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# NIXON BARS ROLE AT EX-AIDE'S TRIAL

## Cites Constitution in Refusal to Appear as a Witness in Ehrlichman Case

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Special to The New York Times

WASHINGTON, Feb. 26 — President Nixon refused on constitutional grounds today to appear as a defense witness at the trial in California of John D. Ehrlichman, his former adviser.

He also refused to appear before the chief judge of the Superior Court of the District of Columbia for a hearing on the question of whether or not he must appear at the Ehrlichman trial.

The chief judge had scheduled the hearing at the behest of the trial judge in California, who asked the Superior Court last month to order the President to appear at Mr. Ehrlichman's trial as well as

"Should the President accede to the principle of compulsory process of the state court, his inability to perform the duties as the Chief Executive would threaten the security of the entire nation," said a document entitled "Response of Richard M. Nixon" submitted this afternoon to Chief Judge Harold H. Greene of the Superior Court.

"As expressed in a different era by President Jefferson," the document went on, "the President cannot sacrifice the compelling and real 'interests' of over 200 million Americans to satisfy the possible interests of any one individual."

### In Ellsberg Case

Mr. Ehrlichman formerly President Nixon's chief adviser on domestic affairs, is under indictment for alleged role in the 1971 break-in at the office of Daniel Ellsberg's former psychiatrist.

On Jan. 29, at Mr. Ehrlichman's request, the judge in his case—Gordon Ritter of the Superior Court in Los Angeles—agreed to summon Mr. Nixon as a witness. A few days later, following procedures set forth in an interstate compact on obtaining the attendance of witnesses fro mout of state, Judge Ritter sent a "certifcate" to the District of Columbia Superior Court stating that Mr. Nixon was a material and necessary witness.

Theterms of that compact reqire the Superior Court to hold a hearing to determine whether Mr. Nixon is indeed material and necessary to the Ehrlichman case and whethe he should be ordered to make an appearance in California.

At the time of Judge Ritter's action, some observers suggested that Mr. Ehrlichman might in fact be counting on Mr. Nixon's refusal to appear at the trial. If the President did refuse, the argument went, the Ehrlichman defense could ask that the charges be dropped because the Government was refusing to supply all information necessary to the case.

This afternoon, asked for comment on Mr. Nixon's response, one of Mr. Ehrlichman's attorneys sai dthat he had not yet read the White House paearly to form a judgment."

"It looks to me what I expected him to say, but really I haven't settled down with it yet," the lawyer, John J. Wilson, said.

The lawyers for Mr. Ehrlichman have until March 8 to submit a written reply to Judge Greene. The hearing is set for March 15.

When Judge Ritter first announced his decision, the White House said that lawyers there would recommend to Mr. Nixon that he decline to appear. It left open the possibility though, that the President would offer to reply in writing to written questions.

The documents presented to Judge Greene today in Mr. Nixon's behalf made no mention of the President's willingness to submit to written interrogatories, however. Instead both Mr. St. Clair's letter and the formal "response" of the President flatly rejected the concept that a state court could require the President's personal appearance.

The White House based its argument on two key points—the requirement in Article II of the Constitution that the President "faithfully execute" the duties of his office, and the so-called "supremacy clause" in Article VI that states that the Federal Government is sovereign.

Essentially, Mr. Nixon's lawyers argued that if a President were required to show up as a witness in trials about the country, he would not be able to devote the necessary tilme to his work as President.

They referred to the supremacy clause as "an additional constitutional barrier." They said that the clause—which is most commonly interpreted as meaning that a Federal statute takes precedence over a conflicting state statute—meant that a state judge could not assert "sovereignty" over the President.

The "response" relied heavily on historical precedents, stating, at the beginning, that "in the 187 years since our Constitution was adopted, no court, Federal or state, had held that the President of the United States can be compelled to testify in person in compliance with a summons."