

# Judge Talks Of Challenge To Pardon

Washington

U.S. District Judge Charles R. Richey yesterday indicated his willingness to consider challenges of Richard Nixon's pardon and the agreement granting him custody of all his presidential tapes.

Noting that reports of Mr. Nixon's health cause "some basis for concern," Richey also won assurances from lawyers for Mr. Nixon and the Ford administration that subpoenaed tapes would not be destroyed should the former President die.

"They are not attached to a self-destruct device . . ." said Justice Department attorney Irving Jaffe. "The status quo would be preserved even if death should occur."

The tapes agreement specifies in part that all tapes are to be destroyed in 1984 or upon Mr. Nixon's death, whichever occurs first.

But Jaffe said that since the subpoenas were served before the tapes agreement was made, the tapes could not be destroyed before the legal process has run its course even if the former President did die.

And, Jaffe said, new negotiations are under way "which may well result in modification of the terms and conditions" of the tapes agreement, announced simultaneously with President Ford's pardon of Nixon on September 9.

At an hour-long hearing on two Watergate civil cases, Richey said the pardon and the tapes agreement raise "substantial" questions that could have considerable impact on the coverup trial of six former Nixon aides due to start October 1.

"The thought occurs to the court after thinking it over during the weekend that it might be desirable to have a trial court resolve the questions that are extant on the validity of the agreement and the validity of the pardon," he said.

Such a challenge was filed last Friday by James W. McCord Jr., one of the convicted Watergate burglars, but Richey dismissed it on technical grounds.

McCord's lawyer, Bernard Fensterwald, refiled the suit yesterday, contending Mr. Ford's pardon on his predecessor was "illegal and unconstitutional . . . arbitrary and capricious." He also argued that the tapes are government property and so any agreement giving them to Mr. Nixon, a private citizen, is null and void.

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