

Justice Claims Subpoena Right On Any Senator

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BOSTON, Mass., Sept. 10—The Justice Department claimed in federal court today that it is entitled to subpoena any member of Congress or any congressional staff aide before a grand jury investigating the disclosure earlier this year of a secret Pentagon study on the war in Vietnam.

"Senators are not immune from the criminal process," said Justice Department Attorney Paul C. Vincent, arguing that an aide to Sen. Mike Gravel (D-Alaska) should be forced to answer a subpoena served on him last month.

Lawyers for Gravel argued in U.S. District Court for Massachusetts that Gravel's assistant, Leonard S. Rodberg, is protected by the same constitutional immunity as any member of Congress.

Federal Judge W. Arthur Garrity took the case under advisement over the weekend.

The Alaska senator, who read excerpts from the Pentagon papers into the public report during a midnight session of his public works subcommittee last June 29, invited the administration to test the issue more directly by calling him to testify instead of Rodberg.

Charging that the Justice Department was using "the back door" to get at his own confidential business, Gravel told a news conference: "if the federal government is after me, they should say so."

After the more than five hours of heated courtroom debate, Gravel said, "I was taken aback by the aggressiveness with which the government seems to pursue me."

Declines to Comment

Vincent, however, replied

only "no comment" when asked whether the Justice Department is contemplating the issuance of a subpoena against the senator himself.

Rodberg, a former professor of physics and astronomy at the University of Maryland, said he was determined not to testify before the grand jury about the Pentagon papers.

"At the present time," Rodberg told newsmen, "I am bound by my duty as a member of Sen. Gravel's personal staff not to testify."

Judge Garrity's ruling on whether to quash the subpoena against Rodberg could be the first step in a major constitutional confrontation over the meaning and the extent of the "speech and debate clause" in Article 1, Section 6 of the Constitution.

Also under advisement is the case of Richard Falk, a professor of international law at Princeton University, who was served with a similar subpoena to appear before the grand jury here.

Attorneys for Falk argued before Garrity today that the professor's appearance before the grand jury could compromise his own confidential sources of information and his ability to serve as a "scholarly commentator" on public affairs.

Already ordered to testify before the grand jury was Sam Popkin, an assistant professor of government at Harvard University.

Popkin, on Garrity's order, went before the grand jury recently, but was excused from any further appearance after only five minutes of questioning. Legal sources here said that the Harvard professor had been asked "simple questions, like 'what newspapers do you read?'"

Vincent continued today to refuse to state the exact nature of the grand jury inquiry.

But an "oath of office" filed with the clerk of U.S. District Court on July 7 but made public for the first time today, confirms that he is here for the investigation of violation of the federal Espionage Act and of other statutes which the government has cited since it first moved against newspapers which published the Pentagon study and against Daniel Ellsberg, who has acknowledged making the Pentagon papers available to the press.

The alleged violations specified in Vincent's oath include "retention of public or records with intent to convert," the gathering and transmitting of national defense information, "the concealment or removal of public records or documents" and "conspiracy to commit such offenses and to defraud the United States."

Central to the government's argument that Rodberg must answer the subpoena was Vincent's contention in court that Gravel's subcommittee meeting was "unauthorized" and unofficial.

"Immunity attaches to a senator only when he is engaged in lawful duties," Vincent said, suggesting that the emergency meeting was not "lawful."

Lawyers for Gravel and Rodberg insisted that the senator's action had not been "eschewed and disclaimed" by the Senate or by Sen. Jennings Randolph (D-W.Va.), chairman of the Parent Public Works Committee.

Garrity said he was reluctant to determine whether the meeting of Gravel's Subcommittee on Public Buildings and Grounds was legal. He said he doubted the court had the power to rule in the matter.

It became known in Los An-

geles meanwhile, that the federal grand jury which indicted Ellsberg last June had been extended another six months.

Probe Continued

The jury's term was due to expire Monday, Sept. 13, but Assistant U.S. Attorney David Nissen said in court that the panel was continuing a broad inquiry into circumstances surrounding the leak of the Pentagon papers.

Nissen denied that the grand jury was gathering evidence on charges already leveled against Ellsberg. He said it was considering other possible charges against Ellsberg and other individuals, including the possibility of perjury.