

January 18, 1974. - After hearing the motion to stay pending appeal is denied as a matter of discretion in the following reasons. This is not a class action, and the case was decided on the particular facts before the Court. Further, the defendant made no satisfactory showing of irreparable harm. It would be denied. I would also suggest that the public be allowed to receive information and ideas can be learned by continued delay in providing access to the same information.

James H. Gabriel
 U.S. Dist. Ct.

UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS

FILED
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 JAN 22 2 28 PM '74
 U.S. DISTRICT COURT
 DISTRICT OF MASS

GEORGE McMILLAN,
 Plaintiff

v.

NORMAN CARLSON, Director,
 Federal Bureau of Prisons,
 Defendant

CIVIL ACTION NO. 72-2551-X

Admitted

MOTION FOR STAY PENDING APPEAL

Now comes defendant Norman Carlson, Director, Federal Bureau of Prisons, by his attorney James H. Gabriel, United States Attorney for the District of Massachusetts, and moves for stay of the Court's order in the above-entitled action dated December 31, 1973 pending appeal pursuant to Rule 62(c) and (e) Federal Rules of Civil Procedure.

Defendant contends that the Court's ruling will result in irreparable harm to the management of the Federal Prison System entrusted to the Bureau of Prisons. As pointed out in previous briefs filed by defendant in this action, an open visiting policy with respect to authors threatens the prison discipline and the security and order of the Federal Prisons System. See affidavits of Wardens S.J. Britton and George W. Pickett and Norman Carlson, Director of the Bureau of Prisons attached as exhibits to Defendant's Motion To Dismiss Or, In The Alternative, For Summary Judgment and supplement to motion. Under these circumstances, a stay pending appeal is necessary to prevent injury to the public interest. Rule 62(c) and (e), Federal Rules of Civil Procedure. Yakus v. United States, 321 U.S. 414, 440 (1944); Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921, 925 (D.C. Cir. 1958).

In this connection, the Court of Appeals for the Ninth Circuit sustained the constitutionality of the same bureau policy involved in this suit. Seattle-Tacoma Newspaper Guild v.