

Nixon's Move on Calley Rouses Political Debate

By JOHN W. FINNEY APR 8 1971

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WASHINGTON, April 7—The increasingly political debate over the court-martial of First Lieut. William L. Calley Jr. took a new tack today as Democrats and Republicans clashed over whether President Nixon had improperly intervened in the case.

Senator Birch Bayh, an Indiana Democrat with Presidential aspirations, accused President Nixon of playing politics and failing to provide "moral leadership" in the Calley case. Senator Robert Taft Jr., an Ohio Republican, defended Mr. Nixon's intervention in the Calley case, contending such Presidential action was necessary to reassure the public and restore morale in the armed forces.

From the conflicting statements of the two Senators, it was apparent that the Calley case had taken on a new, con-

troversial dimension, largely as a result of a letter from Capt. Aubrey M. Daniel 3d, the prosecutor in the Calley court-martial, to Mr. Nixon.

Captain Daniel complained in the letter, disclosed yesterday, that the President's intervention in the case had weakened military justice and enhanced the image of a convicted murderer "as a national hero."

The question of Lieutenant Calley's guilt or innocence was becoming intertwined with the issue of whether the President had acted improperly in announcing he would make the final determination on the case and in ordering the convicted officer freed from the stockade while his conviction is reviewed.

The White House refused to

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make any comment today on the Daniel letter, except to say that the President had seen and read it.

Ronald L. Ziegler, White House press secretary, refused to say whether the President intended to answer the letter, which was received last night. He finally explained that he would have no comment on the letter because "the judicial process has not ended yet."

Senator Bayh called a news conference in the Senate Caucus Room to read a five-page statement in which he contended that Mr. Nixon, by "premature" intervention in the case, had made "a truly impartial, equitable review impossible."

"Can there be an objective review when the commander in Chief has made his interest so clearly known to career officers under his command?" the Senator asked in a statement read before a bank of television cameras.

He said it was apparent the President had decided to intervene in the case in response to "the great public outcry" against the verdict. The jury found Lieutenant Calley guilty of premeditated murder in killing 22 South Vietnamese civilians at Mylai in 1968 and sentenced him to life imprisonment.

The Senator said he had concluded that the President was "determined to play politics with the Calley decision and the entire Mylai tragedy."

In support of this contention, the Senator noted that 115 American servicemen have been tried for premeditated murder of Vietnamese civilians, with 59 convicted of murder and 21 of

lesser offenses. In none of these cases, he said, has the President "made known his intention to involve himself in the appeal process for a single soldier, sailor or marine in confinement."

By involving himself in the review process in the Calley case, Senator Bayh said, the President "has failed to meet his responsibility" to provide "moral leadership" and has "undermined" the integrity of the military legal system.

Senator Bayh said the President's action could affect the welfare of American servicemen taken as prisoners of war. He asked:

"If the President, by his arbitrary intervention or otherwise, were to establish the precedent that those who intentionally execute unarmed

captive civilians or prisoners of war should be exonerated, what is to prevent American prisoners or civilians, now or at some future time, from suffering a similar fate?"

In defense of the President, Senator Taft, at a crowded tiny Senate office, read news conference in his relationship a statement that he said he had "discussed" with an unidentified White House aide.

Senator Taft said the President's announcement of review did not represent "political interference with justice" but, rather, was a proper exercise of the President's responsibility as Commander in Chief.

Under the Uniform Code of Military Justice, only court-martial sentences of death and all courts-martial of generals and admirals automatically go



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Senator Birch Bayh, left, Indiana Democrat, attacked President Nixon's action in Calley case, while Senator Robert Taft Jr., Ohio Republican, defended intervention. They are shown at separate news conferences yesterday.

to the President for final review. Lieutenant Calley's case thus would not automatically be reviewed by the President.

The cases of officers whose sentences include dismissal from the service such as Lieutenant Calley go automatically to the Secretary of their branch of the service for final review.

Asked why he thought it appropriate for the President to make such an announcement before the military process was completed, Senator Taft said that in view of "widespread public misunderstanding of the verdict," it was necessary that the President reassure the public there would be "the most thorough review."

Furthermore, he said, as Commander in Chief the President had a responsibility to take into consideration the morale of the armed forces. The outcry following the verdict, he said, might have led those in the military "to feel there had been some miscarriage of justice."

"The controversial guerrilla nature of the war and the extent of our participation in it aggravate the difficulty of applying standards of justice to individual conduct," Senator Taft said. "That this needs public explanation and understanding is obvious from the outcry following the jury verdict."

Senator Taft accused Captain Daniel of making an "all-considered and emotional attack" upon the President. What the captain failed to understand, the Senator said, is that the President has made clear he would not take a position one way or the other on the case.

Attorney General John N. Mitchell, meanwhile, raised the question whether "the normal aspects of the criminal justice

system, with respect to a designated crime, should apply in the circumstances of Mylai."

Appearing this evening on the David Frost television show, Mr. Mitchell said he had "a great deal of concern about the total picture" of the Calley case. His concern, he explained, was "whether or not, in a circumstance like that, an individual or a number of individuals can be taken out of the context of the total operation and have the military code of justice applied to it."

Senator Edmund S. Muskie, Democrat of Maine, said he had talked by telephone today with Captain Daniel at Fort Benning, Ga., and "assured him of my concern that our country's fundamental dedication to the integrity of the legal process — military and civilian — be maintained."

"With avenues of appeal still open to Lieutenant Calley," Senator Muskie said, "I feel I cannot comment further on his case because of the risk of compromising that integrity itself."

Senator George S. McGovern, Democrat of South Dakota, said that while the President had the right of final review, Mr. Nixon "should not have made it appear that he would exercise that right as a result of the public clamor."

Senator Harold E. Hughes, Democrat of Iowa, sent a three-page letter to the President calling upon him to "clarify" his actions "by placing them in the context of military justice in wartime."

Mr. McGovern is an announced candidate for the Democratic Presidential nomination. Mr. Muskie is regarded as a certain candidate and Mr. Hughes as a potential contender.