

STEEL ■
HECTOR
■ DAVIS

Steel Hector & Davis LLP
200 South Biscayne Boulevard
Miami, Florida 33131-2398
305.577.7000
305.577.7001 Fax

Norman Davis
305.577.2988

January 29, 2001

Robert G. Sugarman, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153

Re: Jerry Greenberg, et al. v. National Geographic Society, et al.

Dear Bob:

In the Settlement Agreement between the Greenbergs and the National Geographic Society ("NGS"), dated December 1, 1999, the first three paragraphs read as follows:

1. NGS will conduct a visual inventory of photographs of Jerry Greenberg held by NGS and convey the visual inventory to Jerry Greenberg.
2. Jerry Greenberg will demonstrate to NGS any rights he possesses, through contract/agreement or copyright, to control or limit the use of photographs in the inventory.
3. NGS will not directly or indirectly use or permit any third party to use, without the prior written consent of Jerry Greenberg, any photograph in which Jerry Greenberg has demonstrated rights as set forth in paragraph 2 above, except as permitted by Section 201 (c) of the Copyright Act.

In due course, you provided to us an inventory consisting of 12 folders in accordance with paragraph 1 above. This letter, with facsimiles of the 12 folders and supporting documents, is forwarded pursuant to paragraph 2 above. Mr. Greenberg has prepared separate packets to cluster the various photographs as they were identified in each numbered item in the NGS inventory. Each packet is outlined below, and the numbers correspond with the inventory numbers.

#1 -- 15 published photographs from the Pennekamp Reef Park story in the July 1990 edition of the Magazine. Mr. Greenberg owns copyright pursuant to the agreement set forth in a letter from Kent Koberstein on June 14, 1989 and ratified by Mr. Greenberg. Mr. Greenberg registered the copyright on July 27, 1990, and a copy of the registration form is in the packet.

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904.222.8410 Fax

Key West
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Caracas
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582.951.4106 Fax

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Page 2

#2 -- 76 unpublished photographs related to the Pennekamp Reef Park story in the July 1990 edition of the Magazine. Pursuant to the Koberstein letter of June 14, 1989, copyright in all photographs vested in Mr. Greenberg after publication of the article. The agreement provided that all photographs were to be returned to Mr. Greenberg, and that the Society could retain copies of some of the photographs ("reference selects") for reference purposes only. In a letter dated November 16, 1989, Mr. Koberstein clarified that the reference selects would be low-quality dupes and that none of the photographs would be used without Mr. Greenberg's permission. A copy of the registration form for the photographs is included in the packet.

#3 -- 36 unpublished photographs related to the Sea Lab 1964 project. Mr. Greenberg asserts no rights pursuant to the Settlement Agreement.

#4 -- 4 unpublished photographs related to Key Largo. Mr. Greenberg asserts no rights pursuant to the Settlement Agreement.

#5 -- 14 published photographs for the Florida Underwater Wilderness story in Traveler Magazine for December 1985. Mr. Greenberg owns all rights to the photographs pursuant to an agreement dated June 8, 1984 that was executed by Robert Gilka for the Society. The Society purchased one-time reproduction rights.

#6 -- One published photograph (JG975) and three unpublished photographs (JG964, JG976, JG984). On July 3, 1989, the Society assigned all right, title and interest, including copyright, in the photographs bearing those file numbers to Mr. Greenberg.

#7 -- 10 published photographs for the Sharks: Wolves of the Sea story in February 1968. All right, title and interest, including copyright, was transferred to Mr. Greenberg on December 18, 1985.

#8 -- 8 published photographs for the Buck Island story in May 1971. All right, title and interest, including copyright, was transferred to Mr. Greenberg on December 18, 1985.

#9 -- 37 published photographs for two stories in the January 1962 issue of the Magazine. All right, title and interest, including copyright, was transferred to Mr. Greenberg on December 18, 1985.

#10 -- 2 published photographs relating to the Virgin Islands. Mr. Greenberg asserts no rights pursuant to the Settlement Agreement.

