

Letters to the Editor

Aspects of the William Calley Case

To the Editor:

The letter written by Capt. Aubrey M. Daniel 3d to President Nixon should be read and studied by everyone in America who is interested in the administering of justice. When the President long ago spoke about the need for lowering voices, Captain Daniel was one of those who took him seriously.

With almost everyone else in the country erupting like Vesuvius, Captain Daniel speaks softly but firmly. He told the President: "Your intervention [in the Calley case] has, in my opinion, damaged the military judicial system and lessened any respect it may have gained as a result of the proceedings." It will be difficult for President Nixon to answer that charge. [Editorial April 8.]

When the silent majority suddenly began roaring, the President, so it would seem, lost his cool, became frightened by the noise and acted impulsively at a time he should have been doing whatever a leader can do to diminish the unrestrained emotionalism let loose in our troubled land.

These times have come to remind some of us of the Joe McCarthy era, a time when men given public trust remained silent through fear. Courage, you will remember, was for a long time in short supply in the Congress. It will be interesting to note how many politicians sympathetic with the views of Captain Daniel will speak freely and honestly, knowing that by so doing they will give displeasure to the hysterical majority.

These are times when it is risky to substitute integrity and principle for expediency and an oily gift of gab.

Only the strong dare speak out. They spoke once against bully McCarthy. Now they must speak against a collective bully that has lost its reason but has suddenly found its voice.

RUSSELL SPEIRS
Elbridge, N. Y., April 8, 1971

To the Editor:

Because of the widespread popular assumption of the legality (not, of course, the propriety) of President Nixon's intervention in the Calley case, a word might be in order on the law of the matter.

Calley's acts, as determined by the military court, were a "grave breach" of Article 147 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of Aug. 12, 1949. The treaty, binding upon the United States, provides in Article 146 that "Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts." The article further provides that the parties "enact any legislation necessary to provide effective penal sanction" for such persons.

In the very first article of the Geneva Convention, the parties "undertake to respect and to ensure respect for the present Convention in all circumstances."

This language of the treaty, taken in light of its general spirit and purpose, suggests that intervention in the judicial process that might tend to bring disrespect to the convention, degrade

its purpose or render ineffective the penal sanctions provided by law, might be in violation of the convention. Of course, no definitive opinion could be reached on this point short of a lawsuit in the World Court, but at least the treaty itself, which is part of our law and binding upon the Chief Executive, suggests that the legality of the President's action is far from clear.

ANTHONY A. D'AMATO
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Chicago, April 9, 1971

To the Editor:

Now that the facts of My Lai have been proved before a court of law, I wonder whether any thought has been given to honoring those who were present and refused to obey the reprehensible order to kill unarmed captives. To refuse to obey any direct orders in the field bespeaks high courage as well as moral sense, and the honorable questioning of orders should not pass unnoticed.

Indeed, unless servicemen are honored for questioning orders that appear to be illegal, the best they can hope for is to merely escape court-martial for failing to obey.

In the circumstances, if the United States is to live up to its commitments under the Geneva Conventions of 1949, the 1907 Hague Rules of Land Warfare and other rules of international law relating to armed conflict, it would surely be appropriate to praise those who behave well in trying moral circumstances just as we give medals to those who display extraordinary courage in trying physical circumstances.

ALFRED P. RUBIN
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Eugene, Ore., April 2, 1971