24 (listing a selected biography of sources utilized by Waller).

²⁵ *Id.* at 425. When asked in a publisher's promotional interview, why he wrote the book, Waller again fails to answer definitively. See Douglas C. Waller Official Website, *A Question of Loyalty: An Interview with Douglas Waller on His Latest Book*, <http://www.douglascwaller.com/aqol/interview.html#1> (last visited Nov. 21, 2005). Instead he simplistically declares, "Billy Mitchell was a fascinating person. For the journalists of his day, Mitchell was good copy. I would have loved to cover him as a reporter. Digging into his life and writing about him as a biographer today was fun." *Id.*

²⁶ See *infra* notes 27-29 and accompanying text.

²⁷ WALLER, *supra* note 1, at 139.

²⁸ *Id.* Waller also alludes to Mitchell having "scariest moments with crashes" but does not provide any of the details of these crashes. *Id.*

²⁹ *Id.* at 214.

³⁰ *Id.*

³¹ See Douglas C. Waller Official Website, *Biography*, <http://www.douglascwaller.com/bio.html> (last visited Nov. 21, 2005) (listing several of Waller's previous books).

³² See *id.* (noting that Waller has written for both *Time* and *Newsweek* magazines and for newspapers in Greensboro and Charlotte, North Carolina).

includes all of the details under the rubric of providing everything and letting the reader sort it out.³³ The book is filled with verbatim court-martial examination to no benefit of the reader.³⁴ By using such extraneous verbiage, Waller erroneously relies on the trial and defense counsels to do his work for him. Thus, the written word is only as good as the attorneys' oral examinations. Waller's lazy, misplaced, "everything *and* the kitchen sink" tactic may have sprouted from a hinted-at loyalty to the Mitchell family.³⁵ Mitchell's descendents cooperated with Waller in his research by, literally, welcoming him into their homes and giving him virtually unrestricted access to Mitchell's personal writings and letters.³⁶ Such unprecedented access to "the legend of Billy Mitchell" may, unconsciously, have steered Waller to include the minutiae of Mitchell's life.

Thus, it is not the author's research or sources that make *A Question of Loyalty* worth skipping,³⁷ but rather his prose,³⁸ structure, and style.³⁹ The book never reaches its envisioned potential as either a biography or a "gripping" tale of a military court-martial. *A Question of Loyalty* begins by alternating chapters between Mitchell's life and the court-martial.⁴⁰ Less than halfway through the book, Waller abruptly stops this style to focus solely on the court-martial.⁴¹ Waller provides no warning to the reader and his parallel storytelling strands never seem to intersect. Waller's attempt at a seamless transition between earlier parts of Mitchell's life and career and the court-martial of 1925 fails miserably. Such broken structure on the page ensures broken structure in the reader's mind, making the story difficult to follow and difficult to read. For example, one chapter, "Triumph," focuses on the sinking of the *Ostfriesland* battleship by aerial bombing in 1921.⁴² Yet, as soon as Waller describes the success of the bombs in driving the *Ostfriesland* to a watery grave, he unexplicably jumps to describing the "domestic turmoil" in 1920 of Mitchell's first marriage.⁴³ Similarly, the chapter "Preparing for Battle," ends with the fact that "[w]omen had been an important part of Billy Mitchell's life. They could make or break his career."⁴⁴ Illogically, the next chapter begins with Mitchell's return from Europe at the end of World War I.⁴⁵ The structure simply does not flow smoothly.

For the modern judge advocate, *A Question of Loyalty* harbors several flints among the embers. Readers may be entertained by comparing the "carnival atmosphere"⁴⁶ surrounding Mitchell's trial against a modern court-martial. What modern military trial judge would allow the rustling of a newspaper's comics during a trial?⁴⁷ The cracking of peanuts?⁴⁸ Smoking in the courtroom?⁴⁹ Imagine a military judge's reaction to an accused turning from the defense bar to reporters

³³ See WALLER, *supra* note 1, at 419-24 (listing a "Selected Biography" of over 150 sources). Waller unceremoniously concludes one chapter by describing a night out at the opera for Mitchell and his wife to include such details as: the hosts of the pre-opera party; the location of the opera performance; the title of the opera; the location of the Mitchells' seats; the sponsor of the seats; and the time the Mitchells arrived. *Id.* at 212.

³⁴ See, e.g., *id.* at 52 (trial counsel's voir dire of the panel), 90-91 (pleas of the accused), 109 (testimony of A.H. Yeager, newspaper reporter), 178 (testimony of Carl Spaatz, pilot), 236 (testimony of Hiram W. Sheridan, air service flight instructor), 280-81 (testimony of Charles Rosendahl, *USS Shenandoah* navigator), 301-02 (testimony of Mason Patrick, chief of the army air service).

³⁵ See *id.* at 425-26. Waller acknowledges receipt from various family members of "Mitchell stories passed down from generation to generation." *Id.* at 425.

³⁶ See *id.*

³⁷ See *id.* at 365-418 (providing extensive "Source Notes" for Waller's text).

³⁸ See *id.* at 216. The reader owes no gratitude to Waller for inclusion of sentences such as: "There was *no* rule in the manual for courts-martial that a *nonlawyer* could *not* act as a prosecutor and interrogate a witness." *Id.* (emphasis added).

³⁹ See, e.g., *id.* at 255. For example, during the trial, the panel president grants a Thanksgiving recess. *Id.* Rather than resume his story-telling with the next day of the trial, Waller feels compelled to waste three pages covering the celebrations of the various trial participants. *Id.* The book loses what little momentum Waller established. Additionally, Waller favors passive prose that burdens down his text. For example, in "The Verdict," Waller's first sentence fails to capture the reader and draw interest: "For the last day of the trial the courtroom was crowded with almost as many army and navy officers as it was with civilian spectators." *Id.* at 316; see also *id.* at 167, 207.

