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To the Editor:

Anybody who, as President Nixon did, makes "softheaded judges" the theme words in advocating restoration of the death penalty proves himself incompetent to say what is "cruel and unusual punishment" within the meaning of the Eighth Amendment. In addition, Mr. Nixon went either too far or not far enough, logically, in laying down his tough program of "law and order."

The Supreme Court knocked out capital punishment as unevenly administered. It left open the question whether it would be "cruel and unusual" if made mandatory for certain crimes.

The President, without using the impliedly necessary word "mandatory," asks Congress to re-establish the death penalty for "the hijacker, the kidnaper, the man who assaults an officer of the law." On the day he spoke, a Sioux Indian shot an F.B.I. agent through the wrist. The law Mr. Nixon asks for would make that Indian subject to a death sentence had the shot proved fatal.

That puts a crime of anguished passion on a par with the assassination of a President. Is that evenhanded justice? A Supreme Court that would so hold, in the face of its recent decision on capital punishment, could only be said to have lost its mind. Even the dissenting justices, I believe, would join in holding such a law to be arbitrary, capricious, cruel and unusual.

Yet, taking Mr. Nixon's "law and order" stance at face value, he did not go far enough. He asks for the death penalty only for physical crimes against individuals and crimes (hijacking) that endanger persons. There are crimes against the institutions of government that are no less menacing to the entire body politic. Does not the still-growing atrocity at the Watergate warrant the death penalty as much as "assault [on] an officer of the law?" The higher the complicity reaches, the more menacing the crime; the greater should be the retribution. *Ipsa dixit* Nixon.

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Eugene, Ore., March 11, 1973