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#11 -- 39 unpublished photographs relating to the Pennekamp Park story. Mr. Greenberg asserts no rights pursuant to the Settlement Agreement.

#12 -- 17 unpublished photographs relating to the Pennekamp Park story. Mr. Greenberg asserts no rights pursuant to the Settlement Agreement.

If your client has questions or challenges with respect to the rights demonstrated above, or if the rights are sufficiently delineated, please let us know as soon as possible.

Sincerely,



Norman Davis

Enclosures

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Norman Davis

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bcc: Jerry Greenberg

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Mr. Greenberg has provided us with information as to a number of photographs that were not included in the inventory but that have been used in the past by the Society, or that have existed in the Society's files, and that presumably are still within its possession. The essential purpose of this letter is to alert the Society to the existence, or possible existence, in its archives of additional materials that it should safeguard against further use. Some of the discussion below pertains to photographs and visual materials that may actually have been returned to Mr. Greenberg and are merely being flagged here for future reference. Our working assumption is that all original materials (chromes or dupes) have been returned; if, in any of the situations discussed below any original materials (or materials owned by Mr. Greenberg) still exist in the Society's archives, they should be returned to Mr. Greenberg. To the extent that any of the additional photographs are in the archive, it is disappointing, to say the least, that they were not previously accounted for. The discussion below relates to the numerous photographic exhibits that are enclosed with this letter, and each will be mentioned briefly.

Folder #1

In 1970, 11 photographs from Mr. Greenberg's personal files were used in the "Vacationland U.S.A." book published by the Society. The usage was limited to that book. The chromes were returned to him in due course, but one photograph was later re-used as discussed in #2 below. f

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Robert G. Sugarman, Esquire
May 2, 2001
Page 2

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Folder #2

The color photograph shown in the folder appeared in the "Vacationland U.S.A." book mentioned above. In May of 1970, the photograph appeared in the Society's monthly magazine as part of a promotion for the vacation book. That use was not authorized in advance. This experience illustrates that, notwithstanding the return to Mr. Greenberg of his chromes, other usable materials were retained by the Society. The photograph should be flagged against re-use, and returned if under the Society's control.

Folder #3

The color photograph shown in the folder first appeared in the Society's "World Beneath the Sea" in 1967. In 1975, Mr. Greenberg and the Society negotiated a one-time re-use of the photograph in a special membership promotion booklet. The Society's payment voucher even uses a Greenberg file number, JG-972. Any materials still on file should be returned.

Folder #4

In 1970, the Society used one Greenberg photograph in its book "Undersea Treasures," and paid him for the use. Twenty-seven photographs were submitted to the Society at the time for possible use in the book. The photographs should be returned if under the Society's control.

Folder #5

The color photograph shown in the folder was used in Traveler Magazine in 1985. In 1994, the Society published the photograph again, without permission, in the same magazine. In correspondence contained in the folder, Mr. Greenberg accepted payment and an apology for the unauthorized use, but he also insisted on the return of all of his materials. Later in 1994, 14 duplicate transparencies were returned, but he believes that others exist. Any photograph from the 1985 publication should be flagged against re-use, and returned if under the Society's control.

Folder #6

Robert G. Sugarman, Esquire
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Page 3

The shark photographs shown in the folder, from Mr. Greenberg's personal file, were submitted in 1963 to supplement coverage for an article. The seven photographs were not used in the article, but he has no record that they were returned. The photographs should be flagged against re-use, and returned if under the Society's control.

Folder #7

The 26 color photographs shown in the folder all originally appeared in two articles in the Society's magazine for which Mr. Greenberg provided coverage. They were republished in the 1965 and 1969 editions of the Society's book "Wondrous World of Fishes." The photographs were included in the inventory provided by the Society, but we are listing them here because of the re-use that occurred. Copyright in all of the photographs was assigned to Mr. Greenberg in 1985. All of the photographs should be flagged against re-use, and returned if under the Society's control.

Folder #8

The seven color photographs shown in the folder, all from Mr. Greenberg's personal files, were used in the Society's book "Wondrous World of Fishes" in 1965 and 1969. The Society returned the originals but apparently retained dupes of each photograph. One photograph was used subsequently without permission. All of the photographs should be flagged against re-use, and returned if under the Society's control.

