

Nixon Asks New Sentencing System for Capital Crimes

By WARREN WEAVER Jr.

Special to The New York Times

WASHINGTON, March 14—President Nixon's plan to revive the death penalty seeks to circumvent the Supreme Court's opposition to capital punishment by establishing a novel system for sentencing Federal criminals.

The Justice Department has concluded, the President told Congress today, that the high court objected to the death penalty only "as it is applied arbitrarily and capriciously rather than according to specific and even-handed rules.

In a message to Congress, Mr. Nixon detailed his proposed rules more clearly than he had in a radio speech last Saturday, but some important details will await submission of the legislation later this week.

The President's list of Federal crimes for which he will urge imposition of the death penalty, augmented by information at a White House briefing, included:

¶ Treason in time of war, espionage and sabotage.

¶ Kidnapping.

¶ Pirating of aircraft.

¶ Bombing of public building

¶ Killing of law enforcement officials and prison guards.

In convictions for one of these crimes, a second, separate sentencing proceeding would be held, before the trial judge and either the trial jury or a special new jury. No information was provided on what factors would necessitate a new jury.

The jury would consider whether the case involved what Mr. Nixon termed "aggravating factors" tending to make the crime more serious or "mitigating factors" that provided some excuse short of a legal defense for the defendant's acts.

If the jury reported in a special verdict one or more aggravating factors and no mitigating factors, the judge would be required to impose the death penalty. If the jury found one or more mitigating factors, the death penalty would be prohibited.

Assistant Attorney General Henry E. Petersen explained at the briefing session that age below 18 would be an automatic mitigating factor, effectively barring any discretion of the part of the Jury once it had established the fact.

Other mitigating factors include the possibility that they accused had been suffering from "mental impairment" at the time of the crime, that he had been a minor participant or that he had acted under some form of duress.

Aggravating factors, which if not counterbalanced would mandate death, included: gravely endangering the life of an-

other person or the national security, killing for hire, committing a particularly horrible or heinous crime or killing while committing treason, kidnapping or hijacking.

Mr. Petersen said that the last provision would deter kidnapers and hijackers from killing their victims, since they would know that such an act would almost certainly bring down the death penalty on them if they were captured.

In response to a question, Mr. Petersen said he did not

know whether the proposed new procedure would permit a convicted criminal to waive the separate sentencing procedure with a jury and accept the judge's sentence instead.

Last June, the Supreme Court divided 5 to 4 in declaring that the death penalty violated the constitutional prohibition against cruel and unusual punishment when it was imposed infrequently and randomly, killing a criminal in one jurisdiction but sparing a similar one elsewhere.

Mr. Petersen predicted at the White House today that the Administration's new death penalty bill, if enacted by Congress, would receive the support of six of the nine Supreme Court Justices when they reviewed it at the close of the expected court challenge.

Voting in 1972 against prohibiting the death penalty were President Nixon's four appointees to the court: Chief Justice Warren E. Burger and Associate Justices Harry A. Blackmun, Lewis F. Powell Jr. and William H. Rehnquist.