

## History Lesson

Editor — The best evidence on the much-talked about subpoena "served" on President Jefferson in 1807 amounts to this:

- At the trial of Aaron Burr the U.S. Circuit Court (Chief Justice Marshall, presiding) issued such a writ, but it was not actually served on the President.

- After taking a very high line on his right to ignore inconvenient court orders, Jefferson voluntarily gave the sought-after document to the Federal prosecutor in the case.

- The prosecutor was instructed only to withhold parts of the letter which did not bear on the issues before the court.

- The prosecutor, in turn, offered to let the court decide just

which parts were material. Jefferson himself never came to court.

- The court then issued a subpoena against the prosecutor (George Hay), but for some reason the critical papers did not figure in Burr's defense.

The conclusion of I. F. Stone (in an admirable review of the case in the June 28 issue of the New York Review of Books) was that neither court nor president won a clear victory in the historic confrontation, and that in the event Nixon failed to honor a subpoena today with more forthrightness than Jefferson showed long ago, there could be no recourse but to impeach the President.

Constitutional historians, as opposed to constitutional lawyers, must question the wisdom of asking the Federal courts to settle these "political questions," and would suggest instead — for future consideration, at least — that the Constitution be amended to prevent any such clash from recurring. It must be clear to everyone by now that the relations between the executive branch and the other two branches are not sufficiently spelled out in our basic law. We must stop worshipping the Constitution as a faultless inheritance, and treat it as the rather shopworn document that it is. Above all, we must not ask the judges to periodically rewrite it.

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