Folder #9

The 20 color photographs shown in the folder, all from Mr. Greenberg's personal files, were used with permission in the 1967 and 1973 versions of the Society's "World Beneath the Sea." It is not clear whether the originals were returned. It is less clear whether any dupes were retained. All of this material should be flagged against re-use, and returned if under the Society's control.

Folder #10

This folder is included to indicate 12 color photographs that were not included in the Society's inventory, but that are not challenged by Mr. Greenberg as to ownership or use.

Folder #11

Robert G. Sugarman, Esquire
May 2, 2001
Page 4

The color photograph shown in the folder (or one like it) was loaned to Dave Bridge so he could make a personal print for his own use. It appeared, with Mr. Greenberg's consent, in the 1947-1969 Cumulative Index of the Society's monthly magazine. The photograph was not included in the Society's inventory. The photograph should be flagged against re-use, and returned if under the Society's control.

Folder #12

In the inventory, 60 "selects" pulled by the Society in 1961 from a group of photographs taken by Mr. Greenberg for the Key Largo story (the selects were not used in the article) were identified. The color photograph shown in the folder was also in the Key Largo group but was not listed in the inventory. It was not one of the "selects" chosen by editor Bill Garrett in 1961, and Mr. Greenberg is thus the owner pursuant to the written assignment to which he agreed. The photograph was published in an article in the Society's monthly magazine in November 1963. The photograph should be flagged against any further re-use, and returned if under the Society's control.

Folder #13

The color photograph shown in the folder is another in the Key Largo group, discussed above, that was not listed in the inventory and was not one of the Garrett "selects." Mr. Greenberg owns rights to the photograph. The photograph was published in an article in the Society's monthly magazine in August 1963. The photograph should be flagged against any further re-use, and returned if under the Society's control.

Folder #14

The two color photographs shown in the folder were published in 1964 in the June issue of the monthly magazine. These photographs were not included in the Society's inventory, but they are not challenged by Mr. Greenberg as to ownership or use.

Folder #15

The color photographs shown in the folder was published originally in "Wondrous World of Fishes" in 1965. A letter from the Society to Mr. Greenberg in that year indicated that the original chrome for the photograph was returned to him. In the National Geographic School Bulletin of February 1970, however, the photograph appeared again without consultation, but Mr.

Robert G. Sugarman, Esquire
May 2, 2001
Page 5

Greenberg accepted payment after the fact. The photograph should be flagged against re-use, and returned if under the Society's control.

Folder #16

The two color photographs shown in the folder were published originally in 1972 in the Society's book "Treasures in the Sea." All rights to the photographs were transferred to Mr. Greenberg in 1985 and 1989. The photographs were not included in the Society's inventory. They should be flagged against re-use, and returned if under the Society's control.

Folder #17

In August of 1970, the Society retained a number (not known) of photographs, shot by Mr. Greenberg on assignment for "Mineral Wealth From The Sea," for use in the monthly magazine. The photographs were not included in the Society's inventory, but they are not challenged by Mr. Greenberg as to ownership or use.

Folder #18

In August of 1962, the Society retained four items, shot by Mr. Greenberg on assignment for "Voss Coral Reef Research," for use in the monthly magazine. The photographs were not included in the Society's inventory, but they are not challenged by Mr. Greenberg as to ownership or use.

Folder #19

In January of 1966, Mr. Greenberg provided photographs on assignment for "Green Turtle Research" that were not used for the article for which they originally were intended. The Society acknowledged that it retained some "selects." The photographs were not included in the Society's inventory, but they are not challenged by Mr. Greenberg as to ownership or use.

Folder #20

The color photograph shown in the folder was originally used in a 1962 issue of the monthly magazine. It was re-published in June 1967 in the magazine as part of a special publication announcement for the book "World Beneath the Sea." Subsequently, in 1985, copyright in the

Robert G. Sugarman, Esquire
May 2, 2001
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photograph was transferred to Mr. Greenberg. Although the photograph was included in the Society's inventory, it should be particularly flagged against re-use because of the additional publication that occurred in 1967.

