

Pentagon Papers

Gravel Prosecution Hinted

WASHINGTON — (AP) — The Justice Department, raising the possibility of a sharp constitutional clash, says Sen. Mike Gravel could be open to prosecution because of his disclosure of the Pentagon Papers last June.

Terming a midnight hearing convened by the Alaska Democrat "special, unauthorized and untimely," the department said:

"Not being engaged in official subcommittee business, his actions cannot be above scrutiny by those charged to enforce the criminal statutes."

The department commented in a brief filed yesterday in U.S. District Court in Boston to support arguments that a federal grand jury has the right to question a Gravel aide, Dr. Leonard S. Rodberg.

Legal Immunity

The brief did not indicate the department would seek to subpoena Gravel, too, in what is believed to be an investigation of how the secret study of the Vietnam war

was leaked to newspapers and to the senator.

But it argued that the federal grand jury has the right to call the senator and added that if it does, Gravel could refuse to incriminate himself by taking the Fifth Amendment.

A Gravel aide told newsmen an attempt to subpoena a senator, constitutionally immune from legal action while performing legitimate legislative business, probably would require Senate approval and almost certainly touch off a major clash with the executive branch.

The aide argued the same right of immunity extends to congressional aides.

Gravel, meanwhile, in preparation for a third hearing on the Rodberg subpoena scheduled in Boston Friday, wrote his colleagues that "what is at stake is the independence of the Senate and our entire system of constitutional government.

"If the executive branch may with the cooperation of the federal courts order our staff assistants to testify be-

fore federal grand juries about our sources of information," he wrote, "we would obviously be open to harassment and subject to new constraints."

Rodberg, a former physics professor who has done work for several senators who oppose the war, joined Gravel's staff the night the senator read the Pentagon papers at an emotional four-hour meeting of his subcommittee on the Capitol grounds.

Gravel has never said where he obtained his copy of the study.

Think-Tank Aide

Rodberg is associated with the Institute for Political Studies in Washington, a think-tank which has worked closely with war opponents. Some of its members reportedly had access to the Pentagon papers at one time.

The Justice Department brief argues the Constitution protects only senators and congressmen and that the concept of its extension to aides has never been resolved by the courts.