



THOMAS JEFFERSON  
A distortion

## How Nixon Erred on Burr Trial

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President Nixon, in his question-and-answer session with newspaper editors, repeated for the second time in recent weeks a major distortion of history in describing what he called the "Jefferson rule."

In his continuing effort to bolster his claims to executive privilege, the President pointed to the treason trial of Aaron Burr, and essentially repeated last Saturday what he said on October 26:

"You remember the famous case involving Thomas Jefferson where Chief Justice Marshall, then sitting as a trial judge, subpoenaed a letter which Jefferson had written which Marshall

thought or felt was necessary evidence in the trial of Aaron Burr. Jefferson refused to do so, but it did not result in a suit. What happened was, of course, a compromise in which a summary of the contents of the letter which was relevant to the trial was produced by Jefferson, and the chief justice of the United States, acting in his capacity as chief justice, accepted that."

Contrary to what Mr. Nixon said, the facts are as follows:

- Jefferson sent no summary of any letter. Instead, he ordered his prosecutors, in a letter to George Hay on June 12, 1807, to "voluntarily furnish on all occasions whatever the purposes of justice may require," and ordered the War Department to search for whatever additional documents might be relevant.

- He sent all the specific letters and orders that Burr demanded, reserving only the right to delete certain passages from a letter from General James Wilkinson to himself on Nov. 12, 1806, which he said "could contribute nothing" toward Burr's acquittal or conviction, but release of which would not be in "the public interest."

- When Burr demanded the entire letter, prosecutor George Hay freely offered to give the original over to the court for scrutiny and copying. Eventual publication of the letter in Wilkinson's memoirs' showed that it did contain sensitive matter about defenses along the border with Spanish Florida.

Rather than pointing to the Burr trial as precedent for some of their legal positions, President Nixon and his lawyers should find some aspects of it alarming. For instance, President Jefferson's own prosecutors, along with Burr's lawyers and John Marshall, agreed on the general principle that the President could be subpoenaed as a witness. The chief justice stated his own opinion explicitly: "that the President of the United States may be subpoenaed and examined as a witness and required to produce any paper in his possession, is not controverted."

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