

Law Is Vague on Nixon Subpoena

By Brooks Jackson
Associated Press

Washington

Nothing in the Constitution specifically gives the President immunity from being summoned either by a court or by Congress.

The White House has said President Nixon will give no written or oral testimony to the Watergate grand jury, even if he is asked, because it would be "constitutionally inappropriate" and would "do violence to the separation of powers." A grand jury is an arm of the court.

The Constitution deals specifically with procedure for impeaching a president. If the House votes to impeach a President, he is tried in the Senate, with the Chief Justice of the United States presiding.

The Senate may then remove a President from office.

It is an unsettled matter whether Congress can summon a President to testify on any matter short of impeachment proceedings.

The chairman of the Senate's Watergate committee, Sam J. Ervin Jr., contends no presidential immunity exists. In the event President Nixon is issued a subpoena and refuses, the matter presumably would be settled in the Supreme Court.

There is some precedent

for a President refusing to honor a subpoena issued by a court, but its application isn't clear. On June 10, 1807, President Thomas Jefferson was summoned to appear as a witness in the trial of Aaron Burr for treason. He refused to attend, but supplied the court with the evidence it sought, a letter in his possession.

In refusing to personally answer the subpoena, Jefferson said, "To comply with such calls would leave the nation without an executive branch . . ."

Chief Justice John Marshall, sitting at the time on circuit and not at the Supreme Court, allowed Jefferson to ignore the subpoena but declared that "a subpoena may issue to a President." Thus the precedent doesn't appear to be binding. The Supreme Court has never ruled on such a matter.

At least one present justice of the Supreme Court, Byron R. White, appears to lean to the position that a President must obey a court's subpoena. He mentioned Marshall's opinion favorably in the course of a recent majority opinion upholding the right of a grand jury to compel testimony from a newsman.