Letter Explaining Nixon Refusal to Appear at Hearing

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WASHINGTON, Feb. 26— Following is the text of a letter from James D. St. Clair, special counsel for the President, to Chief Judge Harold H. Greene of the Superior Court of the District of Columbia regarding President Nixon's refusal to appear at a hearing to determine whether he must testify at the California trial of John D. Ehrlichman:

I have been directed by the President to respond to your order of Feb. 16, 1974, setting a date for a hearing to determine whether the President of the United States must appear in person to testify as a witness in a California state court in compliance with a subpoena. I have advised the President to follow the precedents established by his predecessors and therefore, he must, and does, respectfully decline to appear at the hearing and as a witness in the California state court. I shall outline my reasons for doing so.

In 1807, President Thomas Jefferson was faced with a similar situation, a subpoena issued by Chief Justice John Marshall requiring his personal appearance in a Federal Court in Richmond, Va., to testify at the trial of Aaron Bure. President Jefferson returned the subpoena with a letter asserting that because he did "not believe that the district courts have a power of commanding the executive government to abandon superior duties and attend on them, at whatever distance, I am unwilling, by any notice of the subpoena, to set a precedent which might sanction a proceeding so preposterous.' President Jefferson also aptly stated on a later occasion that if a President were obliged to honor every subpoena at the risk of imprisonment for disobedience, the courts could breach the separation of powers and "keep him constantly trudging from North to South and East to Wst, and withdraw him entirely from his constitutional duties."

The request, in this instance coming from a state court raises, in addition, a serious constitutional question regarding the authority of a state judiciary to infringe upon the effective operation of the office of the President of the United States. The traditional principle of intergovernmental immunity has never been breached by a state court asserting a purported power sufficient too vercome the constitutional responsibility vested n the Chief Executive of the United States to perform his offical duties. Nevertheless, the language of Article VI of the United States Consttution is unmistakably clear: "The constitution of the laws of the United States . . . shall be the supremel aw of the land; and the judges in every state shall be bound thereby; any thing in the Constitution or laws of any state to the contrary notwithstanding."

In light of the compelling necessity for Presidential immunity from judicial interference with the executive function which is deeply rooted in the law and history of this nation, and consistent with the constitutional obliations mandated by Article II of the United States Constitution, the reasons for his declination to appear are manifest. As Chief Executive of the United States of America, 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 effect would be crippling and would threaten the very essence of the office of the Presidency and, in turn, the nation.