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Heard, Restraint Extended; Halts a Boston Globe Series

Meanwhile, the Justice Department's efforts to suppress publication of the secret material spread to Boston, where a Federal District Judge issued a temporary restraining order against The Boston Globe. The newspaper began a similar series of articles yesterday morning and was sued within hours.

The Globe said it would accede to the order.

In New York, Chief Judge Henry J. Friendly of the Court of Appeals for the Second Circuit announced after arguments in the case involving The Times that a decision would be made "very promptly"—"surely in the next few days" in any event.

The announcement of the decision is expected to touch off a rush to the Supreme Court by lawyers for the losing side. The Court holds its last scheduled session of the current term next Monday. Lawyers involved with the case expect both Courts of

Appeal to decide in time for the cases to reach the high court before the end of this week.

The New York Times series, which included the publication of documents accompanying the Pentagon study, appeared on June 13, 14 and 15, before it was halted by Federal District Judge Murray I. Gurfein pending a final decision on the Government's suit.

At the argument yesterday before the full eight-judge bench of the Second Circuit, which encompasses New York, Vermont and Connecticut, a lawyer for The Times lifted for the first time the secrecy that has shrouded the closed-door testimony by Government officials before Judge Gurfein.

Alexander M. Bickel, who argued for The Times, said that during the secret session "Judge Gurfein asked the Government time and time again to lead

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him into this study and show him where the shoe pinches."

Mr. Bickel, who is a law professor at Yale, added that the three Government witnesses could point to only about six documents in the 7,000-page archive as ones that might severely damage the nation by their disclosure. After Judge Gurfein examined those documents, Mr. Bickel noted, he denied the injunction, declaring that in his opinion publication would not seriously breach the nation's security.

The unusual "en banc" session of the Court of Appeals was held in packed chambers on the 17th floor of the United States Court House on Foley Square. The entire spectator section was taken up by the press corps, consisting of over 50 reporters. Several hundred would-be spectators who pressed against the doors were turned away.

Hurdle for the Government

During the arguments it became apparent that the decision of all eight judges to hear the case—rather than the usual three-judge panel—created a difficult hurdle for the Government since a 4-to-4 tie would affirm judge Gurfein's decision in favor of The Times.

Whitney North Seymour Jr., the United States attorney here, was questioned closely by several members of the court when he presented the Government's arguments.

His basic contention was that the editors of The Times had undermined the Government's system of classified information when "they presumed in themselves the role of the de-classifier" by publishing material stamped top secret.

He argued that once the Government stamps a secret classification on a document, the courts should bar any newspaper from publishing it unless the newspaper proves in court that the classification is "arbitrary and unsupportable."

Mr. Seymour complained that his attorneys were handicapped by a crowded courtroom and "a veritable cabal of the nation's press."

'Like an Old-Fashioned Movie'

"It was almost like an old-fashioned movie," he said, "with bursts of laughter and approval when the advocate of the defendants' position scored a point and mutterings of disapproval as the Government made its arguments."

"What the Government has done in this case is a terribly unpopular thing," he added. "We are vilified on all sides."

Mr. Bickel made a highly technical argument in which he attempted to defend every point

of Judge Gurfein's decision. He stressed the newspaper's assertion that the classification system was a sham, in which documents were routinely over-classified and classified documents were leaked on a wholesale basis.

Mr. Bickel insisted that when The Times published material from the Pentagon study, it was "acting consistently with established practice and with the First Amendment."

At the conclusion of the hour and a half of argument by opposing counsel, Norman Dorsen, general counsel of the American Civil Liberties Union and Victor Rabinowitz of the National Emergency Civil Liberties Union were granted five minutes each to argue as friends of the court.

Mr. Dorsen contended that the proceedings so far "already represent a severe defeat for the First Amendment" because a temporary restraining order was issued on the strength of general allegations by the Government that serious harm would otherwise result.

He said that this was likely to set a precedent that would encourage the Government to go to court whenever officials were upset by news stories.

To avoid this, he urged the court to rule that newspapers cannot be restrained from publishing material unless there is proof that publication would compromise military operations that are not a matter of domestic political debate.