

WXPost SEP 24 1974  
**Court Test on Pardon, Tapes Hinted**

By Timothy S. Robinson  
Washington Post Staff Writer

U.S. District Judge Charles R. Richey said yesterday that "it might be desirable" to have a court rule on the validity of the pardon of former President Nixon and the agreement that allowed him to retain custody of White House tapes.

Judge Richey postponed any arguments on those two points, however, until the jury is sequestered in the Watergate cover-up trial that is now scheduled to begin Oct. 1.

The issues have arisen before Judge Richey in two remaining unsettled civil cases growing out of the original Watergate break-in and the subpoena of two months' worth of White House tapes by parties in those suits, as well as in a new suit filed by convicted Watergate conspirator James W. McCord. Former President Nixon has claimed presidential privilege on the subpoenaed tapes.

At a brief hearing yesterday, representatives of former President Nixon, the Watergate special prosecutor's office, and the White House maintained that no test of the

agreement was necessary as long as negotiations were under way that may end in its modification.

The current talks on a new agreement were begun at the request of the Watergate special prosecutor's office after it received word of the original agreement that gave Mr. Nixon custody of the material.

Philip Lacovara, counsel to the special prosecutor indicated in court yesterday that the special prosecutors office may itself question the validity of the agreement in court if it cannot informally reach a new agreement.

"If they (the talks) are not successfully concluded, there will be resorts to other remedies," Lacovara said. "I believe I can assure the court the special prosecutor would entertain any legal" options he may have.

Mr. Nixon's attorney, Herbert J. Miller, said that while he cannot say the agreement eventually would be modified, he would assure the court that the tapes will remain at the White House pending the end of the discussions.

Judge Richey suggested to Lacovara at one point that, "if

you do not achieve success, it might be desirable to have at least one trial court resolve the questions with respect to the validity of the agreement and public indication by a judge that there might be a legal case point out that McCord's attorney, Bernard Fensterwald, is basing much of his challenge of the pardon on the charter that set up the Watergate special prosecutors office.

That charter, agreed to by congressional leaders, said that the president "shall not exercise his constitutional powers to effect the discharge of the special prosecutor or to limit the independence he is hereby given . . ."

The suit, which is also assigned to Judge Richey claims that the pardon limited

Philip Lacovara, counsel to the special prosecutor indicated in court yesterday that the special prosecutors office may itself question the validity of the agreement in court if it cannot informally reach a new agreement.

"If they (the talks) are not successfully concluded, there will be resorts to other remedies," Lacovara said. "I believe I can assure the court

the special prosecutor would entertain any legal" options he may have.

Mr. Nixon's attorney, Herbert J. Miller, said that while he cannot say the agreement eventually would be modified, he would assure the court that the tapes will remain at the White House pending the end of the discussions.

Judge Richey suggested to Lacovara at one point that, "if you do not achieve success, it might be desirable to have at least one trial court resolve the questions with respect to the validity of the agreement and the validity of the pardon."