



**SAMUEL L. POPKIN**  
... conviction voided

## Witness Upheld on Opinions

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A federal appeals court in Boston has ruled that university scholars cannot be sentenced to jail for refusing to discuss their opinion on controversial issues before grand juries.

The unanimous decision of the U.S. Court of Appeals for the First Circuit came in a case involving Samuel L. Popkin, an assistant professor of government at Harvard University, and his subpoena to testify in an investigation of the disclosure of the Pentagon Papers last summer.

Popkin had been sentenced to up to 18 months in prison on contempt of court for his refusal to answer seven questions during a grand jury appearance March 29.

The appellate court only partially reversed his conviction, sending Popkin's case back to U.S. District Court in Boston for further proceedings.

In a written decision by Judge Frank M. Coffin, the circuit court said it had never

heard of another case where a witness was held in contempt for "refusing to give an opinion."

"In the long run, the quest for opinions would not be a useful investigative tool," Coffin wrote. If Popkin were forced to answer the contested questions, he said, "scholar-sleuths would in the future think long and hard before admitting an opinion, and grand juries would be without workable means for forcing them to do so."

Among the questions Popkin declined to answer was the following:

"What is the opinion as to persons you believed pos-

essed a copy of the Pentagon Papers in Massachusetts prior to June 13, 1971" — the date the top-secret study of American involvement in Vietnam was first published by The New York Times.

Coffin's two colleagues on the appellate court, Chief Judge Bailey Aldrich and Judge Edward M. McEntee, said in a concurring opinion that their only objection to the "opinion questions" was "the semantic one that they are badly phrased."

They suggested that if the government prosecutors reworded their questions to Popkin, they might be able to get the information they sought in the first place.

Popkin, an expert on Vietnamese village life, is a close friend of Daniel Ellsberg, who has acknowledged making the Papers available to the press and goes on trial next month on charges that he violated the federal espionage act and anti-conspiracy law.

The appellate court decision in Popkin's case, which was released last week, rejected his lawyers' argument that a grand jury — like a congressional investigating committee — should be required to show the "relevance" of any questions posed to a reluctant witness.

But at the same time, the court hinted that a scholar, like newsmen, may be entitled to protect his "relationship of confidence" with the sources for his research.

"To the extent that a scholar qua scholar is asked about statements made to him by other scholars," Coffin added in his opinion, "we do not conceive of him as in any different position from that of a doctor asked about his conversations with other doctors, or a lawyer about his talks with other lawyers."

Under that rationale, if Popkin asserts that his relationship with Ellsberg was that of two scholars, he could possibly be excused from telling the grand jury about their conversations.

The decision also indicated that Popkin need not reveal the names of "government officials" or "participant-sources" he interviewed in the course of his scholarly research. Ellsberg could conceivably fall into one of those categories, too.

But the court rejected Popkin's demand that the government reveal whether he was the object of electronic surveillance. When he appeared before the grand jury, Popkin was asked his telephone number.