Folder #21

The color photograph shown in the folder was not included in the Society's inventory. It is not challenged by Mr. Greenberg as to ownership or use.

Folder #22

The color photograph shown in the folder was included in the Society's inventory. It originally was published in a 1962 issue of the monthly magazine. It was subsequently published, on various dates and in various languages, in a Society book titled "How Animals Hide." In 1985, copyright in the photograph was transferred to Mr. Greenberg. Because of his concern over the additional use that was made, the photograph should be flagged against re-use.

Folder #23

The two color photographs shown in the folder. Copyright in the photograph at bottom was transferred to Mr. Greenberg in 1985; copyright in the top photograph was transferred to him in 1989. Notwithstanding the transfers, the photographs were published in a Chinese language version of the Society's book "Treasure in the Sea" in 1989. Neither photograph was included in the Society's inventory. Mr. Greenberg is not now challenging that publication. The photographs should be flagged against re-use.

Folder #24

The four color photographs shown in the folder belong to Mr. Greenberg as a consequence of the transfer to him of copyright in those four specific photographs in 1989. They were not included in the Society's inventory. The photographs should be flagged against re-use, and returned if under the Society's control.

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REGISTERED LIMITED LIABILITY PARTNERSHIP

Robert G. Sugarman, Esquire
May 2, 2001
Page 7

If you or the Society have questions regarding the photographs identified above, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Norman Davis". The signature is written in dark ink and is positioned above the printed name.

Norman Davis

Enclosures

cc: Jerry Greenberg

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The four color photographs shown in the folder belong to Mr. Greenberg as a consequence of the transfer to him of copyright in those four specific photographs in 1989. They were not included in the Society's inventory. The photographs should be flagged against re-use, and returned if under the Society's control.

STEEL ■
HECTOR
■ DAVIS
REGISTERED LIMITED LIABILITY PARTNERSHIP

Robert G. Sugarman, Esquire
May 2, 2001
Page 7

If you or the Society have questions regarding the photographs identified above, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Norman Davis". The signature is written in dark ink and is positioned above the printed name.

Norman Davis

Enclosures

cc: Jerry Greenberg

GREEN FLAG
#10 #13,
#17, #18,
#19, #21

April 25, 2001

Robert G. Sugarman, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153

Re: Jerry Greenberg, et al. v. National Geographic Society, et al.

Dear Bob:

Ⓞ

You previously sent to us, pursuant to the settlement agreement with reference to Counts I and II, an inventory ("inventory" in the discussion below) of what purportedly were all photographic materials in the Society's archives that in one way or another originated from Mr. Greenberg's cameras. We responded by producing documentation in support of Mr. Greenberg's republication rights to various items in the inventory.

Ⓞ

Mr. Greenberg has provided us with information as to a number of photographs that were not included in the inventory but that have been used in the past by the Society, or that have existed in the Society's files, and that presumably are still within its possession. The essential purpose of this letter is to alert the Society to the existence, or possible existence, in its archives of additional materials that it should safeguard against further use. Some of the discussion below pertains to photographs and visual materials that may actually have been returned to Mr. Greenberg and are merely being flagged here for future reference. Our working assumption is that all original materials (chromes or dupes) have been returned; if, in any of the situations discussed below any original materials (or materials owned by Mr. Greenberg) still exist in the Society's archives, they should be returned to Mr. Greenberg. To the extent that any of the additional photographs are in the archive, it is disappointing, to say the least, that they were not previously accounted for. The discussion below relates to the numerous photographic exhibits that are enclosed with this letter, and each will be mentioned briefly.

