Nixon's Lawyers Reject Subpoena

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White House attorneys yesterday rejected a state judge's order that President Nixon personally appear at the California burglary trial of former presidential assistant John D. Ehrlichman and the White House "plumbers."

If Mr. Nixon were to obey the subpoena, the White House said, the precedent would "damage irreparably" the President's ability to function, and "his inability to perform the duties as the chief executive would threaten the entire security of the nation."

The White House response was contained in a nine-page brief and two-page cover letter from special presidential counsel James D. St. Clair, submitted to D.C. Superior Court Chief Judge Harold H. Greene.

In line with interstate agreements governing subpoenas, Greene has set a March 15 hearing on whether Mr. Nixon is a witness "material and necessary" to the California case and should be made to appear.

The subpoena was issued Jan. 30 by California Superior Court Judge Gordon Ringer at the request of lawyers for defendants Ehrlichman, G. Gordon Liddy and David Young, in connection with the September, 1971, burglary of the offices of Dr. Fielding, Daniel Ellsberg's psychiatrist.

The next move is up to the defendants' lawyers, who have until March 8 to reply. The White House then will have until March 13 to make any additional written arguments before the hearing.

The defendants, members of

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the White House special investigation unit known as "the plumbers," contend that any events that occurred were occasioned by sensitive security matters. They want the President to so testify at a pre-trial hearing and at trial.

The White House response yesterday drawn only on the issue of whether Mr. Nixon should be made to appear in person, did not foreclose the possibility that he might answer written interrogatories. Such a possibility was raised earlier by St. Clair as a matter for negotiation between attorneys.

In his cover letter, St. Clair questioned whether a state court could subpoena a President and said the effect of Mr. Nixon's being made to testify "would be crippling and would threaten the very essence of the office of the presidency and, in turn, the nation . . .

"As chief executive of the United States," St. Clair wrote, "a President must be concerned on a daily basis with significant national and international issues which affect the public interests of all Americans.

"To accede to the compulsory process of a state court would not only unduly interfere with the grave responsibility of a President to make the decisions which affect the continued security of the nation but would open the door for unfettered and wholesale imposition upon the office of the President by the courts in each of the 50 states."

The White House brief, submitted by St. Clair, John A. McCahill and Michael A. Sterlacci, says that since the Constitution's adoption, no court —state or federal—has held that a President can be made to "testify in perosn in compliance with a summons."

Chief Justice John Marshall, in the Aaron Burr trials of 1807, subpoenaed President Thomas Jefferson to testify in Richmond. The White House attorneys pointed out yesterday that Marshall "conceded, however, that the official duties of the President might make it difficult, if not impossible, for him to comply."

Jefferson, the White House noted, did not "broadly challenge" a federal court's power to subpoena him but, citing pressing business, refused to testify in perosn at Burr's treason trial. Jefferson submitted relevant evidence by letter through the U.S attorney.

The White House stressed Jefferson's assertion that no court could command "the executive government to abandon superior duties and attend (the court) at whatever distance."

Citing a 1969 Florida case, the White House said that no lower court can exert its will over the executive, in this case a gvoernor. Extending the principle, the White House said, "Any attempt by a state to exercise control over the person of the chief executive of the United States is an act and therefore null and void . .

"Federal and state courts cannot, consistent with the separation of powers inherent in the very structure of the Constitution," the White House concluded, "compel a chief executive officer to appear in person to testify . . .7p "As expressed in a different era by President Jefferson, the President cannot sacrifice the compelling and real 'interests' of over 200 million Americans to satisfy the possible interest of any one individual . .

"The Constitution has vested great responsibility in the President of the United States, and he is determined to pressure the integrity of the executive office in a fashion that will not damage irreparably the ability of the chief executive to function."