

Burger Bars Watergate Trial Delay

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Chief Justice Warren E. Burger refused yesterday to delay the Watergate cover-up conspiracy trial, apparently removing the last threat to the scheduled Sept. 30 trial of former President Nixon's highest aides.

Burger, acting as supervisory justice for District of Columbia court matters, rejected the bid of defendant John D. Ehrlichman to postpone the trial until 1975 because of alleged prejudicial publicity.

In a four-page written opinion Burger indicated he may entertain some doubts about the actions of Judge John J. Sirica and the U.S. Circuit Court of Appeals, but added that his review function was limited at this stage of the proceedings to correcting only "the most extraordinary mistakes of lower courts."

The trial had been set for Sept. 9 and was put off for three weeks after the court of appeals gave "intimations that some delay would be appropriate," Burger noted in his opinion. He added:

"Doubts about the correctness of a district court decision fixing a trial date in these circumstances, particularly after the court of appeals has reviewed the matter and denied us application for mandamus, are not sufficient to form a basis for contrary action by an individual circuit justice."

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Burger said his action "is not to be taken as intimating any view whatever on the issues presented." Those issues, he said, "should they arise after verdict, must await the normal appellate processes."

As legal precedent for this statement, Burger cited the high court's 1966 decision in the Sam Sheppard prejudicial publicity case, which resulted in a new trial and acquittal of the Cleveland doctor who had been convicted of murdering his wife. Dr. Sheppard

was in prison 10 years before the Supreme Court upset his conviction.

Burger said he might have referred the Ehrlichman petition to the full court when the new term opens Oct. 7. But he said this in itself would delay the trial until late October.

In addition to the publicity issue, Ehrlichman complained that a trial at this time in Washington would be especially prejudicial to his defense. His lawyers also said they needed more time to prepare their case. Burger said these questions also were within the discretion of lower courts to decide at this time.

The chief justice noted that he and other justices had "essentially the same exposure as that of the trial judge and the court of appeals to the pretrial publicity" in the case. But in most cases the circuit justice would not have such first-hand familiarity, he added, and the general rule that the justices don't control trial matters closely must be observed.

Watergate Special Prosecutor Leon Jaworski had asked Judge Sirica for a brief postponement but he opposed delay beyond Sept. 30.

Defendants in the case are

Ehrlichman, former domestic adviser to the President; H. R. (Bob) Haldeman, former White House chief of staff; John N. Mitchell, former Attorney General and campaign chief; Robert C. Mardian, former assistant attorney general and campaign aide; Gordon Strachan, former assistant to Haldeman, and Kenneth Wells Parkinson, former lawyer to the presidential campaign committee.

The indictment charges all six defendants with conspiring to cover up responsibility for the Watergate break-in. Other counts charge obstruction of justice, false statements and perjury.