

Compromise Offer

As a rule, American courts shy away from handing down a far-reaching decision on a constitutional question if they can find another solution. Better to search for a compromise than to spell out a judgment that could cause unforeseen problems later on.

Last week such a compromise on the grave issue of the President's Watergate tapes and documents was suggested by the U.S. Court of Appeals for the District of Columbia. White House lawyers were arguing that the President—because he was President—had the unlimited right to decide whether or not the tapes and papers should be given to a grand jury as requested. Special Prosecutor Archibald Cox was claiming that the President's powers were limited by the fact that the tapes were needed for criminal investigations, and no citizen could refuse such a request.

With the perquisites of the presidency and grave questions of separation of powers at stake, the seven sitting justices took the step, unusual in a criminal proceeding, of recommending an out-of-court settlement. They proposed that the President or his delegate should go over the tapes with Cox and White House Attorney Charles Alan Wright and decide what material should go to the grand jury. That way no one's principles would be surrendered. However, if no agreement was possible, the court said, it would make a ruling on the case, one that would certainly be appealed to the Supreme Court.

Cox at once said that he would be delighted to talk the court's proposal over with the President and his men to see if it could be made to work. At week's end, the President and his lawyers were still considering the proposition.

The Forgotten Cubans

All veterans of the fight against Fidel Castro, the four refugees from Cuba saw themselves as good soldiers on the Watergate front. "I was not there to think," as Bernard Barker put it. "I was there to follow orders." Caught in the Democratic National Committee's Watergate offices on that fateful night of June 17, 1972, they all stoically pleaded guilty and trooped off to jail. As the scandal has expanded, they have become its forgotten men: Bernard ("Macho") Barker, 56; Virgilio ("Villo") Gonzalez, 47; Eugenio ("Musculito") Martinez, 51; and Frank Sturgis, 49.*

Today, six months into their provisional 40-year sentences, they are filled with indignation, convinced that they, too, were victims of the complex scandal. Exclaims Barker's daughter, Maria-Elena Moffett: "They feel like they have been used, thrown out, ignored, stepped on and left without any hope of justice.

*Barker and Sturgis do not have Cuban surnames because, although Barker's mother was Cuban, his father was American and Sturgis adopted his stepfather's name.

They do not want to be lumped together with men like Haldeman and Ehrlichman—those who knew exactly what they were doing. They are little people who thought they were helping fight Communism." As Barker explained to the Ervin committee, he was told that the Democrats had received contributions from the Castro regime and he participated in the break-in to find proof.

This week the four men were scheduled to testify in Washington before a federal grand jury, as well as to have their sentences reviewed by Federal Judge John J. Sirica. In meting out their provisional terms last March, Sirica said that if they told investigators all they knew about the break-in, he would "weigh that" in deciding whether to reduce their sentences. They say that they have cooperated. Yet as the Watergate investigation has grown, so has their

DENNIS BRACK—BLACK STAR



CONSPIRATORS MARTINEZ, BARKER . . .

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"provisional" stay at the medium-security federal prison at Danbury, Conn. If Sirica believes that the four have still more to tell, he theoretically could delay a final review of their sentences until after all those who may be indicted for the break-in and cover-up are tried—and that could take months, if not years.

That possibility weighs heavily on the prisoners' minds. In a rare interview, Barker told TIME Correspondent Sandra Burton: "I've been in jail for nine months and I still don't know what my sentence is. Today I am 56 years old, my real estate business has dissolved, and I am in prison where the population is calling me one of 'Nixon's boys.' If I had to choose between going through this Watergate imprisonment or World War II [where he spent 16 months in a German prison camp] again, I would definitely select the latter. This is mentally very cruel."

In desperation, the four conspirators and their families have been seeking

help from every direction. Besides continuing to confer with their original attorney, Daniel Schultz of Washington, D.C., they have also been in touch with two others: Thomas Clifford, the U.S. public defender in Connecticut, and Ellis Rubin, a flamboyant Miami lawyer known for his fervent espousal of Cuban-refugee causes as well as his many losing races for local public office.

In addition, they managed to rouse the interest of a potentially powerful ally: Connecticut Senator Lowell Weicker of the Ervin committee. Barker's daughter had singled him out "because he was the Senator in all the hearings I liked best." She appealed to him, and during the congressional recess Weicker went to Danbury twice to meet with the prisoners. He said that he was "upset to see the men who are least able to afford it sitting in jail while all the others wan-

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. . . STURGIS & GONZALEZ IN WASHINGTON

der around the country." Though the Senator added that he could make no promises, he has turned over minutes of his conferences to the committee staff.

Last week Schultz filed a petition for a retrial of the men, which if accepted by Sirica would cancel his planned review of their sentences. Schultz argued that the men originally pleaded guilty in the belief that they were protecting "national security interests" by doing so. Now they believe they were deceived and made victims of a "cruel fraud." Barker once denied that anyone had pressured the four conspirators into pleading guilty last spring but now says it is a matter of "interpretation" and for the judge to decide. It is known, however, that Schultz is preparing a suit against E. Howard Hunt and former Presidential Special Counsel Charles W. Colson. It will accuse them of misleading the four prisoners into believing that their work had been approved by a federal intelligence agency.