

WXPost SEP 18 1974
**Nixon Called Too Sick
For Lawsuit Appearance**

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Blood Clot

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Former President Nixon's attorneys argued for the first time yesterday that he is too sick to appear for questioning in a lawsuit.

In New York, meanwhile, his daughter, Julie Nixon Eisenhower, said that Mr. Nixon will enter a hospital "within a week or so" for tests and treatment of a painful recurrence of phlebitis that has brought about the formation of a blood clot above his left knee.

The former President's attorneys filed a motion in U.S. District Court in Los Angeles to quash a subpoena for Mr. Nixon's appearance Sept. 24 in Santa Ana, Calif., to give a deposition in a civil suit. The suit challenges security arrangements at a 1971 rally in Charlotte, N.C., in which Mr. Nixon and Billy Graham were the main speakers.

Among other grounds, the

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attorneys said giving the deposition would place an "unreasonable burden" on Mr. Nixon.

"In the opinion of his personal physician, Mr. Nixon has in recent weeks shown serious signs of strain and physical fatigue. He has suffered a recurrence of the phlebitis he had in June of this year, and a new venous blood clot has formed in his upper left leg," attorneys Herbert J. Miller Jr. and Raymond G. Larroca said in the motion filed with U.S. Judge William P. Gray.

George S. Daly of Charlotte, representing 21 persons who are suing local officials, Secret Service men and former White House aides, said he wrote the federal court clerk that he agreed to postpone the deposition "for a reasonable time."

Mr. Nixon rarely has been seen in public since he resigned the presidency Aug. 9 and flew to California. He has strayed from his San Clemente estate just three times—once for a drive, once for a picnic and once to spend a few days at the Palm Springs estate of Walter Annenberg, the ambassador to Great Britain.

His attorneys stated in their motion that "Mr. Nixon's affairs continue to draw extensive coverage and commentary in the news media" and that any giving of a deposition in Santa Ana would be accompanied by "intense publicity . . . (that) is totally unnecessary."

The attorneys also argued that Mr. Nixon is protected by executive privilege from having to divulge information relating to the conduct of his office.

Moreover, Mr. Nixon's attorneys argued that the former President's subpoenaed papers are in Washington and they "may not be transferred to California in the foreseeable future."

They also said that the materials include "thousands of hours of recorded

conversation and literally millions of documents . . . (that) would require laborious, time-consuming, enormously expensive review" to acquire.

Just reviewing the tapes, they said could take as long as "1.8 man-years"—the full-time attention of one man working for as much as one year and 10 months.

The former President's attorneys suggested that if the material sought in the Charlotte case were not covered by executive privilege, Mr. Nixon could answer written question in his San Clemente home "with no one present but the officer taking the deposition."

In New York, Mrs. Eisenhower told a news conference after taping five segments of an NBC television show "Not For Women Only" that her father "is holding up remarkably" considering the strains he has been under.

Nevertheless, she said, the phlebitis "is quite dan-

ous." She said he has agreed to the doctor's request that he get to a hospital—probably at the camp Pendleton Marine Corps Base near San Clemente—where doctors can give him an anticoagulant drug intravenously and take tests.

Mr. Nixon was examined Monday by Dr. John Lungren of Long Beach, Calif., who "strongly recommended" and "insisted" that Mr. Nixon go to the hospital soon, sources close to the former President reported.

Doctors not connected with the case said that anticoagulant therapy must be started intravenously in the hospital, but later the medicines can be given orally. In addition, Mr. Nixon will probably undergo a lung scan to see if any small blood clots have moved up the veins into his lung.

Mrs. Eisenhower said her father was not looking forward to going to the hospital. "He's just like anyone else," she said. "He just doesn't want to go to the hospital."

She denied reports that he had become a recluse in San Clemente and that he is suffering from severe mental strain.

"Of course he's not on top of the world," she said. "The letdown from office is tremendous. My mother says he's a little irritable because of the leg, but to say his mind is wandering is crazy."

Mrs. Eisenhower said she has not seen her father since he resigned the presidency, but that she has been in constant contact with him by phone.