

NY Times
**EHRlichman PLEA
DENIED BY BURGER**

AUG 29 1974
**Way Cleared for Cover-Up
Trial to Begin Sept. 30**

By **WARREN WEAVER**
Special to The New York Times

WASHINGTON, Aug. 28—Chief Justice Warren E. Burger denied today a request by John D. Ehrlichman that the Watergate conspiracy trial be postponed until next year. The move virtually assured that the trial will open here Sept. 30.

The Chief Justice, who handles motions arising in the District of Columbia in his role as its circuit justice, did not analyze Mr. Ehrlichman's contention that he could not get a fair trial now because of publicity following the resignation of former President Richard M. Nixon.

Chief Justice Burger said in a four-page memorandum that such pretrial orders in criminal cases "are essentially within the sound judicial discretion of the trial judge," with the United States Court of Appeals acting as "a primary source of relief" and the Supreme Court's function "limited."

In this case, the Chief Justice noted, Federal District Judge John J. Sirica first refused to postpone the trial date beyond Sept. 9, then revised this to Sept. 30 after the United States Court of Appeals for the District of Columbia had indicated, without issuing an order, that some delay would be appropriate.

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Declining to set aside the Court of Appeals' action, Chief Justice Burger said: "An individual circuit justice does not possess the supervisory powers of a Court of Appeals concerning the activities of the District Courts within its circuit."

The Chief Justice also refused to refer the Ehrlichman motion to the full Supreme Court, which is not scheduled to convene for its fall term until Oct. 7. This, he noted, would result in a delay of three or four weeks, even if the full

court then denied any further postponement.

Chief Justice Burger pointed out that he was not taking any position on the issues of pre-trial publicity or the amount of time available for the defense to prepare its case, if these issues should be raised again by Mr. Ehrlichman or any of the other cover-up defendants in an appeal of a verdict in the trial.

In requesting the postponement, Mr. Ehrlichman, former chief domestic adviser to President Nixon, said he needed more time to study some 5,000 pages of potential evidence made available by the special Watergate prosecutor, Leon Jaworski.

Mr. Ehrlichman had argued that publicity surrounding Mr. Nixon's departure from office created a "divisive environment" in which he could not receive a fair and impartial trial.

Mr. Jaworski urged Chief Justice Burger to deny the motion for postponement on the ground that such issues in a criminal case are properly reviewed after trial rather than before.

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**M'CORD SUBPOENAS
PRESIDENTIAL TAPES**

The Washington Star News
WASHINGTON, Aug. 28—James W. McCord Jr., one of the men convicted in the Watergate break-in, has subpoenaed Presidential tapes for use in his civil lawsuit.

The subpoena, filed in United States District Court yesterday, calls on the White House counsel, Philip W. Buchen, to deliver all tapes made between Jan. 1 and Jan. 31, 1973.

The Watergate trial began Jan. 8 and ended Jan. 30 with the conviction of Mr. McCord, a former employe of the Committee for the Re-election of the President, and G. Gordon Liddy, a former White House aide. Five other men charged with them pleaded guilty.

This is the second subpoena directed to Mr. Buchen in the last week, calling for the tapes of former President Richard M. Nixon. The first was filed by R. Spencer Oliver, former executive director of the Association of State Democratic Chairmen, who also has a Watergate suit pending.