

To the Editor:

The so-called Watergate cover-up trial again raises the much-discussed but seemingly unresolvable issue of fair trial/free press.

But where we have been concerned with prejudice surrounding the traditional criminal case and the *cause célèbre* in particular, we are now faced with the unpleasant possibility that such a case, dealing as it does with fundamental, emotion-charged sociopolitical questions about the conduct of government, has introduced an insidious new strain of prejudice.

To be sure, under law the defendants are charged with a discrete criminal act, but their notoriety and their alleged crime have likely introduced a new genre of criminal case and with it a bias deriving not only from the criminal act but also from deeply rooted attitudes about trust in those that run our country.

As in the traditional case, we will never be able to state unequivocally that prejudice does in fact exist, bound up as it is with the intricacies of the human mind. But we can and must at least be able to establish a scientific probability of prejudice. The Watergate cover-up trial imbues the need to know about the effects of crime news with a new urgency.

It is high time that the constitutional rhetoric over whether freedom of the press is more right than the right to a fair trial be consigned to the junk heap of philosophy and a thorough interdisciplinary investigation of exactly how crime news operates on the potential juror's mind be undertaken.

Until such time, the courts, which must make day-to-day decisions, will continue to rely on little more than hunch and intuition in determining probable prejudice. That they cling to the outmoded "hypodermic" theory of communication, which holds that information disseminated by the press has a direct impact on attitude formation, is more a matter of efficiency than anything else. This view, nevertheless, places the press in a particularly vulnerable position.

Yet it arrogantly continues to maintain its concern only for its right, leaving the rest of the Constitution to the legal side. Only 5 per cent of the three million or so felony cases in the U.S. raise the question of prejudice anyway, its spokesmen are fond of pointing out.

But it is this very 5 per cent which contains the most highly publicized cases, which to a majority of Americans mirror our system of justice. And the Watergate cover-up trial will most assuredly reflect this vaunted system to the rest of the world.

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