

# Herewith, The Possible Watergate Crimes

By Rufus King

*King, a Washington lawyer and writer on criminal law, is a member of the ABA's special committee on standards and author of "The Drug Hang-Up"*

**I**F WATERGATE is a tangled tale, its potential legal consequences are even more complex—and involve, in some cases, laws toughened three years ago by President Nixon himself. Leaving aside state laws that might apply to related cases—the burglary at Daniel Ellsberg's psychiatrist's office and concealing knowledge of the burglary, for example, would come under California statutes—the federal laws possibly involved in Watergate include not only those on wire-tapping, bugging and perjury, but also those on misrepresentation of facts material to an investigation; bribery; tampering with witnesses; removing, concealing, damaging and destroying official records; misconduct in public office; use of a false name to conduct or promote any "unlawful business" through the mail; flight to escape prosecution or to avoid testifying in a criminal proceeding; carrying wiretapping or eavesdropping devices across state lines. Attempts to commit or get anyone else to commit any of these crimes, as well as concealing knowledge of the commission of any of them, may be treated as separate offenses.

The principal offenses, of course, are burglary and bugging, and the laws covering these were broadened and tightened during the Johnson years. Ironically, the laws on wiretapping and bugging were toughened in 1968 over the strenuous objections of then-Attorney General Ramsey Clark, whom candidate Richard Nixon accused of being "soft on crime."

The criminal penalties for electronic eavesdropping are overlapping and severe, with intercepting communications and disclosing them considered separate offenses. They may range up to \$10,000 in fines plus five years' imprisonment. The Federal Communications Act's separate prohibition of wiretapping, which is still in effect, might provide an additional fine of up to \$10,000 and as much as a year in prison. This is in addition to the civil damages that the victim of unauthorized wiretapping or bugging is entitled to claim.

Nor is that all. The same punishment—fines up to \$10,000 and imprisonment for as long as five years—is also specified for the separate offense of mailing or carrying any device "primarily useful for" wiretapping or bugging across a state line—or for assembling or even possessing such a device knowing that it has been or will be taken across a state line. For these purposes, of course, the District line counts as a state line; but since the District is a federal domain, application of the laws covering the tapping or bugging itself need not be tied to interstate or foreign commerce, as it must in state jurisdictions.

Under the District's burglary statutes, unauthorized entry of any private premise (except an occupied dwelling or sleeping apartment, which draws more severe penalties) with intent to steal or to commit any other criminal offense is punishable by a minimum of two and a maximum of 15 years in prison.

## A Web of Related Offenses

**E**ACH SUBSTANTIVE OFFENSE defined in a well-drawn criminal code—and at least a score of them could be found in what we have already examined—provides a center for a whole web of related prohibitions, designed to make the law easier to enforce and to discourage commission of the offense.

These related charges fall into three rough categories: those directly related to the main offense; those that link other people to the main offender; and those that punish separate but related acts, which may in turn become substantive offenses themselves.

First are the conspiracy sections, based on the old realization that even though society may not be threatened by one person alone merely planning to commit a crime, an agreement and plan among several people was a quite different matter, and considerably more dangerous. In most American conspiracy laws there is an additional requirement that someone must actually do something to further the plan, even though his act may be very remotely connected with the plan's purpose. But once he acts, everyone who knowingly participated in any way is guilty and subject, under the federal code, to a fine of up to \$10,000 and a jail term of up to five years. The conspirators cannot, however, be punished more severely than they would have been for the offense they planned.

Ironically, there were no separate conspiracy sections in the District of Columbia Code until President Nixon signed the omnibus District of Columbia Court Reform and Criminal Procedure Act in 1970.

Among the other sanctions that depend on the main offense are those covering attempts to commit a crime and efforts to conceal knowledge of a crime. Attempts to violate the federal wiretap-bugging law are covered in that law itself, while in the District of Columbia attempting any crime is a separate offense punishable by a fine of up to \$1,000 and a jail term of up to one year. And anyone who has knowledge that a felony has actually been committed and who does not "as soon as possible" report that fact to a federal judge or to some other appropriate federal authority, is liable for a separate penalty of a \$500 fine and up to three years in prison.

