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LEGIS

The Grand Jury

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ABROAD AT HOME

By ANTHONY LEWIS

CAMBRIDGE, Mass., April 23—Samuel L. Popkin is an assistant professor of government at Harvard whose special interest is Vietnam village life. He takes a relatively unemotional line on Vietnam by today's standards; he is critical of American policy but also speaks of excesses and mistakes on the other side. His careful views and his connection with Harvard's Center for International Affairs make him suspect in some radical quarters.

Altogether, Professor Popkin seems too moderate and cheerful a young man for martyrdom. But that may be where he is heading. He now faces up to eighteen months in prison for refusing to answer questions before a Federal grand jury.

The grand jury, in Boston, has been looking into The New York Times's publication last June of the Pentagon Papers—the official study of American involvement in Vietnam. Over many months Federal prosecutors have been asking witnesses about Daniel Ellsberg, the accused source, and Neil Sheehan, The Times reporter.

Just what Professor Popkin has to do with the whole business is difficult to see. He told the grand jury under oath that he had never met Mr. Sheehan, had never seen any part of the study that came to be called the Pentagon Papers before publication and had not known of any plan to have it published.

But as a scholar in the Vietnam field, Mr. Popkin said, he had become aware of the study's existence over the years. He said he had no personal knowledge of who might have had copies. The prosecutors then asked for his "opinion" on that point:

"What is your opinion as to persons you believed possessed the Pentagon Papers . . .?"

Professor Popkin refused to answer that question and six others. Four of the seven questions dealt with his opinion on who had had copies and how he had formed that view. Two were about how he had learned who had originally written the official study. The last question was whether he had discussed the study with Daniel Ellsberg, whom he knew professionally.

Considering how unrelated Samuel Popkin really was to the Pentagon Papers affair, why didn't he just answer and get it over with? The reason he gives is that he found himself caught up in what could be a new and dangerous abuse of official investigative power and was obligated to try to help stop it. Some other scholars here, and lawyers, agree.

A substantial transcript of his grand jury session was printed by the Harvard Crimson. It showed the questioning of Professor Popkin to have been, in the lawyers' cliché, a fishing expedition. Rather than relating to specific events, the questions sought his speculations and names of Americans and Vietnamese with whom he had had scholarly interviews over the years.

The danger in such a proceeding is not hard to see. Grand juries have very great power to compel testimony; they can even grant personal immunity from prosecution, as this one did for Professor Popkin. If prosecutors use a grand jury for general inquiries into the opinions and sources of scholars or others, the effect could be as intimidating as the worst Congressional investigations of the 1950's.

The Harvard faculty, seeing the danger, adopted a resolution urging "restraint" in grand jury inquiries and asking that the Government show a strong need before putting such questions. Twenty-four other scholars filed affidavits on Professor Popkin's behalf. Perhaps the most compelling was from Prof. John K. Fairbank, the great expert on China, who wrote:

"My observation is that a subpoena has an effect of intimidation both on the person subpoenaed and on those who might have contact with him. I can testify from personal knowledge that in the early 1950's . . . the widespread subpoena of China scholars had the public effect of inhibiting realistic thinking about China, and I believe the result carried over into unrealistic thinking about Chinese relations with Vietnam and helped to produce our difficulties there."

Professor Popkin asked that he be excused from answering the questions or, at least, that the Government be required to show their pertinence. The district judge rejected his claims, found him in contempt and ordered him held in prison until he did answer, up to a limit of eighteen months. The case is now before the United States Court of Appeals for the First Circuit.

For good reason, our law has always been reluctant to excuse any citizen from the duty of answering questions in an investigation of crime. The courts will not casually create any new privilege against testifying for a class of people, whether scholars or others.

But there is an assumption in the system that, balancing the power to compel testimony, there will be restraint and responsibility on the part of those who exercise the power. If prosecutors are vindictive, if they use grand juries for political purposes, the courts must and will find ways to protect witnesses.

Samuel Popkin's case thus teaches a familiar lesson. In this country we can and do rely on judges for protection against abuse of official power. But every abuse has its cost in public unease and distortion of the legal system. It is better to have a government that exercises a decent restraint.