

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR,

Plaintiff,

v.

Civil Action No. 77-692

DEPARTMENT OF JUSTICE,

Defendant.

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR
ENLARGEMENT OF TIME WITHIN WHICH TO DOCKET
RECORD ON APPEAL

Plaintiff has moved this Court for a forty-day enlargement of the time in which he must docket the record of this case in the United States Court of Appeals. He seeks this enlargement for the stated purpose of preparing a "motion for a new trial,"^{1/} which apparently would be based upon his contention that the recent release by the House Select Committee on Assassinations of two pages of Memphis Police Department records which were involved in this case^{2/} somehow "undermines the credibility" of the affidavit of District Attorney General Hugh W. Stanton, Jr. ("Stanton Affidavit"), filed by defendant in this action.

^{1/} It should be noted that plaintiff has already filed one Rule 59 motion challenging the Court's determination of this case; that motion was denied by the Court on September 13, 1978.

^{2/} A preliminary investigation by defendant's counsel has verified the fact that the two Memphis Police Department records identified by plaintiff (Exhibits 1 and 2 to plaintiff's motion) have in fact been released to the press and the public by the Select Committee, and that a limited number of other similar documents may in the future be disclosed in whole or in selected portions as part of the published record of the hearings recently held by the Select Committee. The identity or significance of the document attached to plaintiff's motion as "Exhibit 4" is unknown.

In response, defendant is compelled to observe that it is difficult to imagine any possible bearing that such document disclosures by the Select Committee could have upon the credibility of the Stanton Affidavit. Indeed, that affidavit specifically identifies the transmission of Memphis Police Department documents to the Select Committee as one of three instances in which such documents have been released from the confidential custody of the District Attorney General's office. See Stanton Affidavit (Exhibit 3 to plaintiff's motion) at 2. The fact that a few of these documents, once obtained by the Select Committee pursuant to congressional subpoena, may be publicly disclosed at the discretion of the Select Committee in no way detracts from the strong policy reasons which compelled this Court to afford protection to all such documents under 5 U.S.C. §552(b)(7)(D) in this case. See Memorandum Opinion of July 28, 1978 at 4.

Accordingly, defendant respectfully suggests that plaintiff has failed to demonstrate the existence of any reasonable grounds for the "motion for a new trial" in connection with which he has filed the instant enlargement request. Should the Court consider it appropriate to afford plaintiff the opportunity to file such a motion, however, defendant would have no objection to the granting

of the requested enlargement in order to ensure the orderly preparation, defense and adjudication of same.

Respectfully submitted,


BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney


LYNNE K. ZUSMAN

Dated: December 13, 1978


DANIEL J. METCALFE

Attorneys, Department of Justice
P.O. Box 7219
Washington, D.C. 20044
Tel: (202) 633-3183

Attorneys for Defendant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Defendant's Response To Plaintiff's Motion For Enlargement Of Time Within Which To Docket Record On Appeal was served upon plaintiff pro se by deposit of a copy thereof in the United States mail, postage prepaid, first class mail, addressed to James H. Lesar, Esq., 910 16th Street, N.W., Washington, D.C., 20006, on this 13th day of December, 1978.



DANIEL J. METCALFE