

Gravel Seeks Stay of Court

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LOS ANGELES, July 19—Sen. Mike Gravel (D-Alaska) took legal action today that would deny the Justice Department key evidence in its case against Daniel Ellsberg and Anthony Russo in the Pentagon Papers trial here.

Gravel, filing with Supreme Court Justice William O. Douglas, asked that a recent high court decision restricting congressional immunity not take effect until the court has ruled on the senator's petition for reconsideration.

That petition, also filed today, contends that it was "entirely improper" for Justice William F. Rehnquist to take part in any Supreme Court case involving the Pentagon Papers, because he helped formulate Justice Department policy on the subject last year as an assistant U.S. attorney general.

The chief effect of Gravel's legal maneuvers, if successful, would be to quash two subpoenas issued last month for appearances at the Ellsberg-Russo trial in U.S. District Court in Los Angeles. Subpoenaed to testify here were Gobin Stair, director of Beacon Press in Boston, and Howard Webber, director of the Massachusetts Institute of Technology Press in Cambridge, Mass.

The MIT Press originally agreed to publish a copy of the Pentagon Papers obtained by Gravel from Ellsberg, but later backed down. Beacon Press, the publishing arm of the Unitarian-Universalist Association, subsequently pub-

lished a four-volume "Gravel edition" of the papers.

Until last month's Supreme Court decision adverse to them, Gravel and Beacon Press had successfully resisted Justice Department attempts to bring testimony on those transactions before a federal grand jury in Boston.

Once that decision officially takes effect next Monday, the Justice Department would be free to call Beacon Press officials, Gravel's aides, and the senator himself, before the Boston grand jury.

The Boston investigation has been suspended, however, pending completion of the trial of Ellsberg and Russo here on charges of conspiracy, espionage and theft of government property.

In the meantime, the special government prosecutors here—who also handled the Boston investigation—apparently feel that the testimony of Stair and Webber is necessary to establish the commercial value of the Pentagon Papers.

One statute under which Ellsberg and Russo are charged specifies that the government property stolen must be worth at least \$100 in order to obtain a conviction.

Jury selection in the Ellsberg-Russo trial, in its eighth day today, is expected to be completed by the end of the week. In that event, the prosecution would begin its case next Monday.

It was with the subpoenas here in mind that Gravel chose to file today with Douglas, who is circuit justice for the Ninth Judicial Circuit, which includes California,

rather than with any other member of the Supreme Court.

Douglas, one of the dissenters in the 5 to 4 decision against Gravel, is also considered the justice who is most likely to grant such a controversial motion without elaborate concern about whether he might be offending his brethren on the high court.

Now at his summer home in Goose Prairie, Wash., Douglas

directed that the Gravel petition be filed with his law clerk in his chambers at the Supreme Court. He could call for oral argument on the matter before ruling.

Attorneys for Gravel and Beacon Press fear that if testimony is compelled here on the "Gravel edition," they will have lost psychological and legal points in their fight against the Boston investigation.

Defense attorneys represent-

Ruling

ing Ellsberg and Russo welcomed the Gravel action as one that could hurt the prosecution case here.

Gravel's petition for rehearing stresses that the Supreme Court decision turned on the vote of Rehnquist, who was assistant attorney general in charge of the Justice Department's office of legal counsel until he was named to the high court last year by President Nixon.