**A**S FOR OFFENSES generally described as "accessory," anyone who "aids, abets, conceals, commands, induces or procures the commission of" an offense, or otherwise causes someone else to commit it is guilty in the same degree as if he had done it himself. After a crime has been com-

mitted, anyone who knowingly "receives, relieves, comforts or assists" the guilty person to prevent his being caught or punished is subject to half the fine and half the maximum prison term prescribed for the principal offense.

Turning to separately described crimes that may tie in more or less directly with the initial offenses, the list here is not exhaustive—and with so much activity and so many people involved, it would be impossible to guess reasonably at all the general sanctions that might conceivably trip someone up.

Perjury in a civil or criminal proceeding, and false swearing to any subscribed document, can bring a fine of up to \$10,000 and imprisonment for up to five years. Inducing another person to perjure himself can draw the same imprisonment but, curiously, only \$2,000 as a fine. Defiance of a court order, if treated as criminal contempt, is punishable by up to \$1,000 in fines and up to six months in jail.

Any intentional misrepresentation of a material fact to any agency of the United States is a separate crime, with a maximum penalty of a \$10,000 fine and five years in prison. Bribing, misrepresenting or intimidation to keep anyone from telling federal investigators about a criminal violation is punishable by as much as \$5,000 in fines and five years in prison.

Anyone who travels in interstate commerce to escape prosecution or to avoid testifying in a criminal proceeding is liable to receive a fine of up to \$5,000 and up to five years in prison. Seeking to influence, intimidate or otherwise interfere with a witness' testimony before any U.S. court, grand jury or congressional body is likewise punishable by a \$5,000 fine and five years in prison.

### Special Rules for Officials

**S**OME SEVERE SPECIAL punishments are aimed directly at the conduct of public officials. Givers and takers of bribes—including anything of value to influence an official act, and including specifically any offer or promise intended to influence testimony under oath—can be fined \$20,000 (or three times the monetary value of whatever was offered), imprisoned for up to 15 years, and disqualified from thereafter holding any office "of



honor, trust or profit under the United States." A mere offer or demand of anything for any such purpose is punishable by a fine of up to \$10,000 and as much as two years in prison.

Any private citizen who "wilfully and unlawfully" removes, conceals, damages or destroys any official record is liable to a \$2,000 fine and a prison term of up to three years; a public official having custody of records and doing the same thing is liable to the same punishment but also forfeits his office and is disqualified from ever returning to a federal post.

The punishments mentioned here are all maximums; the sentencing judge has discretion to give any lower fine and shorter term, to impose a fine without imprisonment or imprisonment only, to suspend the sentence after he has imposed it, and to specify terms on which the offender may be eligible for parole. The only exception here is the D.C. burglary statutes, in which minimum terms are set. If a defendant is found guilty of multiple offenses, such as trying to wiretap and at the same time illegal possession of wiretap equipment (he could not be convicted separately of the attempt and the act itself, since the two offenses merge), the judge can make his terms concurrent or consecutive.

### Reprieves, Pardons,

**F**INALLY, THE PRESIDENT always has the absolute last word by virtue of his constitutional power to grant reprieves, which reduce sentences, and pardons. The only exception to this is in cases of impeachment. The House of Representatives must initiate all impeachment proceedings, by an act comparable to an indictment, and may impeach anyone holding office in the executive or judicial branch.

The Senate then tries the impeachment, sitting as judge and jury, with a two-thirds vote (of members present) required for its verdict. The only unusual provision in presidential impeachments is that the Chief Justice presides over such proceedings to remove the vice president from a difficult conflict of interests.

Impeachment does not relieve the impeached person of criminal responsibility for any offenses he may have committed against any laws of the United States.