Court Test on Pardon, Tapes Hinted 4-24-74

By Timothy S. Robinson Washington Post Staff Writer

R. Richey said yesterday that modification. "it might be desirable" to have a court rule on the valid- agreement were begun at the ity of the pardon of former President Nixon and the cial prosecutor's office after it agreement that allowed him to received word of the original retain custody of White House agreement that gave tapes.

Judge Richey postponed any arguments on those two the special prosecutor indipoints, however, until the jury cated in court yesterday that 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 re- new agreement. maining unsettled civil cases growing out of the original successfully concluded, there hereby given . . ." Watergate break-in and the will be resorts to other remesubpoena of two months' worth of White House tapes lieve I can assure the court by parties in those suits, as the special prosecutor would well as in a new suit filed by convicted Watergate conspira- he may have. tor James W. McCord. Former Mr. Nixon's attorney, Her- the special prosecutors office President Nixon has claimed bert J. Miller, said that while may itself question the validpresidential privilege on the he cannot say the agreement ity of the agreement in court subpoenaed tapes.

day, representatives of former the tapes will remain at the President Nixon, the Water- White House pending the end gate special prosecutor's of of the discussions.

agreement was necessary as you do not achieve success, it, the special prosecutor would U.S. District Judge Charles der way that may end in its

> The current talks on a new request of the Watergate spe-Mr. Nixon custody of the material.

Philip Lacovara, counsel to the special prosecutors office may itself question the validity of the agreement in court if it cannot informally reach a

"If they (the talks) are not dies," Lacovara said. "I beentertain any legal" options

eventually would be modified, if it cannot informally reach a At a brief hearing yester- he would assure the court that new agreement.

least one trial court resolve the he may have.

questions with respect to the that there might be a legal bacase point out that McCord's charter that set up the Watergate special prosecutors office. That charter, agreed to by Judge Ricney suggested to congressional leaders, said Lacovara at one point that, "if that the president "shall not you do not achieve success, it exercise his constitutional powers to effect the discharge of the special prosecutor or to limit the independence he is

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

"If they (the talks) are not successfully concluded, there will be resorts to other remefice, and the White House Judge Richey suggested to dies," Lacovara said. "I be-maintained that no test of the Lacovara at one point that, "if lieve I can assure the court

long as negotiations were un-might be desirable to have at entertain any legal" options

Mr. Nixon's attorney, Hervalidity of the agreement and bert J. Miller, said that while public indication by a judge he cannot say the agreement eventually would be modified, attorney, Bernard Fenster he would assure the court that wald, is basing much of his the tapes will remain at the the tapes will remain at the challenge of the pardon on the White House pending the end of the discussions.

Judge Richey suggested to might be desirable to have at least one trail court resolve the questions with respect to the validity of the agreement and the validity of the pardon."