Folder #1

Ⓞ

In 1970, 11 photographs from Mr. Greenberg's personal files were used in the "Vacationland U.S.A." book published by the Society. The usage was limited to that book. The chromes were returned to him in due course, but one photograph was later re-used as discussed in #2 below. If

any visual materials regarding the 11 photographs are on file they should be flagged against re-use, and returned if under the Society's control. (OK)

Folder #2 (OK)

The color photograph shown in the folder appeared in the "Vacationland U.S.A." book mentioned above. In May of 1970, the photograph appeared in the Society's monthly magazine as part of a promotion for the vacation book. That use was not authorized in advance. This experience illustrates that, notwithstanding the return to Mr. Greenberg of his chromes, other usable materials were retained by the Society. The photograph should be flagged against re-use, and returned if under the Society's control.

Folder #3 (OK)

The color photograph shown in the folder first appeared in the Society's "World Beneath the Sea" in 1967. In 1975, Mr. Greenberg and the Society negotiated a one-time re-use of the photograph in a special membership promotion booklet. The Society's payment voucher even uses a Greenberg file number, JG-972. Any materials still on file should be returned.

Folder #4 (OK)

In 1970, the Society used one Greenberg photograph in its book "Undersea Treasures," and paid him for the use. Twenty-seven photographs were submitted to the Society at the time for possible use in the book. The photographs should be returned if under the Society's control.

Folder #5 (OK)

The color photograph shown in the folder was used in Traveler Magazine in 1985. In 1994, the Society published the photograph again, without permission, in the same magazine. In correspondence contained in the folder, Mr. Greenberg accepted payment and an apology for the unauthorized use, but he also insisted on the return of all of his materials. Later in 1994, 14 duplicate transparencies were returned, but he believes that others exist. Any photograph from the 1985 publication should be flagged against re-use, and returned if under the Society's control.

Folder #6 (OK)

The shark photographs shown in the folder, from Mr. Greenberg's personal file, were submitted in 1963 to supplement coverage for an article. The seven photographs were not used in the article, but he has no record that they were returned. The photographs should be flagged against re-use, and returned if under the Society's control.

Folder #7

(OK)

The 26 color photographs shown in the folder all originally appeared in two articles in the Society's magazine for which Mr. Greenberg provided coverage. They were republished in the 1965 and 1969 editions of the Society's book "Wondrous World of Fishes." The photographs were included in the inventory provided by the Society, but we are listing them here because of the re-use that occurred. Copyright in all of the photographs was assigned to Mr. Greenberg in 1985. All of the photographs should be flagged against re-use, and returned if under the Society's control.

Folder #8

(OK)

The seven color photographs shown in the folder, all from Mr. Greenberg's personal files, were used in the Society's book "Wondrous World of Fishes" in 1965 and 1969. The Society returned the originals but apparently retained dupes of each photograph. One photograph was used subsequently without permission. All of the photographs should be flagged against re-use, and returned if under the Society's control.

Folder #9

(OK)

The 20 color photographs shown in the folder, all from Mr. Greenberg's personal files, were used with permission in the 1967 and 1973 versions of the Society's "World Beneath the Sea." It is not clear whether the originals were returned. It is less clear whether any dupes were retained. All of this material should be flagged against re-use, and returned if under the Society's control.

Folder #10

GREEN FLAG

(OK)

This folder is included to indicate 12 color photographs that were not included in the Society's inventory, but that are not challenged by Mr. Greenberg as to ownership or use.

Folder #11

(OK)

The color photograph shown in the folder (or one like it) was loaned to Dave Bridge so he could make a personal print for his own use. It appeared, with Mr. Greenberg's consent, in the 1947-1969 Cumulative Index of the Society's monthly magazine. The photograph was not included in the Society's inventory. The photograph should be flagged against re-use, and returned if under the Society's control.

Folder #12

(OK)

In the inventory, 60 "selects" pulled by the Society in 1961 from a group of photographs taken by Mr. Greenberg for the Key Largo story (the selects were not used in the article) were identified. The color photograph shown in the folder was also in the Key Largo group but was not listed in the inventory. It was not one of the "selects" chosen by editor Bill Garrett in 1961, and Mr. Greenberg is thus the owner pursuant to the written assignment to which he agreed. The photograph was published in an article in the Society's monthly magazine in November 1963. The photograph should be flagged against any further re-use, and returned if under the Society's control.