⁴⁰ See, e.g., *id.* at chs. 1-14.

⁴¹ See *id.* at 168.

⁴² *Id.* at 136-55. Upon defeat in World War I, the Germans surrendered the *Ostfriesland* to the Allies. *Id.* at 143. In turn, the Department of the Navy allowed Mitchell to use the battleship for operational exercises. See *id.*

⁴³ *Id.* at 159.

⁴⁴ *Id.* at 135.

⁴⁵ *Id.* at 136.

⁴⁶ *Id.* at 195.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 323.

seated in the courtroom and “in a low hoarse voice utter[ing] insults about [the witness].”⁵⁰ Would a military judge or the parties tolerate the panel members rearranging their seats so that they all could be in a press photo about the trial?⁵¹

Of interest to legal historians will be the procedural and substantive differences that abound between Mitchell’s trial and modern courts-martial. In 1925, courts-martial proceeded without a military judge.⁵² Instead, the president of the court-martial panel presided over the proceedings with the guidance of a law officer.⁵³ The law officer, like today’s military judge, ruled on objections, addressed the admissibility of evidence, and controlled witnesses.⁵⁴ Granted wide discretion, the law officer often worked as an instrument of the panel instead of an instrument of the system. For example, in *United States v. Mitchell*, the law officer joined the panel members for deliberation and sat next to the panel president for announcement of the findings and sentence.⁵⁵

For all of the differences in the court-martial system, some of Waller’s anecdotes confirm that some aspects of the process are want to change over time. Waller describes the frequent mishaps made by Mitchell’s civilian defense counsel that alienate the military panel.⁵⁶ In another situation, the defense witnesses “had agreed among themselves that whenever [the defense attorney] asked a loaded question they would blurt out the answer before [the trial counsel] could stop them.”⁵⁷ Further, at one point both the trial counsel and assistant trial counsel rise from counsel table to object and present argument whereupon the defense counsel counters with “I object to this tandem objection.”⁵⁸ Comically, Waller recites how, when faced with his own witness giving “surprise” testimony, the experienced trial counsel objected to the testimony as “incompetent . . . irrelevant and immaterial!”⁵⁹ Additionally, the modern reader may appreciate that the assistant trial counsel, in at least one instance, asked of a defense witness a question to which he did not know the answer.⁶⁰

“What place should [Mitchell] have in history?” questions Waller.⁶¹ The better query asks whether Mitchell’s notoriety as a court-martial accused overshadowed his renown as “the godfather of modern naval aviation.”⁶² Disappointingly, *A Question of Loyalty* fails to answer either question. Ultimately, the quest for the answer in Waller’s storytelling takes too long and is too strenuous a journey. The search for scraps of literary or legal redemption is not worth the minimal reward. General Billy Mitchell’s court-martial may have “gripped the nation,” but his life story fails to hold interest on the page.

⁵⁰ *Id.* at 296. Mitchell also spent one day of the court-martial “munch[ing] on candy from a paper bag.” *Id.* at 219.

⁵¹ *Id.* at 323.

⁵² *See id.* at 86 (listing the required court-martial personnel in 1925).

⁵³ *See id.* (describing the role of the “law member” to rule on legal questions” before the panel); *see also* Major Jeffery D. Lippert, *Automatic Appeals Under UCMJ Article 66, Time for a Change*, 182 MIL. L. REV. 1, 11-12 (2004) (characterizing the “law officer” as “the ‘legal arbiter’ for a court-martial”).

⁵⁴ *Compare* Lippert, *supra* note 53, at 11-12 (listing the duties of the law officer as “rul[ing] on questions of law and instruct[ing] the court members prior to their deliberation” and “rul[ing] on motions to dismiss, or . . . declar[ing] mistrials when necessary” (internal citations omitted)), *with* MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 801 (2005) (providing the duties and responsibilities of the military judge).

⁵⁵ WALLER, *supra* note 1, at 322, 323. *But see* U.S. DEP’T OF ARMY, PAM. 27-9, LEGAL SERVICES: MILITARY JUDGES’ BENCHBOOK para. 1-1a(2)(d) (15 Sept. 2002) (“The judge should avoid comment, conduct, or appearance that may unfairly influence court members or affect their judgment on the outcome of the case.”).

⁵⁶ WALLER, *supra* note 1, at 172 (questioning the civilian defense attorney’s knowledge of “basic aviation terminology”), 294 (retelling how a government witness shouts back at the defense counsel because the defense counsel interrupted the witness), 297 (depicting how the civilian defense counsel confused the Distinguished Service Cross, awarded for heroism in battle, with the Distinguished Service Medal), 312-13 (describing how the civilian defense counsel and a government witness almost came to physical blows during the trial). Waller also describes a scene familiar to modern military counsel in which the civilian defense counsel and military defense counsel act in such a way that “[t]he left hand didn’t know what the right hand was doing . . . – a situation that was not uncommon for military tribunals.” *Id.* at 189.

⁵⁷ *Id.* at 173.

⁵⁸ *Id.* at 235.

⁵⁹ *Id.* at 189.

⁶⁰ *Id.* at 224. All hope is not lost for the modern judge advocate who may make a similar error. The assistant trial counsel in the Mitchell case, Major Allen Guillon, went on to become The Judge Advocate General for the Army. *Id.* at 356.

⁶¹ *Id.* at 363.

⁶² *Id.* at 155.

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