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**NIXON'S LAWYERS
SAY HE IS TOO ILL
TO GIVE TESTIMONY**

**Presidential Privilege Also
Cited in Move to Quash
Carolina Subpoena**

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Special to The New York Times

LOS ANGELES, Sept. 17—Attorneys for Richard M. Nixon have contended in Federal Court here that the former President is too ill to provide testimony in a North Carolina civil suit growing out of his appearances at a rally in Charlotte in 1971.

A motion seeking to quash the subpoena cited Mr. Nixon's health and also contended that he enjoyed Presidential privilege in the case because it involved events that took place while he was in office.

Legal authorities say the judge in such a case has absolute discretion. He can accept outright the doctor's diagnosis, request affidavits from the doctor or doctors, appoint a court-ordered doctor to conduct his own, independent examination, take testimony by deposition or require the witness to appear and cite him for contempt of court if he refuses to do so.

Deposition Scheduled

The former President, who has reportedly suffered a recurrence of a phlebitis condition in his leg, has been scheduled to provide a deposition next Tuesday in a law office near here relating to the Charlotte rally he attended three years ago in honor of the Rev. Billy Graham. Twenty-one plaintiffs in the suit contend that their rights were violated by a White House-devised security plan that denied them admission to the rally.

Beyond the Charlotte case, the motion filed by Mr. Nixon's attorneys late yesterday, and made public today, held implications for the former President's ability to serve as a witness in the Watergate cover-up conspiracy trial of six of his former aides. The trial is scheduled to begin Oct. 1 in Washington before Judge J. Sirica of Federal District Court.

One of the defendants, John D. Ehrlichman, who was Mr. Nixon's chief adviser on domestic affairs before resigning

on April 30, 1973, has subpoenaed Mr. Nixon as a defense witness.

Presidential Privilege

The other defendants in the case are H. R. Haldeman, former Attorney General John N. Mitchell, and Robert C. Mar-dian, Kenneth W. Parkinson and Gordon C. Strachan.

In arguing that the Charlotte subpoena should be quashed on the ground of Presidential privilege, Mr. Nixon's attorneys contend that this privilege includes documents and tape recordings also sought by the plaintiffs.

Judge William P. Gray scheduled arguments on the motion to be heard next Monday in Federal District Court in Los Angeles, at which time it was expected that the nature of Mr. Nixon's physical condition might be further explored.

Mr. Nixon's attorneys contended that his condition imposed a special hardship with regard to a 26-mile trip to the Santa Ana law office where the deposition was to be taken.

"In the opinion of his personal physician," the motion said, "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."

The motion also asserted that matters pertaining to the conduct of Mr. Nixon's office "should not be ordered in a civil proceedings when a claim of Presidential privilege is asserted, absent a clear, preliminary showing that the information sought does not fall within the privilege."

It also said the subpoena demanded materials "which are not physically available to the witness in California and which may not be transferred to California in the foreseeable future."

Should the materials be made available to Mr. Nixon by the White House, the motion continued, it would require "several months" of review, therefore making the request "unreasonable and oppressive."

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