

Court Rules Gravel's Aide Is Immune From Grand Jury

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In a major extension of the doctrine of congressional immunity, a federal appeals court in Boston ruled yesterday that an aide to Sen. Mike Gravel (D-Alaska) cannot be questioned by a grand jury about his role in publication of the top secret Pentagon Papers on the war in Vietnam.

The court said, however, that the grand jury could freely investigate the activities of Beacon Press, which published a copy of the papers provided by Gravel.

The unanimous opinion of the three judges of the U. S. Court of Appeals for the First Circuit authorized resumption of the Boston grand jury investigation of disclosure of the Pentagon Papers, but under severe restrictions.

It said that Dr. Leonard S. Rodberg, an aide to Gravel, could be questioned only about his activities before he was employed by the senator.

Rodberg was hired by Gravel last June 29, a few hours before Gravel convened a midnight hearing of his Senate Subcommittee on Buildings and Grounds for the sole purpose of making public the Pentagon Papers by reading them aloud.

At that time, The New York Times, The Washington Post and The Boston Globe were under temporary federal court restraints against printing articles based on the classified material, pending a final ruling by the Supreme Court.

The next day, the high court, finding that the government had failed to prove the articles would endanger national security, said the newspapers could resume publication.

Rodberg subsequently traveled to Boston with Gravel's copy of the papers and arranged for publication, first by the MIT Press and later, when that fell through, by Beacon, the non-profit publishing arm of the Unitarian-Uni-

versalist Association.

He was subpoenaed by the grand jury in August, and Gravel has been feuding in court with the Justice Department ever since over the legitimate scope of the investigation.

The senator contended that even if he himself was not directly called to testify, his immunity under the speech-and-debate clause of the Constitution could be threatened by

Rodberg's appearance before the grand jury.

Yesterday's appellate court ruling firmly upheld Gravel on that point, which a lower court judge had previously refused to do.

"It is not only accepted practice, but, we would think indispensable, for a legislator to have personal aides in whom he reposes total confidence," wrote Chief Judge Bailey Aldrich.

"This relationship could not exist," Aldrich said, "unless during the course of his employment, the aide and the legislator were treated as one." He said the court would refrain from specifying "exceptions" to that rule.

At the same time, however, the appellate court rejected Gravel's demand for what it called an "unnecessarily cumbersome" procedure to establish whether other grand jury witnesses might jeopardize his immunity.

The senator had sought a full list of grand jury witnesses and the questions they were to

be asked, followed by a hearing on whether anyone had information that might compromise Gravel's position.

But the court said Gravel could provide "a list of his personal aides, and their dates of employment," so that none of them could be questioned about the Pentagon Papers or about Gravel's "legislative activities."

It also ruled that no one could be asked about Gravel's source for the Pentagon Papers. The senator has never specified that source.

Daniel Ellsberg, a researcher at MIT, has acknowledged providing the Pentagon Papers to newspapers and is under indictment in Los Angeles on conspiracy and other federal charges.

Despite its broad ruling covering legislative aides, the court of appeals stressed that "no immunity was conferred upon Beacon Press" when Gravel and Rodberg provided the papers to the publishing firm.