Folder #13

(OK) w/c

The color photograph shown in the folder is another in the Key Largo group, discussed above, that was not listed in the inventory and was not one of the Garrett "selects." Mr. Greenberg owns rights to the photograph. The photograph was published in an article in the Society's monthly magazine in August 1963. The photograph should be flagged against any further re-use, **AND RETURNED IF UNDER THE SOCIETY'S CONTROL.**

Folder #14

GREEN FLAG

(OK)

The two color photographs shown in the folder were published in 1964 in the June issue of the monthly magazine. These photographs were not included in the Society's inventory, but they are not challenged by Mr. Greenberg as to ownership or use.

Folder #15

(OK)

The color photographs shown in the folder was published originally in "Wondrous World of Fishes" in 1965. A letter from the Society to Mr. Greenberg in that year indicated that the original chrome for the photograph was returned to him. In the National Geographic School Bulletin of February 1970, however, the photograph appeared again without consultation, but Mr. Greenberg accepted payment after the fact. The photograph should be flagged against re-use, and returned if under the Society's control.

Folder #16

(OK)

The two color photographs shown in the folder were published originally in 1972 in the Society's book "Treasures in the Sea." All rights to the photographs were transferred to Mr. Greenberg in 1985 and 1989. The photographs were not included in the Society's inventory. They should be flagged against re-use, and returned if under the Society's control.

Folder #17

GREEN FLAG

OK

In August of 1970, the Society retained a number (not known) of photographs, shot by Mr. Greenberg on assignment for "Mineral Wealth From The Sea," for use in the monthly magazine. The photographs were not included in the Society's inventory, but they are not challenged by Mr. Greenberg as to ownership or use.

Folder #18

GREEN FLAG

OK

In August of 1962, the Society retained four items, shot by Mr. Greenberg on assignment for "Voss Coral Reef Research," for use in the monthly magazine. The photographs were not included in the Society's inventory, but they are not challenged by Mr. Greenberg as to ownership or use.

Folder #19

GREEN FLAG

OK

In January of 1966, Mr. Greenberg provided photographs on assignment for "Green Turtle Research" that were not used for the article for which they originally were intended. The Society acknowledged that it retained some "selects." The photographs were not included in the Society's inventory, but they are not challenged by Mr. Greenberg as to ownership or use.

Folder #20

OK

The color photograph shown in the folder was originally used in a 1962 issue of the monthly magazine. It was re-published in June 1967 in the magazine as part of a special publication announcement for the book "World Beneath the Sea." Subsequently, in 1985, copyright in the photograph was transferred to Mr. Greenberg. Although the photograph was included in the Society's inventory, it should be particularly flagged against re-use because of the additional publication that occurred in 1967.

Folder #21

GREEN FLAG

OK

The color photograph shown in the folder was not included in the Society's inventory. It is not challenged by Mr. Greenberg as to ownership or use.

Folder #22

OK

The color photograph shown in the folder was included in the Society's inventory. It originally was published in a 1962 issue of the monthly magazine. It was subsequently published, on various dates and in various languages, in a Society book titled "How Animals Hide." In 1985,

OK

copyright in the photograph was transferred to Mr. Greenberg. Because of his concern over the additional use that was made, the photograph should be flagged against re-use.

Folder #23

OK

The two color photographs shown in the folder. Copyright in the photograph at bottom was transferred to Mr. Greenberg in 1985; copyright in the top photograph was transferred to him in 1989. Notwithstanding the transfers, the photographs were published in a Chinese language version of the Society's book "Treasure in the Sea" in 1989. Neither photograph was included in the Society's inventory. Mr. Greenberg is not now challenging that publication. The photographs should be flagged against re-use.

Folder #24

OK

The four color photographs shown in the folder belong to Mr. Greenberg as a consequence of the transfer to him of copyright in those four specific photographs in 1989. They were not included in the Society's inventory. The photographs should be flagged against re-use, and returned if under the Society's control.

If you or the Society have questions regarding the photographs identified above, please let me know.

Sincerely,

Norman Davis

Enclosures

cc: Jerry Greenberg