

High Court Orders Arguments on Gravel Case

3/7/72

By John P. MacKenzie
Washington Post Staff Writer

Calling for an early showdown on the scope of congressional immunity, the Supreme Court yesterday ordered arguments this spring in the battle between the Justice Department and Sen. Mike Gravel (D-Alaska).

After two weeks of sparring over strategic matters of timing, the court granted the Justice Department's motion to expedite the case for a full oral hearing in April and an expected decision by June.

At issue is how far federal prosecutors may go in grand jury questioning of aides to

Gravel and private citizens who helped arrange publication of the Pentagon Papers edition Gravel placed on the record last June.

Gravel, whose personal immunity from testifying is not currently disputed, contends that the Constitution's "Speech or Debate" clause forbids inquiry into actions taken by his agents or by others who advance his own role as a legislator informing the public.

The clause says that members of Congress may not be "questioned in any other place" for any speech or debate in either house, a phrase the Justice Department claims has been too loosely construed by a lower court.

The First U.S. Circuit Court of Appeals held that a Boston grand jury may not question Gravel aide Leonard Rodberg but may question publishing house representatives and others provided they avoid impugning the senator's motive in singlehandedly declassifying the Pentagon history of the Vietnam war and attempting to disseminate it widely.

Both sides sought review of the decision but Gravel, who has won a temporary stay of the grand jury action, was in no hurry for a hearing, which at the high court's normal pace would not be staged until the fall.

Solicitor General Erwin N. Griswold said the government should not be restricted for that long, especially when the Boston grand jury might produce evidence useful in the Los Angeles prosecution of

former Defense Department official Daniel Ellsberg for conspiring to leak the secret papers.

Gravel's lawyers said the government had disclaimed such a purpose in the Boston inquiry. They also quoted Chief Justice Warren E. Burger's dissent last year when the court ruled, 6 to 3, that The Washington Post and New York Times could not be enjoined from publishing the papers.

At that time, Burger complained that the justices had moved with "judicial haste" in a case that demanded "a judicial atmosphere conducive to throughout reflective deliberation." Gravel said his attorneys needed more time for adequate research.

Senate Democratic and Republican policy leaders meet today to decide whether to file a friend-of-the-court brief supporting Gravel and whether to pay the senator's legal expenses.

Another aspect of congressional immunity is scheduled for a second round of arguments on March 20. The government is seeking reinstatement of a bribery indictment against former Sen. Daniel B. Brewster (D-Md.), which was dismissed on grounds that the prosecution entailed unconstitutional questioning of a legislator's acts.

In other action:

Gas Supplies

The court also called for an expedited review of a lower court ruling that in times of natural gas shortage the Fed-

eral Power Commission lacks the power to curtail industrial customers of pipeline companies. The decision would force the commission to divide the scarce fuel among retail consumers after the pipelines had fulfilled their contracts to their direct industrial customers.

Racing Sheets

The court agreed to hear the cases of five Hammond, Ind., men whose gambling conspiracy conviction rested in part on the use of a Chicago racing "scratch sheet" in their bookmaking operation. They contend that the Seventh U.S. Circuit Court of Appeals should have followed another lower court's lead in ruling that there was no violation of federal law when the papers crossed the state line.

Right to Counsel

The court held, 5 to 2, that a 1970 decision requiring counsel at preliminary hearings did not extend to criminal suspects whose hearings were held before the decision. Chief Justice Burger renewed his dissent from the

1970 ruling and Justice Harry A. Blackmun said the decision, which was heard before the joined the court, was wrong.

But Justice Potter Stewart, who dissented in 1970, and Justice Byron R. White joined in the opinion of Justice William J. Brennan Jr. Two justices, William O. Douglas and Thurgood Marshall, dissented and argued that the ruling should be applied to old cases.

Prisoner Suits

The court let stand a ruling that Attica prisoner Martin Sostre could sue New York correction officials for damages for violation of his rights. It also refused to disturb a ruling that Michigan prisoners may not sue under federal minimum wage laws for prison-enforced cooperation in administering drug tests on other inmates for Parke, Davis & Co. and the Upjohn Co.

Women's Rights

The court summarily affirmed an Alabama federal court decision that states may require married women to use their married names on their drivers' licenses.